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**Authorised Version No. 139**

# Water Act 1989

**No. 80 of 1989**

Authorised Version incorporating amendments as at
24 May 2023

**The Parliament of Victoria enacts as follows:**

## Part 1—Preliminary

### 1 Purposes

This Act has the following purposes—

(a) to re-state, with amendments, the law relating to water in Victoria;

(b) to provide for the integrated management of all elements of the terrestrial phase of the water cycle;

(c) to promote the orderly, equitable and efficient use of water resources;

(d) to make sure that water resources are conserved and properly managed for sustainable use for the benefit of present and future Victorians;

(e) to maximise community involvement in the making and implementation of arrangements relating to the use, conservation or management of water resources;

(ea) to ensure that Victoria's water resources and waterways are managed in a way that considers—

**S. 1(ea) inserted by No. 23/2019 s. 4.**

(i) Aboriginal cultural values and uses of waterways; and

(ii) the social and recreational uses and values of waterways;

(f) to eliminate inconsistencies in the treatment of surface and groundwater resources and waterways;

(g) to provide better definition of private water entitlements and the entitlements of Authorities;

(h) to foster the provision of responsible and efficient water services suited to various needs and various consumers;

(i) to provide recourse for persons affected by administrative decisions;

(j) to provide formal means for the protection and enhancement of the environmental qualities of waterways and their in-stream uses;

(k) to provide for the protection of catchment conditions;

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

(l) to replace many forms of detailed administrative supervision of Authorities with general supervision by the Minister, through approved corporate plans and express directions;

(m) to continue in existence and to protect all public and private rights to water existing before the commencement of the relevant provisions of this Act.

## 2 Commencement

(1) This Act (except sections 328 and 329) comes into operation on 1 September 1991 or an earlier day or days to be proclaimed.

(2) Section 328 comes into operation on the day on which this Act receives the Royal Assent.

(3) Section 329 must be taken to have come into operation on 6 July 1988.

* * * * *

S. 2A inserted by No. 13/1990 s. 45, repealed by No. 23/2019 s. 100.

## 3 Definitions

(1) In this Act—

***Aboriginal person*** has the same meaning as in the **Aboriginal Heritage Act 2006**;

S. 3(1) def. of *Aboriginal person* inserted by No. 23/2019 s. 5(7).

* * * * *

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

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

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

***annual salinity impact charge*** means a charge fixed in a determination under section 232B(1)(b);

S. 3(1) def. of *annual salinity impact charge* inserted by No. 23/2019 s. 5(8).

***annual use limit***, in relation to—

(a) a water-use licence, means the maximum volume of water that in any 12 month period may be applied to the land specified in the licence under a condition on the licence imposed under section 64AD, or as determined in accordance with the conversion rules

S. 3(1) def. of *annual use limit* inserted by No. 99/2005 s. 38(1)(a).

applicable to the licence (as the case requires); and

(b) a water-use registration, means the maximum volume of water that may be used on the land specified in the registration in any 12 month period under a condition on the registration imposed under section 64AT or as determined in accordance with the conversion rules applicable to the registration (as the case requires);

S. 3(1) def. of *approved form* inserted by No. 99/2005 s. 38(1)(a).

***approved form***, in Part 5A, means a form approved by a recording body;

S. 3(1) def. of *approved Great Ocean Road strategic framework plan* inserted by No. 19/2020 s. 112.

***approved Great Ocean Road strategic framework plan*** has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

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

S. 3(1) def. of *area of interest* inserted by No. 85/2006 s. 3(a), repealed by No. 17/2012 s. 3(3)(a).

* * * * *

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

***associated water share*** means a water share that has been determined to be an associated water share under Division 10 of Part 3A;

S. 3(1) def. of *associated water share* inserted by No. 99/2005 s. 38(1)(a).

***associated water system***, in relation to a water share, means the declared water system determined by the Minister under section 33G to be the water system for which the share is issued;

S. 3(1) def. of *associated water system* inserted by No. 99/2005 s. 38(1)(a).

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

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

S. 3(1) def. of *authorised person* amended by No. 23/2019 s. 5(10).

***authorised water officer*** means a person appointed as an authorised water officer under section 291A;

S. 3(1) def. of *authorised water officer* inserted by No. 29/2007 s. 13.

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

S. 3(1) def. of *Authority* amended by Nos 50/1992 s. 10(Sch. item 11.1(a)), 49/1994 s. 4(1)(a), 25/2001 s. 3(1), substituted by No. 85/2006 s. 3(b).

S. 3(1) def. of *biosolids* inserted by No. 85/2006 s. 3(a).

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

S. 3(1) def. of *board of directors* inserted by No. 85/2006 s. 3(a), amended by No. 48/2021 s. 64.

***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, other than Melbourne Water Corporation,, the board established under Division 4 of Part 2 of the **Catchment and Land Protection Act 1994** for that Authority;

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

(a) the interception, collection, storage or extraction of groundwater; or

(b) groundwater observation or the collection of data concerning groundwater; or

(c) the drainage or desalination of any land; or

(d) in the case of a bore that does not form part of a septic tank system, the disposal of any matter below the surface of the ground; or

(e) the recharge of an aquifer—

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

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

***bulk entitlement*** means an entitlement granted under Division 1 of Part 4;

S. 3(1) def. of *bulk entitlement* amended by Nos 50/1992 s. 6(1), 62/1995 s. 4(a), substituted by No. 32/2010 s. 3(1).

***capital works salinity impact charge*** means a charge fixed in a determination under section 232B(1)(a);

S. 3(1) def. of *capital works salinity impact charge* inserted by No. 23/2019 s. 5(8).

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

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

***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;

S. 3(1) def. of *Central Gippsland Region Water Authority* inserted by No. 85/2006 s. 3(a).

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S. 3(1) def. of *central plan office* inserted by No. 85/2006 s. 3(a), amended by No. 70/2013 s. 4(Sch. 2 item 56.1), repealed by No. 53/2017 s. 94.

S. 3(1) def. of *Coliban water district* repealed by No. 23/2019 s. 5(1)(f).

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

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S. 3(1) def. of *Commonwealth Environmental Water Holder* inserted by No. 50/2010 s. 3(1).

***Commonwealth Environmental Water Holder*** means the Commonwealth Environmental Water Holder established under section 104 of the Water Act 2007 of the Commonwealth;

S. 3(1) def. of *Council* amended by No. 9/2020 s. 390(Sch. 1 item 111.1).

***Council*** has the same meaning as in the **Local Government Act 2020**;

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

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

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

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***declared area*** has the same meaning as in the **Planning and Environment Act 1987**;

S. 3(1) def. of *declared area* inserted by No. 17/2018 s. 30.

***declared water system*** means a water system that has, under a declaration under section 6A become a declared water system;

S. 3(1) def. of *declared water system* inserted by No. 99/2005 s. 38(1)(a).

***Department*** means the Department of Environment and Primary Industries;

S. 3(1) def. of *Department* amended by No. 46/1998 s. 7(Sch. 1), substituted by No. 108/2004 s. 117(1) (Sch. 3 item 232.1), amended by No. 70/2013 s. 4(Sch. 2 item 56.2).

***Department Head*** means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department;

S. 3(1) def. of *Department Head* inserted by No. 76/1998 s. 29(a)(ii), amended by No. 108/2004 s. 117(1) (Sch. 3 item 232.2).

***designated land*** means land that—

S. 3(1) def. of *designated land* inserted by No. 85/2006 s. 3(a).

(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;

S. 3(1) def. of *designated waterway* inserted by No. 85/2006 s. 3(a).

***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;

S. 3(1) def. of *designated works* inserted by No. 85/2006 s. 3(a).

***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;

S. 3(1) def. of *determination of native title* inserted by No. 23/2019 s. 5(5).

***determination of native title*** has the same meaning as in section 225 of the Native Title Act 1993 of the Commonwealth;

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

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

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

(a) household purposes; or

(b) watering of animals kept as pets; or

(c) watering of cattle or other stock; or

(ca) in the case of the curtilage of a house and any outbuilding, watering an area not exceeding 1·2 hectares for fire prevention purposes with water obtained from a spring or soak or water from a dam; or

(d) irrigation of a kitchen garden—

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

***domestic partner*** of a person means—

S. 3(1) def. of *domestic partner* inserted by No. 72/2001 s. 3(Sch. item 12.1), amended by No. 85/2006 s. 3(c), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 65.1), amended by No. 4/2009 s. 37(Sch. 1 item 29.1).

(a) in sections 110 and 114—

(i) a person who is in a registered relationship with the person; or

(ii) 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);

(b) in section 128—

(i) a person who is in a registered domestic relationship with the person; or

(ii) a person to whom the person is not married but with whom the person is, or was at the time of the person's death, living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of *election* inserted by No. 12/1992 s. 4, repealed by No. 85/2006 s. 3(d).

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S. 3(1) def. of *emergency management plan* inserted by No. 17/2012 s. 3(1).

***emergency management plan*** means a plan made or remade under section 159A, 159B or 159D, whether or not the plan is subsequently amended or varied;

S. 3(1) def. of *environment Minister* inserted by No. 85/2006 s. 3(a).

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

S. 3(1) def. of *Environment Protection Authority* inserted by No. 99/2005 s. 3(a).

***Environment Protection Authority*** has the same meaning as ***Authority*** has under the **Environment Protection Act 1970**;

***environmental area*** means land determined to be an environmental area under section 122ZA;

S. 3(1) def. of *environmental area* inserted by No. 23/2019 s. 5(3).

***environmental entitlement*** means an entitlement under Division 1A of Part 4;

S. 3(1) def. of *environmental entitlement* inserted by No. 99/2005 s. 3(a).

***Essential Services Commission*** means the Essential Services Commission established under the **Essential Services Commission Act 2001**;

S. 3(1) def. of *Essential Services Commission* inserted by No. 50/2011 s. 9.

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

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S. 3(1) def. of *First Mildura Irrigation Trust* inserted by No. 85/2006 s. 3(a), repealed by No. 17/2012 s. 3(3)(b).

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

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

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

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

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

S. 3(1) def. of *Great Ocean Road coast and parks* inserted by No. 19/2020 s. 112.

***Great Ocean Road coast and parks*** has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *Great Ocean Road coast and parks protection principles* inserted by No. 19/2020 s. 112.

***Great Ocean Road coast and parks protection principles*** has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *Great Ocean Road region* inserted by No. 19/2020 s. 112.

***Great Ocean Road region*** has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

S. 3(1) def. of *Great Ocean Road scenic landscapes area* inserted by No. 19/2020 s. 112.

***Great Ocean Road scenic landscapes area*** has the same meaning as in the **Great Ocean Road and Environs Protection Act 2020**;

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

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

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S. 3(1) def. of *holding* repealed by No. 99/2005 s. 38(2)(a).

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

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

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

S. 3(1) def. of *in-stream uses* amended by No. 23/2019 s. 5(6).

(a) the maintenance of aquatic, riparian, floodplain and wetland ecosystems; and

(b) the maintenance of aesthetic and scientific values; and

(ba) the maintenance of Aboriginal cultural values and uses of waterways and other cultural values and uses of waterways; and

(c) water-based recreational activities; and

(d) fishing for commercial purposes; and

(e) the maintenance of water quality; and

(f) navigation;

***irrigation*** means the application of water to land—

S. 3(1) def. of *irrigation* inserted by No. 99/2005 s. 38(1)(a).

(a) for the purpose of watering plants (other than in connection with domestic and stock use, plant nursery use or other prescribed uses); or

(b) any other prescribed agricultural purposes;

S. 3(1) def. of *irrigation district* substituted by Nos 85/2006 s. 3(e), 23/2019 s. 5(1)(a).

***irrigation district***, in relation to a water corporation, means any district that is determined to be or taken to be an irrigation district of the water corporation under Part 6A, including (where the case so requires) any such district as varied under that Part;

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

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

***kitchen garden*** means a garden—

(a) that is used solely in connection with a dwelling; and

(b) no produce from which is sold; and

(c) in the case of a garden irrigated solely with surface water that is not part of an allotment that was alienated from the Crown before 15 December 1886, that is not bigger than 0·1 hectares; and

(d) in the case of a garden irrigated with both surface water and groundwater that is not part of an allotment that was alienated from the Crown before 15 December 1886, that is not bigger than 0·4 hectares; and

(e) in the case of a garden irrigated solely with groundwater, that is not bigger than 0·4 hectares; and

(f) in the case of a garden that is part of an allotment that was alienated from the Crown before 15 December 1886, that is not bigger than 1·2 hectares;

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S. 3(1) def. of *Latrobe Valley* repealed by No. 17/2012 s. 3(3)(b).

***levee maintenance permit*** means a permit issued under section 84AAE;

S. 3(1) def. of *levee maintenance permit* inserted by No. 53/2014 s. 3.

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

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S. 3(1) def. of *licensee* inserted by No. 121/1994 s. 186(a), repealed by No. 17/2012 s. 3(3)(b).

***limited term transfer***, in relation to a water share, means the transfer of a right to future water allocations for a limited period under the share under section 33T;

S. 3(1) def. of *limited term transfer* inserted by No. 99/2005 s. 38(1)(a).

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

S. 3(1) def. of *Melbourne Water* inserted by No. 5/2002 s. 4(a), substituted as *Melbourne Water Corporation* by No. 85/2006 s. 3(f).

S. 3(1) def. of *member* amended by Nos 50/1992 s. 10(Sch. item 11.1(c)), 65/1995 s. 22(a)(ii), repealed by No. 85/2006 s. 3(g).

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S. 3(1) def. of *metropolitan water corporation* inserted by No. 17/2012 s. 3(1).

***metropolitan water corporation*** means a water corporation established by section 85(1A);

S. 3(1) def. of *mineral water* repealed by No. 24/2013 s. 3(1).

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S. 3(1) def. of *municipal district* inserted by No. 85/2006 s. 3(a), amended by No. 9/2020 s. 390(Sch. 1 item 111.1).

***municipal district***, in relation to a Council, has the same meaning as in the **Local Government Act 2020**;

S. 3(1) def. of *Murray-Darling Basin Agreement* inserted by No. 75/2008 s. 21.

***Murray-Darling Basin Agreement*** has the same meaning as ***Agreement*** has in the **Murray-Darling Basin Act 1993**;

S. 3(1) def. of *native title holder* inserted by No. 23/2019 s. 5(5).

***native title holder*** has the same meaning as in section 224 of the Native Title Act 1993 of the Commonwealth;

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

S. 3(1) def. of *nominated officer* inserted by No. 85/2006 s. 3(a).

***non-declared water system*** means a water system that is not a declared water system;

S. 3(1) def. of *non-declared water system* inserted by No. 99/2005 s. 38(1)(a).

***non-metropolitan water corporation*** means a water corporation that is not Melbourne Water Corporation or a metropolitan water corporation;

S. 3(1) def. of *non-metropolitan water corporation* inserted by No. 17/2012 s. 3(1).

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S. 3(1) def. of *non water user limit* inserted by No. 99/2005 s. 38(1)(a), repealed by No. 54/2009 s. 4(1).

***northern water resources*** means the water resources referred to in the definition of Basin water resources in the Water Act 2007 of the Commonwealth;

S. 3(1) def. of *northern water resources* inserted by No. 23/2019 s. 5(7).

***occupier***—

(a) in relation to any bore that is being constructed or altered, means the holder of a licence issued under section 67 in respect of the bore; and

(b) in relation to any bore that is not being constructed or altered means—

(i) the holder of a licence issued under section 51 in respect of the bore; or

(ii) any person disposing of any matter by means of the bore in accordance with an approval given under section 76; or

(iii) if there is no such licensee or person, the occupier of the land on which the bore is situated;

S. 3(1) def. of *permanent water saving plan* inserted by No. 29/2007 s. 13.

***permanent water saving plan*** means a plan prepared, adopted and (where the case so requires) varied under Part 8;

S. 3(1) def. of *permissible annual volume* inserted by No. 5/2002 s. 4(a), substituted as *permissible consumptive volume* by No. 99/2005 s. 3(b).

***permissible consumptive volume***, in relation to—

(a) an area or water system; and

(b) a period of time—

specified in an Order under section 22A, means the volume specified in that Order for that area or water system for that period;

S. 3(1) def. of *person* substituted by No. 32/2010 s. 3(2).

***person***—

(a) in Part 3A, Division 1A of Part 4, Part 4B, Part 5A and Schedule 12A, means an individual or an incorporated body;

(b) in any other part of the Act, means an individual, a body or an association (incorporated or unincorporated) or a partnership;

***police officer*** has the same meaning as in the **Victoria Police Act 2013**;

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 182.1).

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

(a) less fit for any beneficial purpose for which it is, or may reasonably be expected to be, used; or

(b) harmful or potentially harmful to—

(i) the health, welfare or safety of human beings; or

(ii) animals, birds, wildlife, fish or other aquatic life; or

(iii) plants or other vegetation; or

(iv) other organisms;

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

S. 3(1) def. of *private dam* amended by Nos 121/1994 s. 186(b), 17/2012 s. 3(3)(c).

(a) anything owned or operated by a public statutory body; or

(b) any works of an Authority; or

(c) a channel, drain or pipe; or

(d) a bore;

***public statutory body*** includes a council;

S. 3(1) def. of *recognition and settlement agreement* inserted by No. 23/2019 s. 5(5).

***recognition and settlement agreement*** has the same meaning as in the **Traditional Owner Settlement Act 2010**;

S. 3(1) def. of *recording body* inserted by No. 99/2005 s. 38(1)(a).

***recording body*** means—

(a) in relation to water shares, the Registrar;

(b) in relation to water-use licences, water-use registrations, works licences under section 67(1), bulk entitlements and environmental entitlements, the Minister;

(c) in relation to the matters referred to in section 84C(3), an Authority;

S. 3(1) def. of *recreational area* inserted by No. 23/2019 s. 5(3).

***recreational area*** means land determined to be a recreational area under section 122ZA;

S. 3(1) def. of *recycled water* inserted by No. 99/2005 s. 3(a).

***recycled water*** means water derived from sewage or trade waste that has been treated for the purposes of re-use;

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

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S. 3(1) def. of *register* repealed by No. 99/2005 s. 38(2)(b).

***Registrar*** means the person employed under Part 5A to be the Registrar of the water register;

S. 3(1) def. of *Registrar* inserted by No. 99/2005 s. 38(1)(a).

***registration licence*** means a licence issued under section 51(1A), 51AA or 51AB;

S. 3(1) def. of *registration licence* inserted by No. 5/2002 s. 4(a), amended by No. 24/2013 s. 3(2).

***related body corporate*** has the same meaning as in the Corporations Act;

S. 3(1) def. of *related body corporate* inserted by No. 99/2005 s. 38(1)(a).

***related person*** means a person who is related to another person in accordance with any of the following provisions—

S. 3(1) def. of *related person* inserted by No. 99/2005 s. 38(1)(a).

(a) natural persons are related persons if one of them is a relative of the other;

(b) companies are related persons if they are related bodies corporate within the meaning of the Corporations Act;

(c) a natural person and a company are related persons if the natural person is a majority shareholder or director of the company or of another company that is a related body corporate of the company within the meaning of the Corporations Act;

(d) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;

(e) a company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee;

S. 3(1) def. of *relative* inserted by No. 99/2005 s. 38(1)(a).

***relative*** in relation to a natural person, means a person who is—

(a) a child or remoter lineal descendant of the person or of the partner of the person;

(b) a parent or remoter lineal ancestor of the person or of the partner of the person;

(c) a brother or sister of the person or of the partner of the person;

(d) the partner of the person or a partner of any person referred to in paragraph (a), (b) or (c);

(e) a child of a brother or sister of the person or of the partner of the person;

(f) a brother or sister of a parent of the person or of a parent of the partner of the person;

S. 3(1) def. of *return period* inserted by No. 85/2006 s. 3(a).

***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;

***salinity impact charge*** means—

S. 3(1) def. of *salinity impact charge* inserted by No. 23/2019 s. 5(8).

(a) a capital works salinity impact charge; or

(b) an annual salinity impact charge;

***salinity impact zone*** means an area of land that is determined to be a salinity impact zone under section 232;

S. 3(1) def. of *salinity impact zone* inserted by No. 23/2019 s. 5(8).

***seasonal determination*** in relation to a water system, means a determination for that system made under section 64GB;

S. 3(1) def. of *seasonal determination* inserted by No. 99/2005 s. 38(1)(a).

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S. 3(1) def. of *secretary* repealed by No. 85/2006 s. 3(h).

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

S. 3(1) def. of *serviced property* amended by Nos 121/1994 s. 186(c), 12/1996 s. 4(1), 85/2006 s. 3(i), substituted by No. 23/2019 s. 5(2), amended by No. 48/2021 s. 7.

***serviced property*** means—

(a) land that is declared to be serviced property under a notice under section 144 or 179, or by a declaration under 226(5); and

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

**Note**

For land that is taken to be serviced property see sections 336 and 348.

***sewage*** means any human excreta or domestic waterborne waste, whether untreated or partially treated, but does not include trade waste;

***sewer*** means any pipe, channel, tunnel or other conduit which is constructed or provided for the conveyance of sewage or trade waste and is vested in or owned by an Authority;

S. 3(1) def. of *sewerage district* substituted by Nos 85/2006 s. 3(j), 17/2012 s. 3(2)(a), 23/2019 s. 5(1)(b).

***sewerage district***, in relation to a water corporation, means any district that is determined to be or taken to be a sewerage district of the water corporation under Part 6A, including (where the case so requires) any such district as varied under that Part;

S. 3(1) def. of *social and recreational uses and values* inserted by No. 23/2019 s. 5(4).

***social and recreational uses and values***, in relation to waterways, means—

(a) the uses of waterways for social and recreational purposes; and

(b) the economic, aesthetic and well-being benefits that the community derives from the use of waterways for social and recreational purposes;

***specified Aboriginal party***, in relation to an area, means any of the following—

S. 3(1) def. of *specified Aboriginal party* inserted by No. 23/2019 s. 5(5).

(a) if there are native title holders for the whole or part of the area, the native title holders;

(b) if there is a traditional owner group entity appointed for the whole or part of the area and that traditional owner group entity is a party to a recognition and settlement agreement, the traditional owner group entity;

(c) if there is a registered Aboriginal party within the meaning of the **Aboriginal Heritage Act 2006** for the whole or part of the area, the registered Aboriginal party;

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

S. 3(1) def. of *spouse* inserted by No. 72/2001 s. 3(Sch. item 12.1).

***standard water-use condition*** means a condition determined by the Minister under Division 4 of Part 4B;

S. 3(1) def. of *standard water-use condition* inserted by No. 99/2005 s. 38(1)(a).

***standing direction*** has the meaning given by section 33TA(1);

S. 3(1) def. of *standing direction* inserted by No. 28/2014 s. 3.

S. 3(1) def. of *State observation bore* inserted by No. 5/2002 s. 4(a), amended by No. 108/2004 s. 117(1) (Sch. 3 item 232.3).

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

S. 3(1) def. of *Statement of Planning Policy* inserted by No. 17/2018 s. 30.

***Statement of Planning Policy*** has the same meaning as in the **Planning and Environment Act 1987**;

S. 3(1) def. of *storage manager* inserted by No. 85/2006 s. 3(a).

***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;

S. 3(1) def. of *trade waste* amended by No. 17/2012 s. 3(3)(d).

***trade waste*** means—

(a) any waterborne waste (other than sewage) which is suitable, according to the criteria of an Authority, for discharge into the Authority's sewerage system; or

(ab) any other matter that is prescribed by regulations made under this Act to be trade waste; or

(b) any other matter which is declared by a by-law made under this Act to be trade waste;

***traditional owner group*** has the same meaning as in the **Traditional Owner Settlement Act 2010**;

S. 3(1) def. of *traditional owner group* inserted by No. 4/2013 s. 34(1).

***traditional owner group entity*** has the same meaning as in the **Traditional Owner Settlement Act 2010**;

S. 3(1) def. of *traditional owner group entity* inserted by No. 62/2010 s. 130.

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

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

***Victorian Environmental Water Holdings*** means—

S. 3(1) def. of *Victorian Environmental Water Holdings* inserted by No. 50/2010 s. 3(1).

(a) any environmental entitlements allocated to the Water Holder; and

(b) any interests in water shares held by the Water Holder; and

(c) any licences to take and use water under section 51 held by the Water Holder; and

(d) any other rights under this Act held by the Water Holder; and

(e) any agreements between the Water Holder and any other person to supply water to the Water Holder; and

(f) any bulk entitlement that is taken to be granted to the Water Holder by the operation of Schedule 4;

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

S. 3(1) def. of *water allocation* inserted by No. 99/2005 s. 38(1)(a), substituted by Nos 85/2006 s. 3(k), 32/2010 s. 3(3).

***water allocation***—

(a) in relation to an environmental entitlement means—

(i) the volume of water determined under a seasonal determination to be available for the entitlement; or

(ii) if no seasonal determination is made for the entitlement, the water that is available to be taken in any water season, under the terms of the entitlement; or

(b) in relation to a bulk entitlement means—

(i) the volume of water determined under a seasonal determination to be available for the entitlement; or

(ii) if no seasonal determination is made for the entitlement, the water that is available to be taken in any water season, under the terms of the entitlement; or

(c) 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;

S. 3(1) def. of *water allocation assignment* inserted by No. 99/2005 s. 38(1)(a).

***water allocation assignment***, in relation to a water share, means an assignment of the water allocation for the share under section 33U or section 33V;

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

S. 3(1) def. of *water corporation* inserted by No. 85/2006 s. 3(a).

* * * * *

S. 3(1) def. of *water district* substituted by Nos 85/2006 s. 3(l), 17/2012 s. 3(2)(b), repealed by No. 23/2019 s. 5(1)(c).

***Water Holder*** means the Victorian Environmental Water Holder established under section 33DB(1);

S. 3(1) def. of *Water Holder* inserted by No. 50/2010 s. 3(1).

***Water Holdings*** means the Victorian Environmental Water Holdings;

S. 3(1) def. of *Water Holdings* inserted by No. 50/2010 s. 3(1).

***water infringement offence*** means an offence against any of the following—

(a) section 33E(3), to which section 33EB applies;

(b) section 63(3), to which section 63B applies;

(c) section 289(3) or 289B(3), to which section 289C applies;

(d) any other provision of this Act, or the regulations or the by-laws made under this Act, that is prescribed for the purposes of section 295A(1);

S. 3(1) def. of *water infringement offence* inserted by No. 23/2019 s. 5(9).

S. 3(1) def. of *water register* inserted by No. 99/2005 s. 38(1)(a).

***water register*** means the Victorian water register established under Part 5A;

S. 3(1) def. of *water season* inserted by No. 99/2005 s. 38(1)(a).

***water season*** means any period of 12 calendar months beginning on 1 July in any year and ending on 30 June in the following year;

S. 3(1) def. of *water share* inserted by No. 99/2005 s. 38(1)(a).

***water share*** means a water share issued under Division 2 of Part 3A;

S. 3(1) def. of *water supply district* inserted by No. 23/2019 s. 5(1)(d).

***water supply district***, in relation to a water corporation, means any district that is determined to be or taken to be a water supply district of the water corporation under Part 6A, including (where the case so requires) any such district as varied under that Part;

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

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

S. 3(1) def. of *water-use licence* inserted by No. 99/2005 s. 38(1)(a).

***water-use licence*** means a licence granted under Division 2 of Part 4B;

S. 3(1) def. of *water-use objective* inserted by No. 99/2005 s. 38(1)(a).

***water-use objective*** means an objective determined by the Minister under Division 3 of Part 4B;

***water-use registration*** means a registration granted under Division 9 of Part 4B;

**S. 3(1) def. of *water-use registration* inserted by No. 99/2005 s. 38(1)(a).**

***waterway*** means[1]—

(a) a river, creek, stream or watercourse; or

(b) a natural channel in which water regularly flows, whether or not the flow is continuous; or

(c) a channel formed wholly or partly by the alteration or relocation of a waterway as described in paragraph (a) or (b); or

(d) a lake, lagoon, swamp or marsh, being—

(i) a natural collection of water (other than water collected and contained in a private dam or a natural depression on private land) into or through or out of which a current that forms the whole or part of the flow of a river, creek, stream or watercourse passes, whether or not the flow is continuous; or

(ii) a collection of water (other than water collected and contained in a private dam or a natural depression on private land) that the Governor in Council declares under section 4(1) to be a lake, lagoon, swamp or marsh; or

(e) land on which, as a result of works constructed on a waterway as described in paragraph (a), (b) or (c), water

collects regularly, whether or not the collection is continuous; or

(f) land which is regularly covered by water from a waterway as described in paragraph (a), (b), (c), (d) or (e) but does not include any artificial channel or work which diverts water away from such a waterway; or

(g) if any land described in paragraph (f) forms part of a slope rising from the waterway to a definite lip, the land up to that lip;

S. 3(1) def. of *waterway management district* substituted by Nos 85/2006 s. 3(m), 23/2019 s. 5(1)(e).

***waterway management district***, in relation to an Authority, means any district that is determined to be or taken to be a waterway management district of the Authority under Part 6A, including (where the case so requires) any such district as varied under that Part;

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

***works*** includes—

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

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

(c) fencing;

S. 3(1) def. of *Yallourn works area* repealed by No. 17/2012 s. 3(3)(b).

* * * * *

***Yarra protection principles*** has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murron) Act 2017**;

S. 3(1) def. of *Yarra protection principles* inserted by No. 49/2017 s. 93.

***Yarra River land*** has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murron) Act 2017**;

S. 3(1) def. of *Yarra River land* inserted by No. 49/2017 s. 93.

***Yarra Strategic Plan*** has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murron) Act 2017**;

S. 3(1) def. of *Yarra Strategic Plan* inserted by No. 49/2017 s. 93.

***Yarra Strategic Plan area*** has the same meaning as in the **Yarra River Protection (Wilip-gin Birrarung murron) Act 2017**.

S. 3(1) def. of *Yarra Strategic Plan area* inserted by No. 49/2017 s. 93.

(1A) If under the **Public Administration Act 2004** the name of the Department of Environment and Primary Industries is changed, the reference in the definition of ***department*** and ***Department Head*** in subsection (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

S. 3(1A) inserted by No. 46/1998 s. 7(Sch. 1), amended by Nos 76/1998 s. 29(b), 108/2004 s. 117(1) (Sch. 3 item 232.4), 70/2013 s. 4(Sch. 2 item 56.3).

* * * * *

S. 3(2) repealed by No. 17/2012 s. 3(4).

S. 3(3) inserted by No. 72/2001 s. 3(Sch. item 12.2), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 65.2).

(3) For the purposes of the definition of ***domestic partner*** in subsection (1)—

(a) ***registered relationship*** has the same meaning as in the **Relationships Act 2008**; and

S. 3(3)(aa) inserted by No. 4/2009 s. 37(Sch. 1 item 29.2(a)).

(aa) ***registered domestic relationship*** has the same meaning as in the **Relationships Act 2008**; and

S. 3(3)(b) amended by No. 4/2009 s. 37(Sch. 1 item 29.2(b)).

(b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and

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

S. 3(4) inserted by No. 99/2005 s. 38(3), repealed by No. 54/2009 s. 4(2), new s. 3(4) inserted by No. 50/2010 s. 3(2).

(4) In the case of land specified in a water-use registration, ***occupier*** includes any person within the definition of occupier set out in section 64APAA.

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

(1) The Governor in Council may on the recommendation of the Minister, by Order published in the Government Gazette, declare a collection of water (other than water collected and contained in a private dam or a natural depression

on private land) to be a lake, lagoon, swamp or marsh.

(2) The Minister must not recommend to the Governor in Council the making of a declaration under subsection (1) unless—

(a) the Minister is satisfied that—

(i) the declaration has been applied for by a person who, if the collection of water was a lake, lagoon, swamp or marsh, would have the right to take and use water from it under section 8(1); and

(ii) the applicant has caused notice of the application to be published in a newspaper circulating generally in the area in which the water is situated; and

(iii) the applicant has caused notice of the application to be given or sent by post to—

(A) the owner and occupier of the land on which the water is situated; and

(B) the council in whose municipal district the water is situated; and

(C) the responsible authority in relation to a planning scheme for the area in which the water is situated; and

(b) the Minister has considered any submissions made on the application within the period of 60 days after the publication or giving of notice of the application under paragraph (a)(ii) or (a)(iii), whichever is the later.

(3) The Minister may require further information with respect to an application to be provided by the applicant or an Authority.

(4) The Governor in Council may on the recommendation of the Minister, by Order published in the Government Gazette at the same time as a declaration under subsection (1), require a person who—

(a) owns land on which the declared collection of water is situated; or

(b) who will benefit from the declaration—

to pay the amount of compensation specified in the Order to another person who—

(c) owns land on which the declared collection of water is situated; or

(d) will suffer detriment from the declaration.

(5) A copy of an Order made under subsection (4) must be given or sent by post to any Authority or person affected by the Order.

S. 4(6) substituted by No. 52/1998 s. 311(Sch. 1 item 105.2).

(6) A person whose interests are affected by a decision of the Governor in Council to make an Order under subsection (1) or (4) may apply to the Tribunal for review of the decision.

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

(7) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

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

### 4A The Environmental Water Reserve

S. 4A inserted by No. 99/2005 s. 4.

(1) The environmental water reserve comprises water that is set aside for the environment—

(a) as an environmental entitlement; and

(b) through the operation of—

(i) conditions on any bulk entitlement, or any licence, permit or authority issued under this or any other Act, or regulations made under this or any other Act; and

(ii) any management plan under this Act; and

(iii) any other provision of this Act, the **Murray-Darling Basin Act 1993** or the **Groundwater (Border Agreement) Act 1985** or any regulations made under this Act or those Acts.

(2) In this Act a reference to the environmental water reserve is a reference to any water to which subsection (1) applies.

### 4B Environmental Water Reserve Objective

S. 4B inserted by No. 99/2005 s. 4.

(1) The environmental water reserve objective is the objective that the environmental water reserve be maintained so as to preserve the environmental values and health of water ecosystems, including their biodiversity, ecological functioning and quality of water and the other uses that depend on environmental condition.

(2) In this Act a reference to the environmental water reserve objective is a reference to the objective set out in subsection (1).

### 5 Certain provisions to bind Crown

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

(a) sections 12, 15 and 16;

(b) section 23;

S. 5(ba) inserted by No. 23/2019 s. 6(a).

(ba) section 33E;

S. 5(bb) inserted by No. 23/2019 s. 6(a).

(bb) sections 55A and 70A;

(c) section 63;

S. 5(d) substituted by No. 23/2019 s. 6(b).

(d) sections 75A, 76A, 78A, 79A, 80AA and 81;

S. 5(e) amended by No. 23/2019 s. 6(c).

(e) sections 141, 143, 145, 145A, 148(1), 149, 150, 151, 153 and 154;

S. 5(ea) inserted by No. 23/2019 s. 6(d).

(ea) section 169A;

(f) section 178;

(g) sections 194, 195, 200, 208 and 218;

(h) sections 265, 268 to 270 and 281;

(i) sections 288 to 290.

### 5A Relationship with the Traditional Owner Settlement Act 2010

S. 5A inserted by No. 23/2019 s. 7.

A requirement to give notice to or consult with a specified Aboriginal party under section 22E, 22M, 22R, 31 or 190 does not affect any right or obligation under a land use activity agreement or any other agreement under the **Traditional Owner Settlement Act 2010**.

### 6 Interstate groundwater agreements to prevail over Act

(1) Every power, discretion, function, authority and duty of the Minister, the Authority and the Tribunal under this Act must be construed subject to—

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

(a) the **Groundwater (Border Agreement) Act 1985** and the agreement approved by that Act; and

(b) the **Murray-Darling Basin Act 1993** and the Murray-Darling Basin Agreement.

S. 6(1)(b) substituted by No. 75/2008 s. 22.

(2) A purported exercise of a power, discretion, function, authority or duty by the Minister, an Authority or the Tribunal is of no effect to the extent that it is inconsistent with an agreement referred to in subsection (1).

S. 6(2) amended by Nos 52/1998 s. 311(Sch. 1 item 105.3), 5/2002 s. 5(2)(a)(b).

(3) An agreement referred to in subsection (1) prevails over a right to take or to use water conferred by or under this Act, other than section 7(1), 8(1) or 8(4)(c).

S. 6(3) inserted by No. 5/2002 s. 5(3).

(4) The Minister, an Authority or the Tribunal, in exercising a power, discretion, function, authority or duty under this Act, must not act in a manner detrimental to or inconsistent with the operation of an agreement referred to in subsection (1).

S. 6(4) inserted by No. 5/2002 s. 5(3).

S. 6AA inserted by No. 23/2019 s. 8.

### 6AA Extraterritorial operation of Act

In order to give effect to any intergovernmental agreement to which the State is a party and which is relevant to the operation of this Act, it is the intention of the Parliament that the operation of this Act, as far as possible, is to include operation in relation to the following—

(a) things, including land, situated in or outside the territorial limits of Victoria;

(b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of Victoria;

(c) things, land, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another jurisdiction.

S. 6A inserted by No. 99/2005 s. 39.

### 6A Power to declare water systems

(1) The Governor in Council may, on the recommendation of the Minister, by Order published in the Government Gazette, make a declaration that, on the day specified in the declaration, a water system becomes a declared water system.

(2) A declaration under subsection (1)—

(a) must not be amended, unless to correct any clerical, factual or other inadvertent mistake in the declaration; and

(b) must not be revoked.

(3) Before making a declaration under subsection (1), the Minister must consult with—

(a) the Authority or Authorities responsible for the supply of water from the water system to which the declaration relates; and

(b) the Registrar.

# Part 2—Rights and liabilities

## Division 1—Rights

### 7 Continuation of the Crown's rights to water

(1) The Crown has the right to the use, flow and control of all water in a waterway and all groundwater[2].

(2) Subject to subsection (3), the right of the Crown to the use, flow and control of all water referred to in subsection (1) is not diminished by the fact that—

(a) by or under this or any other Act rights to water are conferred on other persons; or

(b) under this Act the Minister may issue licences for the taking or use of water; or

(c) under this or any other Act approval may be given for works or activities that affect the use, flow or control of water.

(3) The Crown must not exercise a right conferred by subsection (1) so as to limit a right to water conferred on any other person by section 8(1)(b), (c) or (d) or section 8(4)(c).

S. 7(4) inserted by No. 99/2005 s. 5.

(4) Despite anything to the contrary in this or any other Act—

(a) a right to water must not be conferred on another person by or under this or any other Act; and

(b) a licence for the taking or use of water must not be issued by or under this or any other Act; and

(c) an approval must not be given for works or activities that affect the use, flow or control of water under this or any other Act—

unless regard is had to the need to maintain the environmental water reserve in accordance with the environmental water reserve objective.

### 8 Continuation of private rights to water

(1) A person has the right to take water, free of charge, for that person's domestic and stock use from a waterway or bore to which that person has access—

(a) by a public road or public reserve; or

(b) because that person occupies the land on which the water flows or occurs; or

(c) in the case of a waterway, because that person occupies land adjacent to it and the bed and banks of the waterway have remained the property of the Crown by virtue of section 385 of the **Land Act 1958**[3] or any corresponding previous enactment; or

(d) subject to section 33C, in the case of a bore, because that person occupies it.

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

(2) If required to do so by the regulations, a person taking water under subsection (1) must give the Minister, in accordance with the regulations, written notice of the amount taken.

(3) A person has the right to use water taken by that person from a waterway under subsection (1)(a), if the water is being used at the place at which it is taken.

**S. 8(3) substituted by No. 32/2010 s. 4.**

S. 8(3A) inserted by No. 32/2010 s. 4.

(3A) A person has the right to use water taken by that person from a waterway under subsection (1)(b), (c) or (d).

S. 8(3B) inserted by No. 32/2010 s. 4.

(3B) A person has the right to use water taken by that person from a bore under subsection (1).

S. 8(3C) inserted by No. 32/2010 s. 4.

(3C) A person has the right to use, while it is within the waterway or bore, water which that person has the right to take under subsection (1).

(4) A person has the right to use—

(a) water taken or received by that person in accordance with a licence or other authority issued to that person under this Act or any corresponding previous enactment; or

(b) water lawfully taken or received by that person from the works of an Authority or of any other person; or

(c) rainwater or other water that occurs or flows (otherwise than in a waterway or bore) on land occupied by that person or, with the permission of the other person, on land occupied by another person.

(5) Water referred to in subsection (4)(c) may be used for any purpose and on any land.

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

(5A) Subsections (4)(c) and (5) do not apply to the use, other than domestic and stock use, of water from a spring or soak or water from a private dam (to the extent that it is not rainwater supplied to the dam from the roof of a building).

(6) A right conferred by this section is limited only to the extent to which an intention to limit it is expressly (and not merely impliedly) provided in—

(a) this Act, any regulations or by-laws under this Act, or any permission, authority or agreement made under this Act; or

S. 8(6)(a) substituted by No. 99/2005 s. 6.

(b) any other Act or in any permission or authority granted under any other Act; or

(c) the conditions of a licence issued under this Act; or

(d) the prescriptions contained in an approved management plan drawn up under Division 3 of Part 3 for a water supply protection area.

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

(7) The rights to water conferred by or under this Act on a person who has an interest in land replace any rights[4]—

(a) to take or use water; or

(b) to obstruct or deflect the flow of water[5]; or

(c) to affect the quality of any water; or

(d) to receive any particular flow of water; or

(e) to receive a flow of water of any particular quality—

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

(8) This section does not authorise any act or omission that may—

(a) cause any water to be polluted; or

(b) obstruct the flow of any water in a waterway; or

(c) erode or otherwise damage the surrounds of any waterway.

S. 8A inserted by No. 62/2010 s. 131, amended by No. 4/2013 s. 34(2), substituted by No. 67/2016 s. 35.

### 8A Traditional owner agreement for natural resources

If a traditional owner group entity has an agreement under Part 6 of the **Traditional Owner Settlement Act 2010**, a person who is a member of a traditional owner group bound by the agreement has the right to take and use water on the land that is subject to the agreement—

(a) in accordance with the agreement; and

(b) if the water is to be taken from a place from which water may be taken under section 8(1).

### 9 Authority rights to water

(1) An Authority within the meaning of Division 1 of Part 4 has the right to take the amounts of water that are made available to it—

S. 9(1)(a) amended by No. 62/1995 s. 6(1), substituted by No. 32/2010 s. 5(1).

(a) under a bulk entitlement; or

S. 9(1)(b) repealed by No. 85/2006 s. 4.

* * * * *

S. 9(1)(c) amended by No. 62/1995 s. 11, repealed by No. 85/2006 s. 4.

* * * * *

S. 9(1)(d) inserted by No. 62/1995 s. 11.

(d) under any other entitlement, licence or right under this Act.

(2) An Authority referred to in subsection (1) has the right to use water taken by it under a right conferred by subsection (1)—

(a) in the case of an Authority referred to in paragraph (a) or (b) of the definition of ***Authority*** in section 34, for any purpose connected with the exercise of its functions under this Act or the **Local Government Act 1989** or the **Local Government Act 2020**, as the case requires;

S. 9(2)(a) amended by Nos 62/1995 s. 9(1), 9/2020 s. 390(Sch. 1 item 111.2).

(b) in the case of a generation company within the meaning of the **Electricity Industry Act 2000**, for any purpose connected with the exercise of its functions or powers;

S. 9(2)(b) substituted by No. 32/2010 s. 5(2).

* * * * *

S. 9(2)(c) substituted by No. 130/1993 s. 122(Sch. 4 item 17.1), amended by Nos 53/1994 s. 34(Sch. 1 item 11.1), 110/1994 s. 41(Sch. 1 item 11.1), 56/1995 s. 65, substituted by No. 69/2000 s. 65(1), repealed by No. 32/2010 s. 5(3).

(d) in the case of an Authority referred to in paragraph (d) of the definition of ***Authority*** in section 34, for any public purpose.

S. 9(2)(d) amended by No. 32/2010 s. 5(4).

* * * * *

S. 9(2)(e) repealed by No. 32/2010 s. 5(3).

(3) The right conferred by subsection (1) is limited only to the extent to which an intention to limit it is expressly (and not merely impliedly) provided in—

(a) this Act; or

(b) any other Act; or

(c) the conditions attached to the bulk entitlement.

**10 Right to construct or operate works**

(1) An Authority or any other person may, in accordance with this Act, construct or operate works for, or which may result in—

(a) the drainage of any land; or

(b) the collection, storage, taking, use or distribution of any water; or

(c) the obstruction or deflection of the flow of any water.

(2) The right conferred by subsection (1) is limited only to the extent to which an intention to limit it is expressly (and not merely impliedly) provided in—

(a) this Act; or

(b) any other Act; or

(c) the provisions of a licence issued, or entitlement granted, under this or any other Act.

**11 Allocation of water right on subdivision**

(1) If—

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

(b) on or after that commencement that land is subdivided—

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

(2) The subdivided lot the occupier of which has the right to take water from the waterway, must—

(a) have the waterway flowing or occurring on it; or

(b) be adjacent to the waterway.

(3) The Minister may, on the application of the subdivider, exempt a subdivision from subsections (1) and (2) and allocate the right or part of it to all or any of the subdivided lots.

(4) The Minister may require an applicant under subsection (3) to give notice of the application in any manner specified by the Minister.

(5) A notice given under subsection (4) may invite submissions on the application to be made in the manner specified in the notice within the period specified in the notice.

(6) The Minister may appoint a panel of persons to consider submissions made on an application under subsection (3).

(7) Subsections (2) to (6) of section 50 apply to a panel appointed under subsection (6) as if the reference in subsection (3) of that section to a notice given under section 49(2) were a reference to a notice given under subsection (4) of this section.

(8) In considering an application under subsection (3), the Minister must have regard to—

(a) the report of any panel appointed under subsection (6); and

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

(b) the matters mentioned in paragraphs (b) to (l) of section 40(1) as if the reference in paragraph (e) to the applicant were a reference to the occupiers of the subdivided lots; and

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

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

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

### 12 Authorisation may be conditional[6]

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

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

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

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

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

* * * * * S. 13 repealed by No. 99/2005 s. 7.

## Division 2—Liabilities

### 14 Application

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

### 15 Civil liability for unauthorised taking or use of water or for unauthorised works[7]

(1) A person who—

(a) takes water in an unauthorised manner or in unauthorised quantities; or

(b) uses water in an unauthorised manner or for an unauthorised purpose; or

(c) pollutes water, whether or not authorised to do so; or

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

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

S. 15(2) amended by Nos 121/1994 s. 187(a), 17/2012 s. 4.

(2) Paragraph (c) of subsection (1) does not apply to the discharge of saline matter in accordance with by-laws made under section 160(1)(d) of this Act or regulations made under section 324 of this Act and all other necessary authorisations.

(3) Paragraph (d) of subsection (1) does not apply to any injury, damage or loss to which section 16 applies.

### 16 Liability arising out of flow of water etc.[8]

(1) If—

(a) there is a flow of water from the land of a person onto any other land; and

(b) that flow is not reasonable; and

(c) the water causes—

(i) injury to any other person; or

(ii) damage to the property (whether real or personal) of any other person; or

(iii) any other person to suffer economic loss—

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

(2) If—

(a) a person interferes with a reasonable flow of water onto any land or by negligent conduct interferes with a flow of water onto any land which is not reasonable; and

(b) as a result of that interference water causes—

(i) injury to any other person; or

(ii) damage to the property (whether real or personal) of any other person; or

(iii) any other person to suffer economic loss—

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

(3) If the person who caused, or interfered with, the flow (as the case requires)—

(a) is the servant of another person and acted in the course of the servant's employment; or

(b) is the agent of another person and acted within the scope of the agent's authority—

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

(4) The existence of a liability under subsection (3) does not extinguish the liability of the servant or agent under subsection (1) or (2), as the case requires.

(5) If the causing of, or the interference with, the flow (as the case requires) was given rise to by works constructed or any other act done or omitted to be done on any land at a time before the current occupier became the occupier of the land, the current occupier is liable to pay damages in respect of the injury, damage or loss if the current occupier has failed to take any steps reasonably available to prevent the causing of, or the interference with, the flow (as the case requires) being so given rise to.

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

### 17 Protection from liability[9]

S. 17(1) amended by Nos 121/1994 s. 187(b)(c), 23/2019 s. 101.

(1) A person does not incur any civil liability in respect of any injury, damage or loss caused by water to which section 16 or 157 of this Act applies except to the extent provided by this Act.

S. 17(2) amended by Nos 121/1994 s. 187(d), 17/2012 s. 5.

(2) Sections 15 and 16 do not create any liability in respect of a flow of water from the works (including any dam) of an Authority in the exercise of a function under Part 8, Part 9, Division 2, 3 or 5 of Part 10 or Part 11 or any corresponding previous enactment.

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

(3) Nothing in this section takes away from the power of a court to make an order against a person under section 86 of the **Sentencing Act 1991** with respect to an offence under the **Environment Protection Act 1970**.

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

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

### 19 Jurisdiction of Tribunal

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

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

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

* * * * *

(3) In exercising jurisdiction conferred by subsection (1), the Tribunal—

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

(a) may by order, whether interim or final, grant an injunction (including one to prevent an act that has not yet taken place) if it is just and convenient to do so; or

(ab) may make an order for payment of a sum of money awarding damages in the nature of interest; or

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

(b) may make an order that is merely declaratory.

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

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

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

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

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

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

(a) compensation for damage to land; or

(b) the continuation, removal or modification of works; or

(c) payment of the costs of the removal or modification of works—

that it considers appropriate.

* * * * *

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

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

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

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

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

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

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

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

(a) whether or not the flow, or the act or works that caused the flow, was or were authorised;

(b) the extent to which any conditions or requirements imposed under this Act in relation to an authorisation were complied with;

(c) whether or not the flow conforms with any guidelines or principles published by the Minister with respect to the drainage of the area;

(d) whether or not account was taken at the relevant time of the likely impact of the flow on drainage in the area having regard to the information then reasonably available about the cumulative effects on drainage of works and activities in the area;

(e) the uses to which the lands concerned and any other lands in the vicinity are put;

(f) the contours of the lands concerned;

(g) whether the water which flowed was—

(i) brought onto the land from which it flowed; or

(ii) collected, stored or concentrated on that land; or

(iii) extracted from the ground on that land—

and if so, for what purpose and with what degree of care this was done;

(h) whether or not the flow was affected by any works restricting the flow of water along a waterway;

(i) whether or not the flow is likely to damage any waterway, wetland or aquifer;

S. 20(1)(i) amended by No. 43/2015 s. 39(1).

(j) in the case of a flow of, or interference with, water caused by the construction, removal or alteration of a levee in accordance with section 32AC of the **Victoria State Emergency Service Act 2005**, whether or not that construction, removal or alteration occurred in response to an emergency within the meaning of section 3 of the **Emergency Management Act 2013**.

S. 20(1)(j) inserted by No. 43/2015 s. 39(2).

(2) In taking account of the matters specified in subsection (1), greater weight must be attached to the matters specified in paragraphs (a), (b), (c) and (d) than to the other specified matters.

(2A) Subsection (2B) applies in the case of determining whether a flow of, or interference with, water caused by the construction, removal or alteration

S. 20(2A) inserted by No. 43/2015 s. 39(3).

of a levee in accordance with section 32AC of the **Victoria State Emergency Service Act 2005** is reasonable or not reasonable.

S. 20(2B) inserted by No. 43/2015 s. 39(3).

(2B) Despite subsection (2), in taking account of the matters specified in subsection (1), greatest weight must be attached to whether or not the construction, removal or alteration referred to in subsection (2A) occurred in response to an emergency within the meaning of section 3 of the **Emergency Management Act 2013**.

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

(3) An Authority that has a waterway management function in the area to which a proceeding before the Tribunal relates may make a submission to the Tribunal on the matters specified in paragraphs (c), (d) and (i) of subsection (1).

S. 21 amended by Nos 121/1994 s. 187(g), 17/2012 s. 6.

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

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

(a) the circumstances, state of scientific knowledge and knowledge of local conditions at the time the works were constructed;

(b) the nature and position of the works;

(c) the likely effects and costs of continuing, removing or modifying the works;

(d) the nature of any interest in land affected by the works and the effect on that interest of continuing, removing or modifying the works.

# Part 3—Assessment of and accounting for water

## Division 1—Role of Minister

### 22 Role of Minister

(1) The Minister—

(a) must make sure that a continuous program of assessment of the water resources of the State is undertaken; and

(ab) must make sure that a program of long-term water resources assessments is undertaken in accordance with this Act; and

S. 22(1)(ab) inserted by No. 99/2005 s. 8(1)(a).

(ac) must make sure that a program of sustainable water strategies is undertaken for the State in accordance with this Act; and

S. 22(1)(ac) inserted by No. 99/2005 s. 8(1)(a).

(b) subject to and in accordance with this Act, may allocate the available water resources; and

S. 22(1)(b) amended by No. 99/2005 s. 8(1)(b).

(c) may require an assessment of the environmental water reserve to be carried out.

S. 22(1)(c) inserted by No. 99/2005 s. 8(1)(c).

(2) The water resources assessment program must provide for the collection, collation, analysis and publication of information about—

(a) the availability of water, including surface water and groundwater; and

S. 22(2)(a) substituted by No. 99/2005 s. 8(2)(a).

(ab) the use of one water source as a substitute for another water source; and

S. 22(2)(ab) inserted by No. 99/2005 s. 8(2)(a).

(ac) the environmental water reserve; and

S. 22(2)(ac) inserted by No. 99/2005 s. 8(2)(a).

(b) the disposal of wastewater (including trade waste, sewage and saline water); and

(c) the use and re-use of water resources; and

(d) floodwaters; and

(e) drainage and waterway management; and

(f) water quality (including salinity); and

(g) in-stream uses of water; and

S. 22(2)(ga) inserted by No. 99/2005 s. 8(2)(b).

(ga) current and historic levels of allocation and use of surface water and groundwater; and

S. 22(2)(gb) inserted by No. 99/2005 s. 8(2)(b).

(gb) current and historic condition of waterways and aquifers; and

(h) anything else that the Minister decides is appropriate.

S. 22(2A) inserted by No. 99/2005 s. 8(3).

(2A) The Minister must make sure that information about the water resources assessment program is published every 5 years by—

(a) making the information available for inspection, during business hours, free of charge at the office of the Department Head; and

(b) making the information available on the Department's website.

(3) Water may be allocated by the Minister under—

S. 22(3)(aa) inserted by No. 99/2005 s. 8(4)(a).

(aa) an environmental entitlement; or

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

(a) a bulk entitlement granted to an Authority under Division 1 or 3 of Part 4; or

(ab) a water share; or

S. 22(3)(ab) inserted by No. 99/2005 s. 40(1).

(b) a licence to take and use water issued under section 51(1) or a registration licence; or

S. 22(3)(b) amended by No. 24/2013 s. 4.

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S. 22(3)(c) repealed by No. 99/2005 s. 8(4)(b).

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S. 22(4) repealed by No. 23/2019 s. 102.

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S. 22(5) repealed by No. 17/2012 s. 8(1).

(6) The Minister may, by Order published in the Government Gazette set rules with respect to the adjustment of volumes to be applied to transfers, whether permanent or temporary, of water rights in non-declared water systems.

S. 22(6) inserted by No. 62/1995 s. 31, substituted by No. 99/2005 s. 40(2).

(7) The Minister may amend or revoke an Order made under subsection (6), in the same manner in which the Order is made under that subsection.

S. 22(7) inserted by No. 99/2005 s. 40(2).

Pt 3 Div. 1A (Heading and s. 22A) inserted by No. 5/2002 s. 8.
Pt 3 Div. 1A (Heading) amended by No. 99/2005 s. 9.

## Division 1A—Permissible consumptive volumes

S. 22A (Heading) substituted by No. 99/2005 s. 10(1).
S. 22A inserted by No. 5/2002 s. 8.

### 22A Permissible consumptive volumes

S. 22A(1) substituted by No. 99/2005 s. 10(2).

(1) The Minister may, from time to time, by Order published in the Government Gazette, declare, in respect of an area or a water system specified in the Order, that the total volume of—

(a) both surface water and groundwater; or

(b) surface water only; or

(c) groundwater only—

that may be taken in the area or from the water system (whether for use in that area or water system or elsewhere) under this or any other Act, during the period specified in the Order, must not exceed the volume specified in the Order for that period.

S. 22A(1A) inserted by No. 99/2005 s. 10(2).

(1A) The Minister may, by Order published in the Government Gazette, revoke an Order made under subsection (1).

(2) If—

(a) an annual reserve volume of groundwater has been specified for the area under section 49A of the **Groundwater Act 1969**; or

(b) a prescription has been made under section 62(1) of the **Groundwater Act 1969** of the maximum total amounts of water to be extracted per annum from all licensed bores within the area—

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

(3) The Minister may make an Order under subsection (1) on the Minister's initiative or at the request of an Authority.

(3A) The Minister must not make a declaration under subsection (1) unless the Minister has first consulted with the Minister administering Part 4 of the **Catchment and Land Protection Act 1994**.

S. 22A(3A) inserted by No. 99/2005 s. 10(3).

(4) In this section, ***area*** includes a sub-surface stratum of land or geological formation.

## Division 1B—Sustainable water strategies

Pt 3 Div. 1B (Heading and ss 22B–22J) inserted by No. 99/2005 s. 11.

### 22B Preparation of a Sustainable Water Strategy

S. 22B inserted by No. 99/2005 s. 11.

The Minister may cause a Sustainable Water Strategy to be prepared for a region of the State determined by the Minister.

S. 22C inserted by No. 99/2005 s. 11.

### 22C Contents of a Sustainable Water Strategy

(1) A Sustainable Water Strategy must provide for the strategic planning of the use of water resources in the region to which it applies—

(a) to identify threats to the reliability of supply and quality of water for both environmental and consumptive uses in the region; and

(b) to identify ways to improve and set priorities for improving the reliability of supply and quality of water, including managing demand for water, and investing in infrastructure for the supply of recycled water; and

(c) to identify ways to improve and set priorities for improving the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; and

(d) to identify ways to increase and set priorities for increasing the volume of water in the environmental water reserve to improve the environmental values and health of water ecosystems; and

S. 22C(1)(e) amended by No. 32/2010 s. 77(Sch.).

(e) to include an implementation plan, setting out timelines or targets for implementing key actions identified by the strategy.

(2) A Sustainable Water Strategy must take into account—

(a) the results of any long-term water resources assessment undertaken under Division 1C;

(b) any relevant strategy or statement of policy or plan prepared under this Act, the **Catchment and Land Protection Act 1994**, the **Flora and Fauna Guarantee Act 1988**, the **Heritage Rivers Act 1992**, the **Planning**

**and Environment Act 1987** or the **Environment Protection Act 1970**;

(c) the principles set out in sections 1B to 1L of the **Environment Protection Act 1970**.

(3) A Sustainable Water Strategy must also—

**S. 22C(3) inserted by No. 23/2019 s. 9.**

(a) consider opportunities to provide for the following, consistently with the requirements of this Act or any other Act—

(i) Aboriginal cultural values and uses of waterways in the region to which the Strategy applies;

(ii) the social and recreational uses and values of waterways in the region to which the Strategy applies; and

(b) take into account any of the following agreements that are relevant to the region to which the Strategy applies—

(i) a recognition and settlement agreement and any further agreement to a recognition and settlement agreement;

(ii) an Aboriginal cultural heritage land management agreement within the meaning of the **Aboriginal Heritage Act 2006** that is recorded on the Victorian Aboriginal Heritage Register under section 145 of that Act; and

(c) take into account any determination of native title that native title exists in relation to the region to which the Strategy applies; and

(d) have regard to any relevant economic and environmental matters.

S. 22C(4) inserted by No. 23/2019 s. 9.

(4) In addition, a Sustainable Water Strategy that addresses a decline or deterioration referred to in section 22P(1)(a) or (b) that is identified in a long-term water resources assessment under Division 1C must set out the action required to be taken to address the matters referred to in section 22P(1)(c) or (d).

S. 22D inserted by No. 99/2005 s. 11.

### 22D Consultative committee—Sustainable Water Strategy

(1) The Minister must appoint a consultative committee to advise the Minister on—

(a) the preparation of each Sustainable Water Strategy; and

S. 22D(1)(b) amended by No. 23/2019 s. 10(1).

(b) the matters the strategy must provide for under section 22C(1), (3) and (4); and

(c) any other matter requested by the Minister relating to the preparation of the Strategy.

S. 22D(2) substituted by No. 23/2019 s. 10(2).

(2) The Minister must make sure that, so far as is possible, the membership consists of—

(a) persons who have knowledge or experience in the matters to be covered in a Sustainable Water Strategy; and

(b) at least one Aboriginal person residing in Victoria who has knowledge or experience in the matters to be covered in a Sustainable Water Strategy.

S. 22E inserted by No. 99/2005 s. 11, amended by No. 23/2019 s. 11(2) (ILA s. 39B(1)).

### 22E Preparation of a draft Sustainable Water Strategy

(1) In preparing a draft Sustainable Water Strategy, the Minister must—

(a) consult with the consultative committee appointed by the Minister under section 22D;

(b) give notice of the preparation of the Strategy to—

S. 22E(1)(b) substituted by No. 23/2019 s. 11(1).

(i) any Authority whose interests the Minister considers are likely to be affected by the Strategy; and

(ii) each specified Aboriginal party for an area that is wholly or partly within the region for which the Strategy is being prepared;

(c) publish notice of the undertaking of the strategy and the preparation of the Strategy in a local newspaper circulating generally in the area to which the Strategy applies;

(d) make the draft Strategy available for inspection by the public for at least 2 months after its preparation;

(e) publish a notice in a newspaper circulating generally in the State and in a local newspaper circulating generally in the region which will be affected by the Strategy stating where and when the draft Strategy can be inspected and inviting public comment by a set date;

(f) consider any comments made by the set date;

(g) consider any comments of any panel appointed under section 22F;

(h) make any appropriate changes to the draft Strategy.

(2) The set date in a notice under subsection (1)(e) must be a day not less than 35 days after the day on which the notice is published.

S. 22E(2) inserted by No. 23/2019 s. 11(2).

S. 22F inserted by No. 99/2005 s. 11.

### 22F Appointment of Panel

(1) The Minister may, by instrument, appoint a panel of persons to consider comments made under section 22E(f) on a draft Strategy, and the persons appointed to the panel must be persons who have knowledge of or experience in the matters that the panel is to consider.

(2) Subject to anything specified by the Minister in the instrument of appointment of the panel, a panel may regulate its own proceedings.

(3) After considering all comments referred to it, the panel must report its findings to the Minister within the period specified by him or her.

(4) The panel may include in its report any recommendations that it thinks fit.

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

(6) The Minister is not bound by the report of the panel under this section.

(7) The Minister must make a copy of any report of the panel available for inspection by the public within 1 month after it is received by the Minister.

S. 22G inserted by No. 99/2005 s. 11.

### 22G Consideration of draft Strategy by the Minister

(1) The Minister must consider the draft Strategy and may—

(a) endorse the Strategy; or

(b) endorse the Strategy with any amendments the Minister considers appropriate; or

(c) refuse to endorse the draft strategy.

(2) Before making a decision under subsection (1) the Minister must—

(a) consider a report of any panel prepared on the draft Strategy under section 22F; and

(b) make any such report available to the public under section 22F(7).

S. 22G(3) inserted by No. 23/2019 s. 12.

(3) If the Minister endorses a Sustainable Water Strategy for a region under subsection (1)(a) or (b), the Minister may revoke or amend an existing Sustainable Water Strategy for all or part of the same region.

S. 22G(4) inserted by No. 23/2019 s. 12.

(4) If the Minister revokes or amends an existing Sustainable Water Strategy under subsection (3), the Minister must include a notice of the revocation or amendment in the Strategy that the Minister endorses.

### 22H Publication of Sustainable Water Strategy

S. 22H inserted by No. 99/2005 s. 11.

The Minister must make sure that a Sustainable Water Strategy is published as soon as practicable after it is endorsed under section 22G by—

(a) making a copy of the Strategy available for inspection, during business hours, free of charge at—

(i) the office of the Department Head; and

(ii) the office of the Department located in the region to which the Strategy applies; and

(b) making a copy of the Strategy available on the Department's website; and

(c) publishing a notice of the availability of the copy of the Strategy in a newspaper circulating generally in the area to which the Strategy applies.

S. 22I inserted by No. 99/2005 s. 11.

### 22I Review of Sustainable Water Strategy

S. 22I(1) substituted by No. 23/2019 s. 13(1).

(1) The Minister must review a Sustainable Water Strategy that has been endorsed under section 22G(1) at the end of 10 years following the endorsement of the Strategy.

(2) The Minister may review a Sustainable Water Strategy at any time.

S. 22I(2A) inserted by No. 23/2019 s. 13(2).

(2A) Despite subsection (1), the Minister is not required to review a Sustainable Water Strategy for a region that has been endorsed under section 22G(1) if—

(a) there is a later Sustainable Water Strategy that has been endorsed under section 22G(1) for all or part of the same region; or

(b) the Minister is preparing a draft Sustainable Water Strategy for all or part of the same region and has published a notice under section 22E(1)(c) in relation to the draft Sustainable Water Strategy.

(3) A review under this section must determine whether or not the timelines and targets in the implementation plan of the Strategy being reviewed have been met.

(4) The procedures that apply to the making of a Sustainable Water Strategy under this Division apply, with any necessary modifications to the review of a Sustainable Water Strategy.

S. 22I(5) inserted by No. 23/2019 s. 13(3).

(5) After endorsing a review of a Sustainable Water Strategy, the Minister may amend the Strategy.

### 22J Report on Sustainable Water Strategies

S. 22J inserted by No. 99/2005 s. 11.

(1) A report on any current Sustainable Water Strategies and on any current draft Strategies must be included in each annual report of the Department.

(2) A report under subsection (1) must—

(a) specify the measures being taken to implement the Strategy; and

(b) identify the priorities that apply to actions required by the implementation plan.

## Division 1C—Long-term water resources assessments

Pt 3 Div. 1C (Heading and ss 22K–22V) inserted by No. 99/2005 s. 11.

### 22K Commencement of long-term water resources assessments

S. 22K inserted by No. 99/2005 s. 11, substituted by No. 23/2019 s. 14.

The Minister must commence a long-term water resources assessment—

(a) for northern water resources—

(i) by the end of 31 January 2025; and

(ii) after that, by the end of the twelfth year in each consecutive 15-year period, where the first such period commences on 1 February 2025; and

(b) for water resources other than northern water resources, by the end of the twelfth year in each consecutive 15-year period, where the first period after the period of the long-term water resources assessment referred to in section 22KA commences on 3 August 2021.

S. 22KA inserted by No. 23/2019 s. 14.

### 22KA Transitional provision—uncompleted long-term water resources assessment—Water and Catchment Legislation Amendment Act 2019

(1) The following paragraphs apply to the long-term water resources assessment commenced but not completed before the commencement day—

(a) subject to paragraph (b), on and from the commencement day the Minister must complete that long-term water resources assessment as if that long-term water resources assessment were being made under this Act as amended by the **Water and Catchment Legislation Amendment Act 2019**; and

(b) on and from the commencement day any part of that long-term water resources assessment relating to northern water resources is omitted.

(2) In this section—

***commencement day*** means the day on which section 14 of the **Water and Catchment Legislation Amendment Act 2019** comes into operation.

S. 22L inserted by No. 99/2005 s. 11.

### 22L Contents of a long-term water resources assessment

A long-term water resources assessment must identify whether or not either or both of the following has occurred—

(a) there has been any decline in the long-term availability of surface water or groundwater and whether the decline has fallen disproportionately on the environmental water reserve or on the allocation of water for consumptive purposes;

(b) there has been any deterioration in waterway health for reasons related to flow.

### 22M Preparation of a draft long-term water resources assessment

S. 22M inserted by No. 99/2005 s. 11.

In preparing a draft long-term water resources assessment, the Minister must—

S. 22M(a) amended by No. 85/2006 s. 5, substituted by No. 23/2019 s. 15.

(a) give notice of the preparation of the assessment and the process by which the assessment will be carried out to—

(i) any Authority whose interests the Minister considers are likely to be affected by the assessment; and

(ii) each specified Aboriginal party for an area that is wholly or partly within the area in which the water resources the subject of the assessment are located;

(b) publish a notice in a newspaper circulating generally in the State and in a local newspaper circulating generally in the area to which the assessment applies stating when and where the draft assessment can be inspected and inviting public comment by a set date;

(c) make the draft assessment available for inspection by the public for at least 2 months after its preparation;

(d) consider any comments made by the set date;

(e) consider any comments made by the Environment Protection Authority in a review under section 22N;

(f) make any appropriate changes to the draft assessment.

### 22N Review by Environment Protection Authority

S. 22N inserted by No. 99/2005 s. 11.

(1) The Minister must cause the draft assessment to be submitted to the Environment Protection Authority for a review of—

(a) the methods and criteria adopted to carry out the assessment; and

(b) any other matter required by the Minister.

(2) In reviewing the draft assessment the Environment Protection Authority must review—

(a) the methodology adopted to carry out the draft assessment; and

(b) whether or not the data used in the draft assessment was the best data available; and

(c) whether or not the conclusions reached in the draft assessment are supported by the methodology and data; and

(d) any other matter required by the Minister.

(3) At the completion of the review, the Environment Protection Authority must—

(a) report its findings to the Minister;

(b) make a copy of its report available on the Authority's website.

(4) The Environment Protection Authority must ensure that the report under subsection (3)(a) is made within the period specified by the Minister, which must be not later than 4 months after the draft assessment is submitted to the Authority under subsection (1).

S. 22O inserted by No. 99/2005 s. 11.

### 22O Consideration and publication of long-term water resources assessment

(1) The Minister, after considering the report of the Environment Protection Authority under section 22N, may—

(a) endorse a long-term water resources assessment; or

(b) endorse a long-term water resources assessment with any amendments the Minister considers appropriate; or

(c) refuse to endorse a long-term water resources assessment.

(2) As soon as practicable after completing a long term water resources assessment, the Minister must—

(a) make a copy of the assessment and the review of the assessment by the Environment Protection Authority available for inspection, during business hours, free of charge at the offices of the Department located in the region to which the assessment applies; and

(b) make a copy of the assessment available on the Department's website; and

(c) publish a notice of the availability of the copy of the assessment in a newspaper circulating generally in the area to which the assessment applies.

S. 22O(3) amended by No. 23/2019 s. 16.

(3) If a long-term water resources assessment has not been completed within 18 months of the publication of a notice under section 22M(a) for that assessment, the Minister must, on publication of the assessment, publish reasons for the delay in the preparation of the assessment.

### 22P Review following long-term water resources assessment

S. 22P inserted by No. 99/2005 s. 11, amended by No. 23/2019 s. 17(1)(a)(c)(2) (ILA s. 39B(1)).

(1) If, in the opinion of the Minister, a long-term water resources assessment has identified—

(a) a decline in the long-term availability of surface water or groundwater which has a disproportionate effect on the environmental water reserve or on the allocation of water for consumptive purposes; or

(b) a deterioration in waterway health for reasons related to flow—

the Minister must undertake a review to determine the action that is required to be taken—

(c) to restore the balance between the environmental water reserve and the allocation of water for consumptive purposes; or

S. 22P(1)(d) amended by No. 23/2019 s. 17(1)(b).

(d) to restore the health of waterways.

S. 22P(2) inserted by No. 23/2019 s. 17(2).

(2) In undertaking a review under subsection (1), the Minister must have regard to any relevant—

(a) economic and environmental matters; and

(b) Aboriginal cultural values and uses of waterways; and

(c) social and recreational matters.

S. 22P(3) inserted by No. 23/2019 s. 17(2).

(3) Despite subsection (1), the Minister is not required to undertake a review under that subsection if the Minister endorses a Sustainable Water Strategy or a review of a Sustainable Water Strategy that determines the action that is required to be taken to address the matters referred to in subsection (1)(c) or (d).

S. 22PA inserted by No. 23/2019 s. 18.

### 22PA Time for completion of reviews etc. following long-term water resources assessment

(1) If a long-term water resources assessment identifies a decline or deterioration referred to in section 22P(1)(a) or (b), the Minister, within 2 years and 6 months after the Minister endorsed that assessment, must—

(a) endorse a Sustainable Water Strategy or a review of a Sustainable Water Strategy that sets out the action to be taken to address the

matters referred to in section 22P(1)(c) or (d); or

(b) complete a review under section 22P that set outs the action to be taken to address the matters referred to in section 22P(1)(c) or (d).

(2) Despite subsection (1), the Minister may decide to extend the time to determine the action required to be taken.

(3) The Minister must publish notice of a decision under subsection (2) and reasons for it on the Department's Internet site.

(4) Failure to endorse a Sustainable Water Strategy or a review of a Sustainable Water Strategy or to complete a review under section 22P setting out the action that is required to be taken to address the matters referred to in section 22P(1)(c) or (d) within the time specified in subsection (1) does not affect—

(a) the validity of the Strategy or review; or

(b) any action, including any action under section 33AAB, the Minister takes following the preparation of the Strategy or completion of the review.

### 22Q Consultative committee for review

**S. 22Q inserted by No. 99/2005 s. 11.**

(1) The Minister must appoint a consultative committee to advise the Minister on a review to be undertaken under section 22P.

(2) The following provisions apply with respect to the membership of a consultative committee appointed under this section—

(a) the Minister must make sure that, so far as it is possible—

(i) all relevant interests are fairly represented on the committee;

(ii) the membership consists of persons who have knowledge or experience in the matters to be covered by the review;

(iii) the membership consists of persons who represent the community to which the review relates;

S. 22Q(2)(a)(iv) inserted by No. 23/2019 s. 19

(iv) the membership consists of at least one Aboriginal person residing in Victoria who has knowledge or experience in the matters to be covered by the review;

(b) at least one half of the membership must consist of persons, who are owners or occupiers of land in the area to which the review relates, appointed after consultation by the Minister with bodies representative of those persons;

(c) any public statutory body which the Minister considers to be directly affected by the review must, after consultation with the Minister, be represented on the committee.

(3) Section 318(2) to (6) applies to a consultative committee appointed under this section.

S. 22R inserted by No. 99/2005 s. 11.

### 22R Review process

(1) In conducting a review under section 22P, the Minister must—

(a) consult with the consultative committee appointed by the Minister under section 22Q;

(b) give notice of the review to— S. 22R(1)(b) substituted by No. 23/2019 s. 20(1).

(i) any Authority or other person whose interests the Minister considers are likely to be affected by the review; and

(ii) each specified Aboriginal party for an area that is wholly or partly within the area to which the water resources the subject of the review are related;

(c) publish notice of the commencement of the review in a local newspaper circulating generally in the area to which the review relates;

(d) make any draft review available for inspection by the public for at least 2 months after its preparation;

(e) publish a notice in a newspaper, circulating generally in the State and a local newspaper circulating generally in the area to which the review relates, stating where and when the draft review can be inspected and inviting public comment by a set date;

(f) consider any comments made by the set date;

(g) consider any comments of the panel appointed under section 22S;

(h) make any appropriate changes to the draft review.

* * * * * S. 22R(2)(3) repealed by No. 23/2019 s. 20(2).

### 22S Reporting of panel

S. 22S inserted by No. 99/2005 s. 11.

(1) The Minister, by instrument, must appoint a panel of persons to consider comments made under section 22R(f) on a draft review, and the persons appointed to the panel must be persons who have

knowledge of or experience in the matters that the panel is to consider.

(2) Subject to anything specified by the Minister in the instrument of appointment of the panel, it may regulate its own proceedings.

(3) After considering all comments referred to it, the panel must report its findings to the Minister within the period specified by him or her.

(4) The panel may include in its report any recommendations that it thinks fit.

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

(6) The Minister is not bound by the report of the panel under this section.

(7) The Minister must make a copy of the report of the panel under this section available for inspection by the public within one month after the report is received by the Minister.

(8) A panel appointed under this section must ensure that its report under subsection (3) is made within the period specified by the Minister which must be not later than 6 months after the panel is appointed under subsection (1).

S. 22T inserted by No. 99/2005 s. 11.

### 22T Consideration and publication of review

(1) After—

(a) considering the report prepared by the panel under section 22S; and

(b) after making the report available to the public under section 22S(7)—

the Minister must consider the review and may—

(c) endorse the Review; or

(d) endorse the Review with any amendments the Minister considers appropriate; or

(e) refuse to endorse the Review.

(2) On completion of a review under section 22P, the Minister must—

(a) make a copy of the review available for inspection, during business hours, free of charge at the offices of the Department; and

(b) make a copy of the review available on the Department's website; and

(c) publish a notice of the availability of the copy of the review in a newspaper circulating generally in the area to which the review applies; and

(d) make a copy of the review available for inspection during business hours, free of charge, at the office of the Department located in the region to which the assessment applies.

**22U Annual report on long-term water resources assessment**

S. 22U inserted by No. 99/2005 s. 11.

A report on any long-term water resources assessment completed in the preceding 12 month period must be included in each annual report of the Department.

**22V Program of implementation of review**

S. 22V inserted by No. 99/2005 s. 11.

(1) Within 6 months of the publication of a notice under section 22T(2)(c) the Minister must determine a program of implementation of the review and publish a statement of the actions required to implement that program.

(2) If, as part of a program of implementation of a review, the Minister determines to qualify rights under section 33AAB, the Minister must set out

notice of that determination in the statement published under subsection (1).

## Division 2—Water resources assessment program

### 23 Powers of Minister in relation to assessment program[10]

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

(a) carrying out surveys and holding inquiries;

(b) measuring and recording the flow of water in—

(i) waterways; and

(ii) other areas in which water collects;

(c) investigating groundwater;

S. 23(1)(ca) inserted by No. 99/2005 s. 12.

(ca) investigating whether or not the environmental water reserve is being maintained in accordance with the environmental water reserve objective;

(d) monitoring the physical, chemical and bacteriological quality of water;

(e) investigating the effect of climatic conditions on the occurrence and quality of water;

(f) investigating the interaction between groundwater and surface water;

(g) monitoring the flows of receiving waters for drainage, sewage and trade waste;

(h) establishing and maintaining works.

(2) For the purposes of the water resources assessment program the Minister may—

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

(a) purchase or compulsorily acquire any land that is required for the establishment of works or State observation bores; or

(b) subject to section 24, authorise a person to enter any land and drill for groundwater; or

(c) require any person (including a public statutory body) taking part in the program or otherwise collecting information of a kind referred to in section 22(2)—

(i) to keep records of all information collected; and

(ii) to give the Minister copies of those records on request; or

(d) direct any Authority—

(i) to collect and record information of a kind referred to in section 22(2) that is related to the Authority's functions; and

(ii) to provide that information to the Minister in any form that the Minister requires.

(3) The **Land Acquisition and Compensation Act 1986** applies to this Division and for that purpose—

(a) this Division is the special Act; and

(b) the Minister is the Authority.

(4) Section 74 of the **Land Acquisition and Compensation Act 1986** applies to an entry on land under subsection (2)(b).

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

(5) A person must not, without the consent of the Minister, destroy, damage, remove, alter or in any way interfere with any works established under subsection (1)(h).

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

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

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

(6) A person who is guilty of an offence under subsection (5) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that subsection, to a further penalty of not more than 5 penalty units for each day during which the offence continues—

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

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

### 24 Drilling for groundwater

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

**TABLE**

| Column 1 | Column 2 |
|---|---|
| Land owned by a public statutory body | The owner of the land |
| Land that is a road | The person responsible for maintaining the road |

| Column 1 | Column 2 |
|---|---|
| Land that is reserved either temporarily or permanently under section 4 of the **Crown Land (Reserves) Act 1978** | The Minister administering the **Conservation, Forests and Lands Act 1987** |
| Land that is leased under section 134 or 151E of the **Land Act 1958** | " |
| Land in respect of which a licence has been granted under section 138 or 401 of the **Land Act 1958** | " |

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

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

### 25 Giving of information to Minister

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

Penalty: 10 penalty units.

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

### 26 Reports on assessment program

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

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

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

## Division 3—Water supply protection areas

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

### 27 Declaration of water supply protection area

(1) The Minister, on the Minister's initiative or on an application from a person referred to in subsection (3), may, by Order published in the Government Gazette, declare an area to be a water supply protection area.

(2) An area may be declared under subsection (1) to be a water supply protection area for the protection of the groundwater resources in the area or the surface water resources in the area or both.

(3) An application for a declaration under subsection (1) may be made by—

(a) a person authorised to use groundwater or surface water under this Act; or

(b) an Authority that—

(i) holds a bulk entitlement; or

(ii) uses groundwater; or

(iii) supplies water; or

(c) a body that has responsibilities under any Act relating to the conservation or management of water, or of land—

in the area concerned or in an area where the water supply is affected by the taking and use of groundwater or surface water (as the case requires) in the area concerned.

(4) The Minister may only make a declaration under subsection (1) if—

(a) the Minister has first caused notice of the proposed declaration to be—

(i) published in a newspaper circulating generally in the area concerned; and

(ii) given by post to the relevant persons listed in subsection (5); and

(b) the Minister has considered any submissions made within 60 days after the publication or giving of notice of the proposed declaration under subparagraph (i) or (ii) of paragraph (a), whichever is the later.

(5) For the purposes of subsection (4)(a)(ii) the relevant persons are—

(a) the Minister administering the **Conservation, Forests and Lands Act 1987**; and

(b) the Minister administering the **Planning and Environment Act 1987**; and

(c) any Authority exercising a function under Part 8 or 11 in the area concerned; and

(d) any Authority that holds a bulk entitlement to water from a source in the area concerned; and

(e) any public statutory body which the Minister considers may be directly affected by the declaration; and

(f) any council in whose municipal district the area concerned is wholly or partly situated; and

(g) the responsible authority under the **Planning and Environment Act 1987** in relation to a planning scheme for the whole or any part of the area concerned.

(6) If an application under subsection (1) is made for a declaration, the publication or giving notice of the proposed declaration is to be at the expense of the applicant.

(7) The Minister may require further information with respect to the proposed declaration to be provided by the applicant for the declaration or any Authority with a function under this Act in the area concerned.

(8) The Minister must make a decision whether to declare an area to be a water supply protection area within 60 days after the period of 60 days referred to in subsection (4)(b).

(9) If the Minister decides to declare an area to be a water supply protection area, the Minister must cause a notice to that effect to be published in a newspaper circulating generally in the area.

(10) If the Minister decides not to declare an area to be a water supply protection area, the Minister must cause a notice to that effect to be published in a newspaper circulating generally in the area.

(11) The Minister must cause a declaration under subsection (1) to be laid before each House of Parliament within 5 sitting days of that House after it is made.

### 28 Amendment or abolition of water supply protection area

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

(1) The Minister may, by a subsequent Order published in the Government Gazette, amend the boundaries of, or abolish, a water supply protection area.

(2) Section 27 applies (with any necessary modifications) to an Order under subsection (1) as if it were a declaration under section 27(1).

### 29 Consultative committee

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

(1) If the Minister makes a declaration under section 27(1), the Minister must appoint a consultative committee to prepare a draft management plan for the area that is the subject of the declaration.

(2) The following provisions apply with respect to the membership of a consultative committee appointed under this section—

(a) the Minister must make sure that, so far as is possible—

(i) all relevant interests are fairly represented on the committee;

(ii) the membership consists of persons who have knowledge or experience in the matters to be covered in the management plan;

(iii) if there are one or more specified Aboriginal parties for an area that is wholly or partly within the area that is the subject of the declaration, the membership consists of at least one person who is a representative of one of the specified Aboriginal parties;

S. 29(2)(a)(iii) inserted by No. 23/2019, s. 21.

(b) at least one half of the membership must consist of persons who are owners or occupiers of land in the area concerned appointed after consultation by the Minister with bodies representative of those persons;

(c) any public statutory body which the Minister considers to be directly affected by the declaration must, after consultation by the Minister with it, be represented on the committee.

(3) Unless the area that is the subject of the declaration is wholly within an urban area, the persons referred to in subsection (2)(b) must be farmers who own or occupy farming land in the area, appointed by the Minister after consultation with the Victorian Farmers Federation.

(4) Section 318(2) to (6) applies to a consultative committee appointed under this section.

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

### 30 Guidelines for preparation of draft management plans

(1) The Minister may prepare guidelines for the preparation of a draft management plan for an area that is the subject of a declaration under section 27(1).

(2) The Minister may from time to time amend or revoke any guidelines prepared under subsection (1).

(3) The Minister, as soon as practicable after preparing, amending or revoking guidelines under this section must give the relevant consultative committee—

(a) a copy of the guidelines or the amendment; or

(b) notice of the revocation of the guidelines.

### 31 Preparation of draft management plan

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

(1) A consultative committee appointed under section 29 must, within 18 months after its appointment—

(a) prepare a draft management plan in accordance with any guidelines prepared by the Minister under section 30; and

S. 31(1)(ab) inserted by No. 23/2019 s. 22(1).

(ab) give notice of the preparation of the draft management plan and a copy of the draft management plan to any specified Aboriginal party for an area that is wholly or partly within the area that is the subject of a declaration under section 27(1); and

(b) make the draft management plan available for comment by interested persons.

S. 31(1AA) inserted by No. 23/2019 s. 22(2).

(1AA) A notice under subsection (1)(ab) must—

(a) invite submissions on the draft management plan to be made in the manner specified in the notice; and

(b) set a date by which submissions must be made, which must be a day not less than 35 days after the day on which the notice is issued.

S. 31(1A) inserted by No. 48/2005 s. 13.

(1A) The consultative committee must consider any comments made by interested persons and make any appropriate changes to the draft management plan.

S. 31(1B) inserted by No. 48/2005 s. 13.

(1B) On completion of the draft management plan, the consultative committee must refer it to the Minister for consideration.

(2) If the consultative committee does not prepare a draft management plan within the period referred to in subsection (1), the Minister may—

(a) from time to time extend the time within which the draft management plan may be prepared and made available for comment by interested persons; or

(b) prepare the draft management plan.

(3) If, under subsection (2), the Minister prepares the draft management plan, the Minister must make that plan available for comment by interested persons.

Note to s. 31 inserted by No. 23/2019 s. 22(3).

**Note**

The preparation of a draft management plan may be a land use activity under the **Traditional Owner Settlement Act 2010** if it relates to public land to which a land use activity agreement under that Act applies.

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

### 32 Overlapping management plans to be taken into account

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

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

### 32A Management plan

(1) The object of a management plan is to make sure that the water resources of the relevant water supply protection area are managed in an equitable manner and so as to ensure the long-term sustainability of those resources.

(2) A management plan may relate to groundwater resources, surface water resources or both in the relevant water supply protection area.

(3) A management plan may prescribe for the relevant water supply protection area or any part of that area—

(a) requirements for metering, monitoring and accounting for groundwater or surface water or both; or

(b) requirements to notify the Authority that has the duty of administering and enforcing the plan of the taking of groundwater from any specified bore or group of bores under a right conferred by section 8(1); or

(c) requirements for the location, capacity and operation of private dams which are—

(i) not licensed under section 51(1) or under a registration licence; and

S. 32A(3)(c)(i) amended by No. 24/2013 s. 5(1).

(ii) not for domestic and stock use; or

(d) restrictions or prohibitions on the issue of licences under section 51 or 67; or

* * * * *

S. 32A(3)(e) repealed by No. 48/2005 s. 14(1)(a).

(f) restrictions to be imposed on the taking of groundwater from any specified bore, group of bores or aquifer, if necessary—

S. 32A(3)(f) amended by No. 99/2005 s. 13(1)(a)(i).

(i) to prevent the level of groundwater declining below a specified level or specified average level; or

S. 32A(3)(f)(i) substituted by No. 48/2005 s. 14(1)(b), amended by No. 99/2005 s. 13(1)(a)(ii).

(ii) to prevent a relevant permissible consumptive volume being exceeded; or

S. 32A(3)(f)(ii) substituted by No. 99/2005 s. 13(1)(a)(iii).

(iii) to ensure that the environmental water reserve is maintained in accordance with the environmental water reserve objective; or

S. 32A(3)(f)(iii) inserted by No. 99/2005 s. 13(1)(a)(iii).

(g) restrictions to be imposed on the taking of surface water at any location specified in the area, if necessary to ensure that—

(i) specified flows at any particular time or for any particular circumstances are maintained; or

S. 32A(3)(g)(ii) amended by No. 99/2005 s. 13(1)(b)(i).

(ii) the permissible consumptive volume for the area is not exceeded; or

S. 32A(3)(g)(iii) inserted by No. 99/2005 s. 13(1)(b)(ii).

(iii) the environmental water reserve is maintained in accordance with the environmental water reserve objective; or

(h) restrictions to be imposed on the supply of groundwater by an Authority that takes groundwater from a source in the area or part; or

(i) conditions relating to the protection of the environment, including the riverine and riparian environment; or

S. 32A(3)(ia) inserted by No. 99/2005 s. 13(1)(c).

(ia) conditions relating to the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; or

(j) conditions relating to payment for the amount of groundwater taken and used from any specified bore or group of bores under a right conferred by section 8(1); or

S. 32A(3)(k) amended by No. 24/2013 s. 5(2).

(k) conditions to which licences issued under section 51(1), or registration licences, are to be subject; or

(l) without derogating from rights to water for domestic and stock use conferred by section 8, conditions to which licences issued under section 67 are to be subject; or

(m) conditions to which licences issued under section 51 to take and use groundwater or surface water, and transferred under section 62, are to be subject, including a condition relating to the maximum volume of water which may be taken and used under the transferred licence; or

(n) the maximum volume of water that may be retained—

(i) in each private dam on a particular lot in a plan of subdivision in the area concerned; or

(ii) in all private dams on every lot in a plan of subdivision in the area concerned; or

(o) any matter relevant to the object of the management plan or its implementation.

(4) A draft management plan may make a recommendation to the Minister as to the total volume of water that should be declared to be the permissible consumptive volume for the area concerned.

**S. 32A(4) amended by No. 99/2005 s. 13(2).**

(5) A draft management plan must name the Authority which is to have the duty of administering and enforcing the plan if it is approved.

(6) The Minister may—

(a) approve a draft management plan; or

(ab) approve a draft management plan with any amendments the Minister considers appropriate; or

**S. 32A(6)(ab) inserted by No. 48/2005 s. 14(2).**

(b) refuse to approve a draft management plan.

(7) The Minister must cause—

(a) notice of the approval or refusal (as the case requires) of a draft management plan to be published and given in accordance with section 27(4)(a); and

(b) if the draft management plan is refused, the reasons for the refusal to be published with that notice.

S. 32A(7A) inserted by No. 48/2005 s. 14(3).

(7A) If a draft management plan is refused, the Minister may—

(a) appoint a consultative committee under section 29 to prepare a new draft management plan for the relevant water supply protection area; or

(b) prepare a new draft management plan; or

(c) abolish the water supply protection area under section 28; or

(d) take any other action that the Minister considers appropriate in the circumstances.

S. 32A(7B) inserted by No. 48/2005 s. 14(3).

(7B) This Division applies to the preparation and approval of a new draft management plan referred to in subsection (7A)(a) or (b) in the same way as it applies to a draft management plan.

(8) The Minister must cause an approved management plan to be laid before each House of Parliament within 5 sitting days of that House after it is approved under subsection (6).

(9) Sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply to an approved management plan as if the approved management plan were a statutory rule within the meaning of that Act.

(10) An approved management plan may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23 of the **Subordinate Legislation Act 1994**.

S. 32A(10A) inserted by No. 48/2005 s. 14(4).

(10A) An approved management plan is not invalid merely because of a defect or irregularity in, or in connection with the approval of the plan.

(11) An approved management plan is binding on every person (including every public statutory body) except to the extent that the Minister otherwise specifies by notice published in the Government Gazette.

S. 32A(12) amended by No. 24/2013 s. 5(3).

(12) On the approval of a draft management plan that prescribes a requirement, restriction or condition to which a registration licence or a licence issued under section 51(1) or 67 is to be subject, every registration licence or licence issued under section 51 or 67, whether issued before or after the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**, is deemed to be subject to that requirement, restriction or condition, despite anything to the contrary specified in the licence or any condition that is prescribed or fixed or imposed by the Minister under section 56 or 71 (as the case requires) in relation to the licence.

(13) A person must not contravene an approved management plan.

Penalty: 20 penalty units.

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

### 32B Administration and enforcement of management plan

(1) The Authority that has the duty of administering and enforcing an approved management plan may—

(a) direct that any specified works be carried out or any specified equipment be installed; or

(b) order the removal of any specified works (other than a private dam) or the discontinuance of any specified action—

if, in the opinion of the Authority, it is necessary to do so in order to secure compliance with the plan.

(2) A person whose interests are affected by a decision of an Authority under subsection (1) to give a direction or make an order may apply to the Tribunal for review of the decision.

(3) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

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

(4) A person must not contravene a direction given or order made by an Authority under subsection (1).

Penalty: 20 penalty units.

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

### 32C Report on administration and enforcement of management plan

(1) The Authority that has the duty of administering and enforcing an approved management plan must prepare a report in respect of its activities in carrying out its duties in relation to the plan—

(a) for the period commencing on the day the management plan is approved and ending on 30 June next following; and

(b) from then on, for each year ending on 30 June or for such other period of time requested by the Authority and approved by the Minister.

(2) The Authority must, on or before 30 September in each year, give a copy of the report to—

(a) the Minister; and

(b) every Catchment Management Authority whose catchment and land protection region is wholly or partly in the area; and

S. 32C(2)(b) amended by No. 85/2006 s. 6(a).

(c) Melbourne Water Corporation, if the area is wholly or partly in the waterway management district of Melbourne Water Corporation.

S. 32C(2)(c) inserted by No. 85/2006 s. 6(b).

### 32D Public availability of report

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

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

(a) make a copy of the report available for inspection, during business hours, free of charge at the offices of the Authority; and

(b) publish a notice of that availability in a newspaper circulating generally in the area to which the approved management plan applies.

### 32E Certain plans deemed to be approved management plans

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

(1) Despite anything to the contrary in this Division but subject to this section, the Minister may approve a plan for the management of surface water resources that has been prepared or partly prepared by or for the department for a particular area before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**.

(2) Before approving a plan as a management plan under subsection (1), the Minister may—

(a) review or revise the plan; or

(b) appoint an advisory committee to assist in developing or completing the plan.

(3) An advisory committee is to consist of such persons as the Minister thinks fit.

(4) The Minister must not approve the plan unless the Minister is satisfied that the plan complies with section 32A(1) to (5).

(5) On the approval by the Minister of a plan under subsection (1)—

(a) the particular area to which the plan relates is deemed to be a water supply protection area for the protection of surface water resources; and

(b) the plan is deemed to be an approved management plan for the surface water resources of the relevant water supply protection area and may be amended or revoked in accordance with this Division.

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

### 32F Compensation in certain circumstances

(1) The owner and occupier of any works is entitled to be paid, by the person specified by the consultative committee that prepared the plan, or specified by the Minister in a plan referred to in section 32E, compensation for any loss suffered or expenses sustained as a result of—

(a) being directed under section 32B(1)(a) to carry out works or install equipment; or

(b) being ordered under section 32B(1)(b) to remove works.

(2) If as a result of the enforcement of an approved management plan a benefit is conferred on one person and a detriment is suffered by another person, the second-mentioned person is entitled to be paid by the first-mentioned person compensation for the detriment suffered.

(3) The amount of compensation payable under subsection (1) or (2) is as agreed by the parties or, in the absence of agreement, as determined by the Authority that has the duty of administering and enforcing the plan, and that amount may be enforced as a debt in a court of competent jurisdiction.

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

(4) A person whose interests are affected by a decision—

(a) of an Authority under subsection (3) as to the amount of compensation payable; or

(b) of a consultative committee or the Minister under subsection (1)—

(i) that a specified person must pay compensation; or

(ii) that no compensation is payable—

may apply to the Tribunal for review of the decision.

(5) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

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

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

### 32G Amendment or revocation of approved management plan

(1) The Minister may amend or revoke an approved management plan.

(2) The Minister may only amend or revoke an approved management plan if—

(a) the Minister has caused notice of the proposed amendment or revocation to be published and given in accordance with section 27(4)(a); and

(b) the Minister has considered any submissions made on the proposed amendment or revocation within 60 days after the publication or giving of notice of it in accordance with section 27(4)(a)(i) or (ii), whichever is the later; and

S. 32G(2)(c) amended by No. 85/2006 s. 7.

(c) in the case of a proposed amendment of the plan, the Minister has appointed a consultative committee to advise on the amendment.

(3) Sections 29 and 31 apply in the case of a proposed amendment to an approved management plan with any necessary modifications, and as if in those sections—

(a) a reference to a consultative committee appointed for the preparation of a draft management plan were a reference to a consultative committee appointed under this section for the amendment of the plan; and

(b) a reference to a draft management plan were a reference to the proposed amendment of the plan.

### 32H Plan must be available for inspection

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

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

(a) any Authority exercising a function under this Act in the area concerned;

(b) any council in whose municipal district the area concerned is wholly or partly situated;

(c) the responsible authority under the **Planning and Environment Act 1987** in relation to a planning scheme for the whole or any part of the area concerned.

## Division 4—Minister's powers to qualify rights

Pt 3 Div. 4 (Heading and s. 33) substituted as Pt 3 Div. 4 (Heading and ss 33–33AAC) by No. 99/2005 s. 14.

### 33 Definitions

S. 33 substituted by No. 99/2005 s. 14.

In this Division—

***qualify*** includes suspend, reduce, increase and otherwise alter;

***right to water*** means—

S. 33 def. of *right to water* amended by No. 24/2013 s. 6.

(a) any right to water conferred by any provision of Division 1 of Part 2 other than section 7(1) or 8(4)(c); and

(b) any environmental entitlement; and

(c) any bulk entitlement; and

(d) in relation to any non-declared water system, any licence issued under section 51(1) or any registration licence; and

(e) in relation to any declared water system, any water share issued in relation to the system.

S. 33AAA inserted by No. 99/2005 s. 14.

### 33AAA Temporary qualification of rights to water

(1) If the Minister declares under this section that a water shortage exists in an area or water system, he or she may temporarily qualify any rights to water whether or not they relate to the same area or water system.

(2) The Minister may declare that a water shortage exists in an area or water system if he or she is of the opinion that the volume or quality of water available in the area or system to satisfy any rights to water (whether or not they relate to that area or water system) is or will shortly be inadequate for any reason.

(3) Before making a qualification to rights to water under subsection (1) the Minister must notify the Minister responsible for administering the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**.

S. 33AAB inserted by No. 99/2005 s. 14.

### 33AAB Permanent qualification of rights to water

(1) Subject to subsection (2), following the endorsement of a review under section 22T(1)(c) or (d), the Minister may permanently qualify any rights to water having regard to—

(a) the review as endorsed by the Minister; and

(b) any relevant report of a panel under section 22S; and

(c) any relevant—

S. 33AAB(1)(c) substituted by No. 23/2019 s. 23.

(i) economic and environmental matters; and

(ii) Aboriginal cultural values and uses of waterways; and

(iii) social and recreational uses and values of waterways.

(2) A permanent qualification of rights to water under subsection (1) must not take effect in relation to an area or water system—

(a) within 15 years of the commencement of section 14 of the **Water (Resource Management) Act 2005**; or

(b) if such a permanent qualification has taken effect in relation to that area or water system within the preceding 15 years.

### 33AAC Procedures applying to qualifications

S. 33AAC inserted by No. 99/2005 s. 14.

(1) A qualification of rights to water under this Division must be done by—

(a) giving notice of the qualification to the person affected; or

(b) causing notice of it to be published in a newspaper generally circulating—

(i) in the area to which the qualified rights to water relate; or

(ii) in the area served by the water system to which the qualified rights to water relate.

(2) A notice given or published under subsection (1) may specify the criteria according to which the Minister determined the qualification.

(3) For the purposes of a qualification under section 33AAA, the Minister may, by Order published in the Government Gazette—

(a) determine the class of any rights to water; and

(b) assign a priority to each of those classes—

and any qualification under that section of rights to water must be made in accordance with the priority of the class of right concerned.

(4) Subject to subsection (3), any qualification under section 33AAA of rights to water must apply to all rights in the same proportion, unless the Minister is of the opinion that the circumstances are so extreme as to justify some other basis.

S. 33AAD inserted by No. 32/2010 s. 6.

### 33AAD Conditions on certain qualifications

(1) If a bulk entitlement has been qualified under this Division, the Minister may impose conditions or duties as to one or more of the following matters on the holder of the bulk entitlement—

(a) monitoring the impacts of the qualification and advising the Minister of the outcomes of the monitoring;

(b) requiring any program of works or actions to be carried out by the holder of the bulk entitlement for the purpose of mitigating any adverse effect or the risk of any adverse effect—

(i) on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; or

(ii) on the holder of any other entitlement, licence or right under this Act;

(c) requiring payments to be made to other Authorities for the purposes specified in the notice of qualification under section 33AAC, including conditions as to—

(i) if any program of works is carried out by another Authority for a purpose specified in paragraph (b), payments that are to be made to reimburse the cost of the carrying out of the program; and

(ii) the manner in which any payments are to be made;

(d) operating arrangements that are required as a result of the qualification.

(2) A condition or duty imposed on the holder of a bulk entitlement under subsection (1) must be set out in the notice of the qualification under section 33AAC.

## Division 5—State observation bores

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

### 33A Power to enter land

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

(1) The Minister, or a person authorised in writing by the Minister for the purpose, may enter, in accordance with subsection (2), any land on which a State observation bore is located for the purpose of—

(a) carrying out observations (including taking water samples); or

(b) operating, maintaining, altering or decommissioning the bore.

(2) The power of entry under subsection (1) may be exercised—

(a) in the case of Crown land, at any time; or

(b) in the case of land other than Crown land, between 7 a.m. and 7 p.m. or, during an emergency, at any time.

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

### 33B Compensation

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

(2) The Minister is liable to compensate any person who has—

(a) sustained any pecuniary loss; or

(b) incurred any expense—

as a direct, natural and reasonable consequence of the performance of a function under this Division by the Minister, or a person authorised in writing by the Minister for a purpose referred to in section 33A.

(3) The Minister is not liable to compensate a person for consequential loss.

(4) Any claim for compensation must be made and dealt with in accordance with the **Land Acquisition and Compensation Act 1986** as if it were a claim under section 47(1) of that Act.

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

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

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

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

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

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

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

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

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

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

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

Pt 3AA (Heading and ss 33DA–33DZA) inserted by No. 50/2010 s. 4.

# Part 3AA—Victorian Environmental Water Holder

## Division 1—Establishment of the Water Holder

S. 33DA inserted by No. 50/2010 s. 4.

### 33DA Definitions

(1) In this Part—

***acting Commissioner*** means a person appointed to act as a Commissioner under section 33DI;

***Chairperson*** means the Commissioner appointed as the Chairperson of the Water Holder under section 33DF(1)(a);

***Commissioner*** means a person appointed as a Commissioner under section 33DF(1);

***corporate plan*** means a plan made under section 33DV or varied under section 33DW;

***Deputy Chairperson*** means the Commissioner appointed as the Deputy Chairperson of the Water Holder under section 33DF(1)(b);

***public entity*** has the same meaning as in the **Public Administration Act 2004**;

***seasonal watering plan*** means a plan made under section 33DX;

***seasonal watering statement*** means a statement issued under section 33DY.

(2) A reference in sections 33DF(4), 33DJ, 33DK and 33DL to a Commissioner includes a reference to an acting Commissioner.

### 33DB Victorian Environmental Water Holder

S. 33DB inserted by No. 50/2010 s. 4.

(1) There is established a body corporate called the Victorian Environmental Water Holder.

(2) The Water Holder—

(a) has perpetual succession; and

(b) has an official seal; and

(c) may sue or be sued in its corporate name; 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 Water Holder's official seal affixed to a document and, until the contrary is proved, must presume the seal was duly affixed.

(4) The official seal of the Water Holder must be kept in the custody that is directed by the Water Holder and must not be used except as authorised by the Water Holder.

## Division 2—Objectives, functions and powers of the Water Holder

### 33DC Objectives of the Water Holder

S. 33DC inserted by No. 50/2010 s. 4.

The objectives of the Water Holder are to manage the Water Holdings for the purposes of—

(a) maintaining the environmental water reserve in accordance with the environmental water reserve objective; and

(b) improving the environmental values and health of water ecosystems, including their biodiversity, ecological functioning and

water quality, and other uses that depend on environmental condition.

S. 33DD inserted by No. 50/2010 s. 4, amended by No. 23/2019 s. 24 (ILA s. 39B(1)).

### 33DD Functions of the Water Holder

(1) The functions of the Water Holder are to do the following in accordance with the objectives of the Water Holder—

(a) apply and use water in the Water Holdings and otherwise exercise rights in the Water Holdings in accordance with this Act;

(b) acquire and purchase rights and entitlements for the Water Holdings and dispose of and otherwise deal in rights and entitlements in the Water Holdings in accordance with this Act;

(c) plan for the purposes of paragraphs (a) and (b);

(d) enter into any agreements for the purposes of paragraphs (a) and (b);

(e) enter into any agreements for the purposes of the co-ordination of the exercise of rights under any water right or entitlement held by another person, including the Commonwealth Environmental Water Holder;

(f) enter into any agreements with any person for the provision of works by that person to enable the efficient application or use of water in the Water Holdings.

S. 33DD(2) inserted by No. 23/2019 s. 24.

(2) In performing its functions, the Water Holder must consider opportunities to provide for the following, consistently with its objectives and the requirements of this Act or any other Act—

(a) Aboriginal cultural values and uses of waterways;

(b) the social and recreational uses and values of waterways.

### 33DE Powers of the Water Holder

S. 33DE inserted by No. 50/2010 s. 4.

The Water Holder has the power to do all things necessary or convenient to be done for, or in connection with, or incidental to, the performance of its functions, powers and duties.

## Division 3—Governance of the Water Holder

### 33DF Constitution of the Water Holder

S. 33DF inserted by No. 50/2010 s. 4.

(1) The Water Holder consists of—

(a) one full-time or part-time Commissioner who is the Chairperson of the Water Holder; and

(b) at least two full-time or part-time Commissioners, one of whom is the Deputy Chairperson of the Water Holder; and

(c) any further full-time or part-time Commissioners—

appointed by the Governor in Council on the recommendation of the environment Minister.

(2) The environment Minister must not recommend a person for appointment under subsection (1) unless that person has knowledge of, or experience in, one or more of the following fields—

(a) environmental management;

(b) sustainable water management;

(c) economics;

(d) public administration.

(3) In addition to the requirement set out in subsection (2), the environment Minister must not recommend a person for appointment under subsection (1)(c) unless the environment Minister considers the appointment necessary to enable the Water Holder to perform its functions.

(4) An act or decision of the Water Holder is not invalid merely because of a defect or irregularity in the appointment of a Commissioner.

S. 33DG inserted by No. 50/2010 s. 4.

### 33DG Terms and conditions of appointment

(1) A Commissioner is appointed for the period, not exceeding 5 years, that is specified in his or her instrument of appointment.

(2) A Commissioner is subject to the terms and conditions specified in his or her instrument of appointment.

(3) A Commissioner is eligible for reappointment.

S. 33DH inserted by No. 50/2010 s. 4.

### 33DH Removal of Commissioners

(1) The Governor in Council, on the recommendation of the environment Minister, may remove a Commissioner from office if the Commissioner has—

(a) refused, neglected or failed to carry out the duties of his or her office; or

(b) demonstrated inefficiency or misbehaviour in carrying out the duties of his or her office; or

(c) become an insolvent under administration; or

(d) not complied with any relevant rules made under Division 6; or

(e) been found guilty of an indictable offence.

(2) If a Commissioner is removed from office under subsection (1), the environment Minister must cause the reasons for that removal to be laid before each House of Parliament within 5 sitting days of that House after that removal.

### 33DI Acting Commissioners

S. 33DI inserted by No. 50/2010 s. 4.

(1) The Governor in Council, on the recommendation of the environment Minister, may appoint a person to act as a Commissioner—

(a) during a vacancy in the office of a Commissioner; or

(b) for a period during which a Commissioner is unable to perform the functions of his or her office.

(2) An acting Commissioner is appointed for the period, not exceeding 6 months, specified in his or her instrument of appointment.

(3) An acting Commissioner is subject to the terms and conditions specified in his or her instrument of appointment.

(4) An acting Commissioner is eligible for reappointment.

(5) The Governor in Council, on the recommendation of the environment Minister, may remove an acting Commissioner from office at any time.

### 33DJ Declaration of pecuniary interests

S. 33DJ inserted by No. 50/2010 s. 4.

(1) If a Commissioner has a direct or indirect pecuniary interest in a matter which he or she is considering or is about to consider in the course of performing his or her duties, the Commissioner must as soon as practicable after the Commissioner has become aware of the relevant facts declare the nature of that interest to the other Commissioners.

(2) Subsection (1) does not apply if the interest is as a result of the supply of goods or services that are available to members of the public on the same terms and conditions.

(3) If a Commissioner has made a declaration under this section, the Commissioner must not take any further part in any decision in relation to the matter, unless the environment Minister directs otherwise.

(4) An act or decision of the Water Holder is not invalid merely because of a failure to comply with this section.

S. 33DK inserted by No. 50/2010 s. 4.

### 33DK Payment of Commissioners

A Commissioner is entitled to be paid any remuneration and any travelling and other allowances that are fixed by the Governor in Council from time to time.

S. 33DL inserted by No. 50/2010 s. 4.

### 33DL Meetings of the Water Holder

(1) The Chairperson may convene as many meetings of the Water Holder as the Chairperson considers necessary.

(2) The Chairperson must preside at a meeting at which the Chairperson is present.

(3) If the Chairperson is absent, the Deputy Chairperson must preside at the meeting.

(4) If the Chairperson and Deputy Chairperson are absent, the Commissioners present must appoint a Commissioner to preside at the meeting.

(5) The quorum for a meeting is a majority of the Commissioners appointed for the time being.

(6) A question arising at a meeting is determined by a majority of the votes of the Commissioners present and voting on the question.

(7) 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.

(8) Subject to this Act, the Water Holder may regulate its own proceedings.

### 33DM Staff

S. 33DM inserted by No. 50/2010 s. 4.

(1) The Water Holder may employ any staff that are necessary for the Water Holder to perform its functions, powers or duties under this Act under Part 3 of the **Public Administration Act 2004**.

(2) The Water Holder may enter into agreements or arrangements for the use of the services of any staff employed under Part 3 of the **Public Administration Act 2004** or by an Authority or other public entity.

### 33DN Consultants

S. 33DN inserted by No. 50/2010 s. 4.

The Water Holder may engage persons with suitable qualifications and experience as consultants on any terms and conditions the Water Holder considers appropriate.

### 33DO Water Holder Trust Account

S. 33DO inserted by No. 50/2010 s. 4.

(1) There is established in the Trust Fund an account known as the "Water Holder Trust Account".

(2) There may be paid into the Water Holder Trust Account the following—

(a) money donated to the Water Holder;

(b) money paid to the Water Holder by another person, including the Commonwealth Environmental Water Holder, pursuant to an agreement with that person;

(c) any other money received by, or on behalf of, the Water Holder in the performance of its functions, powers and duties.

(3) There must not be paid out of the Water Holder Trust Account any money except for—

(a) the purpose of meeting the objectives of the Water Holder; or

**Note**

The objectives of the Water Holder are set out in section 33DC.

(b) if the money was received by way of donation, a purpose that is consistent with the purpose for which the money was donated.

S. 33DP inserted by No. 50/2010 s. 4.

### 33DP Delegation

The Water Holder may delegate any of its functions, powers or duties, except this power of delegation or a prescribed function, power or duty, to—

(a) a member of staff employed under section 33DM; or

(b) a Commissioner; or

(c) an Authority that has a waterway management district; or

(d) any other person, or class of persons, approved by the environment Minister.

S. 33DQ inserted by No. 50/2010 s. 4.

### 33DQ Application of Public Administration Act 2004

The **Public Administration Act 2004** applies to the Water Holder as if the Water Holder were a public entity, but not a small entity, within the meaning of that Act.

S. 33DR inserted by No. 50/2010 s. 4.

### 33DR Application of Financial Management Act 1994

The **Financial Management Act 1994** applies to the Water Holder as if the Water Holder were a public body within the meaning of that Act.

## Division 4—Accountability of the Water Holder

### 33DS Ministerial directions

S. 33DS inserted by No. 50/2010 s. 4.

(1) The environment Minister may give a written direction to the Water Holder in relation to the performance of its functions, powers or duties.

(2) A direction given under subsection (1) must not include a direction relating to—

(a) a particular application or use of water in the Water Holdings or other exercise of rights in the Water Holdings; or

(b) a particular acquisition or purchase of a right or entitlement for the Water Holdings or a particular disposal of or other dealing in a right or entitlement in the Water Holdings—

other than to ensure consistency with a corporate plan or with any relevant rules made under Division 6.

(3) The environment Minister must notify the Water Holder in writing of his or her intention to give a direction under subsection (1) at least 14 days before giving that direction.

(4) As soon as practicable after giving a direction under subsection (1), the environment Minister must publish in the Government Gazette notice of the direction, including a statement or summary of the contents of the direction.

(5) The Water Holder is required to include a statement or summary of the contents of any direction received under subsection (1) in its annual report.

### 33DT Reporting requirements

S. 33DT inserted by No. 50/2010 s. 4.

The Water Holder must include in its annual report information as to the performance of its functions, powers and duties in that year in

accordance with any relevant rules made under Division 6.

S. 33DU inserted by No. 50/2010 s. 4.

### 33DU Recording requirements

The Water Holder must keep and maintain records to accurately account for the performance of its functions under section 33DD(a) and (b) in accordance with any relevant rules made under Division 6.

## Division 5—Planning by the Water Holder

S. 33DV inserted by No. 50/2010 s. 4.

### 33DV Preparation of corporate plan

(1) The Water Holder must prepare a corporate plan for each financial year and submit it to the environment Minister at least 2 months before the start of each financial year.

(2) A corporate plan must include the following information in respect of the financial year to which the plan relates and in respect of each of the 3 subsequent financial years—

(a) the strategies and policies the Water Holder will carry out to achieve its objectives, and perform its functions;

(b) governance, funding and reporting arrangements the Water Holder expects to undertake for those strategies and policies;

(c) performance indicators the Water Holder intends to apply to the performance of its functions;

(d) any other information required to be included by any relevant rules made under Division 6.

(3) In preparing a corporate plan, the Water Holder must—

(a) comply with any procedural or consultative requirements under any relevant rules made under Division 6; and

(b) have regard to any matters required under any relevant rules made under Division 6.

(4) The environment Minister may direct the Water Holder in writing, within 2 months after a corporate plan is submitted under subsection (1), to vary the plan as the environment Minister thinks fit.

(5) The environment Minister must publish in the Government Gazette a direction given under subsection (4).

(6) The Water Holder must make a corporate plan publicly available at the office of the Water Holder or on its website.

**33DW Variation of corporate plan during operation of plan**

S. 33DW inserted by No. 50/2010 s. 4.

(1) A corporate plan may be varied after the start of the financial year to which the plan relates—

(a) at the direction of the environment Minister; or

(b) on the motion of the Water Holder.

(2) The environment Minister must publish in the Government Gazette a direction given under subsection (1)(a).

(3) Before varying a corporate plan under subsection (1)(b), the Water Holder must submit the proposed variation to the environment Minister.

(4) The environment Minister may agree to the proposed variation.

(5) If the Minister does not agree to the proposed variation, the environment Minister must so notify the Water Holder within 30 days of a submission being made under subsection (3).

S. 33DX inserted by No. 50/2010 s. 4.

### 33DX Seasonal watering plans

(1) The Water Holder must make a seasonal watering plan for the whole of the State for each water season.

(2) For the purposes of subsection (1), the Water Holder may make seasonal watering plans for different parts of the State.

(3) A seasonal watering plan must include the following information in respect of the water season to which the plan relates and in respect of the part of the State to which the plan relates, if the plan is made for a part of the State—

(a) a forecast of climatic conditions; and

(b) priorities for the performance of its functions under section 33DD(a) and (b); and

(c) any other information required to be included by any relevant rules made under Division 6.

(4) A seasonal watering plan may be varied by the Water Holder at any time.

(5) Before making or varying a seasonal watering plan, the Water Holder must—

(a) take into consideration any relevant seasonal proposals prepared by an Authority that has a waterway management district under section 192A; and

(b) ensure the plan is consistent with any requirements set out in a bulk entitlement or an environmental entitlement held by the Water Holder; and

(c) comply with any procedural or consultative requirements under any relevant rules made under Division 6; and

(d) have regard to any matters required under any relevant rules made under Division 6.

(6) The Water Holder must make a seasonal watering plan publicly available at the office of the Water Holder or on its website.

### 33DY Seasonal watering statements

S. 33DY inserted by No. 50/2010 s. 4.

(1) The Water Holder may issue a seasonal watering statement for any part of the State in respect of the whole or a part of a water season.

(2) A seasonal watering statement may authorise an Authority that has a waterway management district to apply or use water in the Water Holdings or otherwise exercise rights in the Water Holdings within the waterway management district of the Authority on behalf of the Water Holder.

(3) A seasonal watering statement must include, in respect of the part of the State and the water season to which the statement relates—

(a) the Authority that may apply or use water in the Water Holdings or otherwise exercise rights in the Water Holdings on behalf of the Water Holder; and

(b) in respect of water that is to be applied or used, the rights that are to be exercised under the rights or entitlements in the Water Holdings and any other rights in the Water Holdings that are to be exercised; and

(c) the purpose for which, the amounts of which and the circumstances in which water under rights and entitlements referred to in paragraph (b) is to be applied or used; and

(d) any other information required to be included by any relevant rules made under Division 6.

(4) A seasonal watering statement may be made at any time during the water season to which the statement relates.

(5) A seasonal watering statement must be consistent with a seasonal watering plan for the same water season to which the statement relates.

(6) Before making a seasonal watering statement the Water Holder must—

(a) ensure the statement is consistent with any requirements set out in a bulk entitlement or an environmental entitlement held by the Water Holder; and

(b) comply with any procedural or consultative requirements under any relevant rules made under Division 6; and

(c) have regard to any matters required under any relevant rules made under Division 6.

(7) In the event of any inconsistency between seasonal watering statements, the most recent statement is to prevail to the extent of that inconsistency.

(8) The Water Holder must make a seasonal watering statement publicly available at the office of the Water Holder or on its website.

S. 33DZ inserted by No. 50/2010 s. 4.

### 33DZ Water Holder may request information relating to water season

The Water Holder, by giving written notice to an Authority that has a waterway management district, may require the Authority to give the Water Holder any information relating to the application or use of water in the Water Holdings or other exercise of rights in the Water Holdings

within the waterway management district of the Authority in accordance with a seasonal watering statement.

## Division 6—Ministerial rules relating to Water Holder

### 33DZA Ministerial rules relating to Water Holder

S. 33DZA inserted by No. 50/2010 s. 4 (as amended by No. 29/2011 s. 3(Sch. 1 item 107)).

(1) The environment Minister, by Order published in the Government Gazette, may make rules in relation to—

(a) information for the purposes of reporting requirements under section 33DT;

(b) information for the purposes of recording requirements under section 33DU;

(c) procedural and consultative requirements relating to the preparation of corporate plans, seasonal watering plans and seasonal watering statements;

(d) matters that the Water Holder must have regard to when preparing corporate plans, seasonal watering plans and seasonal watering statements;

(e) information that must be included in corporate plans, seasonal watering plans and seasonal watering statements;

(f) consultative requirements to be undertaken by the Water Holder with communities and stakeholders;

(g) requirements as to the reporting by the Water Holder to the environment Minister in relation to the performance of its functions, powers and duties;

(h) information that must be made publicly available by the Water Holder relating to the performance of its functions, powers or duties or by Authorities that have waterway management districts relating to the application or use of water in the Water Holdings in the waterway management districts of those Authorities, being information that will not disclose the identity of any other person;

(i) the acquisition, purchase and disposal of, and other dealing in, rights and entitlements in the Water Holdings in accordance with this Act;

(j) requirements as to how the Water Holder is to make decisions as to the priority of addressing seasonal watering proposals prepared under section 192A by Authorities that have waterway management districts.

(2) An Order published under subsection (1) must include the place at which a copy of the rules may be inspected.

(3) The environment Minister must not make any rules in relation to any matter for which the environment Minister may not give a written direction under section 33DS.

(4) The environment Minister must not make, amend or vary any rules unless the environment Minister has given the Water Holder and Authorities that have waterway management districts notice in writing of the proposed rule, amendment or variation, and has considered any written submission made by the Water Holder or an Authority that has a waterway management district in response to that notice.

(5) The Water Holder and Authorities that have waterway management districts must comply with any relevant rules made under this section.

Pt 3A (Heading and ss 33E–33AZ) inserted by No. 99/2005 s. 41.

# Part 3A—Water shares

## Division 1—Offence as to taking of water

S. 33E inserted by No. 99/2005 s. 41, substituted by No. 23/2019 s. 25.

### 33E Offences for taking water without a water share[11]

(1) A person must not knowingly take water from a relevant water source in a declared water system without being authorised to do so under a water share, being a taking that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 10 years imprisonment or 1200 penalty units or both;

For a body corporate, 6000 penalty units.

(2) A person must not recklessly take water from a relevant water source in a declared water system without being authorised to do so under a water share, being a taking that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 5 years imprisonment or 600 penalty units or both;

For a body corporate, 3000 penalty units.

(3) A person must not take water from a relevant water source in a declared water system without being authorised to do so under a water share.

Penalty: For an individual, 240 penalty units;

For a body corporate, 1200 penalty units.

(4) A person does not commit an offence under subsection (1), (2) or (3) if the person takes water—

(a) for domestic and stock use from a spring or soak; or

(b) from a dam, that is water taken from the dam other than for domestic and stock use, being water in the dam—

(i) that has been taken from another relevant water source under an authorisation to do so under this or any other Act; or

(ii) that has been collected from a roof; or

(c) from a dam, that is water taken from the dam for domestic and stock use, other than water in the dam that has been taken from a waterway or aquifer without an authorisation to do so under this or any other Act; or

(d) under any other authorisation to do so by or under this or any other Act.

(5) In this section—

***relevant water source*** means any of the following—

(a) a waterway (including the River Murray);

(b) an aquifer;

(c) a spring or soak;

(d) a dam.

S. 33EA inserted by No. 23/2019 s. 25.

### 33EA Evidentiary provisions for offences under section 33E

(1) In any proceeding for an offence under section 33E(1), (2) or (3) against a person, evidence that water has been taken to, diverted to or used on land occupied by the person is evidence that the person took the water and, in the absence of evidence to the contrary, is proof of that fact.

(2) To avoid doubt, subsection (1) applies to a person who is the occupier of land who is also the owner of the land.

(3) In a proceeding for an offence under section 33E(1), (2) or (3), if a person has been found guilty of an offence under section 288(1), (2) or (3) in relation to a meter of an Authority that measures the amount of water that is taken to, delivered to or used on land, the finding of guilt is evidence that—

(a) the person took water and, in the absence of evidence to the contrary, is proof of that fact; and

(b) the person was not authorised to take the water and, in the absence of evidence to the contrary, is proof of that fact.

S. 33EB inserted by No. 23/2019 s. 25.

### 33EB Power to issue infringement notice in relation to offence under section 33E(3)

(1) An authorised water officer may serve an infringement notice on a person whom the officer has reason to believe has contravened section 33E(3) if the person—

(a) was not authorised to take water under a water share; and

(b) took an amount of water equal to, or less than, 10 megalitres.

(2) An authorised water officer may serve an infringement notice on a person whom the officer has reason to believe has contravened section 33E(3) if the person—

(a) was authorised to take a specified amount of water under a water share (the ***authorised amount***); and

(b) took an amount of water in addition to the authorised amount and the amount of that additional water—

(i) was equal to, or less than, 20% of the total authorised amount; and

(ii) was equal to, or less than, 10 megalitres.

## Division 2—Issuing and nature of water share

### 33F Issuing and nature of water shares

**S. 33F inserted by No. 99/2005 s. 41.**

(1) The Minister may issue a water share in respect of a declared water system.

**S. 33F(1) amended by No. 54/2009 s. 14.**

(2) Subject to this Act, a water share authorises the taking of water under the water allocation for the share during the water season for which the water allocation is allocated.

**S. 33F(2) amended by No. 32/2010 s. 7(1).**

**Note**

The operation of some provisions of this Act affects the taking or use of water under a water share. Section 33AD is an example of such a provision.

**Note to s. 33F(2) inserted by No. 32/2010 s. 7(2).**

(3) The authority to take water under a water share is subject to any other provisions of this Act or any regulations or instruments made under this Act or a licence or permit issued under this Act regulating the following—

(a) the place at which water can be taken;

(b) the times or rate at which water can be taken.

(4) The Minister may issue a share under this section—

(a) on receiving an application for a share under section 33L; or

(b) under a contract for the sale of the share entered into in accordance with section 33P; or

(c) on receiving an application under section 33M, in the case of the holder of a right in another State or a Territory that is equivalent to that of ownership of a water share.

S. 33G inserted by No. 99/2005 s. 41.

### 33G Matters the Minister must determine in issuing a water share

On issuing a water share the Minister must determine—

(a) the water system for which the share is issued, and, if that water system is divided into zones, the zone for which the water share is issued; and

(b) the share of water available from the water system under the water share, which must be expressed as a maximum volume of water over a period defined by the Minister; and

(c) the class of reliability of the share; and

(d) any other prescribed matter.

### 33H Matters Minister must specify in issuing water share

S. 33H inserted by No. 99/2005 s. 41.

On issuing a water share the Minister must specify—

(a) in the case of a water share issued under this Part to more than one person, whether the share is to be held by those persons—

(i) as joint tenants; or

(ii) as tenants in common;

(b) whether or not the water share is an associated water share, and if the water share is an associated water share—

(i) the land specified in a water-use licence or water-use registration with which it is associated; and

(ii) the water-use licence or water-use registration in which the land is so specified;

(c) the Authority (if any) that is responsible for providing services in respect of the water share.

### 33I Circumstances in which Minister must not issue a share

S. 33I inserted by No. 99/2005 s. 41.

* * * * *

S. 33I(1) repealed by No. 54/2009 s. 5.

(2) The Minister must not issue a share under this Division if the Minister is of the opinion that—

(a) the issue of the share would be in conflict with any approved management plan for a water supply protection area under Division 3 of Part 3; or

(b) the issue of the share may result in the permissible consumptive volume for the proposed associated water system being exceeded; or

(c) the issue of the share would be in conflict with any relevant bulk entitlement.

S. 33J inserted by No. 99/2005 s. 41.

### 33J Matters to be considered in issuing certain water shares

(1) The Minister, in issuing a water share and in making a determination under section 33G(b) or (c) in respect of a water share, where the associated water system for that water share is subject to a bulk entitlement or is a water system in respect of which a permissible consumptive volume has been declared, must consider—

(a) whether the issue of the share would be consistent with the bulk entitlement or with the permissible consumptive volume for the water system (as the case requires); and

(b) the effect that the issue is likely to have on—

(i) other water shares for which the water system is the associated water system; and

(ii) any environmental entitlement to which the associated water system is subject; and

(iii) the needs of other potential applicants.

(2) The Minister, in issuing a water share and in making a determination under section 33G(b) or (c) in respect of a water share to which subsection (1) does not apply, must consider—

(a) the existing and projected availability of water in the associated water system for the water share; and

(b) the existing and projected quality of water in the associated water system; and

(c) any adverse effect that the allocation or use of water under the water share is likely to have on—

(i) existing authorised uses of water provided from the associated water system; and

(ii) any waterway or aquifer; and

(d) any water in the associated water system in respect of which the applicant is already the owner of a water share; and

(e) the need to protect the environment, including the riverine and riparian environment; and

(f) the conservation policy of the government; and

(g) any adverse effect the issue of the share or the determination (as the case requires) is likely to have on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; and

(h) government policies concerning the preferred allocation or use of water resources; and

(ha) any environment reference standard within the meaning of the **Environment Protection Act 2017** and any Order made by the Governor in Council under section 156 of the **Environment Protection Act 2017**; and

**S. 33J(2)(ha) inserted by No. 39/2018 s. 61(1) (as amended by No. 27/2019 s. 47).**

(i) the needs of other potential applicants; and

(j) so far as is available to the Minister—

(i) any relevant report or statement prepared under any Act; and

(ii) the findings of or any evidence given or submissions made to any relevant investigation or inquiry held under any Act or held by any Committee of the Cabinet, government department or public statutory body, whether or not under an Act; and

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

(3) This section does not apply to the issue of a water share under an application under section 33M.

S. 33K inserted by No. 99/2005 s. 41.

### 33K Matters to be considered in issuing water shares on interstate applications

The Minister, in issuing a water share on an application under section 33M must consider—

(a) any relevant rules made under Division 13; and

(b) the provisions of any agreement under Division 8; and

(c) the effect of the issue of the share on usage of water; and

(d) the impact of subsidies; and

(e) any other matter that the Minister considers relevant.

## Division 3—Application for or sale of water shares

S. 33L inserted by No. 99/2005 s. 41.

### 33L Application for water share

(1) A person may apply to the Minister for the issue of a water share.

(2) An application under subsection (1)—

(a) must specify the proposed associated water system for the share; and

(b) in the case of an application by more than one person, must specify whether the share is to be held by the applicants—

(i) as joint tenants; or

(ii) as tenants in common.

### 33M Applications for water shares by holders of interstate right

S. 33M inserted by No. 99/2005 s. 41.

A person who is the holder of a right in another State or a Territory that is equivalent to that of ownership of a water share, may apply to the Minister, in accordance with the agreement entered into under Division 8, for a water share to be issued under this Part on the cancellation of the equivalent right in the other State or Territory.

### 33N Minister to defer application where area is proposed to be a water supply protection area

S. 33N inserted by No. 99/2005 s. 41.

(1) The Minister must defer consideration of an application for the issue of a water share under section 33L or under section 33M if a notice has been published under section 27(4)(a)(i) that relates to either or both of the following—

(a) the protection of groundwater resources that are specified as a water system in the application;

(b) the protection of surface water resources that are specified as a water system in the application.

(2) Deferral of an application under subsection (1) has effect until either of the following occurs—

(a) an Order is made under section 27(1); or

(b) a notice is published under section 27(10).

(3) If—

(a) an Order is made under section 27(1); and

(b) a management plan for the area that is the subject of the Order has not been approved under section 32A(6)—

the Minister must further defer consideration of an application deferred under subsection (1) in respect of the area until notice of the approval or refusal of a draft management plan has been published under section 32A(7).

S. 33O inserted by No. 99/2005 s. 41.

### 33O Minister to advise applicant of decision

The Minister must advise an applicant for a water share of the Minister's decision on the application in writing.

S. 33P inserted by No. 99/2005 s. 41.

### 33P Sale of water shares by Minister

(1) The Minister may enter into a contract for the sale of a water share either—

(a) on conducting an auction for the sale of water shares; or

(b) after inviting and considering tenders for the sale of water shares; or

(c) in any other manner that the Minister thinks fit.

(2) The Minister must not enter into a contract for the sale of a water share unless he or she has first caused a notice to be published in the Government Gazette and in a newspaper circulating generally in the area of the proposed associated water system for the share—

(a) declaring that the water share is available to be purchased by any person who satisfies the requirements specified in the notice; and

(b) giving details of the method by which the water share is to be sold.

## Division 4—Variation of water shares

### 33Q Power of Minister to vary water shares

S. 33Q inserted by No. 99/2005 s. 41.

(1) The Minister, on receiving an application under this Division to do so may vary his or her determination under section 33G as to a water share by—

(a) determining that the water share is to be converted to a water share with a different associated water system, and for this purpose the Minister may determine a variation in the maximum volume in accordance with the relevant rules made under Division 13; or

(b) determining that the water share is to be converted to a water share for another zone in the associated water system, and for this purpose the Minister may determine a variation in the maximum volume in accordance with the relevant rules made under Division 13; or

(c) determining that the water share is to be converted to a water share with a different class of reliability, and for this purpose the Minister may determine a variation in the maximum volume in accordance with the relevant rules made under Division 13; or

(d) varying any determination of a matter prescribed under section 33G(d).

(2) In making a determination under subsection (1), the Minister must have regard to the relevant rules made under Division 13.

S. 33R inserted by No. 99/2005 s. 41.

### 33R Applications for variation of water shares

The owner of a water share may apply to the Minister for a determination under this Division.

## Division 5—Dealings with water shares

S. 33S inserted by No. 99/2005 s. 41.

### 33S Transfer of ownership of water share

S. 33S(1) amended by No. 32/2010 s. 8.

(1) The owner of a water share may transfer ownership of that share to a person.

(2) In the case of transfer of ownership of a water share owned by more than one person—

(a) a person who is the owner of a portion of a water share as a tenant in common may transfer that person's portion of the undivided whole of the water share without the consent of the other tenants in common;

S. 33S(2)(b) substituted by No. 85/2006 s. 8.

(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.

(3) A transfer of ownership of a water share under this section does not have the effect of assigning any water allocated under the water allocation for that share before the recording of the transfer.

### 33T Limited term transfers of rights to future water allocations under water shares

S. 33T (Heading) amended by No. 28/2014 s. 4(1).

S. 33T inserted by No. 99/2005 s. 41.

(1) The owner of a water share may transfer the whole of the right to future water allocations under that share for a fixed period to any person.

S. 33T(1) amended by Nos 85/2006 s. 9(1), 50/2010 s. 5, substituted by No. 28/2014 s. 4(2).

(2) A transfer under this section must specify the period for which the right is being transferred, being a period of not more than 20 years.

(3) A transfer under this section entitles the holder of the transfer to take water under future water allocations under the water share—

S. 33T(3) substituted by No. 32/2010 s. 9.

(a) from the date on which the transfer is recorded in the water register; or

(b) if a later date is specified in the transfer, that date.

(4) A transfer under this section may have the effect, if so specified in the transfer, of enabling the taking of water under a water allocation from a water system that is not the associated water system for the water share.

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

S. 33T(5) inserted by No. 85/2006 s. 9(2).

S. 33TA inserted by No. 28/2014 s. 5.

### 33TA Standing directions as to future water allocations under water shares

(1) An owner of a water share may give a direction to an Authority under which the whole of the right to future water allocations under that share is transferred to the person nominated in the direction (a ***standing direction***).

(2) A standing direction entitles the person nominated in the direction to take water under future water allocations under the water share.

(3) A standing direction may have the effect, if so specified in the direction, of enabling the taking of water under a water allocation from a water system that is not the associated water system for the water share.

(4) A standing direction takes effect on the date on which the Minister approves the giving of it under section 33X(1)(ba).

(5) A standing direction remains in effect until—

(a) its revocation is approved under section 33TB; or

(b) the water share is—

(i) divided under section 33Y; or

(ii) consolidated with another water share under section 33Z; or

(iii) surrendered under section 33AA; or

(iv) cancelled under section 33AB or 33ABA.

S. 33TB inserted by No. 28/2014 s. 5.

### 33TB Ministerial approval of revocation of standing direction

The Minister, on application by the owner of a water share, may approve the revocation of a standing direction.

### 33U Assignment of water allocation

S. 33U inserted by No. 99/2005 s. 41.

(1) The holder of a water share may assign the whole or a part of the water allocation available to that person under that share (at the time at which the assignment is made) to any person.

S. 33U(1) amended by Nos 85/2006 s. 10(1), 28/2007 s. 3(Sch. item 75.1), 50/2010 s. 6(1), substituted by No. 28/2014 s. 6(1).

(1A) A person who, as a result of the operation of section 33S(3), has a water allocation available to them, may assign the whole or a part of the allocation to any person.

S. 33U(1A) inserted by No. 85/2006 s. 10(2), amended by No. 50/2010 s. 6(2), substituted by No. 28/2014 s. 6(1).

(2) A tenant in common of a water share may not separately assign the water allocation available to that person under the share.

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

S. 33U(3) amended by Nos 85/2006 s. 10(3), 32/2010 s. 10(1).

(4) An assignment under this section may have the effect, if so specified in the assignment, of enabling water to be taken under a water allocation from a water system that is not the associated water system for the water share.

S. 33U(4) amended by Nos 85/2006 s. 10(4), 32/2010 s. 10(2).

(5) In this section ***holder of a water share*** means—

S. 33U(5)(a) amended by No. 28/2014 s. 6(2)(a).

(a) in the case of a water share in respect of which there is no limited term transfer or standing direction, the owner of the water share; or

S. 33U(5)(b) amended by No. 28/2014 s. 6(2)(b).

(b) in the case of a water share in respect of which there is a limited term transfer, the holder of that transfer; or

S. 33U(5)(c) inserted by No. 28/2014 s. 6(2)(c).

(c) in the case of a water share in respect of which there is a standing direction, the person nominated in the direction.

S. 33V inserted by No. 99/2005 s. 41.

### 33V Further assignment of water allocation

S. 33V(1) amended by Nos 85/2006 s. 11(1), 28/2007 s. 3(Sch. item 75.2), 50/2010 s. 7, substituted by No. 28/2014 s. 7.

(1) A person to whom the whole or a part of a water allocation has been assigned under section 33U(1), or under this section, may assign the whole or a part of the assigned water allocation to any person.

(2) An assignment under this section may have the effect, if so specified in the assignment, of enabling the taking of water under a water allocation from a water system that is not the associated water system for the water share.

S. 33V(3) inserted by No. 85/2006 s. 11(2), amended by No. 32/2010 s. 11.

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

### 33W Offence to give a transfer, standing direction or assignment without Ministerial approval

S. 33W (Heading) amended by No. 28/2014 s. 8(1).

S. 33W inserted by No. 99/2005 s. 41.

(1) A person must not do any of the following without the approval of the Minister— S. 33W(1) amended by No. 24/2013 s. 7, substituted by No. 28/2014 s. 8(2).

(a) transfer ownership of a water share; or

(b) transfer ownership of a water share that is subject to a mortgage recorded under clause 1 of Schedule 12A; or

(c) give a limited term transfer; or

(d) give a standing direction; or

(e) give a water allocation assignment.

Penalty: 60 penalty units.

(2) Subsection (1) does not apply to a transfer of ownership of a water share on the death of a person by the legal personal representative of the person to the person entitled to inherit the water share from the deceased person.

### 33X Ministerial approval

S. 33X inserted by No. 99/2005 s. 41.

(1) The Minister may, on application by a person, approve—

(a) the transfer of ownership of a water share under this Division; or

(ab) the transfer of ownership of a water share that is subject to a mortgage recorded under clause 1 of Schedule 12A; or S. 33X(1)(ab) inserted by No. 24/2013 s. 8.

(b) the giving of a limited term transfer under this Division; or

S. 33X(1)(ba) inserted by No. 28/2014 s. 9.

(ba) the giving of a standing direction; or

(c) the giving of a water allocation assignment under this Division.

S. 33X(2) repealed by No. 54/2009 s. 6.

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S. 33X(3) amended by No. 85/2006 s. 12(1), substituted by No. 32/2010 s. 12.

(3) The Minister must not—

(a) give an approval under subsection (1)(a)—

(i) if any fee under Division 9 that is payable in relation to the share is outstanding; or

(ii) for any other prescribed reason; or

(b) give an approval under subsection (1)(b) or (c) for any prescribed reason.

(4) In giving an approval under subsection (1), the Minister must have regard to any relevant rules made under Division 13.

S. 33X(5) amended by No. 85/2006 s. 12(2).

(5) An approval under subsection (1)(a) or (b) remains in force—

(a) for the prescribed period; or

(b) if no period has been prescribed under paragraph (a), for 2 months.

S. 33Y inserted by No. 99/2005 s. 41.

### 33Y Division of water shares

(1) The Minister may, on the application of the owner of a water share, divide the water share either—

(a) by cancelling the water share and by issuing new shares in respect of the volume of the water share; or

(b) by varying the water share so as to reduce the volume that is specified in the application, and issuing one or more new water shares in respect of the volume that is specified in the application.

(2) In granting an application under subsection (1), the Minister must consider any relevant rules made under Division 13.

S. 33Y(2) substituted by No. 85/2006 s. 13.

(3) On the division of a water share under subsection (1), any mortgage that applied to the water share immediately before that division is, on and from the division, deemed to apply—

S. 33Y(3) substituted by No. 85/2006 s. 13.

(a) in the case of the cancellation of the old share under subsection (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 subsection (1)(b), to the share that is varied and to each new share that is issued.

(4) On the division of a water share under subsection (1), any limited term transfer that applied to the water share immediately before that division is, on and from that division, deemed to apply—

S. 33Y(4) inserted by No. 32/2010 s. 13.

(a) in the case of the cancellation of the old share under subsection (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 subsection (1)(b), to the share that is varied and to each new share that is issued.

### 33Z Consolidation of water shares

S. 33Z inserted by No. 99/2005 s. 41.

(1) The Minister may, on the application of an owner of two or more water shares, consolidate those water shares either—

(a) by cancelling the water shares and issuing one water share in respect of the maximum volumes of both shares; or

(b) by cancelling one or more of the water shares and adding the maximum volumes of the cancelled water shares to the maximum volume of one or more of the other water shares.

(2) The Minister must not consolidate water shares under subsection (1) unless—

(a) the persons who own each of the shares are the same; and

(b) each of the shares is owned in the same proportions and the same manner.

(3) In consolidating a water share under subsection (1), the Minister—

(a) must not cancel a water share if there is a recorded mortgage or limited term transfer over the water share; and

**S. 33Z(3)(b) repealed by No. 85/2006 s. 14.**

* * * * *

(c) must not do so unless each of the shares specifies the same water system and the same class of reliability; and

(d) must consider any relevant rules made under Division 13.

(4) On the consolidation of water shares under subsection (1), if the rules made under Division 13 so provide—

(a) any recorded mortgage; or

(b) any limited term transfer—

over a water share to which maximum volume has been added is deemed to apply to the whole of the share (including that part to which the volume has been added).

## Division 6—Surrender and cancellation of water shares

### 33AA Surrender of water share

S. 33AA inserted by No. 99/2005 s. 41.

(1) The owner of a water share may apply to the Minister to surrender the water share to the Crown.

(2) On receiving an application under this section, the Minister may authorise the applicant to surrender the water share to the Crown.

(3) The Minister may refund to a person who has surrendered a water share under this section, the whole or that part of a fee paid under Division 9 that relates to any period of time occurring after the surrender of the water share.

### 33AB Cancellation where interstate rights are obtained

S. 33AB inserted by No. 99/2005 s. 41.

(1) A person who is or persons who are the owners of a water share may, in accordance with the agreement entered into under Division 8, apply to the Minister for the water share to be cancelled, on the issuing of the equivalent right in the other State or Territory.

* * * * *

S. 33AB(2) repealed by No. 54/2009 s. 7.

(3) The Minister, in cancelling a water share under this section must consider—

(a) any relevant rules made under Division 13; and

(b) the provisions of the agreement.

S. 33ABA inserted by No. 85/2006 s. 15.

### 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.

## Division 7—Water allocations

S. 33AC inserted by No. 99/2005 s. 41.

### 33AC Water allocations

(1) In the case of a declared water system for which a seasonal determination has been made for a water season, the Minister must, from time to time during the water season, determine, for each water share for which that system is the associated system, amounts of water that are to be allocated to that share from the water determined to be available for allocation to water shares in the seasonal determination.

S. 33AC(2) amended by No. 32/2010 s. 14.

(2) In the case of a declared water system for which an Authority has not been appointed under section 64GA to make seasonal determinations, the water allocation that may be taken in a water season for each water share for which that system is the associated water system, is to be the maximum volume determined by the Minister under section 33G(b) for that share.

S. 33AD inserted by No. 99/2005 s. 41, substituted by No. 32/2010 s. 15.

### 33AD Declaration for taking of water allocation under water share in subsequent water season

(1) The Minister may make a declaration in respect of water shares, authorising the taking of water that is entitled to be taken under any water allocation for the water shares in a subsequent water season.

(2) A declaration under subsection (1) may apply to—

(a) water shares in a water system or part of a water system; or

(b) a class or classes of water shares in a water system or part of a water system.

(3) Any taking of water under a declaration under subsection (1) is subject to any terms and conditions specified by the Minister in the declaration.

(4) The Minister must cause notice of the making of a declaration under subsection (1) to be published—

(a) in the Government Gazette; and

(b) in a newspaper circulating generally in the area to which the declaration applies.

(5) A declaration under subsection (1) has effect on the publication of notice of the making of the declaration in the Government Gazette.

## Division 8—Intrastate and interstate agreements and approvals

### 33AE Interstate agreement as to dealings in water rights

**S. 33AE inserted by No. 99/2005 s. 41.**

The Minister may enter into an agreement with a Minister of any other State or a Territory of the Commonwealth—

(a) for the conversion of water shares or equivalent rights in one State or Territory into water shares or equivalent rights in another State or Territory; and

(b) for the recognition of rights in one State or Territory in another State or Territory; and

(c) for the assignment of water allocations from one State or Territory to another State or Territory.

S. 33AF inserted by No. 99/2005 s. 41.

### 33AF Offence to take interstate water without approval of Minister

A person must not take water from a declared water system in Victoria under a right in another State or a Territory of the Commonwealth that is an equivalent right to a water share unless that person has first obtained the approval of the Minister to do so under this Division.

Penalty: 60 penalty units.

S. 33AG inserted by No. 99/2005 s. 41.

### 33AG Approval of Minister to taking of interstate water

(1) For the purposes of section 33AF the Minister, on application, may approve a taking of water from a declared water system by the applicant subject to any conditions that the Minister thinks fit.

(2) In giving an approval under subsection (1) the Minister must consider—

(a) any relevant rules made under Division 13; and

(b) the provisions of any agreement under this Division; and

(c) the effect of the giving of the approval on the usage of water; and

(d) the impact of subsidies; and

(e) any other matter the Minister considers relevant.

### 33AH Offence to take water under a water allocation outside the associated water system without approval of Minister

S. 33AH inserted by No. 99/2005 s. 41.

A person must not take water under a water allocation outside the associated water system for a water share under which that allocation is made unless that person has first obtained the approval of the Minister to do so under this Part.

Penalty: 60 penalty units.

### 33AI Approval of Minister to taking of water outside water system

S. 33AI inserted by No. 99/2005 s. 41.

(1) For the purposes of section 33AH the Minister, on application, may approve a taking of water by the applicant subject to any conditions that the Minister thinks fit.

(2) In giving an approval under subsection (1) the Minister must consider—

(a) any relevant rules made under Division 13; and

(b) the provisions of any agreement under this Division; and

(c) the effect of the giving of the approval on the usage of water; and

(d) the impact of subsidies; and

(e) any other matter the Minister considers relevant.

## Division 9—Fees for provision of services to owners of water shares

S. 33AJ inserted by No. 99/2005 s. 41.

### 33AJ Service provision fees

S. 33AJ(1) substituted by No. 85/2006 s. 16.

(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.

(2) The Authority may make a determination under subsection (1) at any time while any such water shares are in force.

(3) An Authority that has made a determination under subsection (1) may do any of the following—

(a) amend or revoke the determination;

(b) impose conditions on the determination (either as to the manner of payment of fees or any other matter).

S. 33AK inserted by No. 99/2005 s. 41.

### 33AK Fee to be a charge over water share

Where a person is liable to pay a fee determined by an Authority under this Division to the Authority in respect of a water share owned by that person, the amount due is a charge on the water share, (whether or not the Authority has agreed to defer the whole or a part of the payment of the amount) that ranks before any mortgage over the water share.

## Division 10—Associated water shares

### 33AL Determination as to water share being an associated water share

S. 33AL inserted by No. 99/2005 s. 41.

(1) The Minister may determine that a water share is associated with land that is specified in a water-use licence or a water-use registration.

(2) The Minister may make a determination under subsection (1) on receiving an application under this Division.

### 33AM Matters to be considered in making of the determination as to associated water shares

S. 33AM inserted by No. 99/2005 s. 41.

(1) The Minister must not make a determination under section 33AL unless the Minister is satisfied that—

(a) in the case of an application by a person who wholly owns or who will wholly own the share, the applicant is—

(i) the owner or occupier of land specified in a water-use licence or water-use registration; or

(ii) a related person to a person who is the owner or occupier of any such land; or

(b) in the case of an application by a person or persons who are or who will become joint tenants of the share, half or more of the tenants are persons who are—

(i) the owner or owners or occupier or occupiers of land specified in a water-use licence or water-use registration; or

(ii) a related person or related persons to a person who is or persons who are the owner or owners or occupier or occupiers of any such land; or

(c) in the case of an application by a person or persons who are or who will become tenants in common of the share, half or more of the ownership of the share is by a person who is or persons who are—

(i) the owner or owners or occupier or occupiers of land specified in a water-use licence or water-use registration; or

(ii) a related person or related persons to a person who is or persons who are the owner or owners or occupier or occupiers of any such land.

(2) The Minister must not make a determination under section 33AL unless—

(a) the Minister is satisfied that the maximum volume of the share together with the maximum volumes of any other water shares that are associated with the land specified in the application is not more than twice the maximum volume of water that is allowed to be used under the water-use licence or water-use registration (as the case requires) on the land; and

(b) the application is consistent with any relevant rules made under Division 13.

(3) The Minister must not determine that a water share is associated with land that is specified in a water-use licence or a water-use registration if there are no works or systems that are available or that are reasonably likely to be available to supply or deliver water to the land.

S. 33AN inserted by No. 99/2005 s. 41.

### 33AN Determination as to cessation as associated water share where no works etc. available

(1) The Minister may revoke a determination under section 33AL, in relation to a water share, if the Minister is satisfied that there are no works or

systems that are available or that are reasonably likely to be available to supply or deliver water to the land with which the share is associated.

(2) The Minister may make a determination under subsection (1) either of his or her own motion or after receiving an application under this Division.

(3) The Minister must not make a determination under subsection (1) of his or her own motion unless the Minister has first notified the owner of the water share of the proposal to make the determination.

**33AO Revocation of associated water share determination by Minister**

S. 33AO inserted by No. 99/2005 s. 41.

(1) Where section 33AN does not apply, the Minister may revoke a determination under section 33AL, in relation to a water share, of his or her own motion if the Minister is satisfied that—

(a) in the case of a water share—

(i) that is wholly owned by one person the owner is not—

(A) the owner or occupier of the land with which the share is associated; or

(B) a related person to a person who is the owner or occupier of the land with which the share is associated; or

(ii) the owners of which are joint tenants, more than half of the tenants are not—

(A) the owner or owners or occupier or occupiers of the land with which the share is associated; or

(B) a related person or related persons to a person who is or persons who are the owner or owners or occupier or occupiers of the land with which the share is associated; or

(iii) that is owned by persons who are tenants in common, more than half of the ownership of the share is by a person who is not or persons who are not—

(A) the owner or owners or occupier or occupiers of the land with which the share is associated; or

(B) a related person or related persons to a person who is or persons who are the owner or owners or occupier or occupiers of the land with which the share is associated; or

(b) the land with which the water share is associated is no longer the subject of a water-use licence or water-use registration.

(2) In any case except that of a transfer of ownership under section 33S, the Minister must not make a determination under subsection (1), unless the Minister has first notified the owner or owners of the water share of the proposal to make the determination.

S. 33AP inserted by No. 99/2005 s. 41.

### 33AP Revocation of associated water share determination on application

(1) The Minister may, on application by a person under this Division, revoke a determination under section 33AL in relation to a water share.

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S. 33AP(2) repealed by No. 54/2009 s. 8.

### 33AQ Applications for and notices of determinations under this Division

S. 33AQ inserted by No. 99/2005 s. 41.

(1) On making a determination under this Division the Minister must give notice in writing of the making of the determination to the owner of the water share.

(2) A person may apply to the Minister for a determination under section 33AL if that person—

(a) is an owner of the water share to which the application relates; or

(b) has applied under Division 2 for the issue of the water share to which the application relates; or

(c) is a person to whom ownership of the water share to which the application relates is being transferred under Division 5.

(2A) The owner of an associated water share may apply to the Minister for a determination under section 33AN.

S. 33AQ(2A) inserted by No. 32/2010 s. 16.

(3) The owner of an associated water share may apply to the Minister for a determination under section 33AP in respect of that share.

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Pt 3A Div. 11 (Heading) repealed by No. 54/2009 s. 9.

S. 33AR inserted by No. 99/2005 s. 41, amended by No. 85/2006 s. 17, repealed by No. 54/2009 s. 10.

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S. 33AS inserted by No. 99/2005 s. 41.

### 33AS Obligations for water share owners on cessation of ownership or occupation of land

(1) A person who owns a water share that is an associated water share must notify the Minister of any cessation of ownership or occupation of the land that is associated with the water share.

Penalty: 20 penalty units.

S. 33AS(2) repealed by No. 54/2009 s. 11.

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S. 33AS(3) amended by No. 85/2006 s. 18, repealed by No. 54/2009 s. 11.

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S. 33AS(4) repealed by No. 54/2009 s. 11.

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S. 33AT inserted by No. 99/2005 s. 41, repealed by No. 54/2009 s. 12.

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S. 33AU inserted by No. 99/2005 s. 41, amended by No. 85/2006 s. 19, repealed by No. 54/2009 s. 12.

## Division 12—Miscellaneous matters as to water shares

### 33AV Effect of death of owner or holder of certain other interests

S. 33AV (Heading) substituted by No. 32/2010 s. 17(1).

S. 33AV inserted by No. 99/2005 s. 41, substituted by No. 85/2006 s. 20.

(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.

S. 33AV(7) inserted by No. 32/2010 s. 17(2).

(7) On the death of a person who holds a mortgage over a water share, the mortgage forms part of the estate of that person.

S. 33AV(8) inserted by No. 32/2010 s. 17(2).

(8) On the death of a person who holds a mortgage over a water share as a joint tenant with other persons, the remaining holders of the mortgage become the joint holders of the mortgage.

S. 33AV(9) inserted by No. 32/2010 s. 17(2).

(9) On the death of a person who holds a mortgage over a water share as tenant in common with other persons, that person's portion of the mortgage becomes part of the estate of that person.

S. 33AVA inserted by No. 28/2014 s. 10.

### 33AVA Effect of death of person who holds a water allocation

(1) This section applies if—

(a) there is water available for a person to take under—

(i) a water allocation under a water share held by the person as a result of the operation of section 33S(3); or

(ii) a standing direction; or

(iii) an assignment of a water allocation under a water share to the person under section 33U; and

(b) the person dies.

(2) An assignment (in accordance with section 33U) or a further assignment (in accordance with section 33V) of the water allocation may be made by—

(a) if the deceased person was the only person who could have taken water under the water allocation—a person authorised to act on behalf of the estate of the deceased person; or

(b) if the deceased person was not the only person who could have taken water under the water allocation—a person authorised to act on behalf of the estate of the deceased person together with the other persons.

### 33AW Applications under this Part

S. 33AW inserted by No. 99/2005 s. 41.

An application to the Minister under this Part—

(a) must be in the form and made in the manner approved by the Minister; and

(b) must be accompanied by the prescribed fee.

### 33AX Application for Tribunal to review certain decisions of Minister as to water shares

S. 33AX inserted by No. 99/2005 s. 41.

A person may apply to the Tribunal for a review of a decision of the Minister to—

(a) refuse an application by the person for the issue of a water share; or

(b) refuse an application by the person for the variation of a water share; or

(c) make a determination under section 33G; or

(d) refuse to approve the transfer of ownership of a water share under section 33X(1)(a); or

S. 33AX(d) amended by No. 54/2009 s. 13.

(e) refuse to approve a limited term transfer of a water share under section 33X(1)(b); or

(ea) refuse to approve the giving of a standing direction under section 33X(1)(ba); or

S. 33AX(ea) inserted by No. 28/2014 s. 11.

(f) refuse to approve a water allocation assignment under section 33X(1)(c); or

(g) refuse an application by the person to divide a water share or to consolidate two or more water shares; or

(h) refuse an application by the person for the cancellation of a water share under section 33AB; or

(i) refuse an application under section 33AG or section 33AI.

S. 33AY inserted by No. 99/2005 s. 41.

### 33AY Time for making application

An application under section 33AX must be made within 28 days of the later of—

(a) the day on which the decision is made; or

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

## Division 13—Rule making powers of Minister

S. 33AZ inserted by No. 99/2005 s. 41.

### 33AZ Rule making powers for water shares

(1) The Minister may, by Order, published in the Government Gazette, set out rules—

(a) with respect to adjustment of volumes to be applied to transfers, assignments and variations of water shares; and

(b) as to the circumstances in which the consent of any Authority under this Act will be required to transfers or assignments under this Part; and

(c) as to any matters relating to applications under this Part; and

(d) as to the circumstances in which the Minister will give or refuse to give approvals under this Part; and

(e) as to the circumstances in which water shares will be consolidated or divided under this Part; and

(f) as to the circumstances in which the Minister will make determinations under Division 10 of this Part; and

(g) as to any other matters the Minister is authorised to make rules for under this Part.

(2) An Order under this section may be amended or revoked in the same manner as that in which it is made.

# Part 4—Allocation of water

## Division 1—Bulk entitlements

### 34 Definition and disallowance

S. 34(1) amended by Nos 130/1993 s. 122(Sch. 4 item 17.2), 53/1994 s. 34(Sch. 1 items 11.2, 11.3), 110/1994 s. 41(Sch. 1 items 11.2, 11.3), 121/1994 s. 188(a)(b), 62/1995 s. 9(2), 69/2000 s. 65(2), substituted by No. 32/2010 s. 18(1).

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

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

S. 34(1)(b) repealed by No. 23/2019 s. 103.

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

(d) the Minister administering the **Conservation, Forests and Lands Act 1987**.

S. 34(1A) inserted by No. 50/2010 s. 8(1).

(1A) In this Division, ***Authority***, in addition to any other meaning set out in subsection (1), also means the Water Holder to the extent of any bulk entitlement referred to in paragraph (f) of the definition of ***Victorian Environmental Water Holdings***.

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

S. 34(2) amended by Nos 62/1995 s. 7(a), 12/1996 s. 5(1), 32/2010 s. 18(2).

(3) An Order referred to in subsection (2) may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23 of the **Subordinate Legislation Act 1994**.

S. 34(3) amended by No. 62/1995 s. 7(b).

(4) Disallowance under subsection (3) is deemed to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1994**.

S. 34(4) amended by No. 62/1995 s. 7(c).

(5) It is sufficient compliance with the requirements of sections 42(1)(c), 42(5)(b), 44(1) and 47(4)(b) for an Order to be published in the Government Gazette if a notice is published in the Government Gazette stating the place where copies of the Order can be obtained.

S. 34(5) inserted by No. 12/1996 s. 5(2), amended by No. 50/2010 s. 8(2).

### 34A Grant of bulk entitlement

S. 34A inserted by No. 32/2010 s. 19.

The Minister may by Order published in the Government Gazette grant a bulk entitlement to water to an Authority, on approving an application under section 42(1)(c).

### 34B Authorisation of entitlement

S. 34B inserted by No. 32/2010 s. 19.

Subject to this Act, a bulk entitlement authorises the holder to take and use water in accordance with the terms of the entitlement.

**Note**

The operation of some provisions of this Act affects the taking and use of water under a bulk entitlement. Section 47DA is an example of such a provision.

S. 35 amended by Nos 50/1992 s. 6(2), 62/1995 s. 6(3), 85/2006 s. 21, 32/2010 s. 20, repealed by No. 23/2019 s. 104.

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### 36 Application for bulk entitlement

(1) An Authority may apply to the Minister for the grant of a bulk entitlement to—

(a) water in a waterway (including the River Murray); or

(b) groundwater; or

S. 36(1)(c) amended by Nos 50/1992 s. 10(Sch. item 11.3), 121/1994 s. 188(c), 62/1995 s. 10(a), 99/2005 s. 15(a).

(c) water, other than recycled water, in any works of another Authority; or

S. 36(1)(d) inserted by No. 121/1994 s. 188(c), amended by No. 99/2005 s. 15(b), repealed by No. 85/2006 s. 22.

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S. 36(1)(e) inserted by No. 121/1994 s. 188(c), amended by Nos 62/1995 s. 10(b), 86/1995 s. 5, 99/2005 s. 15(c), repealed by No. 23/2019 s. 105.

(f) any other water, other than recycled water, to which an Authority has access.

S. 36(1)(f) inserted by No. 62/1995 s. 10(b), amended by No. 99/2005 s. 15(d).

(2) An application must—

(a) be made in a form and manner approved by the Minister; and

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S. 36(2)(b) amended by No. 5/2002 s. 12, repealed by No. 32/2010 s. 21.

(c) be accompanied by the prescribed application fee.

(3) The Minister must forward a copy of an application to—

(a) the Minister administering the **Conservation, Forests and Lands Act 1987**; and

(b) the Minister administering the **Planning and Environment Act 1987**; and

(c) any public statutory body which the Minister considers may be directly affected by the application.

(4) For the purposes of this section, ***waterway*** includes any collection of water which is from time to time replenished in whole or in part by water coming by a natural sub-surface path from a waterway.

S. 37 repealed by No. 32/2010 s. 22.

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### 38 Advertisement etc. of application

(1) This section applies to an application—

(a) under section 36(1) for the grant of a bulk entitlement; or

(b) under section 44 for the amendment of a bulk entitlement; or

S. 38(1)(c) repealed by No. 50/2010 s. 9.

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(d) under section 47 for the conversion of an existing entitlement.

S. 38(2) amended by Nos 62/1995 s. 18(a), 32/2010 s. 23.

(2) The Minister may do either or both of the following—

S. 38(2)(a) amended by Nos 62/1995 s. 18(b), 32/2010 s. 23.

(a) himself or herself give notice of an application to which this section applies in any manner that he or she thinks fit or require the applicant to do so in any manner specified by the Minister;

(b) by notice served on the applicant require the applicant—

(i) to provide the further information specified in the notice within the period specified in the notice; or

(ii) to participate in an investigation specified in the notice designed to enable the Minister to assess the likely effects of granting the application and to bear all of the cost of that investigation or the part of that cost specified in the notice.

S. 38(2)(b)(ii) amended by No. 32/2010 s. 23.

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

### 39 Appointment of panel

(1) The Minister may appoint a panel of persons to consider submissions made on an application under section 36(1).

S. 39(1) amended by No. 32/2010 s. 24(1).

(2) Subject to anything specified by the Minister when appointing the panel, a panel may regulate its own proceedings.

S. 39(2) amended by No. 32/2010 s. 24(2).

(3) If submissions on the application have not been invited by a notice given under section 38(2)(a), the panel must cause a notice to be published in a newspaper circulating generally in the area concerned inviting submissions on the application within the period specified in the notice.

(4) The Minister must make sure that any person that receives a copy of the application under section 36(3) is informed of—

S. 39(4) amended by No. 32/2010 s. 24(3).

(a) the appointment of a panel under subsection (1); and

(b) that person's right to make a submission on the application.

S. 39(5) substituted by No. 32/2010 s. 24(4).

(5) In considering the matter before it, a panel must have regard to—

(a) all submissions referred to it that were made in accordance with a notice under section 38(1)(a) in the manner and within the period specified in the notice; and

(b) all submissions made to the panel in the manner and within the period specified by the panel; and

(c) any further information provided to the Minister under section 38(2)(b)(i); and

(d) the results of any investigation carried out by the Minister under section 38(2)(b)(ii).

S. 39(5A) inserted by No. 32/2010 s. 24(4).

(5A) The panel must report its findings to the Minister within the period specified by the Minister.

(6) The panel may include in its report any recommendations that it thinks fit.

S. 39(7) amended by No. 32/2010 s. 24(5).

(7) A member of a panel is entitled to be paid any fees and allowances fixed by the Minister.

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

### 40 Matters to be taken into account

S. 40(1) amended by No. 32/2010 s. 25(1)(a).

(1) In considering an application under section 36(1), the Minister must have regard to the following matters—

(a) the report of any panel appointed under section 39(1);

(ab) all submissions received by the Minister that were made in accordance with a notice under section 38(2)(a) in the manner and within the period specified in the notice;

S. 40(1)(ab) inserted by No. 32/2010 s. 25(1)(b).

(b) the existing and projected availability of water in the area;

(ba) the permissible consumptive volume, if any, for the area;

S. 40(1)(ba) inserted by No. 5/2002 s. 13(1)(a), amended by No. 99/2005 s. 16(a).

(c) the existing and projected quality of water in the area;

(d) any adverse effect that the allocation or use of water under the entitlement is likely to have on—

(i) existing authorised uses of water; or

(ii) a waterway or an aquifer; or

(iii) the drainage regime within the meaning of section 12(1); or

S. 40(1)(d)(iii) amended by Nos 5/2002 s. 13(1)(b)(i), 99/2005 s. 16(b)(i).

(iv) the maintenance of the environmental water reserve in accordance with the environmental water reserve objective;

S. 40(1)(d)(iv) repealed by No. 5/2002 s. 13(1)(b)(ii), new s. 40(1)(d)(iv) inserted by No. 99/2005 s. 16(b)(ii).

(e) any water to which the applicant is already entitled;

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S. 40(1)(f) repealed by No. 32/2010 s. 25(1)(c).

(g) the need to protect the environment, including the riverine and riparian environment;

S. 40(1)(h) repealed by No. 5/2002 s. 13(1)(c).

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(i) the conservation policy of the government;

(j) government policies concerning the preferred allocation or use of water resources;

S. 40(1)(jaa) inserted by No. 39/2018 s. 61(2) (as amended by No. 27/2019 s. 47).

(jaa) any environment reference standard within the meaning of the **Environment Protection Act 2017** and any Order made by the Governor in Council under section 156 of the **Environment Protection Act 2017**;

S. 40(1)(ja) inserted by No. 36/1992 s. 21(1).

(ja) whether the proposed source of water is within a heritage river area or natural catchment area within the meaning of the **Heritage Rivers Act 1992** and whether there is any restriction on the use of the area under that Act[12];

(k) if appropriate, the proper management of the waterway and its surrounds or of the aquifer;

(l) the purposes for which the water is to be used;

(m) the needs of other potential applicants;

S. 40(1)(n) amended by No. 32/2010 s. 25(1)(d).

(n) so far as available to the Minister—

(i) any relevant report or statement prepared under any Act; or

(ii) the findings of, or any evidence given or submission made to, any relevant investigation or inquiry held under any Act or held by any Committee of the

Cabinet, government department or public statutory body whether or not under an Act;

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

S. 40(1)(o) amended by No. 32/2010 s. 25(1)(d).

(2) In considering an application under section 36(1), the Minister must give effect to an approved management plan for any relevant water supply protection area.

S. 40(2) inserted by No. 5/2002 s. 13(2), amended by No. 32/2010 s. 25(2).

### 41 Application to be deferred in certain circumstances

S. 41 amended by No. 32/2010 s. 26.

If—

(a) a notice is published under section 27(4)(a)(i); and

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

(b) an application is subsequently made under section 36(1) in respect of groundwater in an area that is the subject of the proposed declaration—

the Minister must defer consideration of the application until either—

(c) an Order is made under section 27(1); or

(d) a notice is published under section 27(10).

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

### 42 Determination of application

(1) The Minister may deal with an application under section 36(1) in any of the following ways—

S. 42(1) amended by No. 32/2010 s. 27(1)(a).

(a) refuse it;

S. 42(1)(b) repealed by No. 32/2010 s. 27(1)(b).

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S. 42(1)(c) amended by No. 32/2010 s. 27(1)(c).

(c) approve it.

S. 42(2) amended by Nos 5/2002 s. 15, 32/2010 s. 27(2).

(2) The Minister must not approve an application under subsection (1)(c) unless he or she considers that the allocation of water under the entitlement is not likely to have any significant impact in terms of the matters required to be considered and given effect to under section 40.

S. 42(3)–(6) repealed by No. 32/2010 s. 27(3).

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### 43 Order granting entitlement

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

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

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

(i) the volumetric share of system capacity available to the Authority;

(ii) the share of inflow to the storage available to the Authority;

(iii) the volumetric share of releases from the storage available to the Authority;

(iv) the seepage and evaporative loss adjustments to be debited to the Authority;

(v) the share of inflow to be credited to the Authority when its share of storage capacity does not allow it to receive its full share of inflow;

(b) if the amount of water is quantified by reference to a share of flow, then by reference, for example, to the share of flow past a specified point;

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

(ba) if the amount of water is part of the bulk entitlement of another Authority, the circumstances in which that other Authority may exercise powers under section 141;

S. 43(ba) inserted by No. 62/1995 s. 19.

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S. 43(bb) inserted by No. 62/1995 s. 19, repealed by No. 32/2010 s. 28(a).

(c) the obligations of the storage manager, the resource manager and the environmental manager;

S. 43(c) amended by Nos 86/1995 s. 6, 99/2005 s. 17(a), 85/2006 s. 23.

(d) whether and, if so, in what manner and to what extent the entitlement is transferable;

(e) the financial obligations of the Authority (which may include the making of payments to another Authority);

S. 43(e) amended by Nos 50/1992 s. 6(3), 32/2010 s. 28(b).

(f) water accounting procedures (which may include the granting of credits to the Authority in respect of water returned to the source);

(g) a requirement that the Authority provide, install and maintain at its own expense metering equipment approved by the Minister;

(h) a requirement that the Authority carry out at its own expense a metering program approved by the Minister for the purpose of providing the Minister with the type of information specified in the Order at the times and in the form and manner specified in the Order;

S. 43(i) amended by No. 50/2010 s. 10.

(i) any other matter that the Minister thinks fit to specify, which may include conditions relating to—

(i) if appropriate, the protection of the waterway or aquifer;

(ii) the returning of water to the source;

(iii) the protection of the environment, including the riverine and riparian environment;

S. 43(i)(iv) amended by No. 99/2005 s. 17(b)(i).

(iv) the implementation of the conservation policy of the Government;

S. 43(i)(v) inserted by No. 99/2005 s. 17(b)(ii).

(v) any other requirements as to the maintenance of the environmental water reserve in accordance with the environmental water reserve objective.

### 43A Appointment of resource managers and environmental managers

S. 43A (Heading) inserted by No. 99/2005 s. 18(1), substituted by No. 85/2006 s. 24(1).

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

(1) The Minister may, in respect of each bulk entitlement granted under this Division, appoint, by instrument, an Authority or any other persons as—

S. 43A(1) amended by No. 32/2010 s. 77(Sch.).

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S. 43A(1)(a) repealed by No. 85/2006 s. 24(2).

(b) a resource manager; or

S. 43A(1)(b) amended by No. 99/2005 s. 18(2)(a).

(c) an environmental manager—

S. 43A(1)(c) inserted by No. 99/2005 s. 18(2)(b).

on the terms and conditions specified in the instrument of appointment.

(2) A person appointed under subsection (1) holds office for the term specified by the Minister.

### 44 Amendment of entitlement by Order

(1) The Minister may amend a bulk entitlement, or an entitlement to which section 35(2) applies by Order published in the Government Gazette.

S. 44(1) amended by Nos 50/1992 s. 6(4), 62/1995 s. 14(a)–(c), substituted by No. 32/2010 s. 29(1).

(2) An entitlement may only be amended under subsection (1) on the application of—

(a) the Authority holding the entitlement; or

(b) another Authority with the support of another Minister.

(3) The provisions of this Division relating to the procedure to be followed with respect to an application for the grant of an entitlement apply, with any necessary modifications, with respect to an application for the amendment of an entitlement.

S. 44(4) inserted by No. 32/2010 s. 29(2).

(4) In this section ***amend***, in relation to an entitlement to which this section applies, includes the consolidation of the entitlement with another such entitlement.

S. 44A inserted by No. 99/2005 s. 19.

### 44A Amendment of entitlement where water allocated to environmental entitlement

(1) A bulk entitlement granted to an Authority under this Division may be amended (by notice in writing given by the Minister to the holder of the entitlement) by removing from the entitlement any water that is set aside for the environment through the operation of a condition on the entitlement.

(2) An entitlement must not be amended under subsection (1) unless the Minister is allocating to an environmental entitlement the water that is subject of the condition under the bulk entitlement.

S. 44B inserted by No. 99/2005 s. 19.

### 44B Cancellation of bulk entitlement where water to be transferred to environmental entitlement

(1) On application by an Authority to which a bulk entitlement has been granted under this Division, the Minister may cancel the bulk entitlement and allocate an environmental entitlement under Division 1A, either—

(a) for an equivalent volume to that in the bulk entitlement; or

(b) on equivalent terms and conditions to those specified in the bulk entitlement.

(2) An entitlement must not be cancelled under subsection (1) unless the Minister is allocating to an environmental entitlement the water that is subject of the bulk entitlement.

(3) The cancellation of a bulk entitlement under subsection (1) has effect from the time at which notice in writing is given by the Minister to the holder of the entitlement.

**45 Minor amendment of bulk entitlement by notice**

**S. 45 substituted by No. 32/2010 s. 30.**

(1) The Minister may amend a bulk entitlement by notice given to the holder of the entitlement.

(2) The Minister must not amend a bulk entitlement under subsection (1) unless—

(a) the Authority holding the entitlement has applied to the Minister for the amendment; or

(b) the Minister has consulted with the Authority holding the entitlement about the amendment before making the amendment.

(3) In making an amendment under subsection (1), the Minister must be of the opinion that the amendment is necessary—

(a) to correct a mistake in the description of any element of the entitlement; or

(b) to make a minor variation arising from practical operations (including any dealing in a right or entitlement under this Act); or

(c) to vary an obligation or impose a new obligation on a resource manager, storage manager or environmental manager; or

(d) to make any other amendment to the entitlement that does not impact on another person's entitlement to water and does not adversely affect the environmental water reserve.

(4) An amendment to a bulk entitlement that is made by notice under subsection (1) does not have effect until notice of the making of the amendment has been published in the Government Gazette.

S. 46 amended by Nos 62/1995 s. 13, 5/2002 s. 16, 99/2005 s. 20, 32/2010 s. 31, substituted by No. 50/2010 s. 11.

### 46 Assignment of water allocation

S. 46(1) substituted by No. 28/2014 s. 12.

(1) An Authority, by instrument, may assign the whole or a part of a water allocation available under a bulk entitlement held by the Authority under this Division (at the time at which the assignment is made) to any person.

(2) The Authority must not assign a water allocation under subsection (1) unless the Authority has first obtained the approval of—

(a) the Minister; and

(b) where the case so requires, any other Authority whose works will be used to deliver the water.

(3) An assignment under this section entitles the holder of the assignment to take and, subject to any other requirements of this Act, use water under the water allocation under the bulk entitlement from the date specified in the assignment.

### 46A Further assignment of water allocation

S. 46A inserted by No. 62/1995 s. 28, amended by Nos 86/1995 s. 8, 99/2005 ss 21, 42, 32/2010 s. 32, substituted by No. 50/2010 s. 11.

(1) A person to whom the whole or a part of a water allocation has been assigned under section 46, or under this section, may assign the whole of the assigned allocation to any person.

S. 46A(1) substituted by No. 28/2014 s. 13.

(1A) A person must not assign a water allocation under subsection (1) unless the person has first obtained the approval of—

S. 46A(1A) inserted by No. 24/2013 s. 9(1).

(a) the Minister; and

(b) where the case so requires, any Authority whose works will be used to deliver the water.

(2) An assignment under this section entitles the holder of the assignment to take and, subject to any other requirements of this Act, use water under the water allocation under the bulk entitlement from the date specified in the assignment.

S. 46A(2) amended by No. 24/2013 s. 9(2).

### 46B Offence to give an assignment without Ministerial approval

S. 46B inserted by No. 62/1995 s. 28, amended by Nos 5/2002 s. 17, 99/2005 s. 22, 32/2010 s. 33, substituted by No. 50/2010 s. 11.

(1) A generation company, within the meaning of the **Electricity Industry Act 2000**, must not assign a water allocation under section 46 unless the Minister has approved the assignment.

Penalty: 60 penalty units.

(2) A person to whom the whole or a part of a bulk entitlement has been assigned under section 46 or 46A, must not further assign the water allocation under section 46A unless the Minister has approved the assignment.

Penalty: 60 penalty units.

S. 46C inserted by No. 50/2010 s. 11.

### 46C Ministerial approval

(1) The Minister may—

(a) on a request from the Authority, approve the assigning of a water allocation for the purposes of section 46; or

(b) on an application by a person, approve the assigning of a water allocation for the purposes of section 46A.

(2) The Minister, in deciding whether or not to approve an assignment under subsection (1), must have regard to—

(a) any adverse effect that the assignment is likely to have on—

(i) other persons that take water from the same water system; and

(ii) on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective;

(b) whether the assignment is in accordance with any relevant rules made by the Minister under section 47E;

(c) any other prescribed reason.

(3) Any request or application to the Minister to which subsection (1) applies must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information that is required by the Minister; and

(c) be accompanied by the prescribed fee, if any, for the application.

S. 46C(3)(c) amended by No. 29/2011 s. 3(Sch. 1 item 105.1).

### 46D Transfer of bulk entitlement

S. 46D inserted by No. 50/2010 s. 11.

(1) An Authority that holds a bulk entitlement under this Division may, by instrument, transfer the bulk entitlement, in whole or in part, to any person.

(2) An Authority must not transfer a bulk entitlement under subsection (1) unless the Authority has first applied for and obtained the approval of the Minister.

(3) An application to the Minister under subsection (2) must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information that is required by the Minister; and

(c) be accompanied by the prescribed fee, if any, for the application.

### 46E Ministerial approval for transfer

S. 46E inserted by No. 50/2010 s. 11.

(1) Subject to this section, the Minister, on receiving an application under section 46D(2), may approve a transfer under section 46D.

(2) The Minister must not approve a transfer of the whole or a part of a bulk entitlement held by the Water Holder unless the Minister has first obtained the approval of the environment Minister.

(3) The Minister—

(a) must not approve the transfer if he or she is of the opinion that—

(i) the transfer is likely to have an adverse effect on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; or

(ii) the entitlement or part to be transferred is not surplus to the needs of the Authority; or

(b) in any other case, the Minister, in considering whether or not to approve the transfer, must have regard to—

(i) any of the matters mentioned in section 40(1); and

(ii) any relevant rules made under section 47E.

(4) In considering whether or not to approve the transfer the Minister must give effect to an approved management plan for any relevant water supply protection area.

(5) The Minister must not deal with a transfer in a way that is inconsistent with anything specified in the Order granting the entitlement under section 43(d).

S. 46F inserted by No. 50/2010 s. 11.

### 46F Sale of bulk entitlement

(1) For the purposes of transferring a bulk entitlement under section 46D, the Authority has the power to sell the whole or part of the bulk entitlement—

(a) at auction; or

(b) by inviting tenders; or

(c) in any other manner it thinks fit.

(2) If an Authority decides to sell the whole or part of a bulk entitlement under this section, the Authority must cause a notice to be published in the Government Gazette and in a newspaper circulating generally in the area concerned—

(a) declaring that the bulk entitlement, or a part of the bulk entitlement, is available for purchase; and

(b) giving details of the method by which the bulk entitlement or part is to be sold.

### 46G Effect of transfer of bulk entitlement

S. 46G inserted by No. 50/2010 s. 11.

(1) For the purposes of the transfer of a bulk entitlement or a part of a bulk entitlement under this Division, the Minister, by notice published in the Government Gazette—

(a) must determine the right or entitlement under this Act that the transferred entitlement is to become; and

(b) may determine any conditions that are to apply to the specified right or entitlement.

(2) The Minister must not determine a right or entitlement under subsection (1) that the person to whom it is being transferred is not otherwise capable of holding.

(3) On the publication of the notice under subsection (1), the entitlement or part that has been transferred becomes the right or entitlement determined by the Minister and is taken to have been granted in accordance with this Act to the person to whom the entitlement has been transferred.

(4) On the publication of the notice under subsection (1), in the case of the transfer of a part of a bulk entitlement, the transfer has, in respect of the bulk entitlement from which it is to be

transferred, the effect that the bulk entitlement is taken to be varied in accordance with this Act to remove that part of the entitlement that is transferred.

(5) In making a determination as to a right or entitlement under this section, the Minister is not required to comply with any other provisions of this Act.

### 47 Conversion of existing entitlements

S. 47(1) amended by Nos 50/1992 s. 6(5), 121/1994 s. 188(d), 62/1995 s. 15(1), 85/2006 s. 25.

(1) An Authority that has an entitlement to take water referred to in paragraph (aa), (a) or (b) of section 35(2) or section 35(3) may apply to the Minister to have the whole or part of that entitlement converted into an entitlement or two or more entitlements granted under this Division.

(2) An application must—

(a) be made in a form and manner approved by the Minister; and

(b) contain particulars of the entitlement held by the applicant; and

(c) be accompanied by any prescribed application fee.

(3) The Minister must forward a copy of an application to any entitlement holder whom the Minister considers may be directly affected by the application.

(4) After considering any comments made on the application by an entitlement holder to whom the Minister forwarded a copy of the application, the Minister may deal with an application in any of the following ways—

(a) refuse it;

(b) approve it (with or without modification) and by Order published in the Government Gazette in accordance with section 43 convert the whole or part of the entitlement into an entitlement or two or more entitlements granted under this Division.

S. 47(4)(b) amended by Nos 121/1994 s. 188(d), 62/1995 s. 15(2), 22/1999 s. 3(1).

(5) Without limiting subsection (4)(b), a modification under that subsection may provide for the granting of a reduced or increased entitlement.

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

### 47A Compliance with terms of bulk entitlement

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

(1) An Authority referred to in section 34(1)(c) must comply with the specifications of an Order granting a bulk entitlement to it.

S. 47A(1) substituted by No. 32/2010 s. 34.

(2) An Authority which contravenes subsection (1) is guilty of an offence against this Act and liable to a penalty of not more than 200 penalty units and in the case of a continuing offence to a daily penalty of not more than 80 penalty units for each day the offence continues after conviction or after service by or on behalf of the Minister of notice of contravention of this section.

(3) The Minister may, by notice in writing to an Authority which contravenes subsection (1), require the Authority to take any action specified in the notice within the time (being not less than 2 days) that is specified in the notice or any longer time allowed by the Minister, to remedy the contravention.

(4) If a notice of contravention is not complied with within the time specified or any longer time allowed by the Minister, the Minister may—

(a) cause to be carried out any works and take any other action the Minister decides is necessary to remedy the contravention, and recover reasonable costs from the Authority on which the notice was served; and

(b) cause to be removed or disconnected any works of the Authority in relation to which the contravention occurs, and recover reasonable costs from the Authority on which the notice was served; and

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

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

### 47B Minister may request application

(1) The Minister may request an Authority, by notice in writing to the Authority, to make an application under section 36 or 47.

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

(2) If the Authority fails to make the application requested under subsection (1) within 2 months after the request the Minister may give notice to the Authority that the Minister intends—

(a) to grant a bulk entitlement under this Division to the Authority; or

(b) to convert the whole or part of an entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements under this Division.

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

(3) After giving notice in accordance with subsection (2), the Minister may prepare a proposed Order in accordance with section 43.

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

(3A) A proposed Order converting the whole or part of an entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements under this Division may

propose the granting of a reduced or increased entitlement.

(4) The Minister must give notice of the proposed Order in any manner that the Minister thinks fit.

(5) A notice given under subsection (4) may invite submissions on the proposed Order to be made in the manner specified in the notice within the period specified in the notice.

(6) If the proposed Order converts the whole or part of an entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements under this Division, the Minister must—

(a) forward a copy of the proposed Order to any entitlement holder whom the Minister considers may be directly affected by the proposed Order; and

(b) consider any comments made on the proposed Order by an entitlement holder to whom the Minister forwarded a copy.

(7) After considering any submissions or comments made on the proposed Order, the Minister may, by Order published in the Government Gazette—

(a) grant the bulk entitlement under this Division; or

(b) convert the whole or part of the entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements granted under this Division—

as the case may be.

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

(7A) An Order converting the whole or part of an entitlement referred to in paragraph (aa), (a) or (b) of section 35(2) into an entitlement or 2 or more entitlements under this Division may provide for the granting of a reduced or increased entitlement.

(8) The provisions of this section apply despite any other provisions of this Division.

S. 47C inserted by No. 62/1995 s. 16, amended by Nos 5/2002 s. 18, 99/2005 s. 43, 32/2010 s. 35, substituted by No. 50/2010 s. 12.

### 47C Application for conversion of licences or water shares to bulk entitlements

(1) An Authority that holds a water share or licence under section 51 may apply to the Minister to have the water share or licence converted to a bulk entitlement under this Division.

(2) An Authority that holds a water share or licence under section 51 must apply to the Minister to have the water share or licence converted to a bulk entitlement under this Division, if requested to do so by the Minister.

(3) An application to the Minister under this section must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information that is required by the Minister; and

S. 47C(3)(c) amended by No. 29/2011 s. 3(Sch. 1 item 105.2).

(c) be accompanied by the prescribed fee, if any, for the application.

S. 47CA inserted by No. 50/2010 s. 12.

### 47CA Minister may convert licence or water share to bulk entitlement

(1) The Minister may convert a water share or licence under section 51 that is held by an Authority to a bulk entitlement under this Division held by that Authority, on receiving an application from the Authority under section 47C.

(2) In considering an application under section 47C, the Minister must have regard to any matter referred to in section 40(1)(a) to (o).

### 47CB Effect of conversion

S. 47CB inserted by No. 50/2010 s. 12.

(1) On determining that a licence under section 51 or water share is converted to a bulk entitlement, the Minister must, by notice published in the Government Gazette—

(a) in the case of a licence under section 51, cancel the licence and either—

(i) amend an existing bulk entitlement to add the amount of water that may be taken and used in accordance with the licence; or

(ii) create a new bulk entitlement to the amount of water that may be taken and used in accordance with the licence; or

(b) in the case of a water share, cancel the water share and either—

(i) amend the bulk entitlement to add the maximum volume of the water share; or

(ii) create a new bulk entitlement with the maximum volume of the water share.

(2) The Minister may impose any terms and conditions on the bulk entitlement created or amended under subsection (1) that the Minister thinks fit.

(3) In creating or amending bulk entitlement under this section, the Minister is not required to comply with any other provisions of this Act.

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

### 47D Minister may sell unallocated water

(1) If—

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

(b) the entitlement is in respect of water in a storage which on 1 January 1995 was owned by the Rural Water Corporation; and

(c) there is water in the storage that is not allocated to the converted entitlement; and

S. 47D(1)(d) substituted by No. 99/2005 s. 23.

(d) the Minister has determined that the flow of water out of the storage is adequate having regard to the need to maintain the environmental water reserve in accordance with the environmental water reserve objective—

the Minister may, by notice published in the Government Gazette, declare that an amount of water is unallocated water.

(2) If the Minister has made a declaration under subsection (1), the Minister—

(a) may by notice published in a newspaper circulating generally in the area concerned, declare that the unallocated water is available for purchase by any person holding the qualifications specified in the notice on the terms and conditions specified in the notice; and

(b) must consult with the Authority responsible for delivery of the water before determining the terms and conditions of sale.

(3) A declaration under subsection (2)(a) must—

(a) specify a means referred to in section 43(a) of quantifying the amount of water; and

(b) specify the adjustment, if any, of volumes to be applied to the transfer; and

(c) specify that, if unallocated water is to be converted to a bulk entitlement after sale, the sale is void if the Order granting the bulk entitlement is disallowed by the Parliament under section 34; and

(d) give details of the method by which the unallocated water is to be sold, whether at auction or by inviting tenders or in any other manner that the Minister thinks fit.

(4) A transfer under this section is permanent.

(5) Following a transfer under this section, the Minister must do any or all of the following as is appropriate in the circumstances—

(a) grant a bulk entitlement to the purchaser by Order published in the Government Gazette;

(b) amend a bulk entitlement held by the purchaser in accordance with section 44 or 45;

(c) in the case of—

**S. 47D(5)(c) substituted by No. 99/2005 s. 44.**

(i) water in a non-declared water system, issue a licence under section 51 to the purchaser; or

(ii) water in a declared water system, issue a water share under Part 3A to the purchaser;

S. 47D(5)(d) substituted by No. 32/2010 s. 36.

(d) ensure that details of the sale are given to the relevant Authority for entry on the water register.

S. 47DA inserted by No. 32/2010 s. 37.

### 47DA Declaration for taking of water allocation under bulk entitlement in subsequent water season

(1) The Minister may make a declaration in respect of a bulk entitlement to take water in a water system, authorising the taking of water that is entitled to be taken under any water allocation for the bulk entitlement in a subsequent water season.

(2) A declaration under subsection (1) may apply to—

(a) bulk entitlements in a water system or part of a water system; or

(b) a class or classes of bulk entitlements in a water system or part of a water system.

(3) Any taking of water under a declaration of the Minister under subsection (1) is subject to—

(a) the terms and conditions of the bulk entitlement to which the water allocation applies; and

(b) any terms and conditions specified by the Minister in the declaration.

(4) The Minister must cause notice of the making of a declaration under subsection (1) to be published—

(a) in the Government Gazette; and

(b) in a newspaper circulating generally in the area to which the declaration applies.

(5) A declaration under subsection (1) has effect on the publication of notice of the making of the declaration in the Government Gazette.

### 47E Rule making powers for bulk entitlements

S. 47E inserted by No. 99/2005 s. 45.

(1) The Minister may, by Order, published in the Government Gazette, set out rules—

(a) with respect to adjustment of volumes to be applied to permanent transfers of bulk entitlements under this Division or assignments under sections 46 and 46A; and

S. 47E(1)(a) substituted by No. 24/2013 s. 10(1).

(b) as to the circumstances in which the consent of any Authority under this Act will be required to any such transfers or assignments; and

S. 47E(1)(b) amended by No. 24/2013 s. 10(2).

(c) as to any matters relating to applications for such transfers or assignments; and

S. 47E(1)(c) amended by No. 24/2013 s. 10(2).

(d) as to the circumstances in which the Minister will give or refuse to give approvals for such transfers or assignments; and

S. 47E(1)(d) amended by No. 24/2013 s. 10(2).

(e) as to any other matters the Minister is authorised to make rules for under this Division.

(2) An Order under this section may be amended or revoked in the same manner as that in which it is made.

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S. 48 amended by Nos 62/1995 s. 6(4), 76/1998 s. 29(d), repealed by No. 32/2010 s. 38.

Pt 4 Div. 1A (Heading and ss 48A–48Q) inserted by No. 99/2005 s. 24.

## Division 1A—Environmental entitlements

S. 48A inserted by No. 99/2005 s. 24.

### 48A Definitions

In this Division—

S. 48A def. of *apply* inserted by No. 85/2006 s. 26(a).

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

S. 48A def. of *environment Minister* repealed by No. 85/2006 s. 26(b).

* * * * *

***request*** means a request for the grant of an environmental entitlement made under section 48C(1)(b).

S. 48B inserted by No. 99/2005 s. 24.

### 48B Allocation of environmental entitlement

S. 48B(1) amended by No. 50/2010 s. 13(1).

(1) The Minister may, by instrument, allocate to the Water Holder, an entitlement to—

(a) water in a waterway (including the River Murray); or

(b) groundwater; or

(c) water (other than recycled water) in any works of an Authority; or

S. 48B(1)(d) amended by No. 23/2019 s. 106(a).

(d) water (other than recycled water) in any works of the Melbourne Water Corporation.

* * * * *

S. 48B(1)(e) repealed by No. 23/2019 s. 106(b).

(2) The Minister may allocate an environmental entitlement under subsection (1) for the purpose of—

(a) maintaining the environmental water reserve in accordance with the environmental water reserve objective; or

(b) improving the environmental values and health of water ecosystems, including their biodiversity, ecological functioning and water quality, and the other uses that depend on environmental condition.

### 48BA Authorisation of entitlement

S. 48BA inserted by No. 85/2006 s. 27, amended by No. 32/2010 s. 39(a).

Subject to this Act, 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)).

**Note**

Note to s. 48BA inserted by No. 32/2010 s. 39(b).

The operation of some provisions of this Act affects the application of water under an environmental entitlement. Section 48MA is an example of such a provision.

S. 48C inserted by No. 99/2005 s. 24.

### 48C Requirements as to making of allocation

(1) The Minister may make an allocation under section 48B either—

(a) of his or her own motion; or

S. 48C(1)(b) amended by No. 50/2010 s. 13(2).

(b) at the request of the Water Holder.

(2) The Minister, on allocating an entitlement under this section, must cause a copy of the instrument allocating the entitlement to be published in the Government Gazette.

S. 48D inserted by No. 99/2005 s. 24.

### 48D Advertisement etc. of request

(1) Where a request has been made, the Minister must either—

(a) cause notice of the request to be advertised in any manner that he or she thinks fit; or

S. 48D(1)(b) amended by No. 50/2010 s. 14.

(b) require the Water Holder to advertise the request in any manner specified by the Minister.

(2) A notice under subsection (1) may invite submissions on the request to be made in the manner specified in the notice within the period specified in the notice.

S. 48E inserted by No. 99/2005 s. 24.

### 48E Appointment of panel

(1) The Minister may, by instrument, appoint a panel of persons to consider submissions made under section 48D(2) on the request, and the persons appointed to the panel must be persons who have knowledge of or experience in the matters that the panel is to consider.

(2) Subject to any specifications of the Minister when appointing the panel, a panel may regulate its own proceedings.

(3) If submissions on the request have not been invited by a notice given under section 48D(1)(a), the panel must cause a notice to be published in a newspaper circulating generally in the area concerned inviting submissions on the request within the period specified in the notice.

(4) After considering all submissions referred or made to it, the panel must report its findings to the Minister within the period specified by the Minister.

(5) The panel may include in its report any recommendations that it thinks fit.

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

### 48F Matters to be considered

S. 48F inserted by No. 99/2005 s. 24.

(1) Before making an allocation under section 48B, the Minister must have regard to the following matters—

(a) the report of any panel appointed under this Division;

(b) any adverse effect that the allocation or use of water under the entitlement is likely to have on existing authorised uses of water in the water systems for which the allocation is to be made;

(c) the conservation policy of the government;

(d) government policies concerning the preferred allocation or use of water resources;

S. 48F(1)(da) inserted by No. 39/2018 s. 61(3) (as amended by No. 27/2019 s. 47).

(da) any environment reference standard within the meaning of the **Environment Protection Act 2017** and any Order made by the Governor in Council under section 156 of the **Environment Protection Act 2017**;

(e) the maintenance of the environmental water reserve in accordance with the environmental water reserve objective;

(f) whether the water for which the allocation is to be made is from a water system that is within a heritage river area or natural catchment area (within the meaning of the **Heritage Rivers Act 1992**);

(g) any relevant Sustainable Water Strategy that has been endorsed under section 22G(1);

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

(2) In considering a request, the Minister must give effect to an approved management plan for any relevant water supply protection area.

S. 48G inserted by No. 99/2005 s. 24.

### 48G Determination of request

The Minister may—

(a) refuse a request; or

S. 48G(b) repealed by No. 50/2010 s. 22(1).

* * * * *

(c) approve a request and allocate the entitlement.

S. 48H inserted by No. 99/2005 s. 24.

### 48H Procedures required in determining request

(1) If the Minister gives preliminary approval to a request, he or she must make sure that—

(a) everyone who made a submission on the request is notified of the giving of preliminary approval; and

(b) a notice of the giving of preliminary approval is published in a newspaper circulating generally in the area concerned.

(2) A notice published under subsection (1)(b) must—

(a) set out the prescribed particulars of the request; and

(b) set out particulars of the place or places at which a copy or summary of the request and the preliminary approval may be inspected; and

(c) advise that any interested person may ask for a summary of the preliminary approval in the manner specified in the notice; and

(d) invite written comments on the preliminary approval to be made within 60 days or any longer period that is specified in the notice; and

(e) advise that anyone who so applies will be notified of the final outcome of the request.

(3) After considering all written comments made on the preliminary approval in response to a notice published under subsection (1)(b), the Minister must decide either to—

(a) refuse the request; or

(b) approve the request and allocate the entitlement under section 48B.

(4) If the Minister refuses a request under subsection (3)(a), he or she must make sure that a notice of the refusal is published in a newspaper circulating generally in the area concerned.

S. 48I inserted by No. 99/2005 s. 24.

### 48I Requirements as to instrument allocating entitlement

An instrument allocating an entitlement under this Division may specify in relation to the entitlement allocated all or any of the following—

(a) a means of quantifying the amount of water that the entitlement consists of;

**Note**

The means of quantifying the amount of water that the entitlement consists of may be by volume or by reference to the level of flow at a specified point or by reference to a share of flow or storage or by any other means or combination of means, and if the amount of water is quantified by reference to a share of storage, then by reference, for example, to—

(i) the volumetric share of the system capacity of any system within the water system in which the entitlement is allocated;

(ii) the share of inflow to any storage within the water system in which the entitlement is allocated;

(iii) the volumetric share of releases from any storage within the water system in which the entitlement is allocated;

(iv) the seepage and evaporative loss adjustments to be debited from the entitlement;

(v) the share of inflow to be credited to the entitlement when the share of storage capacity of any storage within the area does not allow for a full share of inflow determined under subparagraph (ii) to be available—

and if the amount of water is quantified by reference to a share of flow, then by reference, for example, to the share of flow past a specified point.

(b) water accounting procedures for accounting for the water in the entitlement;

(c) any condition imposed on the allocation of the entitlement under section 48J;

(d) the class of reliability of the entitlement.

### 48J Conditions relating to entitlements

S. 48J inserted by No. 99/2005 s. 24.

(1) In allocating or amending an entitlement under this Division the Minister may impose, any conditions that the Minister thinks fit to specify as to the operation and management of the entitlement including conditions relating to—

(a) the protection of any waterway or aquifer in that area; or

(b) the returning of water in that area to its water system; or

(c) the protection of the environment in that area, including the riverine and riparian environment; or

(d) payments to be made in relation to services provided by other persons in relation to the entitlement; or

(e) the assignment of water allocations under the entitlement; or

(f) the implementation of the conservation policy of the Government.

(2) For the purposes of giving effect to any conditions imposed under subsection (1), the Minister may require an Authority to perform any functions or duties specified in the entitlement by the Minister.

### 48K Amendment of entitlement by the Minister

S. 48K inserted by No. 99/2005 s. 24.

(1) The Minister, at the request of the Water Holder, may amend an entitlement under this Division.

S. 48K(1) substituted by No. 85/2006 s. 28, amended by No. 50/2010 s. 15(1).

S. 48K(2) substituted by No. 85/2006 s. 28, amended by No. 50/2010 s. 15(2).

(2) The Water Holder must not request an amendment to an entitlement under this Division unless the Water Holder is of the opinion that the amendment would benefit the environmental water reserve.

S. 48K(3) substituted by No. 85/2006 s. 28.

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

S. 48K(4) amended by No. 32/2010 s. 77(Sch.).

(4) The provisions of this Division relating to the procedure to be followed with respect to a request for the allocation of an entitlement under this Division apply, with any necessary modifications, with respect to a request for an amendment under this section that is not for an amendment that is necessary because of—

(a) a mistake in the description in any element of the entitlement; or

(b) a minor variation arising from practical operations.

S. 48KA inserted by No. 85/2006 s. 29, amended by No. 50/2010 s. 16.

### 48KA Water allocations may be applied for other environmental entitlements

The Water Holder, 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.

## 48L Assignment of water allocation

S. 48L (Heading) amended by No. 85/2006 s. 30(1).

S. 48L inserted by No. 99/2005 s. 24.

(1) The Water Holder, by instrument, may 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 any person.

S. 48L(1) substituted by No. 85/2006 s. 30(2), amended by No. 50/2010 s. 17(1), substituted by No. 28/2014 s. 14.

(1A) The Water Holder must not assign a water allocation under subsection (1) unless the Water Holder has first obtained the approval of—

S. 48L(1A) inserted by No. 85/2006 s. 30(2), substituted by No. 50/2010 s. 17(2).

(a) the Minister; and

(b) any Authority whose works will be used to deliver the water.

(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.

S. 48L(1B) inserted by No. 85/2006 s. 30(2).

(2) The Minister, in approving an assignment under subsection (1), must have regard to—

S. 48L(2) substituted by No. 50/2010 s. 17(3).

(a) any adverse effect that the assignment is likely to have on—

(i) other persons that take water from the same water system; and

(ii) the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; or

(b) whether the assignment is in accordance with any relevant rules made under section 48P.

S. 48M inserted by No. 99/2005 s. 24, amended by Nos 85/2006 s. 31(1)(2) (ILA s. 39B(1)), 50/2010 s. 18.

### 48M Further assignment of water allocation

S. 48M(1) substituted by No. 28/2014 s. 15.

(1) A person to whom the whole or a part of a water allocation has been assigned under section 48L, or under this section, may assign the whole of the assigned allocation to any person.

S. 48M(2) inserted by No. 85/2006 s. 31(2).

(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.

S. 48MA inserted by No. 32/2010 s. 40.

### 48MA Declaration for taking of water allocation under environmental entitlement in subsequent water season

(1) The Minister may make a declaration in respect of an environmental entitlement to apply water in a water system, authorising the application of water available to be applied under any water allocation for the environmental entitlement in a subsequent water season.

(2) A declaration under subsection (1) may apply to—

(a) environmental entitlements in a water system or part of a water system; or

(b) a class or classes of environmental entitlements in a water system or part of a water system.

(3) Any application of water under a declaration of the Minister under subsection (1) is subject to—

(a) the terms and conditions of the environmental entitlement to which the water allocation applies; and

(b) any terms and conditions specified by the Minister in the declaration.

(4) The Minister must cause notice of the making of a declaration under subsection (1) to be—

(a) published in the Government Gazette; and

(b) in a newspaper circulating generally in the area to which the declaration applies.

(5) A declaration under subsection (1) has effect on the publication of notice of the making of the declaration in the Government Gazette.

**48N Offence to give an assignment without Ministerial approval**

S. 48N inserted by No. 99/2005 s. 24.

A person must not assign a water allocation under section 48M unless the Minister has approved the assignment.

Penalty: 60 penalty units.

**48O Ministerial approval**

S. 48O inserted by No. 99/2005 s. 24.

(1) The Minister may—

S. 48O(1) substituted by No. 85/2006 s. 32(1).

(a) on a request from the Water Holder, approve the assigning of a water allocation for the purposes of section 48L; or

S. 48O(1)(a) amended by No. 50/2010 s. 19.

(b) on an application by a person, approve the assigning of a water allocation for the purposes of section 48M.

(2) The Minister must not give an approval under subsection (1) for any prescribed reason.

(3) In giving an approval under subsection (1), the Minister must have regard to any relevant rules determined under section 48P.

S. 48O(4) repealed by No. 85/2006 s. 32(2).

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S. 48OA inserted by No. 50/2010 s. 20.

### 48OA Transfer of environmental entitlement

(1) The Water Holder may, by instrument, apply to transfer the whole or a part of an environmental entitlement, to any person.

(2) The Water Holder must not transfer an environmental entitlement under subsection (1) unless the Water Holder has first applied for and obtained the approval of the Minister.

S. 48OB inserted by No. 50/2010 s. 20.

### 48OB Ministerial approval for transfer

(1) Subject to this section, the Minister may, on application by the Water Holder under section 48OA(2), approve a transfer under that section.

(2) The Minister must not approve a transfer of the whole or a part of an environmental entitlement under this section unless the Minister has first obtained the approval of the environment Minister.

(3) The Minister, in considering whether or not to approve the transfer must have regard to—

(a) any of the matters mentioned in section 40(1); and

(b) whether the transfer is in accordance with any relevant rules made under section 48P.

(4) In considering whether or not to approve the transfer the Minister must give effect to an approved management plan for any relevant water supply protection area.

(5) The Minister must not deal with a transfer in a way that is inconsistent with anything specified in the Order allocating the entitlement under this Division.

### 48OC Sale of environmental entitlement

S. 48OC inserted by No. 50/2010 s. 20.

(1) For the purposes of transferring an environmental entitlement under section 48OA, the Water Holder has the power to sell the whole or part of the entitlement—

(a) at auction; or

(b) by inviting tenders; or

(c) in any other manner it thinks fit.

(2) If the Water Holder decides to sell the whole or part of the entitlement under this section, the Water Holder must cause a notice to be published in the Government Gazette and in a newspaper circulating generally in the area concerned—

(a) declaring that the environmental entitlement, or a part of the environmental entitlement, is available for purchase; and

(b) giving details of the method by which the environmental entitlement or part is to be sold.

### 48OD Effect of transfer of environmental entitlement

S. 48OD inserted by No. 50/2010 s. 20.

(1) For the purposes of the transfer of an environmental entitlement or a part of an environmental entitlement under this Division, the Minister, by notice published in the Government Gazette—

(a) must determine the right or entitlement under this Act that the transferred entitlement is to become; and

(b) may determine any conditions that are to apply to the specified right or entitlement.

(2) The Minister must not determine a right or entitlement under subsection (1) that the person to whom it is being transferred is not otherwise capable of holding.

(3) On the publication of the notice under subsection (1), the entitlement or part that has been transferred becomes the right or entitlement determined by the Minister and is taken to have been granted in accordance with this Act to the person to whom the entitlement has been transferred.

(4) On the publication of the notice under subsection (1), in the case of the transfer of a part of an environmental entitlement, the transfer has, in respect of the environmental entitlement from which it is to be transferred, the effect that the environmental entitlement is taken to be varied in accordance with this Act to remove that part of the entitlement that is transferred.

(5) In making a determination of a right or entitlement under this section, the Minister is not required to comply with any other provisions of this Act.

S. 48OE inserted by No. 50/2010 s. 20.

### 48OE Application for conversion of licences or water shares to environmental entitlements

(1) If the Water Holder holds a water share or licence under section 51, the Water Holder may apply to the Minister to have the water share or licence converted to an environmental entitlement under this Division.

(2) The Water Holder must apply to the Minister to have a water share or licence under section 51 converted to an environmental entitlement under this Division, if requested to do so by the Minister.

### 48OF Minister may convert licence or water share to environmental entitlement

S. 48OF inserted by No. 50/2010 s. 20.

(1) Subject to this section, the Minister may convert a water share or licence under section 51 that is held by the Water Holder to an environmental entitlement under this Division on receiving an application from the Water Holder under section 48OE.

(2) In considering an application for conversion under section 48OE, the Minister may have regard to any matter referred to in section 40(1)(a) to (o).

### 48OG Effect of conversion

S. 48OG inserted by No. 50/2010 s. 20.

(1) On determining that a licence under section 51 or water share is converted to an environmental entitlement, the Minister must, by notice published in the Government Gazette—

(a) in the case of a licence under section 51, cancel the licence and either—

(i) amend an existing environmental entitlement to add the amount of water that may be taken and used in accordance with the licence; or

(ii) create a new environmental entitlement to the amount of water that may be taken and used in accordance with the licence; or

(b) in the case of a water share, cancel the water share and either—

(i) amend the environmental entitlement to add the maximum volume of the water share; or

(ii) create a environmental bulk entitlement with the maximum volume of the water share.

(2) The Minister may impose any terms and conditions on the environmental entitlement created or amended under subsection (1) that the Minister thinks fit.

(3) In creating or amending an environmental entitlement under this section, the Minister is not required to comply with any other provisions of this Act.

S. 48P inserted by No. 99/2005 s. 24.

### 48P Rule making powers for environmental entitlements

(1) The Minister may, by Order, published in the Government Gazette, set out rules—

(a) with respect to adjustment of volumes to be applied to, assignments of water allocations under entitlements under this Division; and

(b) as to the circumstances in which the consent of any Authority under this Act will be required to assignments under this Division; and

(c) as to any matters relating to applications under this Division; and

(d) as to the circumstances in which the Minister will give or refuse to give approvals under this Division; and

(e) as to any other matters the Minister is authorised to make rules for under this Division.

(2) An Order under this section may be amended or revoked in the same manner as that in which it is made.

### 48PA Applications under this Division

S. 48PA inserted by No. 85/2006 s. 33, amended by No. 50/2010 s. 21(a).

An application to the Minister under this Division—

(a) must be in the form and made in the manner approved by the Minister; and

(ab) must contain any information that is required by the Minister; and

S. 48PA(ab) inserted by No. 50/2010 s. 21(b).

(b) must be accompanied by the prescribed fee.

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S. 48PB inserted by No. 85/2006 s. 33, amended by No. 32/2010 s. 41, repealed by No. 50/2010 s. 22(2).

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S. 48Q inserted by No. 99/2005 s. 24, repealed by No. 50/2010 s. 22(2).

## Division 2—Licences

### 49 Advertisement etc. of application

(1) This section applies to an application—

(a) under section 51 for the issue of a licence to take and use water; or

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S. 49(1)(b) repealed by No. 29/2007 s. 24(1).

(c) under section 58(1) for the renewal of a licence referred to in paragraph (a) or (b); or

(d) under section 62(3) for approval of the transfer of a licence referred to in paragraph (a) or (b).

(2) The Minister may require an applicant to give notice of an application to which this section applies in any manner specified by the Minister.

(3) A notice given under subsection (2) may invite submissions on the application to be made in the manner specified in the notice within the period specified in the notice.

**50 Appointment of panel**

(1) The Minister may appoint a panel of persons to consider submissions made on an application to which section 49 applies.

(2) Subject to anything specified by the Minister when appointing the panel, a panel may regulate its own proceedings.

(3) If submissions on the application have not been invited by a notice given under section 49(2), the panel must cause a notice to be published in a newspaper circulating generally in the area concerned inviting submissions on the application within the period specified in the notice.

(4) After considering all submissions referred or made to it, the panel must report its findings to the Minister within the period specified by him or her.

(5) The panel may include in its report any recommendations that it thinks fit.

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

### 51 Licence to take and use water

(1) A person may apply to the Minister for the issue of a licence to take and use—

(a) water from a waterway (including the River Murray); or

(b) groundwater; or

(ba) water from a spring or soak or water from a dam (to the extent that it is not rainwater supplied to the dam from the roof of a building or water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or

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

(c) water, other than recycled water, from any works of an Authority.

S. 51(1)(c) amended by Nos 50/1992 s. 10(Sch. item 11.4), 49/1994 s. 5(1)(b), substituted by No. 86/1995 s. 11, amended by Nos 99/2005 s. 25(a), 23/2019 s. 107(a).

* * * * *

S. 51(1)(d) inserted by No. 86/1995 s. 11, amended by No. 99/2005 s. 25(b), repealed by No. 23/2019 s. 107(b).

(1AA) An application may not be made under subsection (1) to take and use water in a declared water system unless—

S. 51(1AA) inserted by No. 99/2005 s. 46, substituted by No. 29/2007 s. 14.

(a) the water to be taken and used is to be subject to a condition that a proportion of the water so taken and used is to be returned to the water system; or

(b) the water is to be taken and used for a prescribed purpose.

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

(1A) During the period commencing on 1 July 2002 and ending on 30 June 2003, a person may apply, without payment of an application fee, to the Minister for the issue of a registration licence to take and use—

(a) water from a spring or soak or water from a dam (to the extent that it is not rainwater supplied to the dam from the roof of a building or water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or

(b) water from a dam on a waterway other than a river, creek, stream or watercourse, for a use other than domestic and stock use.

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

(1B) Subsection (1A) only applies, in relation to a spring or soak or dam, to a person who at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using—

(a) water from the spring or soak or water from the dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or

(b) water from the dam on a waterway other than a river, creek, stream or watercourse, for a use other than domestic and stock use for which a licence under subsection (1)(a) is not in force—

as the case may be.

(1C) Nothing in this section requires a person to hold a licence issued under this section to re-use water that—

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

(a) is stored in a dam that complies with design criteria specified by the Minister under section 80A; and

(b) does not exceed the volume determined in accordance with the formula specified by the Minister under section 80A; and

(c) is supplied to the person under a licence issued under this section, under section 124(7) or in accordance with section 222.

(2) An application under this section must—

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

(a) be made in a form and manner approved by the Minister; and

(b) contain any information that—

(i) is prescribed; or

(ii) is required by the Minister; and

(ba) in the case of an application under subsection (1)(ba) or (1A) in relation to a spring or soak or dam by a person who at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using—

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

(i) water from the spring or soak or water from the dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or

(ii) water from a dam on a waterway other than a river, creek, stream or watercourse, for a use other than domestic and stock use—

as the case may be, set out the maximum volume of water to be used by the applicant in each year during the period of the licence, determined in accordance with the criteria specified by Order under section 52A; and

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

(c) be accompanied by the application fee, if any, fixed by the Minister for that type of application.

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

(3) After consultation with the Minister administering the **Conservation, Forests and Lands Act 1987**, a licence issued under this section may include authority to enter on any Crown land other than land which is subject to a licence granted under Part 3A of the **Victorian Plantations Corporation Act 1993** and to install and operate works on that land for the purpose of raising water to be taken and used under the licence.

(4) An authority granted under subsection (3) does not remove the need to apply for any licence that is necessary under Part 5.

(5) The licensee is liable to compensate any person who suffers any pecuniary loss as a direct, natural and reasonable consequence of the exercise of an authority granted under subsection (3).

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

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

(7) For the purposes of this section, ***waterway*** includes any collection of water which is from time to time replenished in whole or in part by water coming by a natural sub-surface path from a waterway.

### 51AA Amendment of original registration licences and issue of new registration licences in certain circumstances

S. 51AA inserted by No. 24/2013 s. 11.

(1) This section applies despite anything to the contrary in section 51.

(2) A holder of an original registration licence may apply to the Minister (without payment of an application fee) for—

(a) the original registration licence to be amended so that it authorises water to be taken and used from a single spring, soak or dam specified in the application, being a spring, soak or dam from which water was authorised to be taken and used under the licence immediately before its amendment under this section; and

(b) the issue of a licence to take and use water from each other spring, soak or dam from which water was authorised to be taken and used under the original registration licence immediately before its amendment under this section.

(3) An application under this section must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information or document that is required by the Minister.

(4) The Minister, on receiving an application under this section, may—

(a) amend the original registration licence so that it authorises water to be taken and used from the spring, soak or dam specified in the application; and

(b) issue a licence to take and use water from each other spring, soak or dam from which the holder of the original licence was authorised to take and use water under the original registration licence.

(5) The Minister, in amending an original registration licence under subsection (4)(a), must reduce the volume of water authorised to be taken and used under that licence by an amount that is equivalent to the amount that is authorised to be taken and used under every licence issued under this section.

(6) Subject to subsection (8), an original registration licence that is amended under subsection (4)(a) continues to be subject to any condition to which the licence was subject immediately before the licence was amended.

(7) A licence issued under this section—

(a) must not authorise the taking and use of water from more than one spring, soak or dam; and

(b) subject to subsection (8), is subject to any condition to which the taking and use of water from the relevant spring, soak or dam was subject under the original registration licence.

(8) The Minister may amend a condition referred to in subsection (6) or (7)(b) to the extent necessary to reflect the amendment of the original registration licence and the issue of every licence under this section.

(9) In this section, ***original registration licence*** means a registration licence issued under section 51(1A) that authorises water to be taken and used from more than one spring, soak or dam.

### 51AB Issue of new registration licences in certain circumstances

S. 51AB inserted by No. 24/2013 s. 11.

(1) This section applies despite anything to the contrary in section 51.

(2) A person who is a successor in title to the owner of a part or parcel of land from which water was taken and used under an original registration licence may apply (without payment of an application fee) to the Minister for the issue of a licence to take and use water from each spring, soak or dam on that part or parcel of land from which water was authorised to be taken and used under the original registration licence.

(3) An application under subsection (2) must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information or document that is required by the Minister.

(4) Subject to this section, the Minister may issue a licence to take and use water from each spring, soak or dam specified in the application if the Minister is satisfied that—

(a) the applicant is the successor in title to the owner of the part or parcel of land from which water was taken and used under an original registration licence; and

(b) the original registration licence has not been surrendered under section 51A.

(5) Before issuing a licence under this section, the Minister must—

(a) give notice of the application to the holder of the original registration licence at the person's last known address; and

(b) consider any submission made within 28 days after the date of the notice by the holder of the original registration licence.

(6) If the Minister issues a licence under this section, the Minister must—

(a) amend the original registration licence so that the original registration licence ceases to authorise the taking and use of water from the spring, soak or dam specified in a licence issued under this section; and

S. 51AB(6)(b) amended by No. 42/2021 s. 139.

(b) make any other amendment to the original registration licence that is necessary to reflect the amendment of that licence under paragraph (a) and the issue of a licence under this section.

(7) The Minister, in amending an original registration licence under subsection (6)(a), must reduce the volume of water authorised to be taken and used under that licence by an amount that is equivalent to the amount that is authorised to be taken and used under every licence issued under this section.

(8) A licence issued under this section—

(a) must not authorise the taking and use of water from more than one spring, soak or dam; and

(b) subject to subsection (9), is subject to any condition to which the taking and use of water from the relevant spring, soak or dam was subject under the original registration licence.

(9) The Minister may amend a condition referred to in subsection (8)(b) to the extent necessary to reflect the amendment of the original registration licence and the issue of every licence under this section.

(10) In this section, ***original registration licence*** has the same meaning as in section 51AA.

### 51A Surrender of registration licence

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

(1) The holder of a registration licence may, during the term of the licence, surrender the licence to the Minister and apply, without payment of an application fee, for— S. 51A(1) substituted by No. 99/2005 s. 47(1).

(a) the issue of a licence under section 51(1)(a) or (ba) in a non-declared water system; or

(b) the issue of a water share under Part 3A in a declared water system—

(as the case requires).

(2) Sections 51B and 51C do not apply to an application made under subsection (1).

(3) On an application made under subsection (1), the Minister must issue, within 14 days after the application is made, a licence under section 51(1)(a) or (ba), or a water share under Part 3A, as the case may be, for the same maximum volume of water to be used in each year during the period of the licence as that which applied to the registration licence formerly held by the applicant. S. 51A(3) amended by No. 99/2005 s. 47(2).

(4) A registration licence surrendered under subsection (1) is deemed to continue in operation until the issue of a licence under section 51(1)(a) or (ba) or a water share under Part 3A, as the case requires, in accordance with subsection (3). S. 51A(4) amended by No. 99/2005 s. 47(3).

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

### 51B Application to go to certain bodies

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

(a) the Department Head; and

(b) the relevant Catchment Management Authority; and

S. 51B(c) substituted by No. 85/2006 s. 34.

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

(d) any Authority holding a bulk entitlement that may be affected by the approval of the application.

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

### 51C Bodies must consider application

(1) Within 30 days after receipt of an application referred to a body under section 51B, the body—

(a) must consider the application; and

(b) may advise the Minister in writing that—

(i) it does not object to the issue of a licence; or

(ii) it does not object if the licence is issued subject to the conditions specified by the body; or

(iii) it objects to the issue of the licence on any specified ground; and

(c) may give to the Minister its comments on the application.

(2) If a body makes no response to the Minister within 30 days after receipt of an application referred to it under section 51B, the Minister may proceed to determine the application.

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S. 52 amended by Nos 50/1992 s. 10(Sch. item 11.5), 49/1994 s. 5(1)(c), 110/1997 s. 17(2), repealed by No. 99/2005 s. 26.

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

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

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

(a) a registration licence; or

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

### 53 Matters to be taken into account

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

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

S. 53(1) amended by No. 32/2010 s. 77(Sch.).

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

S. 53(1)(ab) inserted by No. 5/2002 s. 23(1)(a).

(ab) any advice and comments received within the period of 30 days referred to in section 51C(1);

S. 53(1)(b) amended by No. 5/2002 s. 23(1)(b).

(b) the matters mentioned in paragraphs (b) to (m) of section 40(1);

S. 53(1)(c)(d) repealed by No. 5/2002 s. 23(1)(c).

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S. 53(1)(da) inserted by No. 62/1995 s. 8, repealed by No. 5/2002 s. 23(1)(c).

* * * * *

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

S. 53(2) inserted by No. 5/2002 s. 23(2), amended by No. 32/2010 s. 77(Sch.).

(2) In considering an application under section 51, the Minister must give effect to—

(a) any relevant Order under section 52A; and

(b) any relevant Order made by the Governor in Council under section 49A of the **Groundwater Act 1969** specifying an annual reserve volume of groundwater; and

(c) any relevant prescription made under section 62(1) of the **Groundwater Act 1969** in respect of a groundwater conservation area declared under section 61 of that Act; and

S. 53(2)(d) repealed by No. 29/2007 s. 24(2).

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(e) an approved management plan for any relevant water supply protection area.

### 54 Minister to defer application in certain circumstances

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

(1) If—

(a) a notice is published under section 27(4)(a)(i); and

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

(b) a relevant application is subsequently made under—

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

(i) section 51 in respect of an area that is the subject of the proposed declaration; or

S. 54(1)(b)(i) amended by No. 32/2010 s. 77(Sch.).

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

S. 54(1)(b)(ii) amended by No. 32/2010 s. 77(Sch.).

the Minister must defer consideration of the application until either—

(c) an Order is made under section 27(1); or

(d) a notice is published under section 27(10).

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

(2) If—

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

(a) an Order is made under section 27(1); and

(b) no management plan for the area has been approved under section 32A(6)—

the Minister must defer consideration of a relevant application—

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

S. 54(2)(c) amended by No. 32/2010 s. 77(Sch.).

S. 54(2)(d) amended by No. 32/2010 s. 77(Sch.).

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

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

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

(3) This section does not apply to—

(a) an application for a registration licence; or

(b) an application for a licence under section 51(1)(a) or (ba) on the surrender of a registration licence; or

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

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

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

(a) for the protection of the groundwater resources, is an application relating to groundwater; and

(b) for the protection of the surface water resources, is an application relating to surface water; and

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

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

### 55 Determination of application

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

S. 55(1) amended by Nos 5/2002 s. 25(1), 32/2010 s. 77(Sch.).

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

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

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

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

(2B) Subject to section 51A, the Minister must refuse an application under section 51 if, in the Minister's opinion—

S. 55(2B) inserted by No. 5/2002 s. 25(4), substituted by No. 99/2005 s. 27.

(a) the allocation or use of water under the licence will or may result in the permissible consumptive volume for the area for that year or a future year being exceeded; or

(b) the allocation under the licence is likely to have an adverse effect on maintaining the environmental water reserve in accordance with the environmental water reserve objective.

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

S. 55A inserted by No. 23/2019 s. 26.

### 55A Offence to breach licence conditions[13]

The holder of a licence under section 51(1) must not fail to comply with any condition under section 56 to which the licence is subject.

Penalty: For an individual, 120 penalty units;

For a body corporate, 600 penalty units.

### 56 Conditions of licence

S. 56(1) amended by No. 32/2010 s. 77(Sch.).

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

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

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

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

(iii) in the case of a licence issued under section 51, the maximum amounts of water which may be taken in particular periods or circumstances; or

(iv) in the case of a licence issued under section 51, payment for the amount of water used; or

(v) the protection of the environment, including the riverine and riparian environment; or

S. 56(1)(a)(va) inserted by No. 99/2005 s. 28(1).

(va) the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; or

(vi) the conservation policy of the Government; or

(vii) the efficient use of water resources; or

(viii) if appropriate, the proper management of the waterway and its surrounds or of the aquifer; or

(ix) the drainage regime within the meaning of section 12(1); or

(x) the manner in which the licensee is to compensate any person whose existing authorised use of water may be adversely and materially affected by the allocation or use of water under the licence; or

(xi) the protection or control of in-stream uses; or

(xii) in the case of a licence issued under section 51, the installation and use of measuring devices or pumps; and

(xiii) notification of change of ownership of land on which water is taken under a registration licence; and

**S. 56(1)(a)(xiii) inserted by No. 5/2002 s. 26(1), amended by No. 24/2013 s. 12(1).**

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**S. 56(1)(b) amended by No. 69/1993 s. 4, repealed by No. 24/2013 s. 12(2).**

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

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

S. 56(3) amended by Nos 5/2002 s. 26(2), 32/2010 s. 77(Sch.).

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

S. 56(3A) inserted by No. 5/2002 s. 26(3), amended by No. 24/2013 s. 12(1).

(3A) Unless sooner revoked, cancelled or surrendered, a registration licence remains in force for an unlimited period.

S. 56(4) inserted by No. 62/1995 s. 32(1), amended by No. 5/2002 s. 26(4), repealed by No. 99/2005 s. 28(2).

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S. 56(5) inserted by No. 79/1995 s. 34, amended by No. 69/2000 s. 65(3).

(5) If the Minister is satisfied that a generation company within the meaning of the **Electricity Industry Act 2000** requires a licence under this Division to take and use groundwater for purposes associated with an open cut coal mine, the licence may, despite subsection (3), be issued for a period exceeding 15 years (but not exceeding 30 years) specified in the licence, subject to any special conditions determined by the Minister.

S. 56(6) inserted by No. 35/1997 s. 29, amended by No. 69/2000 s. 65(3).

(6) If the Minister is satisfied that a generation company within the meaning of the **Electricity Industry Act 2000** requires a licence under this Division to take and use water for purposes associated with the operation of a hydro-electric power station, the licence may, despite subsection (3), be issued for a period exceeding 15 years (but not exceeding 40 years) specified in the licence, subject to any special conditions determined by the Minister.

### 57 Sale of licence by Minister

(1) Instead of issuing a licence on an application under section 51(1) the Minister may, after having considered the matters mentioned in section 53, sell a licence—

S. 57(1) amended by Nos 5/2002 s. 27(a), 32/2010 s. 77(Sch.).

(a) at auction; or

(b) by inviting tenders; or

(c) in any other manner that he or she thinks fit.

(2) If the Minister decides to sell a licence under subsection (1), he or she must cause a notice to be published in the Government Gazette and in a newspaper circulating generally in the area concerned—

(a) declaring that the licence is available for purchase by any person holding the qualifications specified in the notice; and

(b) giving details of the method by which the licence is to be sold; and

(c) specifying the conditions to which the licence will be subject and the period for which it is capable of remaining in force.

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

S. 57(3) amended by Nos 5/2002 s. 27(b), 32/2010 s. 77(Sch.).

### 58 Renewal of licence

(1) The holder of a licence issued under section 51(1) may, before the expiry of the licence, apply to the Minister for the renewal of the licence.

S. 58(1) amended by Nos 5/2002 s. 28(1), 32/2010 s. 77(Sch.).

(2) An application must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information that—

(i) is prescribed; or

(ii) is required by the Minister; and

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

(c) be accompanied by the application fee, if any, fixed by the Minister for that kind of licence.

S. 58(3) amended by Nos 5/2002 s. 28(3), 32/2010 s. 77(Sch.).

(3) In considering an application for the renewal of a licence issued under section 51(1), the Minister must have regard to the matters mentioned in section 53 and must renew the licence unless, in the opinion of the Minister, there are good reasons not to do so.

(4) If the Minister approves the application and renews a licence, he or she may amend or delete any of the conditions to which the licence is subject or add a new condition but must not make the licence subject to any condition to which it could not have been made subject under section 56(1).

S. 58(5) amended by No. 5/2002 s. 28(4), substituted by No. 99/2005 s. 48.

(5) A licence under section 51(1) may be renewed for a period not exceeding 15 years.

S. 58(6) amended by Nos 5/2002 s. 28(4), 32/2010 s. 77(Sch.).

(6) A licence issued under section 51(1) may be renewed under this section from time to time.

S. 58(7) inserted by No. 23/2019 s. 27.

(7) A person whose licence is suspended may apply for renewal of the licence during the period of suspension and before the expiry of the licence.

(8) A suspended licence that is renewed in accordance with subsection (7) remains suspended in accordance with the terms of the suspension until—

S. 58(8) inserted by No. 23/2019 s. 27.

(a) the licence is cancelled; or

(b) the suspension ends or is lifted.

(9) If the holder of a licence issued under section 51 that is suspended does not apply for renewal of the licence before the expiry of the licence, the licence expires.

S. 58(9) inserted by No. 23/2019 s. 27.

### 59 Amendment of licence issued under section 51(1), or a registration licence, on motion of Minister

S. 59 (Heading) inserted by No. 32/2010 s. 42(1), amended by No. 24/2013 s. 13(1).

(1) The Minister, of the Minister's own motion, may amend a licence issued under section 51(1), or a registration licence, to the extent necessary to ensure compliance with an approved management plan for any relevant water supply protection area.

S. 59(1) amended by Nos 5/2002 s. 29, 32/2010 s. 42(2), 24/2013 s. 13(2).

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S. 59(1A) inserted by No. 62/1995 s. 32(2), repealed by No. 29/2007 s. 24(3).

(2) The Minister must give at least 3 months' written notice of the amendment to the licensee and must specify in the notice the reasons for the amendment.

S. 59A (Heading) amended by No. 24/2013 s. 14(1).

S. 59A inserted by No. 32/2010 s. 43.

### 59A Amendment of licence issued under section 51(1), or a registration licence, on application of licence holder

S. 59A(1) amended by No. 24/2013 s. 14(2).

(1) The Minister, on the application of the holder of a licence issued under section 51(1), or a registration licence, may amend the licence.

S. 59A(2) amended by No. 24/2013 s. 14(3).

(2) The holder of a licence issued under section 51(1), or a registration licence, may apply to the Minister for an amendment of the licence under this section.

(3) An application under this section—

(a) must be in a form and made in a manner approved by the Minister; and

(b) contain any information that is required by the Minister; and

(c) be accompanied by the fee fixed by the Minister for that class of application (if any).

S. 59B inserted by No. 32/2010 s. 43, amended by No. 24/2013 s. 15.

### 59B Procedure applying to application

The procedure that applies under this Division to an application for the issue of a licence under section 51(1) or for a registration licence applies, with any necessary modifications and subject to section 59C, to an application under section 59A for the amendment of such a licence.

S. 59C inserted by No. 32/2010 s. 43, amended by No. 24/2013 s. 16.

### 59C Ministerial consideration of application

In considering an application under section 59A that relates to a licence issued under section 51(1), the Minister—

(a) must have regard to any matter referred to in section 53(1)(a) to 53(1)(b); and

(b) must give effect to the matters referred to in section 53(2); and

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

### 60 Suspension and cancellation of licence

S. 60 amended by Nos 5/2002 s. 30, 32/2010 s. 77(Sch.), 24/2013 s. 17, substituted by No. 23/2019 s. 28.

(1) The Minister may suspend or cancel a licence issued under section 51(1) or a registration licence if—

(a) the Minister reasonably believes that—

(i) there has been a failure to comply with this Act or regulations made under this Act; or

(ii) there has been a failure to comply with any conditions to which the licence is subject; or

(iii) the holder of the licence has not paid an applicable fee or charge payable in respect of the licence; or

(iv) in the case of a licence relating to works, the works are being operated contrary to the provisions of this Act; or

(b) any prescribed circumstances apply.

(2) The Minister must give the licence holder written notice of a decision under subsection (1).

(3) If the Minister decides to suspend the licence, the notice under subsection (2) must specify—

(a) the period of suspension, which may extend beyond the period of the current licence to any period of renewal; and

(b) any actions the licence holder must take before the end of the period of suspension in order for the suspension to be lifted.

(4) A suspension under this section remains in force until the earlier of the following—

(a) the end of the period specified in subsection (3)(a), if no actions have been specified under subsection (3)(b);

(b) if the Minister is satisfied that the licence holder has taken the actions specified under subsection (3)(b), the date specified by the Minister by notice in writing to the licence holder as the date on which the suspension is no longer in force (which may not be later than 2 days after the date of the notice).

S. 60(A) inserted by No. 23/2019 s. 28.

### 60A Process for suspension or cancellation of licence

(1) Before suspending or cancelling a licence under section 60(1), the Minister must—

(a) notify the holder of the licence in writing as to—

(i) the grounds specified in section 60(1) on which the Minister proposes to suspend or cancel the licence; and

(ii) the rights the holder of the licence has under this section to make submissions on the proposal; and

(iii) if the Minister proposes to suspend the licence, any actions the holder of the licence would need to take in order for the proposed suspension to be lifted; and

(b) allow the holder of the licence an opportunity to make written submissions on the proposal to suspend or cancel the licence within the period specified in the notice under paragraph (a), which must not be less than 35 days after the Minister gives the notice.

(2) The Minister—

(a) must have regard to any submissions made under subsection (1)(b) when making a decision under section 60(1); and

(b) must not make a decision under section 60(1) until the period specified in subsection (1)(b) has elapsed.

### 61 Surrender of licence

(1) A licensee may surrender to the Minister a licence issued under section 51(1) or a registration licence.

S. 61(1) amended by Nos 32/2010 s. 77(Sch.), 24/2013 s. 18.

(2) The Minister may refund to the licensee all or part of any charge paid by the licensee in respect of a licence surrendered under subsection (1).

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

S. 61A inserted by No. 85/2006 s. 35.

(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.

### 62 Transfer of licence

S. 62(1) amended by Nos 5/2002 s. 31(1), 32/2010 s. 77(Sch.), substituted by No. 23/2019 s. 29.

(1) A licence issued under section 51(1) may be transferred—

(a) subject to any conditions set out in the licence or imposed under section 56 relating to the transfer of the licence, including any condition prohibiting the transfer of the licence to another property; and

(b) in accordance with this section.

S. 62(1A) inserted by No. 23/2019 s. 29.

(1A) If a licence that is suspended under section 60(1) is transferred, the licence remains suspended until the suspension ends or is lifted.

S. 62(1B) inserted by No. 23/2019 s. 29.

(1B) The Minister may lift all or part of a period of a suspension for a licence that is transferred under subsection (1) if the actions specified in the notice of suspension—

(a) are not able to be completed after the transfer; or

(b) are no longer relevant to the transferred licence.

(2) A transfer may be either permanent or temporary.

S. 62(2AA) inserted by No. 5/2002 s. 31(2), amended by No. 24/2013 s. 19(1).

(2AA) On the transfer or conveyance of land on which water is taken under a registration licence, the registration licence is deemed to be transferred to the successor in title to the owner of that land.

S. 62(2A) inserted by No. 62/1995 s. 23(1), amended by No. 110/1997 s. 15(1).

(2A) If the Minister approves, a permanent or temporary transfer of a licence under section 51 may be made to the owner or occupier of land outside Victoria.

(3) A licensee may apply to the Minister for approval of the transfer of the licence.

(3A) Without limiting subsection (5), the Minister may approve a transfer referred to in subsection (2A), having regard to the effect of the transfer on usage of water, the impact of subsidies and any other matter that the Minister considers relevant.

S. 62(3A) inserted by No. 62/1995 s. 23(2).

(4) An application must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information that—

(i) is prescribed; or

(ii) is required by the Minister; and

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

S. 62(4)(c) amended by No. 110/1997 s. 17(4).

(5) In considering an application, the Minister must have regard to the matters mentioned in section 53.

S. 62(5) amended by No. 99/2005 s. 29(1).

(5A) Subsection (5) does not apply if the application is for approval of a permanent transfer of a licence to a successor in title to the owner of the land to which the licence relates.

S. 62(5A) inserted by No. 24/2013 s. 19(2).

(6) If an application is made—

(a) the Minister, if he or she is of the opinion that the transfer is likely to have an adverse effect on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective must refuse to approve the transfer; or

S. 62(6) amended by No. 62/1995 s. 23(3), substituted by No. 99/2006 s. 29(2).

(b) in any other case, the Minister may—

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

S. 62(6)(b)(ii) amended by No. 32/2010 s. 77(Sch.).

(ii) approve the transfer of the licence and may, in addition, amend or delete any of the conditions to which the licence is subject or add a new condition, but must not make the licence subject to any condition to which it could not have been made subject under section 56(1).

(7) A licence may be transferred under this section even if the water is to be used in an irrigation district.

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

(8) For the purposes of transfers under this section, the holder of a licence under section 51 has power to sell the licence—

(a) at auction; or

(b) by inviting tenders; or

(c) in any other manner that the holder thinks fit.

S. 62(9) inserted by No. 62/1995 s. 23(4), repealed by No. 99/2005 s. 49.

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S. 62A inserted by No. 32/2010 s. 44.

### 62A Declaration for taking of water under a licence in subsequent water season

S. 62A(1) amended by No. 24/2013 s. 20.

(1) The Minister may make a declaration in respect of licences issued under section 51(1), or registration licences, to take water in a water system, authorising that holders of the licences may take water that is entitled to be taken under

the licences in any particular water season in a subsequent water season.

(2) A declaration under subsection (1) may apply to—

(a) licences in a water system or part of a water system; or

(b) a class or classes of licences in a water system or part of a water system.

(3) Any taking of water under a declaration of the Minister under subsection (1) is subject to—

(a) any terms and conditions of the licence to which the water allocation applies; and

(b) any terms and conditions specified by the Minister in the declaration.

(4) The Minister must cause notice of the making of a declaration under subsection (1) to be—

(a) published in the Government Gazette; and

(b) in a newspaper circulating generally in the area to which the declaration applies.

(5) A declaration under subsection (1) has effect on the publication of notice of the making of the declaration in the Government Gazette.

**63 Offences for taking or using water from a non-declared water system[14]**

**S. 63 amended by Nos 5/2002 s. 32 (as amended by No. 6/2002 s. 4(2)), 90/2003 s. 4, 99/2005 s. 50, substituted by No. 23/2019 s. 30.**

(1) A person must not knowingly take or use water from a relevant water source in a non-declared water system without being authorised to do so by or under this or any other Act, being a taking or using that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 10 years imprisonment or 1200 penalty units or both;

For a body corporate, 6000 penalty units.

(2) A person must not recklessly take or use water from a relevant water source in a non-declared water system without being authorised to do so by or under this or any other Act, being a taking or using that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 5 years imprisonment or 600 penalty units or both;

For a body corporate, 3000 penalty units.

(3) A person must not take or use water from a relevant water source in a non-declared water system without being authorised to do so by or under this or any other Act.

Penalty: For an individual, 240 penalty units;

For a body corporate, 1200 penalty units.

(4) A person does not commit an offence under subsection (1), (2) or (3) if the person takes or uses water—

(a) from a spring or soak for domestic and stock use; or

(b) from a dam, that is water taken or used other than for domestic and stock use, being water in the dam—

(i) that has been taken from another relevant water source under an authorisation to do so under this or any other Act; or

(ii) that has been collected from a roof; or

(c) from a dam, that is water taken or used for domestic and stock use, other than water in the dam that has been taken from an aquifer or a waterway (within the meaning of the definition of ***relevant water source***) without an authorisation to do so under this or any other Act.

(5) In this section—

***relevant water source*** means any of the following—

(a) a waterway including—

(i) the River Murray; and

(ii) any collection of water which is from time to time replenished in whole or in part by water coming by a natural sub-surface path from a waterway;

(b) an aquifer;

(c) a spring or soak;

(d) a dam.

### 63A Evidentiary provisions for offences under section 63

**S. 63A inserted by No. 23/2019 s. 30.**

(1) In any proceeding for an offence under section 63(1), (2) or (3) against a person, evidence that water has been taken to land, diverted to land or used on land that is specified in a relevant

authorisation held by that person as land on which that water may be used, is evidence that the person took or used the water and, in the absence of evidence to the contrary, is proof of that fact.

(2) In any proceeding for an offence under section 63(1), (2) or (3) against a person, in a case where subsection (1) does not apply, evidence that water has been taken to land, diverted to land or used on land occupied by the person is evidence that the person took or used that water and, in the absence of evidence to the contrary, is proof of that fact.

(3) To avoid doubt, subsection (2) applies to a person who is the occupier of land who is also the owner of the land.

(4) In a proceeding for an offence under section 63(1), (2) or (3), if a person has been found guilty of an offence under section 288(1), (2) or (3) in relation to a meter of an Authority that measures the amount of water that is taken to, diverted to or used on land, the finding of guilt is evidence that—

(a) the person took water and, in the absence of evidence to the contrary, is proof of that fact; and

(b) the person was not authorised to take the water and, in the absence of evidence to the contrary, is proof of that fact.

(5) In this section—

***relevant authorisation*** means any of the following—

(a) a bulk entitlement;

(b) a licence issued under section 51;

(c) a licence issued under section 67.

### 63B Power to issue infringement notice in relation to offence under section 63(3)

S. 63B inserted by No. 23/2019 s. 30.

(1) An authorised water officer may serve an infringement notice on a person whom the officer has reason to believe has contravened section 63(3) if the person—

(a) was not authorised to take or use water under an authorisation under this or any other Act; and

(b) took or used an amount of water equal to, or less than, 10 megalitres.

(2) An authorised water officer may serve an infringement notice on a person whom the officer has reason to believe has contravened section 63(3) if the person—

(a) was authorised to take or use a specified amount of water under an authorisation under this or any other Act (the ***authorised amount***); and

(b) took or used an amount of water in addition to the authorised amount and the amount of that additional water—

(i) was an amount equal to, or less than, 20% of the authorised amount; and

(ii) was an amount equal to, or less than, 10 megalitres.

### 64 Review of decisions

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

(1) A person whose interests are affected by the decision may apply to the Tribunal for review of a decision by the Minister—

(a) under section 55(1) to refuse an application under section 51; or

S. 64(1)(a) amended by No. 32/2010 s. 77(Sch.).

S. 64(1)(b) amended by No. 32/2010 s. 77(Sch.).

(b) under section 55(1) to approve an application under section 51; or

(c) under section 56(1) to make a licence subject to any condition; or

(d) under section 58 to refuse an application for the renewal of a licence; or

(e) under section 58 to approve an application for the renewal of a licence; or

(f) under section 58 to impose any condition on a licence or to amend or delete any of the conditions to which a licence is subject; or

S. 64(1)(g) amended by No. 62/1995 s. 32(3).

(g) under section 59(1) or (1A) to amend a licence; or

S. 64(1)(ga) inserted by No. 32/2010 s. 45.

(ga) under section 59A(1) or (2) to amend a licence; or

S. 64(1)(h) amended by No. 23/2019 s. 31.

(h) under section 60(1) to cancel or suspend a licence; or

(i) under section 62(6)(a) to refuse to approve the transfer of a licence; or

(j) under section 62(6)(b) to approve the transfer of a licence; or

(k) under section 62(6)(b) to impose any condition on a licence or to amend or delete any of the conditions to which a licence is subject.

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

(2) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

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

### 64AAA Rule making powers for licences under section 51

S. 64AAA inserted by No. 99/2005 s. 51.

(1) The Minister may, by Order, published in the Government Gazette, set out rules—

(a) with respect to adjustment of volumes to be applied to transfers of licences issued under section 51; and

(b) as to the circumstances in which the consent of any Authority under this Act will be required to transfers of licences under section 51; and

(c) as to any matters relating to applications under section 62; and

(d) as to the circumstances in which the Minister will give or refuse to give approvals under section 62; and

(e) as to any other matters the Minister is authorised to make rules for under this Division.

(2) An Order under this section may be amended or revoked in the same manner as that in which it is made.

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Pt 4 Div. 3 (Heading and ss 64A–64E) inserted by No. 62/1995 s. 5, amended by Nos 52/1998 s. 311(Sch. 1 item 105.13), 5/2002 s. 33, repealed by No. 85/2006 s. 36.

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

## Division 4—Periodic amendment of entitlements

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

### 64F Records and reports of transfers

(1) An Authority which is a party to or approves or has notice of—

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

(a) a transfer, whether permanent or temporary, under section 46A or 62; or

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

(b) a temporary transfer under section 224 or 224A; or

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

(c) a permanent transfer under section 47D, 226 or 226AA; or

(d) a conversion to a bulk entitlement under section 47C—

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

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

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S. 64G inserted by No. 62/1995 s. 29, amended by Nos 86/1995 s. 12(2), 110/1997 s. 15(3)(a)(b), repealed by No. 32/2010 s. 46.

## Division 5—Seasonal determinations

Pt 4 Div. 5 (Heading and ss 64GA, 64GB) inserted by No. 99/2005 s. 52.

### 64GA Appointment of Authorities to be responsible for seasonal determinations

S. 64GA inserted by No. 99/2005 s. 52.

The Minister may appoint an Authority to be responsible for making determinations in respect of a declared water system under section 64GB.

### 64GB Seasonal determinations by Authorities

S. 64GB inserted by No. 99/2005 s. 52.

(1) If the Minister has appointed an Authority under section 64GA, the Authority must, for each water season for each declared water system for which the Authority has been so appointed, determine, the water that is available in the water system for that season—

(a) for each class of water shares issued in that system; and

(b) for each bulk entitlement in the system in respect of which the water available to be taken, in any water season, under the entitlement is not able to be established from the terms of the entitlement; and

S. 64GB(1)(b) substituted by No. 32/2010 s. 47.

(c) for each environmental entitlement in the system in respect of which the water available to be taken, in any water season,

S. 64GB(1)(c) substituted by No. 32/2010 s. 47.

under the entitlement is not able to be established from the terms of the entitlement.

(2) A determination under subsection (1) must be made before the commencement of the water season to which it relates.

(3) An Authority that has made a determination under subsection (1) may, from time to time during the season, if the Authority is of the opinion that there is additional water available in the system, determine that additional water is available in the water system—

(a) for each class of water shares issued in the system; and

(b) for each bulk entitlement in the system; and

(c) for each environmental entitlement in the system.

(4) An Authority must not make a determination under this section until the Authority has assessed the amount of water available in the system to be taken and the amount reserved for the environment—

(a) in any case where a bulk entitlement applies to the system, by applying the rules specified for the purposes of any such determination in any Order granting the bulk entitlement; or

(b) in the case where a bulk entitlement does not apply to the system, by applying the rules specified for the purposes of any such determination in the management plan, approved under section 32A, applying to the system.

(5) In making a determination under this section, the Authority may have regard to the state of the system in the part of the season to which the

determination relates and the expected state of the system.

(6) A determination under this section must apply—

(a) to each water share in a class of water shares in the same proportion; and

(b) to each bulk entitlement in the same proportion; and

(c) to each environmental entitlement in the same proportion—

subject to—

(d) any rules specified for the purposes of any such determination in any Order granting any bulk entitlement in the system; or

(e) any requirement, restriction or condition contained in a management plan under section 32A in relation to the allocation of water; or

(f) any condition that applies to the allocation of water under this section determined by the Minister.

(7) An Authority that has made a determination under this section must cause a notice of the determination to be published in a newspaper generally circulating in the area that is the subject of the determination or the area served by the water system that is the subject of the determination.

**S. 64GB(8) amended by No. 28/2007 s. 3(Sch. item 75.3).**

(8) In the case of a determination under this section as to the amount of water available for water shares in a water system, the determination may be expressed as a percentage of the maximum volume of water that has been determined for each water share.

# Part 4A—Delivery of interstate water

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

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

## 64H Temporary supply of interstate water

(1) The holder of a licence under section 51 or the owner or occupier of a holding within an irrigation district may, in accordance with this section and the by-laws made under section 64I, apply to an Authority for approval to use the works of the Authority for the temporary supply of water to the applicant by an owner or occupier of land outside Victoria.

(2) An application under subsection (1) must be accompanied by the prescribed fee, if any.

S. 64H(3) substituted by No. 99/2005 s. 30.

(3) If an application under subsection (1) is made—

(a) the Authority, if the Authority is of the opinion that approval of the use of the works is likely to have an adverse effect on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective, must refuse to approve the use of the works; or

(b) in any other case, the Authority may—

(i) refuse to approve the use of its works for any temporary supply; or

(ii) approve the use of its works for any temporary supply, subject to the prescribed terms and conditions and may, in addition, impose any other terms and conditions on the approval of which notice is given to the parties by the Authority when the approval is given.

(4) An approval given under this section expires—

(a) if the application is approved during an irrigation period, on the expiry of that irrigation period;

(b) if the application is approved between irrigation periods, on the expiry of the next irrigation period after the application is approved.

(5) This section does not apply in a declared water system.

S. 64H(5) inserted by No. 99/2005 s. 53.

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

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

(1) An Authority may, in accordance with section 160, make by-laws for or with respect to the use of the Authority's works for the temporary supply of water under section 64H.

S. 64I(1) amended by No. 85/2006 s. 37.

(2) Without limiting subsection (1), by-laws may—

(a) prescribe procedures for applications for approval; and

(b) fix any fees payable to the Authority for processing and approving an application; and

(c) fix any fees payable to the Authority for the use of the Authority's works for the temporary supply of water; and

(d) set limits on the use of works for the temporary supply of water under section 64H; and

(e) prescribe any other terms and conditions in relation to an approval under section 64H.

Pt 4B (Heading and ss 64J–64AZ) inserted by No. 99/2005 s. 54.

# Part 4B—Water-use licences and water use registrations

## Division 1—Offences

S. 64J inserted by No. 99/2005 s. 54.

### 64J Offence to use water for certain purposes on land without licence

S. 64J(1) amended by No. 85/2006 s. 38(1).

(1) A person must not use water for irrigation on land, or knowingly cause or permit water to be used for irrigation on land, being water that is from a declared water system, unless the person does so under a water-use licence that authorises the use of water for that purpose on that land.

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

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

S. 64J(2) amended by No. 85/2006 s. 38(2).

(2) A person must not use water on land or knowingly cause or permit water to be used on land for purposes other than the purpose of irrigation, being water that is from a declared water system, unless the person does so under a water-use registration that authorises the use of water for purposes other than irrigation on that land.

Penalty: For a first offence, 20 penalty units;

For a subsequent offence, 60 penalty units.

(3) This section does not apply to a person who is using water on land under any other authorisation to do so by or under this or any other Act.

### 64K Further offence for use of water in certain cases

S. 64K inserted by No. 99/2005 s. 54.

(1) A person must not use water that is authorised to be taken under Part 3A on land specified in a water-use licence or water-use registration unless—

S. 64K(1) amended by No. 85/2006 s. 39(1), substituted by No. 50/2010 s. 23(1).

(a) the water is being taken under a water share that is associated with the land specified in the water-use licence or water-use registration; or

(b) the Minister has approved the use of the water on that land.

Penalty: 60 penalty units.

(1A) A person must not use water that is authorised to be taken under the assignment of an allocation under section 46, 46A, 48L or 48M on land specified in a water-use licence or water-use registration unless the Minister has approved the use of the water on that land.

S. 64K(1A) inserted by No. 50/2010 s. 23(1).

Penalty: 60 penalty units.

(1B) Subsection (1A) does not apply to any use of water by the Water Holder under an assignment of an allocation under section 46, 46A, 48L or 48M.

S. 64K(1B) inserted by No. 50/2010 s. 23(1).

(2) For the purposes of subsection (1) and subsection (1A), a person may apply to the Minister for approval to the use of water on land.

S. 64K(2) amended by No. 50/2010 s. 23(2).

(3) An application under subsection (2) must—

(a) be made in the form and manner approved by the Minister; and

(b) contain the prescribed particulars; and

S. 64K(3)(c) amended by No. 85/2006 s. 39(2).

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

(d) be accompanied by the prescribed fee.

S. 64K(4) amended by No. 50/2010 s. 23(2).

(4) For the purposes of subsection (1) and subsection (1A), the Minister may give approval, subject to any conditions that the Minister thinks fit.

S. 64K(5) amended by No. 50/2010 s. 23(3).

(5) In giving an approval under subsection (1) or subsection (1A), the Minister must have regard to any relevant rules made under Division 11.

## Division 2—Grant of water-use licences

S. 64L inserted by No. 99/2005 s. 54.

### 64L Power to grant water-use licences

(1) The Minister, on receiving an application under this Division from an owner of land, may grant to that person a licence that authorises—

(a) the use of water (authorised to be taken under Part 3A) for the purposes of irrigation on the land that is owned by that person and that is specified in the licence; and

(b) the use of water (authorised to be taken under Part 3A) on the land specified in the licence for any other purposes that are specified in the licence.

(2) The Minister must set out in the licence—

(a) the name and address of the licence holder; and

(b) a description of the land specified in the licence; and

(c) the conditions to which the licence is subject (including the annual use limit); and

(d) the date on which the licence takes effect.

### 64M Matters to be considered in granting water-use licences

S. 64M inserted by No. 99/2005 s. 54.

The Minister, in granting a water-use licence, must consider the following matters—

(a) the impact the proposed use of water may have on other persons or the environment (in particular waterlogging, salinity and nutrient impacts); and

(b) whether or not the proposed use can meet standard water-use conditions that would apply to the licence, if granted; and

(c) whether or not the proposed use is consistent with the water use objectives that would apply to the licence, if granted; and

(d) if the application has been referred to the Catchment Management Authority, any comments received from that Authority, within 30 days of the application being referred to that Authority; and

(e) any other matters the Minister considers relevant.

### 64N Obligation not to grant licence in certain circumstances

S. 64N inserted by No. 99/2005 s. 54.

The Minister must not grant a water-use licence if, after considering the matters set out in section 64M—

* * * * *

S. 64N(a) repealed by No. 85/2006 s. 40.

(b) the Minister is of the opinion that the granting of the licence would be inconsistent with the water-use objectives that would apply to the licence, if granted; or

(c) the Minister is of the opinion that there are no works or systems in place or likely to be installed in the near future for delivering water to the land that is to be the land specified in the licence.

S. 64O inserted by No. 99/2005 s. 54.

### 64O Applications for water-use licences

An owner of land may apply for a water-use licence to authorise the use of water on that land.

S. 64P inserted by No. 99/2005 s. 54.

### 64P Form of application

An application for a water-use licence must—

(a) be in the form and made in the manner approved by the Minister; and

(b) contain the prescribed particulars; and

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

S. 64P(d) amended by No. 85/2006 s. 41.

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

S. 64Q inserted by No. 99/2005 s. 54.

### 64Q Referral of application

On receiving an application for a water-use licence, if the Minister is of the opinion that the application does not meet the relevant standard water-use conditions, but may meet the relevant water-use objectives, the Minister must refer the application to the Catchment Management Authority responsible for managing the catchment in which the land that is to be specified in the licence is situated, without delay.

### 64R Licence fees

S. 64R inserted by No. 99/2005 s. 54.

(1) The Minister may fix fees to be paid by licence holders for the provision of services by the Minister to the licence holders.

(2) A fee under subsection (1) may apply at consecutive periods of twelve months while any water-use licences are in force.

### 64S Change of ownership of specified land

S. 64S inserted by No. 99/2005 s. 54.

(1) In the case of a transfer of ownership of the whole of the land specified in a water-use licence, the person to whom ownership is transferred is deemed to be the holder of the licence.

(2) In the case of a transfer of ownership of part only of the land specified in a water-use licence, the licence is to be taken to be cancelled on the day on which transfer of the ownership of the land takes place.

## Division 3—Water-use objectives for licences

### 64T Objectives as to water use

S. 64T inserted by No. 99/2005 s. 54.

(1) The Minister may determine, for the whole or any part of the State, objectives that are to apply in the administration of this Part.

(2) The Minister may make a determination under subsection (1), either—

(a) of his or her own motion; or

(b) on the recommendation of the Catchment Management Authority for the catchment and land protection region in which the area to which the determination relates is situated.

(3) The Minister must not make a determination of his or her own motion under this section until the Minister has consulted with—

(a) any Catchment Management Authorities and water Authorities that have responsibilities in the part of the State to which the determination relates; and

(b) any bodies, that the Minister thinks fit to consult with, that represent persons whose interests are likely to be affected by the making of the determination.

S. 64U inserted by No. 99/2005 s. 54.

### 64U Matters that objectives may provide for

Objectives determined under this Division may provide for minimising impacts of water use on other persons and the environment in the part of the State to which the objectives apply, including the following—

(a) minimising salinity;

(b) managing groundwater infiltration;

(c) managing disposal of drainage;

(d) protecting biodiversity;

(e) minimising cumulative effects of water use.

S. 64V inserted by No. 99/2005 s. 54.

### 64V Recommendations by Catchment Management Authorities

(1) In making a recommendation under section 64T(2)(b), the Minister may request a Catchment Management Authority to give consideration to matters specified by the Minister when making its recommendation under that subsection.

(2) Before making a recommendation under section 64T the Authority must—

(a) give notice of the proposal to make the objectives to any other Authority or any holders of water-use licences whose interests the Authority considers are likely to be affected by the objectives;

(b) consult with those persons or bodies that the Authority considers represent the interests of persons who are likely to be affected by the recommendation and then prepare draft objectives and make the draft objectives available for inspection by the public for at least 2 months after their preparation;

(c) publish a notice in a newspaper circulating generally in the State and in a local newspaper circulating generally in the part of the State to which the proposal applies stating where and when the draft objectives can be inspected and inviting public comment by a set date;

(d) comply with any other consultative processes required by directions given by the Minister;

(e) consider any comments made by the set date.

(3) In making a recommendation under section 64T the Authority must have regard to any comments made under subsection (2).

### 64W Revoking or amending determinations as to objectives

**S. 64W inserted by No. 99/2005 s. 54.**

(1) The Minister may make a determination amending or revoking a determination made under section 64T, either—

(a) of his or her own motion; or

(b) on the recommendation of the Catchment Management Authority.

(2) In making a recommendation under subsection (1)(b) as to an amending determination, the Catchment Management Authority may recommend all or any of the water use objectives that are to be included in the amending determination.

(3) Sections 64T(3) and 64V apply to the making of a determination or recommendation under this section in the same manner as they apply to the making of a determination or recommendation under section 64T.

S. 64X inserted by No. 99/2005 s. 54.

### 64X Notification and effect of determinations as to objectives

A determination under this Division—

(a) must specify the day on which it comes into force; and

S. 64X(b) amended by No. 32/2010 s. 48.

(b) must be published in a newspaper circulating generally in the part of the State to which the objectives apply.

## Division 4—Standard water-use conditions for licences

S. 64Y inserted by No. 99/2005 s. 54.

### 64Y Standard water-use conditions

(1) The Minister may determine for the whole or any part of the State, conditions that are to apply to all water-use licences, or to all water-use licences of a particular class, that specify land that is in the area to which the determination relates.

(2) The Minister may make a determination under subsection (1), either—

(a) of his or her own motion; or

(b) on the recommendation of the Catchment Management Authority for the catchment and land protection region in which the area to which the determination relates is situated.

(3) The Minister must not make a determination of his or her own motion under this section until the Minister has consulted with—

(a) any Catchment Management Authorities and water Authorities that have responsibilities in the area to which the determination relates; and

(b) any bodies, that the Minister thinks fit to consult with, that represent persons whose interests are likely to be affected by the making of the determination.

### 64Z General provisions applying to standard water-use conditions

S. 64Z inserted by No. 99/2005 s. 54.

(1) Conditions determined by the Minister under this Division may vary according to the nature of all or any of the following—

(a) the use of water under licences;

(b) the water that is to be used under licences;

(c) the way water is applied under licences;

(d) any other relevant matter.

(2) Conditions determined by the Minister under this Division must be consistent with water-use objectives that apply to the part of the State to which the conditions apply.

(3) Conditions determined by the Minister under this Division may include conditions as to all or any of the following matters—

(a) maximum volumes of water per hectare that may be applied to land specified in licences over any 12 month period;

(b) requirements to minimize impacts of the use of water on other persons or on the environment;

(c) the way that water is used and re-used on land specified in licences;

(d) drainage from land specified in licences;

(e) monitoring and reporting requirements of licence holders;

(f) any other matter that the Minister thinks fit.

S. 64AA inserted by No. 99/2005 s. 54.

### 64AA Recommendations by Catchment Management Authorities

(1) In making a recommendation under section 64Y(2)(b), the Minister may request a Catchment Management Authority to give consideration to matters specified by the Minister when making its recommendation under that subsection.

(2) Before making a recommendation under section 64Y(2)(b) the Authority must—

(a) give notice of the proposal to make the conditions to any other Authority or any holders of water-use licences whose interests the Authority considers are likely to be affected by the conditions;

(b) make the draft conditions available for inspection by the public for at least 2 months after their preparation;

(c) publish a notice in a newspaper circulating generally in the State and in a local newspaper circulating generally in the region which will be affected by the proposal to make the conditions stating where and when the draft conditions can be inspected and inviting public comment by a set date;

(d) consult with those persons or bodies that the Authority considers represent the interests of persons who are likely to be affected by the recommendation and comply with any other consultative processes required by directions given by the Minister;

(e) consider any comments made by the set date.

(3) In making a recommendation under section 64Y(2)(b) the Authority must have regard to any comments made under subsection (2).

### 64AB Revoking or amending determinations as to standard water-use conditions

S. 64AB inserted by No. 99/2005 s. 54.

(1) The Minister may make a determination amending or revoking a determination made under section 64Y, either—

(a) of his or her own motion; or

(b) on the recommendation of the Catchment Management Authority.

(2) In making a recommendation under subsection (1)(b) as to an amending determination, the Catchment Management Authority may recommend all or any of the water-use conditions that are to be included in the amending determination.

(3) Sections 64Y(3) and 64AA apply to the making of a determination or recommendation under this section in the same manner as they apply to the making of a determination or recommendation under section 64Y.

### 64AC Notification and effect of determinations as to standard water-use conditions

S. 64AC inserted by No. 99/2005 s. 54.

(1) A determination under this Division—

(a) must specify the day on which it comes into force; and

(b) must be published in a newspaper circulating generally in the region to which the determination relates.

S. 64AC(1)(b) amended by No. 32/2010 s. 49.

(2) The conditions determined under this Division apply to any water-use licence that specifies land that is in the area to which the determination applies.

(3) On the making of a determination under this Division, the Minister must notify all the holders of water-use licences to which the determination applies of the making of the determination and of the conditions set out in the determination.

(4) A failure to comply with subsection (3) does not affect the validity of a determination made under this Division.

## Division 5—Particular conditions on licences

S. 64AD inserted by No. 99/2005 s. 54.

### 64AD Particular conditions on water-use licences

The Minister may impose any particular conditions on a water-use licence that the Minister thinks fit as to the following matters—

(a) the meeting of water-use objectives that apply in the area in which the land that is specified in the licence is situated; and

(b) specifying the annual use limit on the licence.

## Division 6—Further provisions as to conditions on licences

S. 64AE inserted by No. 99/2005 s. 54.

### 64AE Effect of inconsistency between standard water-use conditions and other conditions on licences

(1) If a water-use licence is subject to a standard water-use condition at the time a particular condition is imposed on the licence, being a standard water-use condition that is inconsistent with the particular condition, the standard water-use condition is void (on and from the imposition of the particular condition) to the extent of that inconsistency.

(2) If a water-use licence becomes subject to a standard water-use condition after a particular condition has been imposed on a water-use

licence, being a standard water-use condition that is inconsistent with the particular condition, the particular condition is void (on and from the commencement of the application of the standard water-use condition to the licence) to the extent of that inconsistency.

(3) In this section ***particular condition*** means a condition that is imposed under Division 5 on a water-use licence.

### 64AF Offence to fail to comply with licence condition

S. 64AF inserted by No. 99/2005 s. 54.

The holder of a water-use licence must comply with the conditions imposed on the licence in accordance with Division 4 or Division 5 to the extent that the conditions are not void under section 64AE.

Penalty: 60 penalty units.

## Division 7—Variations of licences

### 64AG Variation of water-use licences on motion of Minister

S. 64AG inserted by No. 99/2005 s. 54.

(1) The Minister, on the Minister's own motion, may vary a water-use licence by imposing a new condition on the licence or by amending an existing condition on the licence.

(2) The Minister must not vary a condition on a licence or impose a new condition on a licence under subsection (1) unless the Minister is satisfied that the variation or new condition (as the case requires) is consistent with the water-use objectives that apply to the licence.

(3) Before making a variation under this section, the Minister must—

(a) notify the holder of the licence as to—

(i) the nature of the proposal to vary the licence; and

(ii) the rights the holder of the licence has under this section to make submissions on the proposal; and

(b) allow the holder an opportunity to make written submissions on the proposal to vary the licence.

(4) Submissions under subsection (3) must be made within 2 months of the giving of the notice.

(5) In deciding whether or not to make a variation under this section, the Minister must—

(a) have regard to submissions made under subsection (3) within the period for the making of submissions; and

(b) notify the holder of the licence of the Minister's decision.

(6) A variation under this section has effect from the later of—

(a) the date that the notice under subsection (5) is served; or

(b) the date that is specified by the Minister in that notice.

S. 64AH inserted by No. 99/2005 s. 54.

### 64AH Variation of water-use licence on application of licence holder

(1) The Minister may, on the application of the holder of a water-use licence, vary or revoke a condition on the licence.

(2) The holder of a licence may apply to the Minister for a variation of a licence under subsection (1).

(3) Where there is a joint application under this section for the variation of two water-use licences by the holders of the licences, being an application where—

(a) the holder of one licence is applying to reduce the annual use limit for the licence held by that person; and

(b) the holder of the other licence is applying to increase the annual use limit for the licence held by that person; and

(c) the application is made under an agreement between both parties—

the Minister must approve the applications if the Minister is satisfied that the salinity impacts of the proposed reduction and increase will not have an adverse impact on other persons or the environment.

### 64AI Form of applications for variation

S. 64AI inserted by No. 99/2005 s. 54.

(1) An application under this Division must—

(a) be in a form approved by the Minister; and

(b) contain any prescribed particulars; and

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

S. 64AI(1)(c) substituted by No. 85/2006 s. 42.

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

S. 64AI(1)(d) substituted by No. 85/2006 s. 42.

(2) The powers of the Minister in relation to applications for licences apply in respect of an application for variation of a licence under this Division as if it were an application for a water-use licence.

(3) The Minister must notify an applicant under this section of his or her decision on the application.

## Division 8—Suspension, revocation, cancellation and other powers for licences

S. 64AJ inserted by No. 99/2005 s. 54.

### 64AJ Suspension of water-use licence

(1) The Minister may suspend a water-use licence if the Minister reasonably believes that—

(a) there has been a failure to comply with a condition to which the licence is subject; or

(b) there has been a failure to comply with a notice of contravention under section 151 that relates to the licence; or

(c) the holder of the licence has not paid a fee payable in respect of the licence or any charge payable under section 287A.

(2) Before suspending a licence under this section, the Minister must—

(a) notify the holder of the licence as to—

(i) the reason for proposing to suspend the licence; and

(ii) the rights the holder of the licence has under this section to make submissions on the proposal; and

(iii) the terms on which the suspension will be lifted; and

(b) allow the holder an opportunity to make written submissions on the proposal to suspend the licence; and

(c) notify any person who has a registered mortgage (under the **Transfer of Land Act 1958**) over the land specified in the licence of the proposed suspension of the licence.

(3) Submissions under subsection (2)(b) must be made within 2 months of the giving of the notice.

(4) In deciding whether or not to suspend a licence under this section, the Minister must have regard to submissions made under subsection (2)(b) within the period for the making of submissions.

(5) The Minister must not suspend the licence on the ground of the failure to pay—

(a) a fee payable in respect of the licence; or

(b) a charge payable under section 287A—

if the fee has been paid within the period allowed under subsection (3) for the making of submissions.

(6) On making a decision as to whether or not to suspend a licence under this section, the Minister must notify the holder of the licence of that decision.

(7) A suspension under this section remains in force until the Minister, in writing, notifies the holder of the licence that it is no longer in force.

### 64AK Revocation of water-use licence

**S. 64AK inserted by No. 99/2005 s. 54.**

(1) The Minister may revoke a water-use licence if the Minister reasonably believes that—

(a) in the case of the holder of a water-use licence who has been found guilty of a failure to comply with a condition of the licence, that person has continued after that finding of guilt to fail to comply with that condition; or

(b) in the case of a licence that is or has been suspended, water has been used during the suspension on the land specified in the licence for a purpose for which a water-use licence would be required; or

(c) in the case of a licence that has been suspended, the holder of the licence has, within 3 years of the completion of the period of suspension, failed to comply with a condition of the licence.

(2) Before revoking a licence under this section, the Minister must—

(a) notify the holder of the licence as to—

(i) the reason for proposing to revoke the licence; and

(ii) the rights the holder of the licence has under this section to make submissions on the proposal; and

(b) allow the holder an opportunity to make written submissions on the proposal to revoke the licence; and

(c) notify any person who has a registered mortgage (under the **Transfer of Land Act 1958**) over the land specified in the licence of the proposed revocation of the licence.

(3) Submissions under subsection (2) must be made within 2 months of the giving of the notice.

(4) In deciding whether or not to revoke a licence under this section, the Minister must have regard to submissions made under subsection (2) within the period for the making of submissions.

(5) On making a decision as to whether or not to revoke a licence under this section, the Minister must notify the holder of the licence of that decision.

### 64AL Cancellation of water-use licence on motion of the Minister

S. 64AL inserted by No. 99/2005 s. 54.

(1) The Minister may cancel a water-use licence if the Minister reasonably believes that water has not been used on the land specified in the licence for the purposes for which use of water is authorised under the licence for the immediately preceding period of 10 years.

(2) Before cancelling a licence under this section, the Minister must—

(a) notify the holder of the licence as to—

(i) the reason for proposing to cancel the licence; and

(ii) the rights the holder of the licence has under this section to make submissions on the proposal; and

(b) allow the holder an opportunity to make written submissions on whether or not water has been used on the land in the preceding 10 years; and

(c) notify any person who has a registered mortgage (under the **Transfer of Land Act 1958**) over the land specified in the licence of the proposed cancellation of the licence.

(3) Submissions under subsection (2)(b) must be made within 2 months of the giving of the notice.

(4) In deciding whether or not to cancel a licence under this section, the Minister must have regard to submissions made under subsection (2)(b) within the period for the making of submissions.

(5) On making a decision as to whether or not to cancel a licence under this section, the Minister must notify the holder of the licence of that decision.

S. 64AM inserted by No. 99/2005 s. 54.

### 64AM Other powers to cancel water-use licences

(1) The holder of a water-use licence may apply to the Minister for the cancellation of the licence.

(2) On receiving an application made by a licence holder under subsection (1), the Minister must cancel the licence.

(3) At least 30 days before cancelling a licence under subsection (2), the Minister must notify any person who holds a registered mortgage (under the **Transfer of Land Act 1958**) over the land specified in the licence of the proposal to cancel the licence.

S. 64AN inserted by No. 99/2005 s. 54.

### 64AN Application for review of Minister's decisions as to licences

(1) A person may apply to the Tribunal for a review of a decision of the Minister to refuse an application by the person for a water-use licence.

(2) The holder of a water-use licence may apply for a review of a decision of the Minister—

(a) on an application by the holder of the licence to vary the licence; or

(b) on the Minister's own motion, to vary the licence; or

(c) to suspend the licence; or

(d) to revoke the licence; or

(e) on the Minister's own motion, to cancel the licence; or

(f) to impose conditions (other than standard water-use conditions) on the licence.

### 64AO Time period for making an application for review

S. 64AO inserted by No. 99/2005 s. 54.

An application for review under section 64AN must be made within 28 days of the later of—

(a) the day on which the decision is made; or

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

## Division 9—Registration of water uses

### 64APAA Definition

S. 64APAA inserted by No. 50/2010 s. 24.

In this Division—

***occupier***, in relation to land, means a prescribed person, or a person of a prescribed class of person, who has a right of access to the land or responsibility for the provision of a service to the land.

### 64AP Power to register water uses

S. 64AP inserted by No. 99/2005 s. 54, amended by Nos 85/2006 s. 43, 50/2010 s. 25.

The Minister, on receiving an application under this Division from an owner or occupier of land, may grant to that person a registration that authorises the use of water, being water that is from a declared water system, for purposes other than the purpose of irrigation on the land owned or occupied by the person that is specified in the registration.

S. 64AQ inserted by No. 99/2005 s. 54.

### 64AQ Matters to which a Minister must have regard in registering use

The Minister must grant a water-use registration if the Minister is reasonably satisfied that—

(a) there are works or systems in place or likely to be installed in the near future for delivering water to the land; and

(b) the use of water for the purpose set out in the application is not prohibited by or under an Act; and

(c) the maximum volume of water proposed in the application is reasonable for use for the purpose set out in the application.

S. 64AR inserted by No. 99/2005 s. 54.

### 64AR Applications for water-use registrations

S. 64AR(1) amended by No. 50/2010 s. 26.

(1) An owner or occupier of land may apply for a water-use registration to authorise the use of water for purposes other than irrigation on that land.

(2) An application for a water use registration must—

(a) be in the form and made in the manner approved by the Minister; and

(b) contain any prescribed particulars; and

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

S. 64AR(2)(d) amended by No. 85/2006 s. 44.

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

### 64AS Change of ownership of land specified in registration

S. 64AS inserted by No. 99/2005 s. 54, substituted by No. 50/2010 s. 27.

(1) If a person who is the holder of a water-use registration is the owner of the land specified in the registration and that person transfers his or her ownership of the whole of the land so specified to another person, that person is taken to be the holder of the water-use registration.

(2) If a person who is the holder of a water-use registration is the owner of the land specified in the registration and that person transfers his or her ownership of part only of the land so specified to another person, the registration is taken to be cancelled on the day on which the transfer of ownership takes place.

### 64AT Condition on water-use registrations as to annual use limit

S. 64AT inserted by No. 99/2005 s. 54.

The Minister may impose a condition on a water-use registration specifying the annual use limit for the registration.

## Division 10—Variation, cancellation and other powers as to registration

### 64AU Variation of water-use registrations on application

S. 64AU inserted by No. 99/2005 s. 54.

(1) The Minister may, on the application of the holder of a water use registration, vary the terms or conditions of the water-use registration.

S. 64AU(1) amended by No. 32/2010 s. 50.

(2) The holder of a water use registration may apply to the Minister for a variation under subsection (1).

(3) An application under subsection (2) must—

(a) be in a form approved by the Minister; and

(b) contain any prescribed particulars; and

S. 64AU(3)(c) amended by No. 85/2006 s. 45(a).

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

S. 64AU(3)(d) amended by No. 85/2006 s. 45(b).

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

(4) The powers of the Minister in relation to applications for water-use registrations apply in respect of an application under this section as if it were an application for a water-use registration.

(5) The Minister must notify an applicant under this section of his or her decision on the application.

S. 64AV inserted by No. 99/2005 s. 54.

### 64AV Cancellation of water-use registration on motion of the Minister

(1) The Minister may cancel a water-use registration if the Minister reasonably believes that water has not been used on the land specified in the registration for the purposes for which use of water is authorised by the registration for the preceding period of 10 years.

(2) Before cancelling a water-use registration under this section, the Minister must—

(a) notify the holder of the water use registration as to—

(i) the reason for proposing to cancel the registration; and

(ii) the rights the holder of the water use registration has under this section to make submissions on the proposal; and

(b) allow the holder an opportunity to make written submissions on whether or not water has been used on the land in the preceding 10 years.

(3) Submissions under subsection (2)(b) must be made within 2 months of the giving of the notice.

(4) In deciding whether or not to cancel a registration under this section, the Minister must have regard to submissions made under subsection (2)(b) within the period for the making of submissions.

(5) On making a decision as to whether or not to cancel a registration under this section, the Minister must notify the holder of the water use registration of that decision.

**64AW Other powers to cancel water-use registrations**

S. 64AW inserted by No. 99/2005 s. 54.

(1) The holder of the water use registration may apply to the Minister for the cancellation of the registration.

(2) On receiving an application made by the holder of a water use registration under subsection (1), the Minister must cancel the registration.

**64AX Application for review of Minister's decisions as to registrations**

S. 64AX inserted by No. 99/2005 s. 54.

(1) A person may apply to the Tribunal for a review of a decision of the Minister to refuse an application by the person for a water-use registration.

(2) The holder of a water use registration may apply for a review of a decision of the Minister—

(a) to vary the registration; or

(b) on the Minister's own motion, to cancel the registration; or

(c) to impose conditions on the registration.

S. 64AY inserted by No. 99/2005 s. 54.

### 64AY Time period for making an application for review

An application for review under section 64AX must be made within 28 days of the later of—

(a) the day on which the decision is made; or

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

## Division 11—Rule making powers of Minister

S. 64AZ inserted by No. 99/2005 s. 54.

### 64AZ Rule making powers for water-use licences and water-use registrations

(1) The Minister may, by Order, published in the Government Gazette, set out rules—

(a) as to the circumstances in which the Minister will give consents under this Part;

(b) as to any other matters the Minister is authorised to make rules for under this Part.

(2) An Order under this section may be amended or revoked in the same manner as that in which it is made.

# Part 5—Works

## Division 1—General

### 65 Advertisement etc. of application

(1) This section applies to an application—

(a) under section 67 for the issue of a licence to construct, alter, operate, remove or decommission works, a bore or a private dam; or

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

(b) under section 72(1) for the renewal of a licence referred to in paragraph (a); or

(c) under section 74(3) for approval of the transfer of a licence referred to in paragraph (a); or

(d) under section 76(1) for approval to dispose of any matter underground by means of a bore.

(2) The Minister may require an applicant to give notice of an application to which this section applies in any manner specified by the Minister.

(3) A notice given under subsection (2) may invite submissions on the application to be made in the manner specified in the notice within the period specified in the notice.

### 66 Appointment of panel

(1) The Minister may appoint a panel of persons to consider submissions made on an application to which section 65 applies.

(2) Subsections (2) to (6) of section 50 apply to a panel appointed under subsection (1) as if the reference in subsection (3) of that section to a notice given under section 49(2) were a reference to a notice given under section 65(2).

## Division 2—Licence to construct works, etc.

### 67 Licence to construct works etc.

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

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

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

(b) a bore.

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

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

(a) has a wall that is 5 metres or more high above ground level at the downstream end of the dam and a capacity of 50 megalitres or more; or

(b) has a wall that is 10 metres or more high above ground level at the downstream end of the dam and a capacity of 20 megalitres or more; or

(c) has a wall that is 15 metres or more high above ground level at the downstream end of the dam, regardless of the capacity; or

(d) is a dam belonging to a prescribed class of dams.

(2) An application must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information that—

(i) is prescribed; or

(ii) is required by the Minister; and

(c) be accompanied by—

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

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

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

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

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

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

(B) is not occupied by the applicant—

the written consent of the occupier.

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

S. 67(3) inserted by No. 85/2006 s. 46.

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

S. 67(4) inserted by No. 85/2006 s. 46.

(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 subsection (4).

S. 67(5) inserted by No. 85/2006 s. 46.

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

S. 67(6) inserted by No. 85/2006 s. 46.

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

### 67A Application to go to certain bodies

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

(a) the Department Head; and

(b) the relevant Catchment Management Authority; and

(c) the relevant Council; and

S. 67A(d) substituted by No. 85/2006 s. 47.

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

(e) any Authority holding a bulk entitlement that may be affected by the approval of the application.

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

### 67B Bodies must consider application

(1) Within 30 days after receipt of an application referred to a body under section 67A, the body—

(a) must consider the application; and

(b) may advise the Minister in writing that—

(i) it does not object to the issue of a licence; or

(ii) it does not object if the licence is issued subject to the conditions specified by the body; or

(iii) it objects to the issue of the licence on any specified ground; and

(c) may give to the Minister its comments on the application.

(2) If a body makes no response to the Minister within 30 days after receipt of an application referred to it under section 67A, the Minister may proceed to determine the application.

### 68 Matters to be taken into account

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

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

(a) have regard to the report of any panel appointed under section 66; and

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

(ab) have regard to any advice and comments received within the period of 30 days referred to in section 67B(1); and

(b) have regard to any adverse effect that the exercise of rights under the licence is likely to have—

(i) on the drainage regime within the meaning of section 12(1); or

(ii) on in-stream uses of water; or

(iii) otherwise on the aquifer or on the flow of water within the waterway, including effects on the land that forms the waterway or its surrounds; or

(iv) on the implementation of the conservation policy of the government; and

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

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

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

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

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

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

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

(d) have regard to whether the site of the proposed works is within a heritage river area or natural catchment area within the meaning of the **Heritage Rivers Act 1992** and whether there is any restriction on the use of the area under that Act; and[15]

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

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

### 69 Determination of application

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

(1) The Minister may either refuse an application under section 67 or approve it and issue a licence under that section.

(2) The Minister must defer consideration of the application pending the determination of any related application under Part 4.

(3) The Minister must refuse the application if—

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

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

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

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

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

### 70 Other permits etc. still necessary

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

### 70A Offence to breach licence conditions under section 71[16]

S. 70A inserted by No. 23/2019 s. 32.

The holder of a licence under section 67 must not fail to comply with any condition under section 71(1) to which the licence is subject.

Penalty: For an individual, 120 penalty units;

For a body corporate, 600 penalty units.

### 71 Conditions on which licence may be issued

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

(a) the prescribed conditions; and

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

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

(ac) any condition that the Minister thinks fit—

S. 71(1)(ac) inserted by No. 99/2005 s. 31(a).

(i) as to the maximum amounts of water that may be taken in particular periods and circumstances; and

(ii) the installation and use of measuring devices and pumps; and

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

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

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

(iii) the date of commencement of the works and the notice required to be given of that commencement; or

(iv) the submission of reports on the carrying out of the work; or

S. 71(1)(b)(iva) inserted by No. 99/2005 s. 31(b).

(iva) the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; or

(v) the qualifications required to be held by persons undertaking, designing, constructing or operating the whole or any part of the work; or

(vi) the protection of the environment, including the riverine and riparian environment; or

(vii) the implementation of the conservation policy of the government; or

(viii) in the case of works on a waterway, additional works or measures to be undertaken for—

(A) the protection and enhancement of in-stream uses of water; or

(B) the protection of the waterway and its surrounds; or

(C) the maintenance of flow in the waterway; or

(D) the maintenance of the drainage regime within the meaning of section 12(1); or

(ix) in the case of works for the storage of water within a waterway, steps to be taken to maintain the availability of water to satisfy other entitlements; or

(ixa) without limiting subparagraph (ix), in the case of any dam, whether or not on a waterway— S. 71(1)(b)(ixa) inserted by No. 5/2002 s. 39(b).

(A) surveillance of the dam, including surveillance by the Minister or a person holding one or more qualifications approved by the Minister and engaged by the licensee; or

(B) the procedures for management of dam safety; or

(C) the procuring of water, by transfer or otherwise, for every year that the dam is in operation; or

(x) in the case of a bore—

(A) additional works or measures to be undertaken for the protection of the aquifer or for the maintenance of flow; or

(B) requiring samples of materials excavated from the bore and of water encountered in the bore to be taken and given to a specified Authority; or

(C) requiring all or any part of the works to be carried out by, or under the direction of, a licensed driller; and S. 71(1)(b)(x)(C) amended by No. 5/2002 s. 39(c).

(c) without derogating from rights to water for domestic and stock use conferred by section 8, any other conditions that the S. 71(1)(c) inserted by No. 5/2002 s. 39(d).

Minister thinks fit and specifies in the licence.

S. 71(1A) inserted by No. 85/2006 s. 48.

(1A) In addition to any conditions to which a licence under section 67 is subject under subsection (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.

(2) A licence issued under section 67 remains in force for the period specified in the licence but, if necessary, may be renewed under section 72.

### 72 Renewal of licence

(1) The holder of a licence issued under section 67 may, before the expiry of the licence, apply to the Minister for the renewal of the licence.

(2) An application must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information that—

(i) is prescribed; or

(ii) is required by the Minister; and

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

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

(3) In considering an application for the renewal of a licence issued under section 67, the Minister must have regard to the matters mentioned in section 68.

(4) If the Minister approves the application and renews a licence, he or she may amend or delete any of the conditions to which the licence is subject or add a new condition but must not make the licence subject to any condition to which it could not have been made subject under section 71(1).

(5) A licence may be renewed for a period determined by the Minister or for an unlimited period.

(6) A licence may, if necessary, be renewed under this section from time to time.

(7) A person whose licence is suspended may apply for renewal of the licence during the period of suspension and before the expiry of the licence.

**S. 72(7) inserted by No. 23/2019 s. 33.**

(8) A suspended licence that is renewed in accordance with subsection (7) remains suspended in accordance with the terms of the suspension until—

**S. 72(8) inserted by No. 23/2019 s. 33.**

(a) the licence is cancelled; or

(b) the suspension ends or is lifted.

(9) If the holder of a licence issued under section 67 that is suspended does not apply for renewal of the licence before the expiry of the licence, the licence expires.

**S. 72(9) inserted by No. 23/2019 s. 33.**

### 73 Amendment of licence

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

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

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

(1A) Within 12 months after the commencement of section 40 of the **Water (Irrigation Farm Dams) Act 2002**, the Minister may amend a licence in respect of a private dam issued under section 67 before that commencement to impose conditions referred to in section 71(1)(b)(ixa) if—

(a) the dam has the dimensions referred to in paragraph (a), (b) or (c) of section 67(1A); or

(b) the dam belongs to a class of dams prescribed under section 67(1A)(d).

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

(1B) The Minister may amend a licence in respect of a private dam issued under section 67 to include conditions relating to the management of dam safety.

(2) The Minister must give at least 3 months' written notice of the amendment to the licensee and must specify in the notice the reasons for the amendment.

S. 73A inserted by No. 99/2005 s. 55.

### 73A Amendment of conditions on works licences

(1) The Minister may, on application by the holder of a licence under section 67, amend a condition on the licence that—

(a) authorises works for the extraction of water in a declared water system; and

(b) that relates to a bore or works for extracting water from waterways—

to vary the maximum amounts of water that may be taken in particular periods or circumstances.

(2) The powers of the Minister in relation to applications for licences under section 67 apply in respect of an application under this section as if it were an application for a licence under section 67.

(3) An application under this section must—

(a) be in the form approved by the Minister; and

(b) contain any prescribed particulars; and

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

S. 73A(3)(c) amended by No. 85/2006 s. 49(a).

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

S. 73A(3)(d) amended by No. 85/2006 s. 49(b).

## 74 Transfer of licence

(1) A licence issued under section 67 may be transferred—

S. 74(1) substituted by No. 23/2019 s. 34.

(a) subject to any conditions set out in the licence or imposed under section 71 relating to the transfer of the licence, including any condition prohibiting the transfer of the licence to another property; and

(b) in accordance with this section.

(1A) If a licence that is suspended under section 74AB(1) is transferred, the licence remains suspended until the suspension ends or is lifted.

S. 74(1A) inserted by No. 23/2019 s. 34.

(1B) The Minister may lift all or part of a period of a suspension for a licence that is transferred under subsection (1) if the actions specified in the notice of suspension—

S. 74(1B) inserted by No. 23/2019 s. 34.

(a) are not able to be completed after the transfer; or

(b) are no longer relevant to the transferred licence.

(2) A transfer may be either permanent or temporary.

(3) A licensee may apply to the Minister for approval of the transfer of the licence.

(4) An application must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information that—

(i) is prescribed; or

(ii) is required by the Minister; and

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

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

S. 74(5) amended by No. 99/2005 s. 32(1).

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

S. 74(5A) inserted by No. 24/2013 s. 21.

(5A) Subsection (5) does not apply if the application is for approval of a permanent transfer of a licence to a successor in title to the owner of the land to which the licence relates.

S. 74(6) substituted by No. 99/2005 s. 32(2).

(6) If an application for approval is made under subsection (3)—

(a) the Minister, if the Minister is of the opinion that—

(i) approval of the transfer is likely to have an adverse effect on the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; or

(ii) it is necessary to refuse to approve the transfer in order to preserve the environmental water reserve in accordance with the environmental water reserve objective—

must refuse to approve the transfer; or

(b) in any other case, the Minister may—

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

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

### 74A Annual charge for surveillance etc.

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

The Minister may fix an annual charge in respect of—

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

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

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

### 74AA Licence fees for works licences

S. 74AA inserted by No. 99/2005 s. 56.

(1) The Minister may, in the case of licences under section 67 that—

(a) authorise works for the extraction of water in a declared water system; and

(b) relate to a bore or works for extracting water from waterways—

S. 74AA(1)(b) amended by No. 32/2010 s. 77(Sch.).

charge fees for the provision of services in respect of those licences by the Minister to the licence holders.

(2) A fee under subsection (1) may apply at consecutive periods of twelve months while any licences under section 67 are in force.

(3) This section applies to licences under section 67 whether or not issued before the coming into operation of section 56 of the **Water (Resource Management) Act 2005**.

S. 74AB inserted by No. 23/2019 s. 35.

### 74AB Suspension or cancellation of licence

(1) The Minister may suspend or cancel a licence issued under section 67 if—

(a) the Minister reasonably believes that—

(i) there has been a failure to comply with this Act or regulations made under this Act; or

(ii) there has been a failure to comply with any conditions to which the licence is subject; or

(iii) the holder of the licence has not paid an applicable fee or charge payable in respect of the licence; or

(b) any prescribed circumstances apply.

(2) The Minister must give the licence holder written notice of a decision under subsection (1).

(3) If the Minister decides to suspend the licence, the notice under subsection (2) must specify—

(a) the period of suspension, which may extend beyond the period of the current licence to any period of renewal; and

(b) any actions the licence holder must take before the end of the period of suspension in order for the suspension to be lifted.

(4) A suspension under this section remains in force until the earlier of the following—

(a) the end of the period specified in subsection (3)(a), if no actions have been specified under subsection (3)(b);

(b) if the Minister is satisfied that the licence holder has taken the actions specified under subsection (3)(b), the date specified by the Minister by notice in writing to the licence holder as the date on which the suspension is no longer in force (which may not be later than 2 days after the date of the notice).

### 74AC Process for suspension or cancellation of licence

S. 74AC inserted by No. 23/2019 s. 35.

(1) Before suspending or cancelling a licence under section 74AB(1), the Minister must—

(a) notify the holder of the licence in writing as to—

(i) the grounds specified in section 74AB(1) on which the Minister proposes to suspend or cancel the licence; and

(ii) the rights the holder of the licence has under this section to make submissions on the proposal; and

(iii) if the Minister proposes to suspend the licence, any actions the holder of the licence would need to take in order for the proposed suspension to be lifted; and

(b) allow the holder of the licence an opportunity to make written submissions on the proposal to suspend or cancel the licence within the period specified in the notice under paragraph (a), which must not be less

than 35 days after the Minister gives the notice.

(2) The Minister—

(a) must have regard to any submissions made under subsection (1)(b) when making a decision under section 74AB(1); and

(b) must not make a decision under section 74AB(1) until the period specified in subsection (1)(b) has elapsed.

### 75 Offences

S. 75(1) amended by No. 5/2002 s. 42(1), repealed by No. 23/2019 s. 36(1).

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S. 75(1A) inserted by No. 5/2002 s. 42(2), repealed by No. 23/2019 s. 36(1).

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S. 75(2)(3) repealed by No. 23/2019 s. 36(1).

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S. 75(4) substituted by No. 5/2002 s. 42(3), amended by No. 23/2019 s. 36(2).

(4) If a licence is issued under section 67 to construct or alter any works and the licence is subject to any condition relating to the future maintenance or operation of the works, a person who operates the works without complying with that condition is guilty of an offence and liable to a penalty of not more than 120 penalty units, for an individual, or 600 penalty units, for a body corporate.

* * * * *

S. 75(5) inserted by No. 5/2002 s. 42(4) (as amended by No. 6/2002 s. 4(3)), repealed by No. 23/2019 s. 36(1).

### 75A Offences as to obstruction of waterways etc.[17]

S. 75A inserted by No. 23/2019 s. 37.

(1) A person must not knowingly carry out any regulated activity without being authorised to do so by or under this or any other Act, being an activity that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 10 years imprisonment or 1200 penalty units or both;

For a body corporate, 6000 penalty units.

(2) A person must not recklessly carry out any regulated activity without being authorised to do so by or under this or any other Act, being an activity that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 5 years imprisonment or 600 penalty units or both;

For a body corporate, 3000 penalty units.

(3) A person must not carry out any regulated activity without being authorised to do so by or under this or any other Act.

Penalty: For an individual, 240 penalty units;

For a body corporate, 1200 penalty units.

(4) A person does not commit an offence under subsection (1), (2) or (3) if the person—

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

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

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

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

(5) In this section—

***regulated activity*** means any of the following—

(a) the obstruction of, or interference with, a waterway;

(b) the construction, alteration, operation, removal or decommissioning of any works on a waterway;

(c) the obstruction of, or interference with, any works on a waterway;

(d) the erosion or damaging of the surrounds of a waterway;

(e) the construction, alteration, operation, removal or decommissioning of a private dam within the meaning of section 67(1A);

(f) the construction, deepening, enlarging or alteration of a bore;

(g) the interfering with or the damaging or destroying of a bore or ancillary works.

## Division 3—Underground disposal

### 76 Power of Minister to approve underground disposal

(1) A person may apply to the Minister for approval to dispose of any matter underground by means of a bore.

(2) An application must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information that—

(i) is prescribed; or

(ii) is required by the Minister; and

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

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

(3) In considering an application the Minister must have regard to the report of any panel appointed under section 66.

(4) The Minister may by notice in writing to the applicant—

(a) approve the application subject to any conditions that he or she thinks fit and specifies in the notice; or

(b) refuse to approve the application and specify the reasons for that refusal.

(5) The Minister must not approve an application in respect of a disposal which, in the opinion of the Minister, would cause the pollution of any groundwater or be detrimental to any aquifer or bore.

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

(5A) The Minister must not approve an application in respect of a disposal by means of a State observation bore if, in the opinion of the Minister, the disposal would interfere with the function of the bore as a State observation bore.

S. 76(6) repealed by No. 23/2019 s. 38(1).

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S. 76(7) inserted by No. 61/2008 s. 323, amended by No. 23/2019 s. 38(2).

(7) This Division does not apply to the holder of an authority under the **Greenhouse Gas Geological Sequestration Act 2008** in relation to work carried out in accordance with an approved injection testing plan or an approved injection and monitoring plan.

S. 76(8) inserted by No. 23/2019 s. 38(3).

(8) The Minister may exempt a person from the requirement to obtain approval under this section to dispose of any matter underground by means of a bore—

(a) if—

(i) the matter is to be injected into or stored in a part of a geological formation in a permit area under a greenhouse gas assessment permit; and

(ii) the Minister administering the **Offshore Petroleum and Greenhouse Gas Storage Act 2010** has consulted with the Minister administering this section at least 40 days before approving, under section 291 of that Act, the carrying on of key greenhouse gas operations under the permit referred to in subparagraph (i); or

(b) if—

(i) the matter is to be injected into or stored in an identified greenhouse gas storage formation in a lease area under a greenhouse gas holding lease; and

(ii) the Minister administering the **Offshore Petroleum and Greenhouse Gas Storage Act 2010** has consulted with the Minister administering this section at least 40 days before approving, under section 329 of that Act, the carrying on of key greenhouse gas operations under the lease referred to in subparagraph (i); or

(c) if—

(i) the matter is to be injected into or stored in an identified greenhouse gas storage formation in a licence area under a greenhouse gas injection licence; and

(ii) the Minister administering the **Offshore Petroleum and Greenhouse Gas Storage Act 2010** has consulted with the Minister administering this section at least 40 days before approving a site plan for that injection licence under regulations made under that Act.

(9) In this section—

**S. 76(9) inserted by No. 23/2019 s. 38(3).**

***greenhouse gas assessment permit***, ***greenhouse gas holding lease***, ***greenhouse gas injection licence*** and ***key greenhouse gas operation*** have the same meanings as in the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**.

S. 76A inserted by No. 23/2019 s. 39.

### 76A Offences as to disposal of matter underground[18]

(1) A person must not knowingly dispose of any matter underground by means of a bore without being authorised to do so by or under this or any other Act, being an activity that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 10 years imprisonment or 1200 penalty units or both;

For a body corporate, 6000 penalty units.

(2) A person must not recklessly dispose of any matter underground by means of a bore without being authorised to do so by or under this or any other Act, being an activity that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 5 years imprisonment or 600 penalty units or both;

For a body corporate, 3000 penalty units.

(3) A person must not dispose of any matter underground by means of a bore without being authorised to do so by or under this or any other Act.

Penalty: For an individual, 240 penalty units;

For a body corporate, 1200 penalty units.

### 77 Other permits etc. still necessary

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

## Division 4—Directions

### 78 Power of Minister to give directions

(1) The Minister may, by notice in writing, direct the occupier of any works on a waterway or of a bore—

(a) to operate or alter those works in compliance with the conditions specified in the notice; or

(b) to take the measures specified in the notice, being measures that the Minister thinks necessary—

(i) to secure compliance with this Act or the conditions of any licence granted under this Act; or

(ii) to prevent the waste, misuse or pollution of water;

S. 78(1)(b)(ii) amended by No. 99/2005 s. 33(a).

(iii) to protect the environment, including the riverine and riparian environment; or

S. 78(1)(b)(iii) inserted by No. 99/2005 s. 33(b).

(iv) to maintain the environmental water reserve in accordance with the environmental water reserve objective.

S. 78(1)(b)(iv) inserted by No. 99/2005 s. 33(b).

(2) Any condition of a licence issued under section 67 relating to works that is inconsistent with a direction given by the Minister under subsection (1) is of no effect to the extent that it is inconsistent.

(3) The Minister may, by notice in writing, direct the occupier of any works to which this subsection applies to remove those works.

(4) Subsection (3) applies to—

(a) works on a collection of water declared by the Governor in Council to be a lake, lagoon, swamp or marsh under section 4 if the works were constructed before the making of the declaration; and

(b) works constructed before the commencement of this subsection on a waterway that immediately before that commencement was not a water-course within the meaning of Part II of the **Water Act 1958**; and

(c) works constructed on a waterway on or after that commencement in contravention of this Act.

S. 78(5) repealed by No. 23/2019 s. 40.

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S. 78A inserted by No. 23/2019 s. 41.

### 78A Offence not to comply with section 78 direction[19]

A person must not fail to comply with any direction under section 78(1) or (3).

Penalty: For an individual, 120 penalty units;

For a body corporate, 600 penalty units.

### 79 Power of Minister to give direction to bore occupier

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

Penalty applying to this subsection: 10 penalty units.

(2) The Minister may direct an occupier who is required to give notice under subsection (1) to take any measures that the Minister thinks necessary or desirable to ensure that the groundwater resources of the State are protected and conserved.

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S. 79(3) repealed by No. 23/2019 s. 42.

### 79A Offence not to comply with section 79 direction[20]

S. 79A inserted by No. 23/2019 s. 43.

A person must not fail to comply with any direction under section 79(2).

Penalty: For an individual, 120 penalty units;

For a body corporate, 600 penalty units.

### 80 Power to give directions concerning dams

(1) The Minister, by written notice, may direct the owner of any public or private dam to do any of the following if the Minister decides that the dam is or is likely to be hazardous to public safety, property or the environment because of its location or the nature of its construction—

S. 80(1) amended by No. 5/2002 s. 44(1)(a), substituted by No. 23/2019 s. 44.

(a) make specified repairs or alterations to the dam;

(b) take specified measures to keep the dam under surveillance;

(c) remove the dam.

(2) The Minister, by written notice, may direct the proposed owner of any proposed public or private dam to do any of the following if the Minister decides that the dam is or is likely to be hazardous to public safety, property or the environment because of its proposed location or the nature of its proposed construction—

S. 80(2) substituted by No. 23/2019 s. 44.

(a) resite the dam;

(b) build the dam to specified standards;

(c) refrain from building the dam.

S. 80(3) substituted by No. 23/2019 s. 44.

(3) This section applies to any public or private dam, whether or not the dam is located on a waterway.

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

(3A) Without limiting any power to give directions under this section, the Governor in Council may make regulations for or with respect to regulating the planning, construction, surveillance, operation and maintenance of any dam or class of dams.

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

* * * * *

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

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

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

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

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

* * * * *

(5) A notice giving a direction under subsection (1) must contain details of the circumstances that, in the opinion of the Minister, warrant the giving of the direction.

(6) The giving or not giving of directions under this section does not make the Minister or the Crown liable in respect of a flow of water from a dam.

### 80AA Offence not to comply with section 80 direction[21]

S. 80AA inserted by No. 23/2019 s. 45.

A person must not fail to comply with any direction under section 80(1) or (2).

Penalty: For an individual, 120 penalty units;

For a body corporate, 600 penalty units.

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

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

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

(a) design criteria for private dams for the re-use of water; and

(b) a formula to determine the maximum volume of water that may be re-used each year by a person by means of such dams.

### 81 Power of Minister to carry out work[22]

S. 81 (Heading) inserted by No. 23/2019 s. 46(1).

(1) If the Minister thinks fit, the Minister may carry out work on any relevant works and take any other measures or remove relevant works and recover the reasonable cost of doing so from the occupier of the relevant works if the Minister considers that—

S. 81(1) substituted by No. 23/2019 s. 46(2).

(a) a person has failed to carry out the work necessary to comply with a direction given under this Division within the time specified in the direction; or

(b) it is necessary for the work to be carried out on the relevant works and measures to be taken or the relevant works to be removed urgently—

(i) to prevent the waste or pollution of water; or

(ii) to protect public safety, property or the environment; or

(c) it is necessary for the work to be carried out on the relevant works and measures to be taken or the relevant works to be removed to secure compliance with this Act, the regulations or the conditions of any licence issued or granted under this Act.

S. 81(1A) inserted by No. 23/2019 s. 46(2).

(1A) In this section—

***relevant works*** means any of the following—

(a) a dam;

(b) works on a waterway;

(c) a bore.

(2) As soon as possible after the work is carried out under subsection (1) the Minister must give the occupier written notice of—

(a) the work carried out; and

(b) the cost of that work.

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

(3) Any costs incurred by the Minister under this section are a charge on the land.

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

(4) Land is so charged when the Minister deposits with the Registrar of Titles a certificate under seal describing the land to be charged and stating the amount of the charge.

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

(5) The Registrar of Titles must make in the Register a recording of the certificate lodged under this section.

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

(6) The Minister must notify the land owner in writing that—

(a) the certificate has been deposited under this section; and

(b) the land is charged with the amount stated in the notice.

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

(7) When an amount due is paid or recovered the Registrar of Titles must, if so required by the Minister, delete the recording of the charge from the Register or make a recording in the Register of the payment or recovery of the charge.

## 82 Compensation

(1) The owner and occupier of any works is entitled to be paid compensation for any loss suffered or expenses sustained as a result of—

(a) being directed under section 78(1)(a) to alter works referred to in section 78(4)(b); or

(b) being directed under section 78(3) to remove works referred to in section 78(4)(a) or (b).

(2) Compensation payable under subsection (1) must be paid as follows—

(a) compensation payable under paragraph (a) must be paid by an Authority specified by the Minister;

(b) compensation payable under paragraph (b) in respect of works referred to in section 78(4)(a) must be paid by the person ordered by the Governor in Council to pay compensation under section 4(4);

(c) compensation payable under paragraph (b) in respect of works referred to in section 78(4)(b) must be paid by an Authority specified by the Minister.

(3) The amount of compensation payable under subsection (1) is as agreed by the parties or, in the absence of agreement, as determined by the Authority or other person responsible for its payment.

## Division 5—Review of decisions

### 83 Review of decisions

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

(1) A person whose interests are affected by the decision may apply to the Tribunal for review of a decision by the Minister—

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

(a) under section 69(1) to refuse an application under section 67; or

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

(b) under section 69(1) to approve an application under section 67; or

(c) under section 71(1) to make a licence subject to any condition; or

(d) under section 72 to refuse an application for the renewal of a licence; or

(e) under section 72 to approve an application for the renewal of a licence; or

(f) under section 72(4) to impose any condition on a licence or to amend or delete any of the conditions to which a licence is subject; or

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

(g) under section 73(1), (1A) or (1B) to amend a licence; or

(h) under section 74(6)(a) to refuse to approve the transfer of a licence; or

(i) under section 74(6)(b) to approve the transfer of a licence; or

(j) under section 74(6)(b) to impose any condition on a licence or to amend or delete any of the conditions to which a licence is subject; or

(ja) under section 74AB to suspend or cancel a licence; or

S. 83(1)(ja) inserted by No. 23/2019 s. 47(a).

(k) under section 76(4)(a) to approve an application under section 76(1); or

(l) under section 76(4)(b) to refuse to approve an application under section 76(1); or

(m) to give a direction under section 78(1) or (3);

(n) to give a direction under section 79(2);

(o) to give a direction under section 80(1) or (2).

S. 83(1)(o) amended by No. 23/2019 s. 47(b).

(2) A person whose interests are affected by the decision may apply to the Tribunal for review of a decision under section 82(3) by an Authority or other person responsible for the payment of compensation as to the amount of compensation payable.

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

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

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

(a) the day on which the decision is made;

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

(3) The State of South Australia may apply to the Tribunal for review of a decision by the Minister under clause 29(5) of the Border Groundwaters Agreement (a copy of which is set out in Schedule 1 to the **Groundwater (Border**

S. 83(3) amended by Nos 52/1998 s. 311(Sch. 1 item 105.16(a)), 79/2005 s. 5.

**Agreement) Act 1985**) as that agreement is amended by the Border Groundwaters Agreement Amendment Agreement (a copy of which is set out in Schedule 2 to that Act).

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

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

Pt 5 Div. 6 (Heading and s. 84) repealed by No. 23/2019 s. 48.

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# Part 5AA—Levee maintenance on Crown land

Pt 5AA (Heading and ss 84AAA–84AAO) inserted by No. 53/2014 s. 4.

## Division 1—Definitions

### 84AAA Definitions

S. 84AAA inserted by No. 53/2014 s. 4.

In this Part—

***land manager***, in relation to specified Crown land, means—

(a) if responsibility for the management of the land is given by an Act to a person, that person; or

(b) if responsibility for the management of the land is not given by an Act to a person, the Minister administering the Act under which the land is managed;

***levee*** means a mound or bank (whether or not on a waterway) constructed primarily of earth, stone or gravel, the purpose of which is to obstruct or deflect the flow of water over the surface of land;

***maintenance***, in relation to a levee, includes reconstruction of a part of the levee;

***specified Crown land*** means land that is—

(a) reserved under the **Crown Land (Reserves) Act 1978**; or

(b) reserved forest within the meaning of the **Forests Act 1958**; or

(c) unreserved Crown land under the **Land Act 1958**; or

(d) described in Schedule Two, Two B, Three or Four to the **National Parks Act 1975** other than—

(i) a wilderness zone (within the meaning of that Act); or

(ii) a remote and natural area (within the meaning of that Act); or

(iii) a designated water supply catchment area (within the meaning of that Act); or

(e) a State Wildlife Reserve or a Nature Reserve within the meaning of the **Wildlife Act 1975**—

but does not include—

(f) a natural catchment area within the meaning of the **Heritage Rivers Act 1992**; or

(g) an area proclaimed to be a reference area under the **Reference Areas Act 1978**.

## Division 2—Authority conferred by permits

S. 84AAB inserted by No. 53/2014 s. 4.

### 84AAB What a levee maintenance permit authorises

(1) A levee maintenance permit authorises the holder to—

(a) carry out maintenance on a levee that is located on specified Crown land; and

(b) enter or pass over any specified Crown land for that purpose.

(2) A levee maintenance permit does not authorise the use of machinery or the introduction of soil or other material to the land to carry out the

maintenance after the first 12 months of the period the permit is in effect.

**Note**

It is an offence to construct, remove, alter or carry out maintenance on a levee on specified Crown land other than under and in accordance with a levee maintenance permit or other authority. See—**Crown Land (Reserves) Act 1978**, **Forests Act 1958**, **Land Act 1958**, **National Parks Act 1975** and **Wildlife Act 1975**.

## Division 3—Application for permit

### 84AAC Application

S. 84AAC inserted by No. 53/2014 s. 4.

(1) A person may apply to the Minister for a levee maintenance permit.

(2) An application must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information that is required by the Minister; and

(c) be accompanied by—

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

(ii) the written consent of any lessee of—

(A) the land on which the levee is located; and

(B) the land over which access is required by the applicant.

### 84AAD Referral of application to land manager

S. 84AAD inserted by No. 53/2014 s. 4.

(1) The Minister must refer a copy of an application under section 84AAC to the land manager.

(2) Within 28 days (or any longer period that the Minister allows) after receiving a copy of the application, the land manager—

(a) must consider the application; and

(b) may—

(i) advise the Minister that the land manager does not require the permit to be subject to any condition; or

(ii) specify any condition (which must be a reasonable condition) to which the land manager requires the permit to be subject.

(3) If a land manager makes no response to the Minister within 28 days (or any longer period that the Minister allowed) after receipt of a copy of the application, the Minister may proceed to determine the application.

## Division 4—Dealing with application for permit

S. 84AAE inserted by No. 53/2014 s. 4.

### 84AAE Determination of application

On receiving an application under section 84AAC, the Minister, subject to this Part, may—

(a) approve the application and issue a levee maintenance permit; or

(b) refuse the application.

S. 84AAF inserted by No. 53/2014 s. 4.

### 84AAF Matters to be set out in permit

A levee maintenance permit must set out the following—

(a) the name and address of the holder;

(b) a description of the specified Crown land on which the levee is located;

(c) a description of the location of the levee;

(d) any condition to which the permit is subject;

(e) the period the permit is in effect;

(f) any other information that the Minister considers necessary.

### 84AAG Conditions of levee maintenance permit

S. 84AAG inserted by No. 53/2014 s. 4.

(1) A levee maintenance permit is subject to—

(a) any prescribed condition; and

(b) any condition specified by the land manager under section 84AAD(2)(b)(ii); and

(c) any other condition that the Minister thinks fit and specifies in the permit.

(2) Without limiting subsection (1)(c), the Minister may specify a condition about any one or more of the following—

(a) the dimensions that the levee must not exceed;

(b) the maintenance authorised by the permit.

(3) In specifying the dimensions of a levee for the purpose of a condition referred to in subsection (2)(a), the Minister may have regard to—

(a) the past or present condition of the whole or any part of the levee; or

(b) the past or present height or width of any part of the levee.

### 84AAH Period a levee maintenance permit is in effect

S. 84AAH inserted by No. 53/2014 s. 4.

Unless sooner revoked, a levee maintenance permit remains in effect for the period (not exceeding 5 years) specified in the permit.

# Division 5—Variation of conditions or revocation of permit

## Subdivision 1—Variation of conditions on application by permit holder

S. 84AAI inserted by No. 53/2014 s. 4.

### 84AAI Application

(1) The holder of a levee maintenance permit may apply to the Minister for the variation or removal of a condition (other than a prescribed condition) to which the permit is subject.

(2) An application must—

(a) be made in a form and manner approved by the Minister; and

(b) contain any information that is required by the Minister; and

(c) be accompanied by—

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

(ii) the written consent of any lessee of—

(A) the land on which the levee is located; and

(B) the land over which access is required by the applicant who is likely to be affected by the variation or removal of the condition.

S. 84AAJ inserted by No. 53/2014 s. 4.

### 84AAJ Referral of application to land manager

(1) The Minister must refer a copy of an application under section 84AAI to the land manager.

(2) Within 28 days (or any longer period that the Minister allows) after receiving a copy of the application, the land manager—

(a) must consider the application; and

(b) may—

(i) advise the Minister that the land manager does not object to the variation or removal of the condition; or

(ii) advise the Minister that the land manager objects to the variation or removal of the condition on the ground specified by the land manager (which must be a reasonable ground); or

(iii) specify any variation (which must be a reasonable variation) to the condition that the land manager requires.

(3) If a land manager makes no response to the Minister within 28 days (or any longer period that the Minister allowed) after receipt of a copy of the application, the Minister may proceed to determine the application.

### 84AAK Determination of application

S. 84AAK inserted by No. 53/2014 s. 4.

(1) On receiving an application under section 84AAI, the Minister, subject to this Part, may—

(a) approve the application and vary or remove the condition; or

(b) refuse the application.

(2) A variation or removal of a condition takes effect—

(a) on the day on which written notice of it is given to the permit holder; or

(b) on a later day specified in the notice.

## Subdivision 2—Variation of conditions on Minister's initiative

S. 84AAL inserted by No. 53/2014 s. 4.

### 84AAL Variation of conditions on Minister's initiative

(1) The Minister, on the Minister's initiative, may—

(a) vary a condition to which a levee maintenance permit is subject; or

(b) remove a condition to which a levee maintenance permit is subject; or

(c) impose a new condition on a levee maintenance permit.

(2) The Minister may only act under subsection (1) after obtaining the written consent of any lessee of—

(a) the land on which the levee is located; or

(b) the land over which access is required by the applicant who is likely to be affected by the variation or removal of the condition or the new condition.

(3) The Minister must give at least 28 days' written notice of the variation or removal of the condition, or the new condition, to the permit holder before it takes effect. However, a variation may take effect earlier if the permit holder agrees.

(4) A notice under subsection (3) must specify the reasons for the variation or removal of the condition or the new condition.

S. 84AAM inserted by No. 53/2014 s. 4.

### 84AAM Referral of proposal to land manager in certain circumstances

(1) This section applies if—

(a) the Minister proposes to vary or remove a condition to which a levee maintenance permit is subject, or to impose a new

condition on a levee maintenance permit, under section 84AAL; and

(b) the Minister is of the opinion that the land manager is likely to be affected by the variation or removal of the condition or the new condition.

(2) The Minister must refer a copy of the permit, together with details of the proposed variation or removal of the condition, or the proposed new condition, to the land manager.

(3) Within 28 days (or any longer period that the Minister allows) after receiving a copy of the permit and details of the proposed variation or removal of the condition, or the proposed new condition, the land manager—

(a) must consider the proposed variation or removal of the condition or the proposed new condition; and

(b) may—

(i) advise the Minister that the land manager does not object to the variation or removal of the condition or the new condition; or

(ii) advise the Minister that the land manager objects to the variation or removal of the condition, or the new condition, on the ground specified by the land manager (which must be a reasonable ground); or

(iii) specify any variation (which must be a reasonable variation) to the condition that the land manager requires.

(4) If the land manager makes no response to the Minister within 28 days after receipt of the copy of the permit and the details of the proposed variation or removal of the condition, or the new condition, the Minister may proceed to vary or remove the condition or impose the new condition.

## Subdivision 3—Revocation

S. 84AAN inserted by No. 53/2014 s. 4.

### 84AAN Revocation of permit

(1) The Minister, by written notice served on the holder of a levee maintenance permit, may revoke the permit.

(2) The Minister may only act under subsection (1)—

(a) following a request to do so by the holder of the permit; or

(b) if the Minister is of the opinion that there has been a failure to comply with any term or condition of the permit.

(3) A notice served under subsection (1) must specify the reasons for the revocation.

(4) A revocation takes effect—

(a) on the day on which written notice of the revocation is served on the permit holder; or

(b) on a later day specified in the notice.

## Division 6—Apportionment of application fee

S. 84AAO inserted by No. 53/2014 s. 4.

### 84AAO Payment to land manager of portion of application fee

(1) The Minister must pay to a land manager that considers an application in accordance with this Part, a proportion (determined by the Minister) of the application fee paid to the Minister for that application.

(2) The proportion must represent a land manager's reasonable costs in considering an application of that kind.

(3) A land manager must provide to the Minister any information that the Minister requests for the purposes of subsection (2).

Pt 5A (Heading and ss 84A–84ZM) inserted by No. 99/2005 s. 57.

# Part 5A—Victorian water register

## Division 1—Victorian water register

S. 84A inserted by No. 99/2005 s. 57.

### 84A Object of Part

The object of this Part is to provide for a Victorian water register, being records and information kept by various recording bodies relating to water-related entitlements in Victoria, together with a centralised system for those records and information.

S. 84B inserted by No. 99/2005 s. 57.

### 84B Purpose of water register

The purpose of the water register is to facilitate the responsible, transparent and sustainable use of the State's water resources and includes—

(a) facilitating the monitoring of, and reporting in relation to, records and information about water-related entitlements and allocation and use of water resources; and

(b) facilitating a market for water-related entitlements and water resources by providing publicly available records and information and other records and information about ownership and use of water-related entitlements.

S. 84C inserted by No. 99/2005 s. 57.

### 84C Responsibilities for water register

S. 84C(1) substituted by No. 32/2010 s. 51.

(1) The Minister is responsible for establishing and maintaining the system for the water register in which is kept records and information referred to in subsections (2), (2A) and (3).

(2) The Minister is responsible for establishing and maintaining records and information in the water register relating to—

S. 84C(2) substituted by No. 32/2010 s. 51.

(a) water-use licences; and

(b) water-use registrations; and

(c) bulk entitlements; and

(d) environmental entitlements; and

(e) the recording of amounts of water that are to be allocated to each water share under section 33AC; and

(f) works licences under section 67(1); and

S. 84C(2)(f) amended by No. 24/2013 s. 22(1)(a).

(g) licences to take and use water issued under section 51(1) or registration licences.

S. 84C(2)(g) inserted by No. 24/2013 s. 22(1)(b).

(2A) The Registrar is responsible for establishing and maintaining records and information in the water register relating to water shares.

S. 84C(2A) inserted by No. 32/2010 s. 51.

(3) An Authority is responsible for establishing and maintaining records and information in the water register relating to—

(a) services delivered by that Authority under section 222(1); and

(b) the recording of any water allocation assignment in a water system for which that Authority is responsible for supplying water; and

S. 84C(3)(b) substituted by No. 24/2013 s. 22(2).

(ba) standing directions; and

S. 84C(3)(ba) inserted by No. 28/2014 s. 16.

S. 84C(3)(c) inserted by No. 24/2013 s. 22(2).

(c) any consumption of allocated water in a water system for which that Authority is responsible for supplying water; and

S. 84C(3)(d) inserted by No. 24/2013 s. 22(2).

(d) the recording of any temporary transfer under section 62 of a licence to take and use water issued under section 51(1); and

S. 84C(3)(e) inserted by No. 24/2013 s. 22(2).

(e) the volume of water consumed under a licence to take and use water issued under section 51(1) or a registration licence; and

S. 84C(3)(f) inserted by No. 24/2013 s. 22(2).

(f) if the Authority is a Rural Water Authority, any agreement to supply water (other than drinking water) entered into in accordance with section 124(7) by the Authority.

S. 84C(4) inserted by No. 24/2013 s. 22(3).

(4) In this section—

***drinking water*** has the same meaning as in the **Safe Drinking Water Act 2003**;

***Rural Water Authority*** has the same meaning as in section 4A of the **Water Industry Act 1994**.

S. 84D inserted by No. 99/2005 s. 57.

### 84D Form and manner of keeping water register

S. 84D(1) amended by No. 32/2010 s. 52(1).

(1) Subject to any regulations made under this Act, the Minister may establish and maintain the system for the water register in any form and manner the Minister thinks fit.

(2) For the purposes of ensuring the integrity, efficiency and viability of the water register and consistency and compatibility—

S. 84D(2)(a) amended by No. 32/2010 s. 52(2).

(a) the Minister must consult with the other recording bodies in relation to the form and manner of establishing, maintaining and

altering the system of the water register, including, but not limited to, the form and manner of the recording of information and keeping records and the processes involved; and

(b) each recording body must consult with the other recording bodies in relation to the form and manner of establishing and maintaining the water register, including, but not limited to, the recording of information and keeping records and the processes involved.

### 84E Disclosure of information

S. 84E inserted by No. 99/2005 s. 57.

(1) The Registrar must ensure that all records and information for which the Registrar is responsible which are necessary to enable—

(a) an Authority to carry out its functions under this Act; or

(b) the Minister—

S. 84E(1)(b) substituted by No. 32/2010 s. 53(1).

(i) to establish and maintain the system of the water register; and

(ii) to carry out the Minister's functions under this Act—

are disclosed to the Authority or Minister, as the case requires, for those purposes.

(2) An Authority must ensure that all records and information for which it is responsible which are necessary to enable—

(a) the Registrar to carry out the Registrar's functions under this Act; or

S. 84E(2)(a) substituted by No. 32/2010 s. 53(2)(a).

(b) another Authority to carry out its functions under this Act; or

S. 84E(2)(c) substituted by No. 32/2010 s. 53(2)(b).

(c) the Minister—

(i) to establish and maintain the system of the water register; and

(ii) to carry out the Minister's functions under this Act—

are disclosed to the Registrar, Authority or Minister, as the case requires, for those purposes.

(3) The Minister must ensure that all records and information for which the Minister is responsible which are necessary to enable—

S. 84E(3)(a) substituted by No. 32/2010 s. 53(3).

(a) the Registrar to carry out the Registrar's functions under this Act; or

(b) an Authority to carry out its functions under this Act—

are disclosed to the Registrar or Authority as the case requires, for those purposes.

(4) A recording body is authorised to collect and use information disclosed under this section for the purposes of carrying out its functions under this Act.

Pt 5A Div. 1A (Heading and s. 84EA) inserted by No. 32/2010 s. 54.

## Division 1A—Minister's functions

S. 84EA inserted by No. 32/2010 s. 54.

### 84EA Functions of Minister as to water register

(1) The functions of the Minister as to the water register are—

(a) to establish and maintain the system for the water register and ensure the system's integrity, efficiency, viability, compatibility and consistency; and

(b) to consult with other recording bodies about matters relating to the form and operation of the system of the water register and the maintaining of records and information, including alterations, in the water register; and

(c) to create, or enable the creation of, reports derived from records and information in the water register, including reports created in accordance with the direction of the Minister.

(2) The Minister may make a report created under subsection (1)(c) available to the public, if the report does not include the names and addresses of individuals.

## Division 2—Registrar

### 84F Employment of Registrar and staff

S. 84F inserted by No. 99/2005 s. 57.

(1) A Registrar of the water register must be employed under Part 3 of the **Public Administration Act 2004** for the purposes of this Act.

(2) Any other employees that are necessary for the purposes of this Part may be employed under the **Public Administration Act 2004**.

### 84G Registrar's functions

S. 84G inserted by No. 99/2005 s. 57.

(1) The Registrar's functions are—

* * * * *

S. 84G(1)(a) repealed by No. 32/2010 s. 55(1).

(b) to administer records and information in the water register relating to water shares; and

(c) to provide information from the records and information in the water register relating to water shares in accordance with this Act; and

S. 84G(1)(d) repealed by No. 32/2010 s. 55(1).

* * * * *

(e) to train persons responsible for maintaining records and information in the water register relating to water shares; and

S. 84G(1)(f) repealed by No. 32/2010 s. 55(1).

* * * * *

(g) to keep records of prior transactions in relation to water shares; and

(h) any other functions conferred on the Registrar by this Act.

S. 84G(2) repealed by No. 32/2010 s. 55(2).

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S. 84H inserted by No. 99/2005 s. 57.

### 84H Delegation

S. 84H(1) substituted by No. 32/2010 s. 56.

(1) The Registrar, by instrument, may delegate any of the Registrar's powers, duties or functions under this Act or under a subordinate instrument made under this Act, other than this power of delegation, to—

(a) a person employed under Part 3 of the **Public Administration Act 2004**; or

(b) an Authority.

(2) A delegation under subsection (1) may be subject to any conditions which the Registrar considers appropriate.

## Division 3—Recordings of water shares by the Registrar

### 84I What is recorded in the water register about water shares?

S. 84I inserted by No. 99/2005 s. 57.

The Registrar must ensure that the following details are recorded in the water register in relation to a water share—

(a) the name and address of—

(i) the owner of the share; and

(ii) any other party with a recording with respect to the share; and

(b) any other matter that is required to be recorded in respect of a water share by or under this Act; and

(c) a description of the water system from which the share is issued; and

(d) the share of water available from the water system under that share, which must be expressed as a maximum volume over a specified period; and

(e) the class of reliability of the water share; and

(f) if the share is associated with land specified in a water-use licence or water-use registration, the identifying details of the land and the water-use licence or water-use registration; and

(g) the Authority responsible for imposing fees under Division 5 of Part 3A in relation to the water share; and

(h) any other information that the Minister considers necessary; and

(i) any other prescribed matters.

S. 84J inserted by No. 99/2005 s. 57.

### 84J Recording of transfers

(1) If—

(a) a transfer of ownership of a water share under section 33S occurs; or

(b) a limited term transfer occurs—

a person may lodge with the Registrar a document for the recording of the transfer to be made in the water register in respect of that share.

(2) A document lodged under subsection (1) must be in the appropriate approved form.

S. 84J(3) amended by No. 32/2010 s. 57.

(3) The Registrar must not record a transfer of ownership of a water share under section 33S or a limited term transfer unless the Registrar is satisfied that, at the time the transfer was lodged for recording, the Minister has approved the transfer.

(4) If a recording is made of a limited term transfer and the rights under that limited term transfer are transferred back to the owner of the water share or surrendered before the expiry of the limited term, the water share ceases to be subject to the limited term transfer.

S. 84JA inserted by No. 85/2006 s. 50.

### 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 subsection (1) must be in the approved form.

### 84K Recording of legal personal representatives

S. 84K inserted by No. 99/2005 s. 57, substituted by No. 32/2010 s. 58.

(1) A legal personal representative may lodge a document with the Registrar for the recording of the transmission to the legal personal representative of—

(a) the ownership of a water share owned by a deceased person represented by the legal personal representative; or

(b) the holding of a limited term transfer held by a deceased person represented by the legal personal representative; or

(c) a deceased person's interest as a mortgagee of a water share, where the deceased person is represented by the legal personal representative.

(2) A document under subsection (1) must be in the approved form.

(3) On being satisfied as to the legal personal representative's authority to be recorded under this section, the Registrar may make a recording of—

(a) the appointment of that legal personal representative; and

(b) the date of death of the person represented by the legal personal representative.

(4) On the making of a recording under this section in a case where subsection (1)(a) applies—

(a) the legal personal representative becomes the owner of the water share in respect of the interest of the deceased owner of the water share; and

(b) the legal personal representative holds the water share subject to all equities to which the deceased owner was subject in relation to the water share, but for the purpose of any dealing with the water share under this Act, is the owner of the water share; and

(c) the status of the legal personal representative as owner of the water share relates back to, and is deemed to have arisen on, the death of the owner of the water share as if there has been no interval of time between the death and the recording.

(5) On the making of a recording under this section in a case where subsection (1)(b) applies—

(a) the legal personal representative becomes the holder of the limited term transfer in respect of the deceased holder of the limited term transfer; and

(b) the status of the legal personal representative as holder of the limited term transfer relates back to, and is deemed to have arisen on, the death of the holder of the limited term transfer as if there has been no interval of time between the death and the recording.

(6) On the making of a recording under this section in a case where subsection (1)(c) applies—

(a) the legal personal representative becomes the mortgagee in respect of the deceased mortgagee; and

(b) the status of the legal personal representative as mortgagee relates back to, and is deemed to have arisen on, the death of the deceased mortgagee as if there has been no interval of time between the death and the recording.

### 84L Recording of survivor of joint ownership or holding

S. 84L inserted by No. 99/2005 s. 57, amended by No. 85/2006 s. 51, substituted by No. 32/2010 s. 59.

(1) Subject to this Act, on the death of a person recorded in the water register with any other person as—

(a) joint owners of a water share; or

(b) joint holders of a limited term transfer; or

(c) joint holders of a mortgagee interest in a water share—

the survivor may lodge a document with the Registrar for a recording to be made in the water register of the transmission to the survivor of the deceased person's ownership or holding.

(2) A document lodged under subsection (1) must be in the approved form.

(3) The Registrar may make a recording of the transmission by survivorship of the joint ownership of a water share or the joint holding of a limited term transfer on being satisfied as to proof of the death of the joint owner or joint holder (as the case requires).

### 84M Recording of trustee of bankrupt

S. 84M inserted by No. 99/2005 s. 57.

(1) The trustee in bankruptcy of an owner of a water share may lodge with the Registrar a document for a recording of the transmission to the trustee in bankruptcy to be made in the water register in respect of that water share.

(2) A document lodged under subsection (1) must be in the approved form.

(3) On being satisfied as to the trustee in bankruptcy's authority to be recorded under this section, the Registrar may make a recording of the appointment of that trustee in bankruptcy.

(4) On the making of a recording under this section—

(a) the trustee in bankruptcy becomes the owner of the water share in respect of the interest of the owner of the water share; and

(b) the trustee in bankruptcy holds the water share subject to all equities on which the owner held it, but for the purpose of any dealing with the water share under this Act, is the owner of the water share.

(5) Unless prior to a bankrupt owner of a water share dealing with the water share, the trustee in bankruptcy has applied to be recorded under this section, any dealings by the bankrupt owner with a person dealing bona fide and for value with that owner is not to be affected by any order of sequestration.

(6) This section is subject to any law of the Commonwealth of Australia relating to bankruptcy.

S. 84N inserted by No. 99/2005 s. 57.

### 84N Recording of mortgages

Schedule 12A has effect.

S. 84O inserted by No. 99/2005 s. 57.

### 84O Electronic lodgement system

Schedule 12B has effect.

S. 84P inserted by No. 99/2005 s. 57.

### 84P Recording and incorporation of common provisions

(1) A person may lodge with the Registrar a memorandum in the approved form containing one or more provisions which are intended for inclusion in documents to be subsequently lodged for recording in the part of the water register for which the Registrar is responsible.

(2) The Registrar may retain a memorandum lodged under subsection (1).

(3) The Registrar may prepare and retain a memorandum containing any provisions which seem appropriate for inclusion in documents to be subsequently lodged for recording in the part of the water register for which the Registrar is responsible.

(4) A memorandum retained by the Registrar under this section is to be deemed to be part of the water register relating to water shares.

(5) A document lodged with the Registrar for the making of a recording in the water register in relation to a water share may incorporate a provision in a memorandum retained by the Registrar under this section by reference to the provision in a way sufficient to clearly identify it.

### 84Q Priority of recordings

S. 84Q inserted by No. 99/2005 s. 57.

(1) For the purposes of determining the priority of recordings in relation to water shares, the Registrar must ensure that the time and date of lodgement of any document for the making of a recording in the water register is recorded.

S. 84Q(1A) inserted by No. 32/2010 s. 60(1).

(1A) If two or more documents for the making of a recording in relation to the same water share are lodged and are waiting recording, the Registrar may make the recordings in the water register arising from those documents in the order which will give effect to the intentions of all the parties, as expressed in or apparent to the Registrar from those documents.

S. 84Q(2) amended by No. 32/2010 s. 60(2).

(2) Subject to subsection (1A), the priority of documents lodged for the making of a recording in relation to a water share as between themselves is according to the time and date of lodgement.

(3) A recording takes effect at the date the recording is made.

## Division 4—Recordings by the Minister

S. 84R inserted by No. 99/2005 s. 57.

### 84R What is recorded in the water register about water-use licences?

The Minister must ensure that the following details are recorded in the water register in relation to a water-use licence—

(a) the name and address of the holder of the licence; and

(b) a description of the land specified in the licence; and

(c) the conditions to which the licence is subject; and

(d) the annual use limit; and

(e) any other information that the Minister considers necessary; and

(f) any other prescribed matters.

S. 84S inserted by No. 99/2005 s. 57.

### 84S What is recorded in the water register about water-use registration?

The Minister must ensure that the following details are recorded in the water register in relation to a water-use registration—

(a) the name and address of the holder of the water use registration; and

(b) a description of the land specified in the water-use registration; and

(c) the purpose for which water may be used on the land under the water-use registration; and

(d) the annual use limit; and

(e) any other information that the Minister considers necessary; and

(f) any other prescribed matters.

**84T What is recorded in the water register about bulk entitlements?**

S. 84T inserted by No. 99/2005 s. 57.

The Minister must ensure that bulk entitlements are recorded in the water register including—

(a) the name of the person who holds the bulk entitlement; and

(b) any other information that the Minister considers necessary; and

(c) any other prescribed matters.

**84U What is recorded in the water register about environmental entitlements?**

S. 84U inserted by No. 99/2005 s. 57.

The Minister must ensure that environmental entitlements are recorded in the water register including—

(a) any information that the Minister considers necessary; and

(b) any prescribed matters.

**84V What is recorded in the water register about works licences?**

S. 84V inserted by No. 99/2005 s. 57, amended by No. 24/2013 s. 23.

The Minister must ensure that the following details are recorded in the water register in relation to a works licence under section 67(1)—

(a) the name and address of the holder of the licence; and

(b) a description of the land specified in the licence; and

(c) a description of the works; and

(d) the conditions to which the licence is subject; and

(e) the period specified in the licence; and

(f) any other information that the Minister considers necessary; and

(g) any other prescribed matters.

S. 84VA inserted by No. 24/2013 s. 24.

### 84VA What is recorded in the water register about licences to take and use water?

The Minister must ensure that the following details are recorded in the water register in relation to licences to take and use water issued under section 51(1) or registration licences—

(a) the name and address of the holder of the licence;

(b) the volume of water the licence authorises the holder of the licence to take and use;

(c) a description of the land specified in the licence (if applicable);

(d) the conditions to which the licence is subject;

(e) the period that the licence is in force and the expiry date of the licence;

(f) the name of the waterway, aquifer or works from which the water may be taken and the water system (if applicable);

(g) the Authority to whom any fees are payable in relation to the licence;

(h) any other information that the Minister considers necessary;

(i) any other prescribed matters.

## Division 5—Recordings by Authorities

### 84W What must an Authority record in the part of the water register for which it is responsible?

S. 84W inserted by No. 99/2005 s. 57.

An Authority must record and maintain the following records and information—

(a) in relation to services delivered by that Authority under section 222(1)—

(i) the name and address of the owner of each serviced property within the irrigation district; and

(ii) in relation to each serviced property in the irrigation district—

(A) the volumes at which and the periods for which the Authority determines under section 223 that water is to be delivered for irrigation to the property; and

(B) any other terms and conditions that apply to the property; and

(b) any water allocation assignment in a water system for which that Authority is responsible for supplying water; and

S. 84W(b) substituted by No. 24/2013 s. 25.

(ba) any consumption of allocated water in a water system for which that Authority is responsible for supplying water; and

S. 84W(ba) inserted by No. 24/2013 s. 25.

(bb) any temporary transfer under section 62 of a licence to take and use water issued under section 51(1); and

S. 84W(bb) inserted by No. 24/2013 s. 25.

(bc) the volume of water consumed under a licence to take and use water issued under section 51(1) or a registration licence; and

S. 84W(bc) inserted by No. 24/2013 s. 25.

(c) any other information that the Authority considers necessary; and

(d) any other prescribed matters; and

(e) any other information that the Minister considers necessary to be recorded in the part of the water register for which an Authority is responsible.

S. 84WA inserted by No. 24/2013 s. 26.

### 84WA What must a Rural Water Authority record in the part of the water register for which it is responsible?

(1) In addition to the requirements set out in section 84W, a Rural Water Authority must record and maintain the following records and information relating to agreements to supply water (other than drinking water) entered into by the Authority in accordance with section 124(7)—

(a) the name and address of each party to the agreement;

(b) the volume of water to be supplied or used (if applicable);

(c) a description of the land specified in the agreement (if applicable);

(d) the period that the agreement is in force and the expiry date of the agreement;

(e) the name of the works from which the water is supplied and the water system (if applicable);

(f) any other information that the Rural Water Authority considers necessary;

(g) any other prescribed matters;

(h) any other information that the Minister considers necessary to be recorded in the part of the water register for which a Rural Water Authority is responsible.

(2) In this section—

***drinking water*** has the same meaning as in the **Safe Drinking Water Act 2003**;

***Rural Water Authority*** has the same meaning as in section 4A of the **Water Industry Act 1994**.

**84WB What is recorded in the water register about standing directions?**

S. 84WB inserted by No. 28/2014 s. 17.

An Authority must ensure that standing directions are recorded in the water register including—

(a) the name of the person nominated in the direction; and

(b) any other information that the Authority considers necessary.

## Division 6—Searching information in the water register

**84X What information is available from the water register?**

S. 84X inserted by No. 99/2005 s. 57.

(1) Subject to this Division, the following records and information in the water register are publicly available—

(a) records and information in the water register referred to in sections 84I, 84R, 84S, 84T, 84U, 84V, 84VA and 84W (except for any records or information referred to in section 84W(b), 84W(ba), 84W(bc), 84WA or 84WB); and

S. 84X(1)(a) amended by Nos 24/2013 s. 27, 28/2014 s. 18.

(b) prescribed records or information.

* * * * *

S. 84X(2) repealed by No. 32/2010 s. 61.

(3) For a prescribed purpose, a prescribed person or prescribed class of person may search the water register for prescribed information or records or prescribed classes of information or records, whether or not that prescribed information or those prescribed records are information or records referred to in subsection (1).

(4) Despite subsection (1) and (3), the regulations may prescribe records or information or classes of records or information which are not publicly available.

S. 84Y inserted by No. 99/2005 s. 57.

### 84Y Suppression of certain personal records and information

(1) A person whose personal information is held in the water register may apply to a recording body to restrict public access to some or all of that personal information.

(2) If a recording body is satisfied that exceptional circumstances exist justifying the restriction of public access to that person's personal information, the recording body may restrict public access to some or all of that personal information.

(3) The restriction of public access under subsection (2) may be for the period and on the conditions that the recording body thinks fit.

(4) If a recording body is satisfied that it is in the public interest that personal information restricted under this section be released to a person who applies for it, the recording body may release some or all of the information to the person on any condition that the recording body thinks fit.

(5) If a recording body decides to release restricted personal information under subsection (4), the recording body must give written notice of the

decision to the person whose restricted personal information is to be released.

(6) A recording body must not release restricted personal information under this section until 28 days after giving written notice of the decision to release the information to the person whose restricted personal information is to be released.

### 84Z Rights of review

S. 84Z inserted by No. 99/2005 s. 57.

(1) A person whose interests are affected by a decision of a recording body under section 84Y may apply to VCAT for review of the decision.

(2) An application for review under subsection (1) must be lodged with VCAT within 28 days after—

(a) notice of the decision was given; or

(b) if, under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

### 84ZA Searching the water register

S. 84ZA inserted by No. 99/2005 s. 57.

(1) A person may apply to a recording body for information or records from the part of the water register for which that body is responsible.

(2) An application under this section must be accompanied by—

(a) in the case of an application to the Registrar or the Minister, the relevant prescribed fee (if any); or

(b) in the case of an application to an Authority, the relevant fee (if any) fixed by the Authority.

(3) On receiving an application under this section, a recording body may search the part of the water register for which it is responsible and provide the information or records to the applicant in any manner permitted by the system.

(4) A recording body may provide information or records under this section in relation to—

(a) current information or records in the water register maintained by a recording body;

(b) other non-current information or records in the water register maintained by a recording body;

(c) documents or images of documents in the water register maintained by a recording body;

(d) any other prescribed information or records in the water register maintained by a recording body;

(e) a combination of the matters referred to in paragraphs (a) to (d).

## Division 7—Corrections and amendment of water register

S. 84ZB inserted by No. 99/2005 s. 57.

### 84ZB Correction and amendment of water register

(1) A recording body, if satisfied that it is necessary to do so to reflect the current status of a record or information, may correct or amend the part of the water register for which that body is responsible—

(a) to correct any error in a recording; or

(b) to amend any recording; or

(c) to delete or cancel any recording.

(2) A recording body must correct or amend the part of the water register for which it is responsible if required to do so—

(a) by a court or tribunal; or

(b) by virtue of this Act or any other Act.

(3) A recording body may correct or amend the part of the water register for which it is responsible by—

(a) adding, cancelling or deleting a recording; or

(b) adding, altering or deleting particulars or details contained in a recording; or

(c) recording details of any change in the name or address of any person in respect of whom the matter recorded in the water register relates.

(4) A recording body—

(a) may correct the water register on the body's own initiative; or

(b) may correct or amend the water register on the application of a person in the approved form accompanied by—

(i) the prescribed fee (if any); or

(ii) in the case of an Authority, the fee fixed by the Authority (if any); or

(c) may correct or amend the water register as a consequence of the Minister exercising a power under section 33AAB.

**S. 84ZB(4)(c) amended by No. 85/2006 s. 52.**

### 84ZC Notification of parties

**S. 84ZC inserted by No. 99/2005 s. 57.**

If a recording body corrects a part of the water register under section 84ZB(4)(a) in relation to a substantial error affecting a person's recorded interest, the body must notify each person who is recorded in the water register as having an interest in the matter in respect of which the correction has been made.

## Division 8—General

S. 84ZD inserted by No. 99/2005 s. 57.

### 84ZD Power to require statutory declarations

A recording body may require that information be given by statutory declaration.

S. 84ZE inserted by No. 99/2005 s. 57.

### 84ZE Recording body may require proof of identity

(1) A recording body may require a person who requests the recording of any matter in the water register or the approval of any matter for recording in the water register to provide any proof of identity of a person that the recording body considers sufficient to establish that person's identity.

(2) A recording body is not required to make a recording in the water register or approve any matter for recording in the water register if the recording body is not satisfied as to the identity of any person by or on behalf of whom any document relating to that matter was executed.

(3) A recording body may require or permit the identity of a person to be verified by a person or class of persons approved as a verifier for the purposes of this section.

(4) A recording body, by notice published in the Government Gazette, may approve—

(a) a person or class of persons as a verifier or verifiers for the purposes of this section; or

(b) standards of proof of identity that the recording body considers sufficient for the purposes of this section.

S. 84ZF inserted by No. 99/2005 s. 57.

### 84ZF Recording body may require production of documents

(1) Before making a recording in the water register, a recording body may require a person to submit any documents related to a recording or give any

information related to a recording for the purposes of enabling any matter to be recorded in the part of the water register for which that body is responsible.

(2) If any information or document required by a recording body under this section is withheld or not complied with, the recording body—

(a) may refuse to make the recording until the relevant information or document is produced or complied with; or

(b) if the relevant information or document is not produced or complied with and the recording is not made, may—

(i) return any documents or information that have been submitted to the responsible body to the person requesting the recording; and

(ii) retain any fee that has been paid by the person requesting the recording.

(3) A recording body, at that body's discretion, may dispense with the submission or production of any document or information.

### 84ZG Monetary consideration to be stated in transfer

S. 84ZG inserted by No. 99/2005 s. 57, amended by No. 32/2010 s. 62.

Any—

(a) transfer of ownership of a water share under section 33S; and

S. 84ZG(a) amended by No. 85/2006 s. 53.

(b) limited term transfer—

must state whether or not the transfer is for monetary consideration and, if the transfer is for monetary consideration, must state the monetary consideration in relation to the transfer.

## 84ZH Method of giving of notices

S. 84ZH (Heading) substituted by No. 32/2010 s. 63(1).

S. 84ZH inserted by No. 99/2005 s. 57.

S. 84ZH(1) amended by No. 32/2010 s. 63(2)(a).

(1) A notice under this Part may be given—

S. 84ZH(1)(a) substituted by No. 32/2010 s. 63(2)(b).

(a) by being sent by letter posted to the person concerned at the address of the person recorded in the water register, which may be a post office box; or

(b) by facsimile, e-mail or other electronic means of communication; or

S. 84ZH(1)(c) amended by No. 32/2010 s. 63(2)(c).

(c) at that person's last known place of residence or business.

S. 84ZH(2) repealed by No. 32/2010 s. 63(3).

* * * * *

(3) A recording body may cause a copy of any notice sent by the recording body to be filed with a memorandum that it was so sent and the memorandum is sufficient proof that the notice was duly sent.

S. 84ZH(4) amended by No. 32/2010 s. 63(4).

(4) If a notice is sent by letter posted to any person at the address recorded in the water register under subsection (1)(a) and the letter is returned by the post office, a recording body may, if it thinks fit—

(a) direct any further notice to be given; or

(b) direct substituted service; or

(c) proceed without notice.

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S. 84ZH(5) repealed by No. 32/2010 s. 63(5).

### 84ZI Approved forms

S. 84ZI inserted by No. 99/2005 s. 57.

(1) A recording body may approve forms for the purposes of this Part in relation to those parts of the water register for which that body is responsible.

(2) A recording body must ensure that approved forms are available—

(a) at the office of the recording body; and

(b) on the Internet.

### 84ZJ Power to remit fees

S. 84ZJ inserted by No. 99/2005 s. 57.

In appropriate cases, a recording body may remit to a person the whole or part of a fee paid or payable under this Part and the Consolidated Fund is hereby appropriated accordingly.

## Division 9—Offences and enforcement

### 84ZK Certificates and evidentiary effect

S. 84ZK inserted by No. 99/2005 s. 57.

(1) For the purposes of proceedings in any court or tribunal, a recording body may issue a certificate under that body's signature or seal (as the case requires) certifying as to any matter—

(a) that is recorded in the part of the water register for which that body is responsible; or

(b) that can be ascertained from—

(i) the part of the water register for which that body is responsible; or

(ii) any other records or information maintained by that recording body.

(2) All courts and persons acting judicially must take judicial notice of a recording body's signature or seal (as the case requires) on a certificate issued under subsection (1) and, until the contrary is proved, must presume that it was duly signed or sealed.

(3) In any proceedings, a certificate issued under subsection (1) purporting to be signed or sealed (as the case requires) by a recording body is evidence and, in the absence of evidence to the contrary, is proof, of the matters specified in the certificate.

S. 84ZL inserted by No. 99/2005 s. 57.

### 84ZL False or misleading information

A person must not knowingly give false or misleading information—

(a) in any document lodged with or provided to a recording body under this Part; or

(b) in relation to a recording in the water register.

Penalty: 60 penalty units or imprisonment for 6 months.

S. 84ZM inserted by No. 99/2005 s. 57.

### 84ZM Making false entries etc. in water register

A person must not knowingly make, or cause to be made—

(a) a false recording in the water register; or

(b) a recording or an alteration, cancellation or deletion of a recording in the water register without—

(i) the authority of the Registrar; or

(ii) being otherwise authorised to do so.

Penalty: 60 penalty units or imprisonment for 6 months.

# Part 6—Water corporations

Pt 6 (Heading and ss 85–122) substituted.[23]

## Division 1—Establishment, restructuring, abolition and administration of water corporations

### 85 Establishment of water corporations

S. 85 substituted by No. 85/2006 s. 54.

(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.

S. 85(1A) inserted by No. 17/2012 s. 7.

(1A) 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 1A.

(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

(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.

S. 86 substituted by No. 85/2006 s. 54.

### 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.

S. 87 substituted by No. 85/2006 s. 54.

### 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 subsection (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

(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.

S. 87(3) repealed by No. 17/2012 s. 8(1).

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### 88 Abolition of water corporations

S. 88 substituted by No. 85/2006 s. 54.

(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 subsection (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

S. 89 substituted by No. 85/2006 s. 54.

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

### 90 Effect of Schedule 2

S. 90 substituted by No. 85/2006 s. 54.

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

### 91 Appointment of administrator

S. 91 substituted by No. 85/2006 s. 54.

(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.

S. 91(1A) inserted by No. 48/2021 s. 65(1).

(1A) In addition to the power to appoint an administrator under subsection (1), the Minister may, by determination, appoint an administrator to carry out the functions of Melbourne Water Corporation, if Melbourne Water Corporation has failed to comply with a direction under section

19A of the **Catchment and Land Protection Act 1994** of the Minister administering that Act.

S. 91(2) amended by No. 48/2021 s. 65(2).

(2) A determination of the Minister under subsection (1) or (1A)—

(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.

(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 subsection (5)(a), at the time of that reinstatement; or

(b) if all the members are dismissed under subsection (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 subsection (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

S. 92 substituted by No. 85/2006 s. 54.

(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.

S. 92(2A) inserted by No. 23/2019 s. 49.

(2A) In performing functions conferred on it by or under this Act, a water corporation must consider opportunities to provide for the following, consistently with its objectives and the requirements conferred on it by or under this Act or any other Act—

(a) Aboriginal cultural values and uses of waterways;

(b) the social and recreational uses and values of waterways.

(3) Schedule 3 has effect with respect to Melbourne Water Corporation.

S. 93 substituted by No. 85/2006 s. 54.

### 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

S. 93(c) substituted by No. 23/2019 s. 50.

(c) the need to integrate both long term and short term—

(i) economic, environmental and equitable considerations; and

(ii) Aboriginal cultural considerations; and

(iii) social and recreational considerations; and

(d) the need for the conservation of biological diversity and ecological integrity to be a fundamental consideration; and

(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

S. 94 substituted by No. 85/2006 s. 54.

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

S. 95 substituted by No. 85/2006 s. 54.

(1) Each water corporation must have a board of directors consisting of—

S. 95(1) amended by No. 17/2012 s. 8(2).

(a) not less than 2 and not more than 9 directors appointed by—

S. 95(1)(a) substituted by No. 17/2012 s. 9(1).

(i) in the case of Melbourne Water Corporation and each metropolitan water corporation, the Minister in consultation with the Treasurer; or

(ii) in the case of a non-metropolitan water corporation, the Minister; and

(b) the managing director of the water corporation.

* * * * *

S. 95(2) repealed by No. 17/2012 s. 8(1).

(3) For the purposes of subsection (1)(a)—

S. 95(3) substituted by No. 17/2012 s. 9(2).

(a) in the case of Melbourne Water Corporation and each metropolitan water corporation, the Minister, in consultation with the Treasurer, may, from time to time by instrument,

determine the number of directors for the water corporation; or

(b) in the case of each non-metropolitan water corporation, the Minister may, from time to time by instrument, determine the number of directors for the 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 subsection (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.

S. 96 substituted by No. 85/2006 s. 54.

### 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.

S. 97 substituted by Nos 85/2006 s. 54, 17/2012 s. 10.

### 97 Appointment of members of board of directors

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

(2) In appointing persons to be members of the board of directors of a non-metropolitan water corporation, the Minister 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

S. 98 substituted by No. 85/2006 s. 54.

(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—

S. 98(1)(b) substituted by No. 17/2012 s. 11.

(i) in the case of Melbourne Water Corporation and each metropolitan water corporation, on the terms and conditions that are determined by the Minister in consultation with the Treasurer; and

(ii) in the case of each non-metropolitan water corporation, on the terms and conditions that are determined by the Minister.

(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.

### 99 Managing Director

S. 99 substituted by No. 85/2006 s. 54.

(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.

S. 100 substituted by No. 85/2006 s. 54.

**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

S. 100(1)(b) amended by Nos 4/2008 s. 32(Sch. item 37.1), 32/2010 s. 77(Sch.).

(b) becomes an insolvent under administration; or

(c) fails to attend 3 consecutive meetings of the board of directors without the approval of the board; or

(d) is found guilty of an indictable offence; or

(e) holds a paid office in the water corporation.

(2) Subsection (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

S. 101 substituted by Nos 85/2006 s. 54, 17/2012 s. 12.

(1) In the case of Melbourne Water Corporation and each metropolitan water corporation, the Minister in consultation with the Treasurer may at any time remove a person from the office of member of the board of directors of the water corporation (other than the managing director).

(2) In the case of each non-metropolitan water corporation, the Minister may at any time remove a person from the office of member of the board of directors of the water corporation (other than the managing director).

(3) In the case of Melbourne Water Corporation and each metropolitan water corporation, the Minister in consultation 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 in consultation 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.

(4) In the case of each non-metropolitan water corporation, the Minister 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 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.

S. 102 substituted by No. 85/2006 s. 54.

### 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.

S. 103 substituted by No. 85/2006 s. 54.

### 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.

S. 104 substituted by Nos 85/2006 s. 54, 17/2012 s. 13.

### 104 Chairperson

(1) In the case of Melbourne Water Corporation and each metropolitan water corporation, the Minister in consultation with the Treasurer must appoint a member of the board of directors appointed under section 95(1)(a) to be the chairperson of the water corporation.

(2) In the case of a non-metropolitan water corporation, the Minister must appoint a member of the board of directors appointed under section 95(1)(a) to be the chairperson of the water corporation.

### 105 Deputy chairperson

S. 105 substituted by No. 85/2006 s. 54.

(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.

(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

S. 106 substituted by No. 85/2006 s. 54.

(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.

S. 107 substituted by No. 85/2006 s. 54.

### 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.

(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.

S. 108 substituted by No. 85/2006 s. 54.

### 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

S. 109 substituted by No. 85/2006 s. 54.

(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 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 subsection (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 subsection (1), a statement showing—

(a) that the disclosure was made; and

(b) the nature of the matter and the nature of the disclosed interest; and

(c) whether any vote was taken on a question relating to the matter and, if so, whether the member was present while the vote was taken; and

(d) whether the member left the meeting at any time during consideration of the matter and, if so, at what stage the member left—

must—

(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 subsections (1) and (3).

Penalty: 20 penalty units.

(6) It is a defence to a charge under subsection (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.

(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 subsection (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?**

**S. 110 substituted by No. 85/2006 s. 54.**

(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

(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 subsection (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) Subsection (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, subsection (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.

(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**

**S. 111 substituted by No. 85/2006 s. 54.**

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).

S. 112 substituted by No. 85/2006 s. 54.

### 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

(b) a court hearing an appeal under subsection (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 subsection (1)(a), appeal from that decision—

S. 112(2)(a) amended by No. 3/2016 s. 97.

(a) if the person was found guilty by the Magistrates' Court (other than the Magistrates' Court constituted by the Chief Magistrate who is a dual commission holder)—to the County Court; and

S. 112(2)(ab) inserted by No. 1/2022 s. 107.

(ab) in the case of the Magistrates' Court constituted by the Chief Magistrate who is a dual commission holder—to the Court of Appeal; 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

S. 113 substituted by No. 85/2006 s. 54.

(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.

(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.

S. 114 substituted by No. 85/2006 s. 54.

### 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;

(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;

(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 subsection (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.

S. 115 substituted by No. 85/2006 s. 54.

### 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 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

S. 116 substituted by No. 85/2006 s. 54.

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

S. 117 substituted by No. 85/2006 s. 54.

(1) A water corporation may, subject to subsection (2), pay remuneration and allowances to its members of the board of directors.

S. 117(2) substituted by No. 17/2012 s. 14.

(2) In the case of Melbourne Water Corporation and each metropolitan water corporation, the amounts of any remuneration and allowances paid by the water corporation must not exceed the amounts fixed by the Minister in consultation with the Treasurer in respect of that water corporation.

S. 117(3) substituted by No. 17/2012 s. 14.

(3) The amounts fixed by the Minister in consultation with the Treasurer under subsection (2) may vary between water corporations.

S. 117(3A) inserted by No. 17/2012 s. 14.

(3A) In the case of each non-metropolitan water corporation, the amounts of any remuneration and allowances paid by the water corporation must not exceed the amounts fixed by the Minister in respect of that water corporation.

S. 117(3B) inserted by No. 17/2012 s. 14.

(3B) The amounts fixed by the Minister under subsection (3A) 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.

S. 118 substituted by No. 85/2006 s. 54.

## 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.

S. 119 substituted by No. 85/2006 s. 54.

## 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

(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;

(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.

S. 120 substituted by No. 85/2006 s. 54.

### 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.

(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 subsection (9) is deemed to be present at the meeting.

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

**S. 121 substituted by No. 85/2006 s. 54.**

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

(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.

S. 122 substituted by No. 85/2006 s. 54.

### 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 subsection (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.

S. 122A inserted by No. 85/2006 s. 54.

### 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 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 subsection (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 subsection (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

S. 122B inserted by No. 85/2006 s. 54.

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

(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.

S. 122C inserted by No. 85/2006 s. 54.

### 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;

(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.

(4) By-laws made under subsection (3) prevail, to the extent of any inconsistency, over the provisions of subsection (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

**S. 122D inserted by No. 85/2006 s. 54.**

(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.

(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 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

S. 122E inserted by No. 85/2006 s. 54.

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

S. 122F inserted by No. 85/2006 s. 54.

### 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.

(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

Pt 6A (Headings and ss 122G–122ZF) inserted by No. 85/2006 s. 54.

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Pt 6A Div. 1AA (Heading and ss 122GAA–122GAD) inserted by No. 17/2012 s. 15, repealed by No. 23/2019 s. 51.

## Division 1—Water supply, sewerage, irrigation and waterway management districts

Pt 6A Div. 1 (Heading and ss 122G–122I) inserted by No. 85/2006 s. 54, substituted as Pt 6A Div. 1 (Heading and ss 122G–122M) by No. 23/2019 s. 51.

### 122G Determination of districts

S. 122G substituted by No. 23/2019 s. 51.

(1) The Minister may determine—

(a) a water supply district for an Authority that is a water corporation; or

(b) a sewerage district for an Authority that is a water corporation; or

(c) an irrigation district for an Authority that is a water corporation; or

(d) a waterway management district for an Authority.

(2) A district determined under subsection (1) must be described in the determination by reference to a plan lodged in the Central Plan Office.

(3) A determination under subsection (1) must be published in the Government Gazette.

(4) A determination under subsection (1) takes effect from the date specified in the determination, which must be no earlier than the date of publication of the determination.

S. 122H substituted by No. 23/2019 s. 51.

### 122H Effect of determination on existing districts

On a determination under section 122G taking effect in relation to an Authority, any district that the Authority had, immediately before the taking effect of the determination, that was of the same kind as the new district and—

(a) that is wholly comprised by the new district, is taken to be replaced by the new district; or

(b) that is partly comprised by the new district, is taken to be replaced by the new district, to the extent of that part.

S. 122I substituted by No. 23/2019 s. 51.

### 122I Variation or abolition of district

(1) The Minister, by determination, may vary or abolish the whole or a part of a water supply district, sewerage district, irrigation district or waterway management district of an Authority.

(2) The variation or abolition of a district under a determination under subsection (1) must be described in the determination by reference to a plan lodged in the Central Plan Office.

(3) A determination under subsection (1) must be published in the Government Gazette.

(4) A determination under subsection (1) takes effect from the date specified in the determination, which must be no earlier than the date of publication of the determination.

**122J Procedural requirements before making a determination under this Division**

New s. 122J inserted by No. 23/2019 s. 51.

Before making a determination under this Division, the Minister—

(a) must consult with the Authority for which the district is to be determined, or that has the district that is to be varied or abolished; and

(b) must consult with any other Authority that has a district that may be affected by the determination; and

(c) may consult with any other person, as the Minister considers fit.

**122K Considerations in making determination under this Division**

New s. 122K inserted by No. 23/2019 s. 51.

In making a determination under this Division, the Minister must have regard to—

(a) any submissions received during the course of consulting under section 122J; and

(b) the public interest.

**122L Saving of districts—Water and Catchment Legislation Amendment Act 2019**

New s. 122L inserted by No. 23/2019 s. 51.

(1) On the commencement of section 5(1) of the **Water and Catchment Legislation Amendment Act 2019**, a water corporation is taken to have, as a water supply district, each water district that the water corporation had immediately before that commencement, as if each district were determined as a water supply district under this Division.

(2) On the commencement of section 5(1) of the **Water and Catchment Legislation Amendment Act 2019**, a water corporation is taken to have any sewerage district or irrigation district that the water corporation had immediately before that commencement, as if that sewerage district or irrigation district were determined as a sewerage district or irrigation district under this Division.

(3) On the commencement of section 5(1) of the **Water and Catchment Legislation Amendment Act 2019**, an Authority is taken to have any waterway management district that the Authority had immediately before that commencement, as if that waterway management district were determined as a waterway management district under this Division.

New s. 122M inserted by No. 23/2019 s. 51.

### 122M Waterway management district of Melbourne Water Corporation

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.

Pt 6A Div. 1A (Heading and ss 122IA–122IC) inserted by No. 17/2012 s. 16, repealed by No. 23/2019 s. 51.

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Pt 6A Div. 2 (Heading and ss 122J, 122K) inserted by No. 85/2006 s. 54, repealed by No. 23/2019 s. 51.

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Pt 6A Div. 3 (Heading and ss 122L–122W) inserted by No. 85/2006 s. 54, amended by No. 17/2012 ss 17, 18, repealed by No. 23/2019 s. 51.

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Pt 6A Div. 4 (Heading and ss 122X–122Z) inserted by No. 85/2006 s. 54, amended by No. 17/2012 s 19, repealed by No. 23/2019 s. 51.

## Division 5—Environmental and recreational areas

### 122ZA Environmental and recreational areas

S. 122ZA inserted by No. 85/2006 s. 54.

(1) The Minister may determine land—

(a) which is owned or controlled by an Authority; or

(b) which is within the water supply 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 controlled by another public statutory body or which is Crown land—

S. 122ZA(1)(b) amended by No. 23/2019 s. 52.

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 subsection (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.

S. 122ZB inserted by No. 85/2006 s. 54.

### 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 subsection (1).

S. 122ZC inserted by No. 85/2006 s. 54.

### 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.

S. 122ZD inserted by No. 85/2006 s. 54.

### 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

S. 122ZE inserted by No. 85/2006 s. 54.

(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 subsection (1)—

***declared bulk water entitlement*** means a bulk water entitlement in respect of which a declaration under section 185(3) has been made.

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S. 122ZF inserted by No. 85/2006 s. 54, repealed by No. 23/2019 s. 53.

Pt 6B (Heading and ss 122ZG–122ZJ) inserted by No. 85/2006 s. 54.

# Part 6B—Duties of water corporations

## Division 1—Customer dispute resolution

S. 122ZG inserted by No. 85/2006 s. 54.

### 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

(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 supply district, a sewerage district or an irrigation district.

S. 122ZG(4) amended by No. 23/2019 s. 54.

## Division 2—Dividends

### 122ZH Dividends

S. 122ZH inserted by No. 85/2006 s. 54.

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

S. 122ZI inserted by No. 85/2006 s. 54.

(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

S. 122ZJ inserted by No. 85/2006 s. 54.

(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 subsection (2).

# Part 6C—Storage managers

Pt 6C (Heading and ss 122ZK–122ZN) inserted by No. 85/2006 s. 54.

## 122ZK Appointment of storage managers

S. 122ZK inserted by No. 85/2006 s. 54.

(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 subsection (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 subsection (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

S. 122ZL inserted by No. 85/2006 s. 54.

(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 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 subsection (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.

S. 122ZM inserted by No. 85/2006 s. 54.

### 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.

(2) An agreement under subsection (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 subsection (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

**S. 122ZN inserted by No. 85/2006 s. 54.**

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.

# Part 7—General powers

## 123 Powers of Authorities

(1) An Authority has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions, including any function delegated to it.

(2) No other provision of this Act that confers a power on an Authority limits subsection (1).

## 124 Particular powers of Authorities

(1) The powers of an Authority that has a water supply district include the powers set out in Part 8.

(2) The powers of an Authority that has a sewerage district include the powers set out in Part 9.

(3) The powers of an Authority that has a waterway management district include any of the powers set out in any Division of Part 10 that applies to that Authority.

(4) The powers of an Authority that has an irrigation district include the powers set out in Part 11.

(5) An Authority is not obliged to perform any function conferred by this Act, unless this Act expressly provides otherwise.

S. 124(6) amended by Nos 50/1992 s. 10(Sch. item 11.17), 49/1994 s. 5(1)(d), 65/1995 s. 22(f).

(6) It is a function of an Authority to construct, complete, operate and maintain any works of water supply, drainage or salinity mitigation for which funding is provided to it under any other Act or which, under any other Act, it is authorised or directed to construct, complete, operate or maintain.

(7) It is a function of an Authority, subject to this Act, to supply water from its works to any person by agreement.

S. 124(7) amended by Nos 50/1992 s. 10(Sch. item 11.18), 49/1994 s. 5(1)(e).

(8) In deciding whether to make an agreement to supply water, an Authority must have regard to the matters specified in section 40(1)(b) to (m), with any necessary modifications, and to any other matter that the Authority thinks fit to have regard to.

S. 124(8) amended by Nos 50/1992 s. 10(Sch. item 11.19), 49/1994 s. 5(1)(f)(i)(ii), 5/2002 s. 48.

(9) The powers of an Authority include the power to require vessels to be licensed if they are used on any of its works.

S. 124(9) inserted by No. 65/1995 s. 18.

(10) The functions of an Authority include the carrying on within or, with the approval of the Minister, outside Victoria, of any business or activity incidental to its functions under this Act.

S. 124(10) inserted by No. 65/1995 s. 18.

(11) Without limiting subsection (10), the functions of an Authority include the carrying on within or, with the approval of the Minister, outside Victoria, of any business or activity that is capable of being conveniently carried on by the use of resources that are not immediately required in carrying out the Authority's functions under this Act.

S. 124(11) inserted by No. 65/1995 s. 18.

(12) In subsections (10) and (11) ***business or activity*** includes the provision of consultancy and project management services.

S. 124(12) inserted by No. 65/1995 s. 18.

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S. 124A inserted by No. 49/2017 s. 94, amended by No. 43/2021 s. 219(Sch. 1 item 14.1), repealed by No. 48/2021 s. 66.

S. 124B inserted by No. 17/2018 s. 31.

### 124B Obligations of Catchment Management Authorities in relation to declared areas

(1) A Catchment Management Authority, when performing a function or duty or exercising a power under this Act in relation to a declared area—

(a) must not act inconsistently with any part of a Statement of Planning Policy that is expressed to be binding on the Catchment Management Authority; and

(b) must have regard to those parts of the Statement of Planning Policy not expressed to be binding on the Catchment Management Authority; and

(c) must have regard to the principles set out in section 46AZL of the **Planning and Environment Act 1987**.

S. 124B(2) substituted by No. 43/2021 s. 219(Sch. 1 item 14.2).

(2) Subsection (1) does not apply to the performance of a function or the exercise of a power by a Catchment Management Authority in relation to—

(a) a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**; or

(b) a Suburban Rail Loop project within the meaning of the **Suburban Rail Loop Act 2021**.

### 124C Obligations of Corangamite Catchment Management Authority and Glenelg Hopkins Catchment Management Authority in relation to the Great Ocean Road region

S. 124C inserted by No. 19/2020 s. 113.

(1) The Corangamite Catchment Management Authority or Glenelg Hopkins Catchment Management Authority, when performing a function or duty or exercising a power under this Act or any other Act—

(a) must not act inconsistently with any part of an approved Great Ocean Road strategic framework plan that is expressed to be binding on the Corangamite Catchment Management Authority or Glenelg Hopkins Catchment Management Authority (as the case requires) in relation to the Great Ocean Road scenic landscapes area; and

(b) must have regard to the Great Ocean Road coast and parks protection principles in relation to the Great Ocean Road coast and parks; and

(c) must have regard to those parts of an approved Great Ocean Road strategic framework plan not expressed to be binding on the Corangamite Catchment Management Authority or Glenelg Hopkins Catchment Management Authority (as the case requires) in relation to the Great Ocean Road region.

(2) Subsection (1) does not apply to the performance of a function or the exercise of a power by the Corangamite Catchment Management Authority or Glenelg Hopkins Catchment Management Authority (as the case requires) in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

### 125 Accountability of Authorities

An Authority must perform its functions and exercise its powers subject to any direction given by the Minister under section 307.

### 126 Contracts and agreements

(1) The power of an Authority to enter into contracts includes power to agree or contract with another Authority, a government department or any other public statutory body with respect to—

(a) the exercise by the Authority and the other party of their respective functions; or

(b) the carrying out or providing by either party for the other party of any works or services; or

(c) the use or joint use by the Authority and the other party of their respective facilities or the services of their respective staff.

(2) An Authority may, at the request of any person and at the expense of that person—

(a) carry out, repair or alter any works; or

(b) carry out any survey or investigation; or

(c) do anything else—

connected with or incidental to the functions of the Authority.

(3) An Authority may, with the Minister's approval, contract to provide to any person any works or services that are not connected with or incidental to any function of the Authority.

### 127 Commercial ventures

(1) An Authority may, with the approval of the Minister—

S. 127(1)(a) amended by No. 50/1992 s. 5(a).

(a) form or participate in the formation of a corporation, trust, partnership or other body; or

(b) subscribe for or otherwise acquire, and hold and dispose of, shares in or debentures or other securities of a corporation; or

(c) become a member of a company limited by guarantee; or

(d) subscribe for or otherwise acquire, and hold and dispose of, units in a trust; or

(e) acquire, and hold and dispose of, an interest in a partnership or other body; or

(f) carry on or engage in any business transaction (whether within or outside the State) which is capable of being conducted so as directly or indirectly to benefit the Authority; or

(g) enter into partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise, with any person carrying on or engaged in, or about to carry on or engage in, any business or transaction (whether within or outside the State) which is capable of being conducted so as directly or indirectly to benefit the Authority.

(2) An Authority must include in its annual report a report of—

S. 127(2)(a) amended by No. 50/1992 s. 5(b).

(a) the activities of any body formed by or in the formation of which the Authority participates under subsection (1)(a); and

(b) any business transaction carried on or engaged in by the Authority under subsection (1)(f); and

(c) the activities carried out by any partnership or under any arrangement entered into by the Authority under subsection (1)(g).

### 128 Accident insurance

S. 128(1) amended by No. 72/2001 s. 3(Sch. item 12.6(a)).

(1) An Authority may enter into a contract to insure a member of the Authority or the spouse or domestic partner of a member of the Authority against accidents arising out of or in the course of—

(a) in the case of a member, the performance of his or her functions as a member; or

S. 128(1)(b) amended by No. 72/2001 s. 3(Sch. item 12.6(a)).

(b) in the case of the spouse or domestic partner of a member, accompanying the member in the performance of his or her functions as a member; or

(c) in the case of a member, his or her travelling by a reasonably direct route between his or her home and any other place, if the travelling is undertaken solely for the purpose of his or her performing at that other place his or her functions as a member; or

S. 128(1)(d) amended by No. 72/2001 s. 3(Sch. item 12.6(a)).

(d) in the case of the spouse or domestic partner of a member, travelling with the member in the circumstances described in paragraph (c).

S. 128(2) amended by No. 72/2001 s. 3(Sch. item 12.6(a)(b)).

(2) If an Authority enters into such a contract with respect to its members or the spouses or domestic partners of its members generally, each member for the time being or his or her spouse or domestic partner must individually be taken to be insured under the terms of the policy in all respects as if he or she had personally entered into a policy of

accident insurance on those terms, to have effect for so long as the member concerned remains a member.

(3) In this section, ***member***, in relation to an Authority, includes member of a committee established by the Authority.

S. 128(3) amended by Nos 50/1992 s. 10(Sch. item 11.20), 49/1994 s. 4(1)(j).

### 129 Intellectual property

(1) An Authority may, with the approval of the Minister—

S. 129(1) amended by Nos 50/1992 s. 10(Sch. item 11.21), 65/1995 s. 22(g).

(a) apply for, obtain and hold, whether on its own behalf or jointly with any other person, any intellectual property rights; or

(b) assign or grant licences in respect of those intellectual property rights, with or without charge; or

(c) enter into agreements and arrangements for the commercial exploitation of intellectual property rights.

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S. 129(2) amended by No. 50/1992 s. 10(Sch. item 11.22), repealed by No. 65/1995 s. 22(h).

### 130 Acquisition of land

(1) An Authority may purchase or compulsorily acquire any land which is or may be required by the Authority for or in connection with, or as incidental to, the performance of its functions or the achievement of its objects.

(2) The **Land Acquisition and Compensation Act 1986** applies to this Act and for that purpose—

(a) the **Water Act 1989** is the special Act; and

(b) the acquiring Authority is the Authority; and

(c) ***land*** includes—

(i) any land that—

(A) is actually comprised by measurement in the land described in the Crown grant of the land; and

(B) forms part of the bed and banks of a watercourse; and

(C) is declared to remain the property of the Crown by section 385 of the **Land Act 1958**; and

(ii) strata above or below the surface of land and easements and rights to use land or strata above or below the surface of land.

(3) If an Authority acquires any right in the nature of an easement or purporting to be an easement, that right must be taken to be an easement even though there is no land vested in the Authority which is benefited or capable of being benefited by that right.

**S. 130(4) amended by No. 76/1998 s. 29(e).**

(4) If any land to be acquired by an Authority is held by a licensee or lessee of the Crown, the Authority must notify the Department Head of its intention to acquire the land, and must include in the notice a description of the land.

(5) If a Crown grant is issued to any person of the land out of which, in respect of which or over which any land or easement has been

compulsorily acquired, the land or easement so acquired must be taken to be exempted from the grant, and remains vested in the Authority.

(6) If any land acquired by an Authority is Crown land other than that referred to in subsection (4), the Authority must, as soon as practicable after the acquisition, notify the Department Head of the acquisition.

S. 130(6) amended by No. 76/1998 s. 29(e).

### 131 Management of Crown land

(1) The Governor in Council may, on the recommendation of the Minister and the Minister for the time being administering the **Conservation, Forests and Lands Act 1987**, by Order published in the Government Gazette, declare that the Crown land specified in the Order is, subject to any conditions specified in the Order, placed under the management and control of the Authority specified in the Order.

(2) The Governor in Council may, at any time and without compensation, by Order published in the Government Gazette, resume any Crown land specified in the Order that was by an Order under subsection (1) placed under the management and control of an Authority and that is required for any public purpose or for any public highway.

(3) An Authority may, at any time, subject to the approval of the Governor in Council, surrender to the Crown any Crown land that was, by an Order under subsection (1), placed under the management and control of the Authority.

(4) Any Crown land that is surrendered under subsection (3) becomes, by virtue of that surrender, unalienated Crown land.

### 132 Other dealings with land

(1) An Authority may, for or in connection with, or as incidental to, the performance of its functions—

(a) obtain a lease or licence over land; or

(b) exchange any land for any other land; or

(c) grant leases and licences; or

(d) grant easements over its land; or

(e) sell any land by public auction or public tender; or

(f) in accordance with any guidelines issued by the Minister, sell any land by private treaty.

S. 132(2) amended by Nos 50/1992 s. 10(Sch. item 11.23), 65/1995 s. 22(i).

(2) If the relevant water authority within the meaning of the **Murray-Darling Basin Act 1993** sells by private treaty or leases any land acquired by it at or near Lake Dartmouth for or in connection with the Dartmouth township or works for the construction of Dartmouth Reservoir, it must make any payments that the Minister determines to any public statutory body towards the cost of providing or maintaining services in the land.

### 133 Power to enter land

S. 133(1) amended by No. 17/2012 s. 20(1).

(1) An officer of an Authority or an authorised person may, subject to subsections (1A), (1B) and (4), enter any land for the purpose of—

(a) reading a meter installed under section 142 or any corresponding previous enactment; or

(b) inspecting and measuring any septic tank system; or

(c) inspecting any works, or making any test, to find out whether this Act, the regulations and the by-laws of the Authority are being complied with; or

(d) carrying out any other function under this Act.

S. 133(1A) inserted by No. 17/2012 s. 20(2).

(1A) An officer of an Authority or an authorised person must not enter any land under subsection (1)(c), if the land is used primarily for residential purposes, unless—

(a) the officer or person gives 7 days' notice in writing of the entry to the occupier of the land; or

(b) the entry is by an officer of the Authority, who is an authorised water officer, who is entering under a warrant issued under section 291E; or

(c) the occupier consents to the entry.

S. 133(1B) inserted by No. 17/2012 s. 20(2).

(1B) An officer of an Authority or an authorised person must not enter land under subsection (1)(d), if the land is used primarily for residential purposes, unless—

(a) the officer or person gives 7 days' notice in writing of the entry to the occupier of the land; or

(b) the occupier consents to the entry; or

(c) the entry is in an emergency; or

(d) the officer or person is performing a function under section 221(a).

(2) An officer of an Authority or an authorised person may, subject to subsection (4) and after the Authority has given 7 days' notice in writing to the occupier, enter any land and carry out on that land any works that the Authority is empowered to carry out.

(3) An Authority need not give the notice required by subsection (2)—

(a) if the occupier consents to the entry and the carrying out of the works; or

(b) in an emergency.

S. 133(4) substituted by No. 17/2012 s. 20(3).

(4) Land that is used primarily for residential purposes must not be entered under subsection (1)(a), (b) or (d) or (2) between the hours of 6.00 p.m. and 7.30 a.m. unless—

(a) the occupier consents to the entry between those hours; or

(b) the entry is in an emergency.

S. 133(5) inserted by No. 17/2012 s. 20(3).

(5) Land that is primarily used for residential purposes must not be entered under subsection (1)(c) between the hours of 6.00 p.m. and 7.30 a.m. unless—

(a) the occupier of the land consents to the entry between those hours; or

(b) the entry is authorised under a warrant issued under section 291E.

### 134 Obligations in relation to entry of land

(1) In exercising the powers given by section 133, an officer or authorised person must—

(a) cause as little harm and inconvenience as possible; and

(b) not stay on the land for any longer than is reasonably necessary; and

(c) remove from the land on completing the works all plant, machinery, equipment, goods or temporary buildings brought onto the land by the officer or authorised person, other than anything that the owner or

occupier of the land agrees may be left there; and

(d) leave the land as nearly as possible in the condition in which he or she found it; and

(e) co-operate as much as possible with the owner and occupier of the land.

* * * * * S. 134(2) repealed by No. 17/2012 s. 21.

### 135 Powers under Land Acquisition and Compensation Act 1986

The powers conferred by section 133 are in addition to powers conferred by the **Land Acquisition and Compensation Act 1986**.

### 136 Subdivisional easements and reserves

(1) If a proposal for subdivision of land is referred to an Authority under the **Planning and Environment Act 1987**, the Authority may require the creation of easements or reserves, or both, for the use of the Authority for any of the following purposes—

(a) pipelines or ancillary purposes;

(b) channels;

(c) carriageways;

(d) waterway management;

(e) drainage.

(2) The creation of an easement or a reserve for a purpose specified in subsection (1) gives the Authority for whose use it is created the rights prescribed in relation to an easement or reserve created for that purpose.

S. 137 substituted by No. 12/2004 s. 175.

### 137 Works on a road

Subject to the **Road Management Act 2004**, an Authority may—

(a) in relation to a road within the meaning of the **Road Management Act 2004**, enter upon any public or private land or road for the purpose of carrying out any works that the Authority is empowered to carry out; and

(b) temporarily close to traffic the road or any part of it, if it is necessary to do so for the carrying out of works under paragraph (a).

S. 137A inserted by No. 9/2006 s. 161.

### 137A Safety duties in relation to works on or in immediate vicinity of rail infrastructure or rolling stock

(1) An Authority must, when carrying out any works on or in the immediate vicinity of rail infrastructure or rolling stock, ensure, so far as is reasonably practicable, that it carries out those works safely.

Penalty: 9000 penalty units.

(2) A works contractor must, when carrying out works on or in the immediate vicinity of rail infrastructure or rolling stock, ensure, so far as is reasonably practicable, that he, she or it carries out those works safely.

Penalty: In the case of a natural person, 1800 penalty units;

In the case of a body corporate, 9000 penalty units.

(3) An offence against subsection (1) or (2) is an indictable offence.

Note to s. 137A(3) amended by No. 68/2009 s. 97(Sch. item 133.1).

**Note**

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

(3A) Nothing in subsection (1) or (2) is to be construed as—

S. 137A(3A) inserted by No. 41/2019 s. 117(Sch. 1 item 13.1).

(a) conferring a right of action in a civil proceeding in respect of a contravention of those subsections; or

(b) conferring a defence to an action in a civil proceeding or otherwise affecting a right of action in a civil proceeding.

(4) In this section—

***rail infrastructure*** has the same meaning as in section 4(1) of the Rail Safety National Law (Victoria);

S. 137A(4) def. of *rail infrastructure* substituted by Nos 22/2013 s. 77, 41/2019 s. 117(Sch. 1 item 13.2(a)).

***rolling stock*** has the same meaning as in section 4(1) of the Rail Safety National Law (Victoria);

S. 137A(4) def. of *rolling stock* substituted by Nos 22/2013 s. 77, 41/2019 s. 117(Sch. 1 item 13.2(b)).

***works contractor*** means a person engaged directly or indirectly by an Authority to carry out works on behalf of the Authority, and includes a sub-contractor.

### 137B Notification of owners or occupiers of land on which there is rail infrastructure or rolling stock

S. 137B inserted by No. 9/2006 s. 161.

(1) An Authority must, before carrying out works on land on which there is rail infrastructure or rolling stock, notify the owner or occupier of that land of the Authority's intention to carry out those works if the carrying out of those works will threaten, or is likely to threaten, the safety of that rail infrastructure or rolling stock.

Penalty: 300 penalty units.

S. 137B(2) substituted by No. 22/2013 s. 78.

(2) In this section—

S. 137B(2) def. of *rail infrastructure* substituted by No. 41/2019 s. 117(Sch. 1 item 13.3(a)).

***rail infrastructure*** has the same meaning as in section 4(1) of the Rail Safety National Law (Victoria);

S. 137B(2) def. of *rolling stock* substituted by No. 41/2019 s. 117(Sch. 1 item 13.3(b)).

***rolling stock*** has the same meaning as in section 4(1) of the Rail Safety National Law (Victoria).

S. 137C inserted by No. 9/2006 s. 161, substituted by No. 22/2013 s. 79.

### 137C Notification of Authorities before railway operations carried out

(1) A rail transport operator must, before carrying out railway operations that will threaten, or are likely to threaten, the safety of an Authority's works, notify the Authority of the rail transport operator's intention to carry out those operations.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) In this section—

S. 137C(2) def. of *rail transport operator* substituted by No. 41/2019 s. 117(Sch. 1 item 13.4(a)).

***rail transport operator*** has the same meaning as in section 4(1) of the Rail Safety National Law (Victoria);

***railway operations*** has the same meaning as in section 4(1) of the Rail Safety National Law (Victoria).

S. 137C(2) def. of *railway operations* substituted by No. 41/2019 s. 117(Sch. 1 item 13.4(b)).

### 138 Ownership of works

(1) Unless subsection (2) applies, any works—

(a) that were, immediately before the commencement of this section, owned by an Authority; or

(b) that are, at that commencement, in the process of being constructed by an Authority; or

(c) that are, after that commencement, acquired, constructed or in the process of being constructed by an Authority—

are owned by that Authority.

(2) Works that are constructed by an Authority on behalf of another public body or of the owner or occupier of land are not owned by the Authority if this Act provides, or the parties agree, that the works are not owned by the Authority.

### 139 Abandonment of major works

(1) An Authority must not abandon or decommission any of its major works without the approval of the Minister.

S. 139(1) amended by No. 5/2002 s. 49.

(2) The Minister may issue guidelines as to what are "major works" for the purposes of subsection (1).

(3) The Minister may impose conditions on any approval given under subsection (1).

S. 139(3) inserted by No. 85/2006 s. 55.

S. 139(4) inserted by No. 85/2006 s. 55.

(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 subsection (1)—

(a) in a newspaper circulating generally in the area to which the proposal relates; and

(b) in the Government Gazette.

S. 139A inserted by No. 85/2006 s. 56.

### 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.

S. 139B inserted by No. 85/2006 s. 56.

### 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.

(2) A notice under subsection (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

S. 139C inserted by No. 85/2006 s. 56.

(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 subsection (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

S. 139D inserted by No. 85/2006 s. 56.

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

S. 139E inserted by No. 85/2006 s. 56.

(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.

### 140 Preparation and inspection of plans

(1) An Authority must make sure that plans of its districts are available for inspection at its offices.

(2) Those plans—

(a) must be kept up to date; and

(b) must show the works of the Authority in the amount of detail that the Authority considers necessary.

S. 141 amended by No. 52/1998 s. 311(Sch. 1 items 105.17, 105.18), substituted by No. 99/2005 s. 58 (as amended by No. 85/2006 s. 171).

### 141 Authority may reduce, restrict or discontinue water supply[24]

(1) An Authority may reduce or restrict the quantity of water supplied to any person, or discontinue the supply of water to any person, if—

(a) the Authority is, because of a shortage of water or for any other unavoidable cause, unable to supply the quantity of water which would otherwise be supplied to the person; or

(b) the Authority reasonably believes that the reduction, restriction or discontinuance is necessary—

(i) to avoid future water shortages; or

(ii) because there is insufficient capacity in the distribution works of the Authority for the Authority to meet its obligations under the Act to supply and deliver water to the person; or

(c) the quality of water available for supply does not meet the standards for its intended authorised use; or

(d) any private works for the supply of water to the person—

(i) are, in the opinion of the Authority, inadequate or not properly constructed or maintained and a notice to repair has been issued under section 150 and not complied with by the time specified or allowed under that section; or

(ii) do not, in the opinion of the Authority, comply with the regulations; or

(e) the person has contravened this Act, the regulations or the Authority's by-laws in relation to the misuse of water supplied to the person by the Authority; or

(f) the person has contravened this Act, the regulations or the Authority's by-laws in relation to the taking of water; or

(g) the person has refused entry to an authorised water officer, or an officer of an Authority, who intended to exercise powers conferred by or under this Act to investigate any suspected contravention referred to in paragraph (e) or (f); or

S. 141(1)(g) amended by No. 24/2013 s. 28.

(h) the person has refused or failed to pay any money due to the Authority for the supply or delivery of water to the person.

(2) An Authority must reduce the supply of water under subsection (1)(a) or (b) to all persons in the same proportion unless the Minister is of the opinion that the circumstances are so extreme as to justify some other basis.

(2A) Despite subsection (1), an Authority must not discontinue the supply of drinking water to a person merely because the person has refused or failed to pay any money due to the Authority.

S. 141(2A) inserted by No. 17/2012 s. 22(1).

(3) An Authority that reduces, restricts or discontinues the supply of water to a person may reduce or waive any amount of money payable to it for the supply of water to the person.

(4) An Authority that restricts or discontinues the supply of water to a person under subsection (1)(d), (e), (f), (g) or (h) may charge a fee for removing the restriction or recommencing that supply.

(5) An Authority may reduce or restrict the quantity of water supplied to a person or discontinue the supply of water to a person under subsection (1)(d), (e), (f), (g) or (h) if it decides that the required circumstances exist, whether or not it has been proved to the satisfaction of a court that those circumstances do exist.

(6) A person may apply to the Tribunal for review of the Authority's decision to discontinue the supply of water to the person under subsection (1)(e) or (f).

(7) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

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

(8) A person is not entitled to any compensation under section 155 for anything done by an Authority under this section.

S. 141(9) inserted by No. 17/2012 s. 22(2).

(9) In this section ***drinking water*** has the same meaning as in the **Safe Drinking Water Act 2003**.

S. 141A inserted by No. 85/2006 s. 57.

### 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—

* * * * *

S. 141A(1)(a) repealed by No. 17/2012 s. 23(1).

(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.

S. 141A(2) amended by No. 17/2012 s. 23(2).

(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 subsection (1) are as agreed between Melbourne Water Corporation and the bulk entitlement holder or other person or, in default of agreement, as determined by the Essential Services Commission.

### 142 Water meters

S. 142(1) amended by No. 24/2013 s. 29(1), substituted by No. 23/2019 s. 55(1).

(1) An Authority may provide or install, and maintain, a meter on any land to measure the following—

(a) the amount of water supplied or delivered to the land by the Authority in the exercise of its water supply or delivery functions;

(b) the amount of water taken or used.

S. 142(1A) inserted by No. 24/2013 s. 29(2), substituted by No. 23/2019 s. 55(1).

(1A) An Authority may install a water meter under subsection (1) in any position it considers appropriate.

S. 142(1B) inserted by No. 24/2013 s. 29(2), substituted by No. 23/2019 s. 55(1).

(1B) Without limiting subsection (1), an Authority may provide or install, and maintain, a separate meter—

(a) for each occupancy on any land; and

(b) for each point from which water is taken; and

(c) if water is supplied or delivered for more than one type of service, to measure the amount of water supplied or delivered for each service.

S. 142(1C) inserted by No. 23/2019 s. 55(1).

(1C) In determining what constitutes a separate occupancy, the Authority must have regard to—

(a) any regulations prescribing the following—

(i) any class of land or part of land as constituting an occupancy;

(ii) any considerations for determining what constitutes an occupancy; or

(b) if there are no such regulations, the principles set out in the **Valuation of Land Act 1960**.

S. 142(2) amended by No. 24/2013 s. 29(3), repealed by No. 23/2019 s. 55(2).

* * * * *

(3) A meter provided or installed by an Authority remains the property of that Authority.

S. 142A inserted by No. 23/2019 s. 56.

### 142A Estimate of water supplied or delivered

(1) A water corporation may estimate in accordance with subsection (2) the amount of water supplied or delivered to land, used on land or taken to land, if one or more of the following applies—

(a) the water corporation is of the opinion that a meter belonging to it or under its control or management is not functioning accurately or has been interfered with;

(b) the water corporation supplies or delivers water to any land and there is no meter on that land to measure the amount of water supplied or delivered to land;

(c) water is taken to or used on any land under an authorisation to take or to use water under this or any other Act and there is no meter to measure the amount of water taken or used on the land under the authorisation;

(d) water is taken to or used on any land without an authorisation to take or use water under this or any other Act.

(2) For the purposes of subsection (1), a water corporation may estimate the amount of water supplied or delivered to land, used on land or taken to land, during a specified period—

(a) by having regard to the amount of water supplied or delivered to or used on or taken to—

(i) the land in any previous or subsequent period or periods; or

(ii) similar land during the specified period; or

(b) in any other way that is prescribed.

### 143 Waste and misuse of water supply[25]

S. 143 amended by No. 121/1994 s. 189(1)(a).

(1) A person who receives a supply of water must not—

(a) after receiving a warning notice from an Authority, deliberately cause or negligently

allow the water to be wasted, misused or excessively consumed; or

(b) if the water is supplied by agreement for a specific purpose, use the water for a different purpose; or

(c) if the water is supplied for domestic and stock purposes, use the water for a different purpose.

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

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

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

S. 143(1)(d) amended by Nos. 121/1994 s. 189(1)(b), 17/2012 s. 24(1).

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

(e) if no notice of contravention is served, after conviction of the person for the offence.

S. 143(2) inserted by No. 121/1994 s. 189(1)(c), repealed by No. 17/2012 s. 24(2).

* * * * *

### 144 Serviced properties

(1) An Authority may, by notice in writing, declare any land to be a serviced property for the purposes of this Act if—

S. 144(1)(a) amended by No. 23/2019 s. 57(1)(a).

(a) in the case of land within a water supply district, the Authority has made provision for water supply services to the land; or

(b) in the case of land within a sewerage district, the Authority has made provision for sewerage services to the land; or

(c) the land is within the Authority's irrigation district and the Authority has made provision for—

(i) water delivery services to the land; or

(ii) irrigation drainage or salinity mitigation services in relation to the land or that directly benefit the land; or

S. 144(1)(c) amended by Nos 50/1992 s. 7(j), 24/2013 s. 30, substituted by No. 23/2019 s. 57(1)(b).

(d) the land is within the Authority's waterway management district and the Authority has made provision for regional drainage or floodplain management services that are of direct benefit to that land;

S. 144(1)(d) amended by Nos 50/1992 s. 7(k)(i), 65/1999 s. 3(1).

* * * * *

S. 144(1)(e) repealed by No. 50/1992 s. 7(k)(ii).

(2) A notice under subsection (1) must be—

(a) served on the owner of the land; and

S. 144(2)(a) amended by Nos 12/1996 s. 4(2), 65/1999 s. 3(2).

* * * * *

S. 144(2)(b) repealed by No. 23/2019 s. 57(2).

(c) sent to any council that is likely to be affected.

S. 144(3) substituted by No. 23/2019 s. 57(3).

(3) The Authority must publish a notice under subsection (1)—

(a) on the Internet site of the Authority for at least 2 months before the date on which the land becomes serviced property; and

(b) in the Government Gazette.

(4) The notice must—

(a) define the locality to which it applies; and

S. 144(4)(b) amended by No. 23/2019 s. 57(4)(a).

(b) in the case of land within a water supply district or a sewerage district, specify the services available and generally identify the land to which the services are available; and

S. 144(4)(c) amended by Nos 50/1992 s. 7(l), 65/1999 s. 3(3), substituted by No. 23/2019 s. 57(4)(b).

(c) in the case of a waterway management district or irrigation district, specify the services available or which are of direct benefit and generally identify the land to which the services are available or which is directly benefitted by the services; and

(d) fix a date on and from which the land must be taken to be a serviced property for the purposes of this Act.

S. 144(5) inserted by No. 85/2006 s. 58.

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

S. 144A inserted by No. 85/2006 s. 59, amended by No. 23/2019 s. 58 (ILA s. 39B(1)).

### 144A Serviced property, Melbourne Water Corporation

(1) 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).

S. 144A(2) inserted by No. 23/2019 s. 58.

(2) If the waterway management district of Melbourne Water Corporation is varied by a determination under section 122I and the waterway management district as varied does not include properties that were in that waterway management district before the variation, the properties that are no longer within that waterway management district are taken not to be serviced properties for the purposes of Melbourne Water Corporation's powers, functions and duties under Part 10.

### 145 Control over connections[26]

S. 145(1) substituted by No. 23/2019 s. 59(1).

(1) For the purpose of section 145A, an Authority may consent to—

(a) the connection of any works to the works of the Authority; or

(b) the alteration or removal of any works that are connected to the works of the Authority; or

(c) the discharge of anything into the works of the Authority.

S. 145(2) substituted by No. 24/2013 s. 31(1).

(2) An application for the Authority's consent must be made in a manner determined by the Authority and must be accompanied by—

(a) any fee fixed by a determination of the Authority under subsection (3C); and

(b) any plan that the Authority requires; and

(c) any other information that the Authority requires.

(3) The Authority may—

(a) refuse its consent; or

(b) consent; or

(c) consent subject to any terms and conditions it thinks fit.

S. 145(3AA) inserted by No. 24/2013 s. 31(2).

(3AA) For the purposes of subsection (3)(c), a condition may be that—

(a) a separate meter is installed—

(i) for each occupancy on the land on which the works to be connected will be situated; or

(ii) if water is delivered, or proposed to be delivered, for more than one type of service in the exercise of the Authority's water supply or delivery functions, to measure the amount of water delivered for each service; or

(b) each meter that is installed on that land is positioned as the Authority considers appropriate.

S. 145(3AB) inserted by No. 24/2013 s. 31(2), repealed by No. 23/2019 s. 59(2).

* * * * *

S. 145(3A) inserted by No. 17/2012 s. 25.

(3A) A person may apply to VCAT for review of a decision by an Authority under subsection (3).

S. 145(3B) inserted by No. 17/2012 s. 25.

(3B) An application for review under subsection (3A) must be lodged with VCAT within 28 days after—

(a) notice of the decision was given; or

(b) if, under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons

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

(3C) An Authority may make a determination for or with respect to the fee to accompany an application for the Authority's consent under this section.

S. 145(3C) inserted by No. 24/2013 s. 31(3).

(4) A person who causes or permits anything referred to in section 145A(3) or (6) to be done must make sure that it is done in accordance with any terms or conditions subject to which the Authority gave its consent.

S. 145(4) substituted by No. 23/2019 s. 59(3).

Penalty: For an individual, 60 penalty units;

For a body corporate, 300 penalty units.

(5) Terms and conditions subject to which the Authority consents are binding on the successors in title of the person who applied for that consent.

### 145A Offences as to connections and discharges without consent[27]

S. 145A inserted by No. 23/2019 s. 60.

(1) A person must not knowingly cause or permit—

(a) the connection of any works to the works of an Authority; or

(b) the alteration or removal of any works that are connected to the works of an Authority—

without the consent of the Authority under section 145, being a connection, alteration or removal that results in—

(c) land, works or water being seriously damaged; or

(d) another person suffering substantial economic loss.

Penalty: For an individual, 10 years imprisonment or 1200 penalty units or both;

For a body corporate, 6000 penalty units.

(2) A person must not recklessly cause or permit—

(a) the connection of any works to the works of an Authority; or

(b) the alteration or removal of any works that are connected to the works of an Authority—

without the consent of the Authority under section 145, being a connection, alteration or removal that results in—

(c) land, works or water being seriously damaged; or

(d) another person suffering substantial economic loss.

Penalty: For an individual, 5 years imprisonment or 600 penalty units or both;

For a body corporate, 3000 penalty units.

(3) A person must not cause or permit—

(a) the connection of any works to the works of an Authority, without the consent of the Authority under section 145; or

(b) the alteration or removal of any works that are connected to the works of an Authority, without the consent of the Authority under section 145.

Penalty: For an individual, 120 penalty units;

For a body corporate, 600 penalty units.

(4) A person must not knowingly cause or permit anything to be discharged into the works of an Authority, without the consent of the Authority under section 145, being a discharge that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 10 years imprisonment or 1200 penalty units or both;

For a body corporate, 6000 penalty units.

(5) A person must not recklessly cause or permit anything to be discharged into the works of an Authority, without the consent of the Authority under section 145, being a discharge that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 5 years imprisonment or 600 penalty units or both;

For a body corporate, 3000 penalty units.

(6) A person must not cause or permit anything to be discharged into the works of an Authority without the consent of the Authority under section 145.

Penalty: For an individual, 120 penalty units;

For a body corporate, 600 penalty units.

### 146 Diversion into works of an Authority

A person must not, without the consent of an Authority, divert any surface water from one catchment to another catchment from where it may drain, directly or indirectly, into any works of the Authority.

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

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

For a continuing offence, an additional penalty of 5 penalty units for each day for which the offence continues—

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

(b) if no notice of contravention is served, after conviction of the person for the offence.

### 147 Notice to connect

S. 147(1) substituted by No. 17/2012 s. 26(1).

(1) An Authority may require the owner of a serviced property to connect the property to the sewerage works of the Authority.

S. 147(1A) inserted by No. 17/2012 s. 26(1).

(1A) An Authority may require the owner of a serviced property—

(a) to remove any existing connection between that property and any works of the Authority; or

(b) to carry out any work that the Authority considers necessary for the provision of a service of the Authority to the property.

S. 147(1B) inserted by No. 17/2012 s. 26(1).

(1B) The Authority must give notice in writing to the owner of the property of a requirement under subsection (1) or (1A) and must specify in the

notice the time within which the requirement must be carried out.

(1C) The owner of a serviced property who has been notified under subsection (1B) must carry out the requirement specified in the notice within the time specified in the notice or any longer time allowed by the Authority.

S. 147(1C) inserted by No. 17/2012 s. 26(1).

(2) An Authority may, by notice to the owners of a group of properties, require the owners to connect the properties by a combined connection to the Authority's sewerage works within the time specified in the notice, or any longer time allowed by the Authority.

S. 147(2) amended by No. 17/2012 s. 26(2).

(3) A notice under subsection (1) or (2) must be served on the owner of each property required to be connected.

(4) The owner of a property to which a notice applies must comply with the notice within the time specified, or any longer time allowed by the Authority.

Penalty: 20 penalty units.

(5) If an owner of a property to which a notice applies does not comply with the notice within the time specified, or any longer time allowed by the Authority, the Authority may—

(a) do the things the owner was required by the notice to do; and

(b) recover from the owner its reasonable costs of doing so, other than costs that are prescribed to be the responsibility of the Authority.

S. 147(6) inserted by No. 99/2005 s. 35, substituted by No. 17/2012 s. 26(3).

(6) An Authority must not, by notice under subsection (1), require the owner of a property to connect to sewerage works of the Authority unless—

(a) the Authority has first consulted with the Environment Protection Authority and the Secretary to the Department of Health; and

(b) the Authority is of the opinion that the connection (whether alone or in combination with other connections) is necessary to avoid an adverse impact on public health or the environment.

S. 147(7) inserted by No. 17/2012 s. 26(3).

(7) The owner of the property may apply to VCAT for review of a decision to impose a requirement under subsection (1) or (1A).

S. 147(8) inserted by No. 17/2012 s. 26(3).

(8) An application for review under subsection (7) must be lodged with VCAT within 28 days after—

(a) notice of the decision was given; or

(b) if, under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, the owner requests a statement of reasons for the decision, the day on which the statement of reasons is given to the owner or the owner is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 147(9) inserted by No. 17/2012 s. 26(3).

(9) In reviewing a decision of an Authority on application under subsection (7), VCAT must not make a determination that has the effect that the owner is not required to connect to the sewerage works of the Authority unless the owner can demonstrate that the owner is able to dispose of wastewater or sewage from the property (whether alone or in combination with other properties) in a manner that avoids an adverse impact on public health or the environment.

### 148 Structures over works

(1) Unless subsection (6) applies, a person must not, without an Authority's consent, cause or permit[28]—

S. 148(1) amended by No. 12/2004 s. 176(1).

(a) any structure to be built, or any filling to be placed, on land over which—

(i) an easement exists in favour of the Authority; or

(ii) an easement exists for water supply, sewerage or drainage purposes; or

S. 148(1)(b) substituted by No. 85/2006 s. 60.

(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

(c) any structure to be built above or below any area prohibited by paragraph (b); or

(d) any soil, rock or other matter that supports, protects or covers any works of the Authority to be removed.

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

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

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

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

(f) if no notice of contravention is served, after conviction of the person for the offence.

(2) An application for the Authority's consent must be made in the manner determined by the Authority, and must be accompanied by any plans and other information that the Authority requires.

(3) The Authority may—

(a) refuse its consent; or

(b) consent; or

(c) consent subject to any terms and conditions it thinks fit.

(4) A person who, with the consent of an Authority, causes or permits anything referred to in subsection (1) to be done must make sure that the thing is done in accordance with any terms and conditions subject to which the Authority gave its consent.

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

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

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

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

(b) if no notice of contravention is served, after conviction of the person for the offence.

(5) Terms and conditions subject to which the Authority consents are binding on the successors in title of the person who applied for the consent.

(6) Subsection (1) does not apply in respect of a road authority if it is necessary for the road authority to do anything referred to in that subsection for the purpose of constructing a road or conducting maintenance or repair works on a road.

S. 148(6) inserted by No. 12/2004 s. 176(2).

(7) For the purposes of subsection (6), the road authority is subject to any directions given to the road authority by an Authority which are reasonably necessary—

S. 148(7) inserted by No. 12/2004 s. 176(2).

(a) to ensure the safety of any works of the Authority; or

(b) to prevent an interruption of the water supply.

(8) Any dispute arising between a road authority and an Authority in relation to any directions given under subsection (7) is to be determined in accordance with section 125 of the **Road Management Act 2004**.

S. 148(8) inserted by No. 12/2004 s. 176(2).

(9) In this section—

S. 148(9) inserted by No. 12/2004 s. 176(2).

***road authority*** has the same meaning as it has in section 3(1) of the **Road Management Act 2004**.

### 149 Removal of trees[29]

(1) An Authority may, by notice in writing, require the owner of any property to remove any tree on that property if the Authority reasonably decides that the tree is obstructing or damaging the Authority's works or that it is likely to obstruct or damage them.

(2) If the tree required to be removed is not on land over which—

(a) an easement exists in favour of the Authority; or

(b) an easement exists for water supply, sewerage or drainage purposes—

the Authority must, subject to subsection (7), pay appropriate compensation to the owner of the property in accordance with Part 5 of the **Land Acquisition and Compensation Act 1986**.

(3) The owner may, within 7 days after receiving a notice to remove a tree, object to the Authority.

(4) An Authority must take into account any objection made to it.

(5) If the owner refuses or fails to comply with the notice—

(a) within the time specified in the notice; or

(b) if the owner has objected, within 7 days after he or she receives notice from the Authority that the objection is not upheld; or

(c) within any longer time allowed by the Authority—

the Authority may, after giving 21 days' notice of its intention to do so, remove the tree and recover from the owner the reasonable costs of the removal.

(6) The Authority may recover from the owner the cost of any repairs to the Authority's works that are necessary to repair the damage caused by a tree that is removed by the owner or the Authority after service of a notice under subsection (1).

(7) An Authority is not liable to pay compensation for the removal of a tree that is planted after the completion of the works of the Authority that are obstructed, damaged or at risk.

**S. 149(8) substituted by No. 52/1998 s. 311(Sch. 1 item 105.19).**

(8) An owner may apply to the Tribunal for review of a decision by an Authority not to uphold the owner's objection to a notice to remove a tree.

(9) An application for review must be made within 28 days after the later of—

S. 149(9) inserted by No. 52/1998 s. 311(Sch. 1 item 105.19).

(a) the day on which the decision is made;

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

### 150 Notice to repair[30]

(1) An Authority may, by notice in writing to the owner of land, require the owner to repair or carry out maintenance on, within the time specified in the notice or any longer time allowed by the Authority, any works on that land or that connect the land to the works of the Authority or that are necessary for any service provided to the land by the Authority.

* * * * *

S. 150(1A) inserted by No. 39/1996 s. 11(2), repealed by No. 23/2019 s. 61.

(2) If land is connected to the works of the Authority by a combined connection, a notice to repair may be served on any or all of the owners of that land.

(3) An owner on whom a notice to repair is served must comply with the notice within the time specified in it, or any longer time allowed by the Authority.

Penalty: 20 penalty units.

(4) If a notice to repair is not complied with within the time specified in it, or any longer time allowed by the Authority, the Authority may carry out the required repairs and recover its reasonable costs from each owner on whom the notice was served, other than costs that are prescribed to be the responsibility of the Authority.

### 151 Notice of contravention[31]

(1) An Authority may, by notice in writing to a person who contravenes—

(a) this Act, the regulations or the Authority's by-laws; or

(b) a requirement made by the Authority under this Act; or

(c) a condition of a licence issued under this Act; or

S. 151(1)(d) amended by No. 5/2002 s. 50.

(d) a prescription of an approved management plan for a water supply protection area—

require that person, or the owner of any property in relation to which the contravention occurs, to take any action specified in the notice within the time (being not less than 2 days) that is specified in the notice or any longer time allowed by the Authority, to remedy the contravention.

(2) A person on whom a notice of contravention is served must make sure that the notice is complied with within the time specified, or any longer time allowed by the Authority.

Penalty: 20 penalty units.

(3) If a notice of contravention is not complied with within the time specified or any longer time allowed by the Authority, the Authority may—

(a) carry out any works and take any other action it decides is necessary to remedy the contravention, and recover its reasonable costs from the person on whom the notice was served; and

(b) remove or disconnect any service to the property in relation to which the contravention occurs, and recover its reasonable costs from the person on whom the notice was served; and

(c) apply to a court for an injunction restraining the person on whom the notice was served from contravening the notice.

**152 Notice of intention to affect works**

(1) An Authority that intends to do anything that will affect the works of another Authority or a public statutory body must, except in an emergency or with the consent of that Authority or public statutory body to a shorter period, give 14 days' notice of its intention to that other Authority or public statutory body.

(2) If the other Authority or public statutory body notifies the Minister of its objection to the proposal, the matter must be resolved in accordance with section 154.

(3) An Authority that, in an emergency, affects the works of another Authority or a public statutory body must, as soon as practicable after the works are affected, notify the other Authority or public statutory body.

(4) This section does not apply to the closure of a road, or any part of it, under section 137.

S. 152(5) inserted by No. 85/2006 s. 61.

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

S. 152(5)(a) amended by No. 6/2010 s. 203(1) (Sch. 6 item 51.1(a)) (as amended by No. 45/2010 s. 22).

(a) a passenger transport company within the meaning of the **Transport (Compliance and Miscellaneous) Act 1983**;

S. 152(5)(b) amended by No. 6/2010 s. 203(1) (Sch. 6 item 51.1(b)) (as amended by No. 45/2010 s. 22).

(b) a rail corporation, a tram operator or a train operator within the meaning of the **Rail Management Act 1996**.

### 153 Notice to alter or remove works[32]

(1) An Authority that intends to do anything that affects the works of another Authority or a public statutory body may, by notice in writing, require the other Authority or public statutory body to alter or remove those works in the way, and within the time, specified in the notice.

(2) If the other Authority or public statutory body notifies the Minister of its objection to the notice, the matter must be resolved in accordance with section 154.

### 154 Determination of disputes[33]

(1) The Minister may determine any dispute that arises between Authorities over a notice under section 152 or 153 and that determination is binding on the parties and is final.

(2) The Minister may refer to the Governor in Council any dispute that arises between an Authority and any other public statutory body

(other than another Authority) over a notice under section 152 or 153, and that determination of the Governor in Council is binding on the parties and is final.

(3) A determination under this section may include the allocation or apportionment of costs.

### 155 Compensation for damage

(1) An Authority must cause as little damage and inconvenience as possible in the performance of its functions.

(2) An Authority is liable, unless this Act specifically provides otherwise, to compensate any person who has—

(a) sustained any pecuniary loss; or

(b) incurred any expense—

as a direct, natural and reasonable consequence of the performance of the Authority's functions.

(3) An Authority is not liable to compensate a person for consequential loss.

(4) Any claim for compensation must be made and dealt with in accordance with the **Land Acquisition and Compensation Act 1986** as if it were a claim under section 47(1) of that Act.

(5) This section does not apply to any injury, damage or loss to which section 157 applies.

### 155A Compensation for loss of services on declaration of cessation

S. 155A inserted by No. 99/2005 s. 59.

(1) An Authority is liable to compensate any person who is the owner of a property in the district of the Authority which has ceased to be a serviced property by the operation of a declaration made by the Authority under section 161J if the owner has—

(a) sustained any pecuniary loss; or

(b) incurred any expense—

as a direct, natural and reasonable consequence of the property ceasing to be a serviced property.

(2) For the purposes of subsection (1) a "direct natural and reasonable consequence of the property ceasing to be a serviced property" does not include the lost opportunity of the transfer of the service to another property.

(3) An Authority is not liable to compensate the owner of a property under subsection (1) for consequential loss.

(4) Any claim for compensation under this section must be made and dealt with in accordance with the **Land Acquisition and Compensation Act 1986**, as if it were a claim under Part 5 of that Act.

**156 Authority may send water into waterway etc.**

(1) An Authority may send water into any waterway, works or natural channel which crosses any land.

(2) An Authority with functions under Part 8 and Part 11 which exercises its powers under subsection (1) must—

(a) construct and maintain any bridge or other crossing made necessary by the introduction of the water; or

(b) if alternative access is available to the land, pay compensation to the owner of the land.

(3) The obligation of the Authority to maintain any crossing under subsection (2)(a) ceases if any area of land connected by the crossing to any other land ceases at any time to be owned by the person who, at that time, owns that other land.

(4) The owner of the land may apply to the Tribunal for review of the decision of the Authority as to—

S. 156(4) amended by No. 52/1998 s. 311(Sch. 1 item 105.20).

(a) the number, type and position of any crossings to be constructed; or

(b) the amount of compensation to be paid.

(5) An application for review must be made within 28 days after the later of—

S. 156(5) inserted by No. 52/1998 s. 311(Sch. 1 item 105.21).

(a) the day on which the decision is made;

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

### 157 Liability of Authorities arising out of flow of water[34]

(1) If—

S. 157(1)(a) amended by No. 17/2012 s. 27.

(a) as a result of intentional or negligent conduct on the part of an Authority in the exercise of a function under Part 8, Part 9, Division 2, 3 or 5 of Part 10, or Part 11 or any corresponding previous enactment, a flow of water occurs from its works onto any land; and

(b) the water causes—

(i) injury to any other person; or

(ii) damage to the property (whether real or personal) of any other person; or

(iii) any other person to suffer economic loss—

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

(2) If it is proved in a proceeding brought under subsection (1) that water has flowed from the works of an Authority onto any land, it must be presumed that the flow occurred as a result of intentional or negligent conduct on the part of the Authority unless the Authority proves on the balance of probabilities that it did not so occur.

(3) For the purposes of a proceeding brought under subsection (1)—

(a) a flow of water is to be taken to have occurred as a result of intentional conduct on the part of an Authority if the flow—

(i) was designed or intended by the Authority; or

(ii) inevitably and without intervening cause resulted from the exercise of a power by the Authority; and

(b) in determining whether or not a flow of water occurred as a result of negligent conduct on the part of an Authority, account must be taken of all the circumstances including any omission or failure, in the planning, design, construction, maintenance or operation of the works, to provide reasonable standards of capacity or efficiency or exercise reasonable care or skill having regard to the following matters—

(i) the state of scientific knowledge and knowledge of local conditions at any relevant time;

(ii) the nature and situation of the works;

(iii) the service to be provided by the works;

(iv) the circumstances and cost of—

(A) the works; and

(B) the maintenance and operation of the works; and

(C) works which it would have been necessary to construct to avoid the occurrence of any relevant injury, damage or loss.

(4) The following provisions apply with respect to a proceeding brought under subsection (1)—

* * * * *

S. 157(4)(a) repealed by No. 52/1998 s. 311(Sch. 1 item 105.22).

(b) the proportion (if any) of the responsibility of the Authority for the injury, damage or loss must be assessed and only that proportion of the assessed damages must be awarded against the Authority;

(c) in assessing damages in respect of damage to property or economic loss the measure of damages is the direct pecuniary injury to the person bringing the proceeding by the loss of something of substantial benefit accrued or accruing and does not include remote, indirect or speculative damage;

(d) if damages are assessed in the proceeding in respect of any continuing cause of action, they may, in addition to being assessed down to the time of assessment, be assessed in respect of all future injury, damage or loss and, if so, the Authority is not liable to pay any further damages in respect of that injury, damage or loss;

* * * * *

S. 157(4)(e)–(g) repealed by No. 52/1998 s. 311(Sch. 1 item 105.22).

(h) a person, not being a party, in whose favour a determination is made may enforce the determination by the same means as if the person were a party.

### 158 Information statements

S. 158(1) amended by No. 17/2012 s. 28.

(1) Any person may apply to an Authority for an information statement in relation to any land that is within a district of the Authority.

(2) An application must—

(a) be in writing; and

(b) be in a form approved by the Authority; and

S. 158(2)(c) amended by No. 110/1997 s. 18.

(c) be accompanied by the fee fixed by the Authority for applications under this section; and

(d) state the name and address of the applicant; and

(e) contain a description sufficient to identify the land in relation to which the information statement is required.

(3) An Authority to which an application is made must issue to the applicant a statement that gives details of the following things in relation to the described land arising from the performance of any of the Authority's functions under this or any other Act—

(a) any encumbrance affecting the land, other than—

(i) an encumbrance that would be disclosed by search at the Office of Titles or the Office of the Registrar-General; and

(ii) a matter required to be included in any other statement or certificate under this Act;

(b) any works that are required to be carried out (whether deferred by the Authority or not) or any matters that are outstanding and in respect of which the Authority has served any notice, made any resolution, exercised any discretion or entered into any agreement under this Act;

(c) any relevant tariff or other charge, including any amounts outstanding;

S. 158(3)(c) amended by No. 23/2019 s. 62(a).

(d) whether or not the land is serviced property and, if so, the purposes for which the land is serviced property.

S. 158(3)(d) amended by No. 23/2019 s. 62(b).

(4) The Authority may also include in the statement any other information concerning the land that the Authority in its absolute discretion considers relevant.

(5) The statement must be signed by a person who is authorised by the Authority to do so.

(6) The Authority does not incur any liability in respect of any information that it provides in good faith under subsection (4).

### 159 Notice of disposition of land

A prescribed person must, in relation to the disposition of any land, give notice—

(a) in a prescribed form containing prescribed particulars; and

(b) to each prescribed person; and

(c) within a prescribed period.

Penalty: 10 penalty units.

### 159A Requirement to make emergency management plan

S. 159A inserted by No. 17/2012 s. 29.

(1) A water corporation must make a plan that sets out how the water corporation should respond to

any emergency that could affect the exercise of the water corporation's powers or the performance of the water corporation's functions.

(2) In preparing a plan, the water corporation must have regard to any obligations in a statement of obligations issued by the Minister to the water corporation under section 4I of the **Water Industry Act 1994** concerning the form of, and the information to be contained in, such a plan.

(3) In this section and in section 159E, ***emergency*** means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person in Victoria or which destroys or damages, or threatens to destroy or damage, any property in Victoria or endangers or threatens to endanger the environment or an element of the environment in Victoria.

S. 159B inserted by No. 17/2012 s. 29.

### 159B Variation of plan

A water corporation may at any time vary or revoke and remake an emergency management plan.

S. 159C inserted by No. 17/2012 s. 29.

### 159C Publication and effect of plan

(1) A water corporation must on the making, variation or revocation and remaking of an emergency management plan publish notice of that fact in the Government Gazette.

(2) The making, variation or revocation and remaking of a plan has effect on the publication of the notice under subsection (1).

S. 159D inserted by No. 17/2012 s. 29.

### 159D Review of plan at request of Minister

(1) The Minister may at any time, by notice given to the water corporation, require the water

corporation to review an emergency management plan and remake the plan.

(2) In remaking a plan the water corporation must include or have regard to any matters that are required by the Minister in the notice under subsection (1).

### 159E Emergency

S. 159E inserted by No. 17/2012 s. 29.

(1) The Governor in Council, on the recommendation of the Minister by Order published in the Government Gazette, may direct a water corporation to take the action specified in the Order in relation to any area specified in the Order during any period specified in the Order or in any circumstances specified in the Order.

(2) The Minister must not recommend to the Governor in Council the making of an Order under subsection (1) unless he or she is of the opinion that an emergency exists in the area to which the Order is to apply and that the making of the Order is necessary to deal with that emergency.

(3) An Order under subsection (1) must specify the period of time for which it is to remain in force.

(4) An Order under subsection (1) has effect despite anything to the contrary in an emergency management plan, for so long as the order is in force.

### 160 By-laws

S. 160(1) amended by No. 85/2006 s. 62(1).

(1) An Authority may make by-laws for or with respect to—

(a) the management, protection and use of all lands, waterways and works under the Authority's management and control; and

S. 160(1)(b) amended by No. 85/2006 s. 62(2) (as amended by No. 28/2007 s. 3(Sch. item 76)), repealed by No. 23/2019 s. 63.

* * * * *

S. 160(1)(c) substituted by No. 39/1996 s. 12(1).

(c) sanitary drainage plans held by water authorities, including—

(i) the lodging of plans of sanitary drains as they appear after they have been installed or altered; and

(ii) specifying the details that the plans must contain; and

(iii) the providing of the copies of the plans; and

(iv) fixing fees for the lodging, copying and viewing of the plans;

(d) (in the case of an Authority authorised by the Minister to do so) prescribing standards for any saline matter (whether in liquid form or not) that may be discharged—

(i) into works under its control; or

(ii) into any waterway; or

(iii) onto any place from which it may enter into—

(A) any works under the control of the Authority; or

(B) any waterway; or

(C) any aquifer; or

(D) any bore; and

(e) (in the case of an Authority authorised by the Minister to do so) regulating or prohibiting the clearing of land within 20 metres of a channel which is under the control of the Authority; and

(f) generally prescribing anything that is authorised or required to be prescribed by by-laws or that is necessary or convenient for performing the functions of the Authority under this Act.

(2) A power conferred by this Act to make by-laws may be exercised—

(a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and

(b) so as to make, as respects the cases in relation to which the power is exercised—

(i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or

(ii) any such provision either unconditionally or subject to any specified condition.

(3) By-laws made under this Act may be made—

(a) so as to apply—

(i) at all times or at a specified time; or

(ii) throughout the whole of the State or in a specified part of the State; or

(iii) as specified in both subparagraphs (i) and (ii); and

(b) so as to require a matter affected by the by-laws to be—

(i) in accordance with a specified standard or specified requirement; or

(ii) approved by or to the satisfaction of a specified person or a specified class of persons; or

(iii) as specified in both subparagraphs (i) and (ii); and

(c) so as to adopt any model by-law issued by the Minister; or

(d) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person whether—

(i) wholly or partially or as amended by the by-laws; or

(ii) as formulated, issued, prescribed or published at the time the by-laws are made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time; and

(e) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and

(f) so as to provide in a specified case or class of case for the exemption of people or things

or a class of people or things from any of the provisions of the by-laws, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and

(g) so as to impose a penalty for a contravention of the by-laws, not exceeding 20 penalty units and, in the case of a continuing offence, an additional penalty not exceeding 5 penalty units for each day on which the offence continues—

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

(ii) if no notice of contravention is served, after conviction of the person for the offence.

(4) By-laws made under this Act may prescribe a fee by reference to a number (whether whole or fractional) of charge units and that fee may be determined by multiplying the number of charge units by a number of dollars fixed by resolution of the Authority.

S. 160(5) amended by Nos 50/1992 s. 10(Sch. item 11.24), 65/1995 s. 22(j), 75/2008 s. 23(1).

(5) For the purposes of subsection (1) land acquired for the purposes of the **Murray-Darling Basin Act 1982** or for the purposes of works carried out or to be carried out under that Act or under the Murray-Darling Basin Agreement must be taken to be under the management and control of the relevant water authority within the meaning of the **Murray-Darling Basin Act 1993**.

S. 160(6) amended by No. 75/2008 s. 23(2).

(6) References in subsection (5) to the **Murray-Darling Basin Act 1982** include references to any corresponding previous enactment and any references to the Murray-Darling Basin

Agreement include references to any corresponding previous agreement.

S. 161 repealed by No. 85/2006 s. 63.

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S. 161A inserted by No. 79/1995 s. 36.

### 161A Limitation of exercise of powers under this Part

(1) An Authority must not exercise its functions or powers under this Part in a manner which is inconsistent with any provision of an Order granting a declared bulk water entitlement and any purported exercise of a function or power in such a manner is, to the extent to which it is so inconsistent, of no effect.

(2) In subsection (1)—

***declared bulk water entitlement*** means a bulk water entitlement in respect of which a declaration under section 185(3) has been made;

S. 161A(2) def. of *generation company* amended by No. 69/2000 s. 65(5), repealed by No. 11/2002 s. 3(Sch. 1 item 66.2).

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# Part 7A—Reconfiguration plans

Pt 7A (Heading and ss 161B–161K) inserted by No. 99/2005 s. 60.

## 161B Definitions

S. 161B inserted by No. 99/2005 s. 60.

In this Part—

***directions*** means directions issued under section 161E;

***panel*** means a panel appointed under section 161H;

***reconfiguration plan*** is a reference to a plan for the future capacity for an Authority to provide services to properties within the whole or a part of the district of the Authority.

## 161BA Reconfiguration plans

S. 161BA inserted by No. 24/2013 s. 32.

To avoid doubt, nothing in this Part empowers an Authority to adopt a reconfiguration plan that includes anything inconsistent with Part VII of the **Constitution Act 1975**.

## 161C Contents of reconfiguration plans

S. 161C inserted by No. 99/2005 s. 60.

A reconfiguration plan may include—

(a) arrangements for the upgrading, downgrading or discontinuation of works that provide irrigation or other rural water services to properties within the relevant district of the Authority and any associated drainage works; and

(b) arrangements as to pricing and management of services provided to properties within the relevant district of the Authority or works of the Authority.

S. 161D inserted by No. 99/2005 s. 60, amended by Nos 85/2006 s. 64, 23/2019 s. 64.

### 161D Draft plans for reconfiguration of infrastructure

An Authority with an irrigation district or a water supply district may (either on its own behalf, or in conjunction with another Authority or Council) prepare a draft reconfiguration plan.

S. 161E inserted by No. 99/2005 s. 60.

### 161E Directions of Minister as to reconfiguration plans

(1) The Minister may issue directions that apply to reconfiguration plans.

(2) Directions issued under subsection (1) may include all or any of the following—

(a) the circumstances in which an Authority will be required to prepare a reconfiguration plan; and

(b) the circumstances in which compensation will be payable by an Authority for reducing services under a reconfiguration plan; and

(c) any processes for the initiation of the preparation of reconfiguration plans; and

(d) any processes an Authority preparing a reconfiguration plan must implement before the plan is adopted, including processes as to the identification and discussion of funding and charging options; and

(e) whether or not a draft reconfiguration plan, on adoption under section 161F, must be approved under section 161G; and

(f) any matters that must be taken into account by an Authority in preparing a reconfiguration plan; and

(g) any persons to whom reconfiguration plans or classes of reconfiguration plans must be referred for consideration; and

(h) any requirements for advertising or consultation for reconfiguration plans or classes of reconfiguration plans.

(3) The Minister must cause directions issued under this section to be published in the Government Gazette.

### 161F Adoption of reconfiguration plans by Authority

S. 161F inserted by No. 99/2005 s. 60.

(1) An Authority may adopt a reconfiguration plan on completing preparation and consideration of a draft reconfiguration plan in accordance with this Part and after complying with any directions.

S. 161F(2) amended by No. 24/2013 s. 33.

(2) Subject to section 161BA, an Authority must not adopt a reconfiguration plan under subsection (1) that proposes termination of the whole or a part of the services provided by the Authority, unless the Authority has—

(a) notified the owner of each serviced property to which the services that are proposed to be terminated are provided; and

(b) allowed the owner of each such property an opportunity to make written submissions to the Authority about the plan; and

(c) given consideration to arrangements to meet any ongoing domestic and stock use requirements for each property.

(3) In the case of a reconfiguration plan that, under the directions, does not require the approval of the Minister, on adoption of the plan under this section, the Authority must cause notice of the adoption to be published in the Government Gazette.

S. 161G inserted by No. 99/2005 s. 60.

### 161G Approval of reconfiguration plans by the Minister

(1) In the case of a reconfiguration plan that, under the directions, on adoption by the Authority, also requires approval of the Minister, the Minister may approve the plan—

(a) on being satisfied that the Authority has adopted the plan under section 161F; and

(b) on being satisfied that the Authority has complied with the directions; and

(c) after considering the report of any panel the Minister has appointed to consider the plan.

(2) Before approving a plan under subsection (1), the Minister may refer the plan to a panel for advice.

S. 161H inserted by No. 99/2005 s. 60.

### 161H Appointment of Panel

(1) The Minister may, by instrument, appoint a panel of persons to give advice under section 161G(2) on an adopted reconfiguration plan, and the persons appointed to the panel must be persons who have knowledge of or experience in the matters that the panel is to give advice on.

(2) Subject to anything specified by the Minister in the instrument of appointment of the panel, a panel may regulate its own proceedings.

(3) After considering the plan, the panel must report its findings to the Minister within the period specified by him or her.

(4) The panel may include in its report any recommendations that it thinks fit.

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

(6) The Minister is not bound by the report of the panel under this section.

(7) The Minister must make a copy of any report of the panel available for inspection by the public within one month after it is received by the Minister.

### 161I Approval and notification of plan

S. 161I inserted by No. 99/2005 s. 60.

On approving a reconfiguration plan under section 161G, the Minister must cause notice of the adoption and approval of the plan to be published in the Government Gazette.

### 161J Termination of services to properties consequent on plans for reconfiguration

S. 161J inserted by No. 99/2005 s. 60.

(1) An Authority may, by notice in writing, declare serviced properties on any land in any part of its district to cease to be serviced properties for the purposes of this Act.

(2) An Authority must not make a declaration under subsection (1) unless a plan adopted under section 161F and (where the case so requires) approved under section 161G includes a proposal to make such a declaration.

(3) On making a declaration under this section the Authority must serve notice on the owner of each serviced property in the part of the district to which the declaration relates of the making of the declaration and of the day on which the declaration comes into effect.

(4) A notice under subsection (3) must set out the date on which it takes effect, which must be more than 12 months after the day on which the Authority makes the declaration.

S. 161K inserted by No. 99/2005 s. 60.

### 161K Plans by agreement

Nothing in this Part prevents an Authority from reconfiguring infrastructure of the Authority that enables the provision of services to serviced properties with the agreement of the owner of those properties.

# Part 8—Water supply

## Division 1—Authorities with a water supply district

Pt 8 Div. 1 (Heading) inserted by No. 85/2006 s. 65, amended by No. 23/2019 s. 65.

### 162 Application of this Division

S. 162 (Heading) inserted by No. 85/2006 s. 66(1).

This Division applies to an Authority that has a water supply district.

S. 162 amended by Nos 85/2006 s. 66(2), 23/2019 s. 66.

### 163 Functions of Authorities

(1) An Authority that has a water supply district has the following functions (to the extent that the functions are not storage management functions that have been conferred on an Authority under Part 6C)—

S. 163(1) amended by Nos 85/2006 s. 67(1), 23/2019 s. 67.

(a) to provide, manage, operate and protect water supply systems, including the collection, storage, treatment, transfer and distribution of water;

(b) to identify community needs relating to water supply and to plan for the future needs of the community relating to water supply;

(c) to develop and implement programs for the conservation and efficient use of water;

(d) to investigate, promote and conduct research into any matter related to its functions, powers and duties in relation to water supply;

(e) to educate the public about any aspect of water supply.

S. 163(2) repealed by No. 85/2006 s. 67(2).

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S. 164 (Heading) inserted by No. 23/2019 s. 68(1).

### 164 Exercise of functions of Authority outside its water supply district

(1) An Authority may, subject to subsection (2), exercise its functions outside its district, including outside the State.

S. 164(2) substituted by No. 23/2019 s. 68(2).

(2) An Authority must not provide a service under this Part outside its water supply district unless—

(a) the service is capable of being conveniently provided by the use of resources that are not immediately required in carrying out the Authority's functions under this Act; and

(b) if the service relates to land in another Authority's water supply district, that Authority has agreed to the service being provided.

### 165 Fire plugs and free water

S. 165(1) amended by No. 23/2019 s. 69(1).

(1) A council may require an Authority that has a water supply district situated wholly or partly within the council's municipal district to fix fire plugs to any of the works of the Authority within the water supply district in suitable locations for the supply of water for fire-fighting purposes.

(2) A council must meet the costs of providing, installing, marking and maintaining all fire plugs that the council requires under subsection (1) to be installed in its municipal district.

(3) An Authority may provide, install, mark and maintain any extra fire plugs that it thinks necessary or that are requested by a landowner,

either at its own cost or at the cost of the landowners benefited by them.

(4) An Authority must—

(a) keep all fire plugs in its water supply district in working order; and

S. 165(4)(a) amended by No. 23/2019 s. 69(2)(a).

(b) provide conspicuous markers for fire plugs supplied by it; and

(c) make sure that at all times water is available from fire plugs in its water supply district for cleaning sewers and drains, unless the water is unavailable due to a shortage of water or another unavoidable cause, or due to repairs.

S. 165(4)(c) amended by Nos 17/2012 s. 30(1), 23/2019 s. 69(2)(b).

(5) Subsection (4)(a) does not require an Authority to make sure that water pressure is adequate for fire fighting.

(6) No charge may be made by an Authority in respect of water taken for fire-fighting purposes from a fire plug fixed to its works.

S. 165(6) inserted by No. 17/2012 s. 30(2).

(7) An Authority may impose a reasonable charge in respect of water taken for cleaning sewers and drains from a fire plug fixed to its works.

S. 165(7) inserted by No. 17/2012 s. 30(2).

* * * * *

S. 166 amended by Nos 50/1992 s. 10(Sch. item 11.25), 49/1994 s. 4(1)(k), repealed by No. 46/2003 s. 59(1).[35]

### 167 Power to enter land for water supply protection

(1) An officer of an Authority or an authorised person may enter any land for the purposes of water supply protection.

(2) Sections 133 and 134 apply in relation to the entry of land under subsection (1) as if that entry were made under section 133(1).

### 168 Immediate action for water supply protection

An Authority may, immediately and without notice, remove from—

(a) any land that is adjacent to any waterway or works forming part of the Authority's water supply system; or

(b) any water in or adjacent to any such waterway or works—

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

### 169 Notice of contravention for water supply protection

(1) Subject to subsection (2), an Authority may, by notice in writing to any person, require—

(a) that an activity carried out on any land owned or occupied by that person be discontinued; or

(b) the removal of any substance or thing—

if the carrying out of the activity, or the presence of the substance or thing, is, in the opinion of the Authority, likely to affect the purity of the Authority's water supply system.

(2) A notice under subsection (1) may not require the discontinuance of any activity or the removal of any substance or thing if the carrying out of the activity or the presence of the substance or thing is specifically authorised by or under this or any other Act.

S. 169(3) repealed by No. 23/2019 s. 70.

(3) * * * * *

### 169A Offence not to comply with notice of contravention[36]

S. 169A inserted by No. 23/2019 s. 71.

(1) A person on whom a notice of contravention under section 169 is served must not knowingly fail to comply with the notice, being a failure to comply that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 10 years imprisonment or 1200 penalty units or both;

For a body corporate, 6000 penalty units.

(2) A person on whom a notice of contravention under section 169 is served must not recklessly fail to comply with the notice, being a failure to comply that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 5 years imprisonment or 600 penalty units or both;

For a body corporate, 3000 penalty units.

(3) A person on whom a notice of contravention under section 169 is served must not fail to comply with the notice.

Penalty: For an individual, 240 penalty units;

For a body corporate, 1200 penalty units.

S. 169B inserted by No. 23/2019 s. 71.

### 169B Authority may carry out works etc. where notice not complied with

If a notice of contravention under section 169 is not complied with within the time specified, or any longer time allowed by the Authority, the Authority may—

(a) carry out any work and take any other action it decides is necessary to remedy the contravention, and recover its reasonable costs from the person on whom the notice was served; and

(b) remove or disconnect any service to the property in relation to which the contravention occurs, and recover its reasonable costs from the person on whom the notice was served; and

(c) apply to a court for an injunction restraining the person on whom the notice was served from contravening the notice.

S. 170 amended by Nos 48/1991 s. 74, 69/2006 s. 224(Sch. 3 item 12), repealed by No. 17/2012 s. 31.

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S. 170A inserted by No. 90/2003 s. 6.

### 170A Preparation and adoption of permanent water saving plan

(1) An Authority must prepare a permanent water saving plan and submit that plan to the Minister for approval on or before the date specified by the Minister.

(2) The Minister may, by notice served on the Authority, give directions or issue guidelines concerning the form of, and the information to be contained in, such a plan.

(3) In preparing a plan, an Authority must—

(a) comply with any written directions; and

(b) have regard to any written guidelines—

given or issued by the Minister under subsection (2).

(4) Without limiting subsection (2), a plan must contain a Schedule setting out restrictions or prohibitions on the use of water in any area, or a specified part of any area, in respect of which the Authority has the function of providing a water supply system.

(5) Without limiting subsection (4), a restriction may require a use of water to be approved by a specified person or a specified class of person.

(6) Before submitting a plan to the Minister under subsection (1), an Authority must ensure that a notice in accordance with subsection (7) is published in the Government Gazette and a newspaper circulating generally in any area capable of being affected by the plan.

(7) A notice must—

(a) summarise the restrictions and prohibitions proposed by the plan;

(b) specify where a copy of the proposed plan can be obtained;

(c) invite public comments or submissions within such time (being not less than 28 days from the latest day on which the notice is published under subsection (6)) as is specified in the notice.

(8) An Authority must ensure that all comments and submissions received before the date specified in the notice in response to the notice are considered, and any variations to the proposed plan that the Authority thinks fit are made, before the proposed plan is submitted to the Minister under subsection (1).

(9) An Authority must adopt a plan as approved by the Minister under subsection (1).

S. 170B inserted by No. 90/2003 s. 6.

### 170B Variation of plan

(1) An Authority may at any time, in accordance with this section, make any variations to an adopted permanent water saving plan that it thinks fit.

(2) Before making any variation to an adopted plan, an Authority must submit the proposed variation to the Minister for approval.

(3) The Minister may at any time, by notice served on the Authority, require an Authority to review a permanent water saving plan and submit a revised plan to the Minister for approval on or before the date specified by the Minister.

(4) In preparing a variation to an adopted plan or a revised plan, an Authority must—

(a) comply with any written directions; and

(b) have regard to any written guidelines—

given or issued by the Minister under section 170A(2) concerning the form of, and the information to be contained in, a permanent water saving plan.

(5) Except with the approval of the Minister, before submitting a proposed variation or revised plan to the Minister under subsection (2) or (3), an Authority must ensure that a notice in accordance with subsection (6) is published in the Government Gazette and a newspaper

circulating generally in any area capable of being affected by the proposed variation or revised plan.

(6) A notice must—

(a) summarise the proposed variation or revised plan;

(b) specify where a copy of the proposed variation or revised plan can be obtained;

(c) invite public comments or submissions within such time (being not less than 28 days from the latest day on which the notice is published under subsection (5)) as is specified in the notice.

S. 170B(7) amended by No. 17/2012 s. 32.

(7) An Authority must ensure that all comments and submissions received before the date specified in the notice in response to the notice are considered, and any changes to the proposed variation or changes to the proposed revised plan that the Authority thinks fit are made, before the proposed variation or revised plan is submitted to the Minister under subsection (2) or (3).

(8) An Authority must vary a permanent water saving plan, or adopt a revised permanent water saving plan, as approved by the Minister under subsection (2) or (3).

### 170C Major deviations from plan

S. 170C inserted by No. 90/2003 s. 6.

(1) An Authority must not make a major deviation from a permanent water saving plan.

(2) The Minister may issue guidelines as to what are major deviations for the purposes of subsection (1).

S. 170CA inserted by No. 85/2006 s. 68.

### 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.

S. 170D inserted by No. 90/2003 s. 6.

### 170D Copy of plan

(1) The permanent water saving plan of an Authority at any time is that plan adopted in accordance with section 170A or 170B(8), as varied under section 170B at that time.

(2) An Authority must ensure that an up to date copy of its permanent water saving plan is available at its offices during business hours for inspection on request.

S. 170D(3) inserted by No. 29/2007 s. 15, amended by No. 32/2010 s. 77(Sch.).

(3) An Authority must ensure that a copy of its permanent water saving plan is published electronically at the electronic address of the Authority.

S. 170E inserted by No. 90/2003 s. 6.

### 170E Implementation of plan

(1) An Authority must implement immediately—

(a) a permanent water saving plan adopted by the Authority in accordance with section 170A or 170B(8);

(b) a variation to an adopted permanent water saving plan referred to in paragraph (a).

(2) Implementation involving the imposition or removal of restrictions or prohibitions on the use of water in an area may be effected by the Authority publishing a notice in the Government Gazette and a newspaper circulating generally in the area specifying—

(a) the restrictions or prohibitions imposed or being substituted or removed; and

(b) the area to which they apply or applied; and

(c) the time from which they apply or cease to apply, not being earlier than the latest day on which the notice is published.

(3) A person cannot be convicted of an offence against section 170F in respect of a contravention of a restriction or prohibition on the use of water contained in a permanent water saving plan if prior to the relevant time notice of the particular restriction or prohibition had not been published in accordance with subsection (2).

### 170F Contravention of plan

**S. 170F inserted by No. 90/2003 s. 6.**

(1) A person who receives a supply of water from an Authority must not contravene a restriction or prohibition on the use of that water contained in a permanent water saving plan of the Authority.

**S. 170F(1) amended by No. 29/2007 s. 16.**

Penalty: For a first offence, 10 penalty units;

For a subsequent offence, 20 penalty units.

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

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

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

**Note**

Section 296(1) sets out who may prosecute an offence under subsection (1).

S. 170G inserted by No. 90/2003 s. 6.

### 170G Inconsistency

(1) If there is an inconsistency between a restriction or prohibition in a by-law and a permanent water saving plan applying to a person who receives a supply of water from an Authority, the person must comply with the restriction or prohibition in the by-law.

(2) A restriction or prohibition in a permanent water saving plan is of no effect to the extent of that inconsistency.

S. 171 amended by No. 90/2003 s. 5 (ILA s. 39B(1)).

### 171 By-laws

S. 171(1) amended by No. 85/2006 s. 69(1).

(1) An Authority 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

(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

S. 171(1)(ba) inserted by No. 85/2006 s. 69(2).

(bb) the infringement penalties for any offence for which an infringement notice may be served; and

S. 171(1)(bb) inserted by No. 85/2006 s. 69(2).

* * * * *

S. 171(1)(bc) inserted by No. 85/2006 s. 69(2), repealed by No. 23/2019 s. 72.

* * * * *

S. 171(1)(c)(d) repealed by No. 23/2019 s. 72.

(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 the Authority's water supply system; and

(ii) may affect that system; and

(g) prohibiting people who are not entitled to water supply from using water from the Authority's works; and

(h) regulating or prohibiting the access to or use of land and works under the management and control of the Authority; and

(i) regulating the use of water for fire-fighting purposes; and

(j) any other matter or thing for which it is necessary or convenient for the Authority to make by-laws.

S. 171(2) inserted by No. 90/2003 s. 5.

(2) A penalty imposed for a contravention of a by-law made under subsection (1)(a) must not exceed—

(a) for a first offence, 40 penalty units or imprisonment for 3 months; and

(b) for a subsequent offence, 80 penalty units or imprisonment for 6 months—

and, in the case of a continuing contravention, an additional penalty not exceeding 5 penalty units for each day on which the offence continues (up to a maximum of 20 additional penalty units)—

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

(d) if no notice of contravention is served, after conviction of the person for the offence.

S. 171(3) inserted by No. 85/2006 s. 69(3).

(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 subsection (1)(ba) must not exceed—

S. 171(3)(a) amended by No. 17/2012 s. 33(a).

(a) for an offence in respect of the first stage of restrictions or prohibitions (however described) on the use of water, 2 penalty units;

S. 171(3)(b) amended by No. 17/2012 s. 33(b).

(b) for an offence in respect of the second stage of restrictions or prohibitions (however described) on the use of water, 3 penalty units;

(c) for an offence in respect of the third stage of restrictions or prohibitions (however described) on the use of water, 4 penalty units;

S. 171(3)(c) amended by No. 17/2012 s. 33(c).

(d) for an offence in respect of the fourth stage of restrictions or prohibitions (however described) on the use of water, 5 penalty units.

S. 171(3)(d) amended by No. 17/2012 s. 33(d).

(4) An offence referred to in subsection (1)(ba), for which an infringement notice may be served, is an infringement offence within the meaning of the **Infringements Act 2006**.

S. 171(4) inserted by No. 29/2007 s. 17.

* * * * *

S. 171A inserted by No. 48/2002 s. 75, amended by No. 85/2006 s. 70, repealed by No. 1/2010 s. 93.

## Division 2—Melbourne Water Corporation

Pt 8 Div. 2 (Heading and ss 171B–171I) inserted by No. 85/2006 s. 71.

### 171B Water supply function of Melbourne Water Corporation

S. 171B inserted by No. 85/2006 s. 71.

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—

* * * * *

S. 171B(a)(i)(ii) repealed by No. 23/2019 s. 108(1).

(iii) the holder of a bulk entitlement to water in the works of Melbourne Water Corporation granted under Division 1 of Part 4;

S. 171B(a)(iv) amended by No. 23/2019 s. 73.

(iv) an Authority that has a water supply district or an irrigation district;

(v) any other person or class of person prescribed for the purposes of this section;

(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;

S. 171B(c) amended by No. 23/2019 s. 108(2).

(c) to supply water to all or any of the persons referred to in paragraphs (a)(iii) 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;

(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

S. 171C inserted by No. 85/2006 s. 71.

(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) Subsection (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.

(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 subsection (1) are as agreed between the Corporation and that person.

S. 171D inserted by No. 85/2006 s. 71.

### 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 subsection (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 unavailable due to a shortage of water or another unavoidable cause, or due to repairs.

(5) Subsection (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

S. 171E inserted by No. 85/2006 s. 71.

(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 subsection (1) as if that entry were made under section 133(1).

### 171F Notice of contravention for water supply protection

S. 171F inserted by No. 85/2006 s. 71.

(1) Subject to subsection (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 subsection (1) may not require the discontinuance of any activity or the removal of any substance or thing if the carrying out of the activity or the presence of the substance or thing is specifically authorised by or under this or any other Act.

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

S. 171G inserted by No. 85/2006 s. 71.

### 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.

S. 171H inserted by No. 85/2006 s. 71.

### 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 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 subsection (1)(a) must not exceed—

(a) for a first offence, 40 penalty units or imprisonment for 3 months; and

(b) for a subsequent offence, 80 penalty units or imprisonment for 6 months—

and, in the case of a continuing contravention, an additional penalty not exceeding 5 penalty units for each day on which the offence continues (up to a maximum of 20 additional penalty units)—

(c) after service of a notice of contravention on the person under section 171F; or

(d) if no notice of contravention is served, after conviction of the person for the offence.

S. 171I inserted by No. 85/2006 s. 71, repealed by No. 1/2010 s. 93, new s. 171I inserted by No. 49/2017 s. 95.

### 171I Obligations of Melbourne Water Corporation in relation to Yarra River land

(1) Melbourne Water Corporation—

(a) must not act inconsistently with any part of a Yarra Strategic Plan that is expressed to be binding on Melbourne Water Corporation when performing a function or duty or exercising a power under this Act or any other Act in relation to Yarra River land; and

(b) must have regard to the Yarra protection principles, and those parts of a Yarra Strategic Plan not expressed to be binding on Melbourne Water Corporation, when performing a function or duty or exercising a power under this Act or any other Act in relation to the Yarra Strategic Plan area that may affect Yarra River land.

S. 171I(2) substituted by No. 43/2021 s. 219(Sch. 1 item 14.3).

(2) Subsection (1) does not apply to the performance of a function or the exercise of a power by Melbourne Water Corporation in relation to—

(a) a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**; or

(b) a Suburban Rail Loop project within the meaning of the **Suburban Rail Loop Act 2021**.

S. 171J inserted by No. 17/2018 s. 32.

### 171J Obligations of water corporations in relation to declared areas

(1) A water corporation, when performing a function or duty or exercising a power under this Act in relation to a declared area—

(a) must not act inconsistently with any part of a Statement of Planning Policy that is expressed to be binding on the water corporation; and

(b) must have regard to those parts of the Statement of Planning Policy not expressed to be binding on the water corporation; and

(c) must have regard to the principles set out in section 46AZL of the **Planning and Environment Act 1987**.

S. 171J(2) substituted by No. 43/2021 s. 219(Sch. 1 item 14.4).

(2) Subsection (1) does not apply to the performance of a function or the exercise of a power by a water corporation in relation to—

(a) a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**; or

(b) a Suburban Rail Loop project within the meaning of the **Suburban Rail Loop Act 2021**.

S. 171K inserted by No. 19/2020 s. 114.

### 171K Obligations of certain water corporations in relation to the Great Ocean Road region

(1) The Barwon Region Water Corporation, Gippsland and Southern Rural Water Corporation or Wannon Region Water Corporation, when performing a function or duty or exercising a power under this Act or any other Act—

(a) must not act inconsistently with any part of an approved Great Ocean Road strategic framework plan that is expressed to be binding on the Barwon Region Water Corporation, Gippsland and Southern Rural Water Corporation or Wannon Region Water Corporation (as the case requires) in relation to the Great Ocean Road scenic landscapes area; and

(b) must have regard to the Great Ocean Road coast and parks protection principles in relation to the Great Ocean Road coast and parks; and

(c) must have regard to those parts of an approved Great Ocean Road strategic framework plan not expressed to be binding on the Barwon Region Water Corporation, Gippsland and Southern Rural Water Corporation or Wannon Region Water Corporation (as the case requires) in relation to the Great Ocean Road region.

(2) Subsection (1) does not apply to the performance of a function or the exercise of a power by the Barwon Region Water Corporation, Gippsland and Southern Rural Water Corporation or Wannon Region Water Corporation (as the case requires) in relation to a declared project within the meaning of the **Major Transport Projects Facilitation Act 2009**.

# Part 9—Sewerage

## Division 1—Authorities other than Melbourne Water Corporation

Pt 9 Div. 1 (Heading) inserted by No. 85/2006 s. 72.

### 172 Definitions

S. 172 substituted by No. 85/2006 s. 73.

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.

### 173 Functions of Authorities

(1) An Authority that has a sewerage district has the following functions—

(a) to provide, manage and operate systems for the conveyance, treatment and disposal of sewage and, if the Authority so decides, of trade waste;

(b) to identify community needs relating to sewerage services and to plan for the future needs of the community relating to sewerage services;

(c) to develop and implement programs for the recycling and reuse of treated waste water;

(d) to investigate, promote and conduct research into any matter which relates to its functions, powers and duties in relation to sewerage services;

(e) to educate the public about any aspect of sewerage.

S. 173(2) repealed by No. 85/2006 s. 74.

* * * * *

S. 174 (Heading) inserted by No. 23/2019 s. 74(1).

### 174 Exercise of functions of Authority outside its sewerage district

(1) An Authority may, subject to subsection (2), exercise its functions outside its district, including outside the State.

S. 174(2) substituted by No. 23/2019 s. 74(2).

(2) An Authority must not provide a service under this Part outside its sewerage district unless—

(a) the service is capable of being conveniently provided by the use of resources that are not immediately required in carrying out the Authority's functions under this Act; and

(b) if the service relates to land in another Authority's sewerage district, that Authority has agreed to the service being provided.

### 175 New works

(1) Subject to subsection (4), at least 14 days before starting construction of any sewer an Authority must—

(a) serve a notice on each owner or occupier of land which will be affected by the proposed construction; and

(b) publish a notice in a newspaper circulating generally in the area concerned—

which contains a statement of the Authority's intention to construct the sewer, information about where and when a copy of the plan of the works for the sewer may be inspected, and notice that submissions are invited within 14 days after publication.

(2) A person who objects to the proposed construction may, within 14 days after the date of publication of the notice, make a submission to the Authority, and the Authority must, before starting construction, consider any submissions received.

(3) The Authority may construct the sewer—

(a) after considering any submissions; or

(b) if no submissions are received, 14 days after the date of publication of the notice.

(4) If the Authority has the consent in writing of each owner or occupier who would be affected by the construction of a sewer, it may construct the sewer without following the procedure specified in subsections (1) to (3).

**176 Compensation not payable in certain cases**

(1) Despite any other provision, an Authority is not liable to pay compensation for damage caused in the course of works to provide a sewer that the Authority decides is necessary for the proper sewerage of allotments of land, unless that damage is to buildings and is not repaired by the Authority.

(2) Subsection (1) applies only to land—

(a) that is subdivided in such a way that the allotments abut each other, back to back or side to back, without any right of way between them; and

(b) in relation to which the sewer is underground and close to the boundary of an allotment.

**177 Testing etc. of waste**

(1) A person authorised by an Authority to do so may—

(a) at any reasonable time, but in an emergency at any time, enter land and—

(i) measure flows of trade waste; or

(ii) take samples of any trade waste that is to be received by the Authority or of any matter used or produced in a process involving trade waste, and analyse those samples; or

(iii) inspect any fittings, private works and works ancillary to them that are used or provided for conveying trade waste to the Authority's sewerage system; and

(b) require any person to supply any information relating to any trade waste that is to be received by the Authority or any matter used or produced in a process involving trade waste.

(2) Powers conferred by subsection (1) are in addition to any other powers of an Authority.

(3) A person must not disclose any information supplied to the person as required under subsection (1)(b) unless that disclosure is made—

(a) to the Authority; or

(b) for the purposes of legal proceedings; or

(c) with the consent of the person who supplied the information.

Penalty: 20 penalty units.

**178 Protection of sewers[37]**

(1) A person must not cause or permit anything other than—

(a) sewage; or

(b) trade waste discharged in accordance with a trade waste agreement—

to be discharged into the sewerage system of an Authority.

Penalty: 200 penalty units and, for a continuing offence, an additional penalty of 80 penalty units for each day on which the offence continues—

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

(d) if no notice of contravention is served, after conviction of the person for the offence.

(2) Subsection (1) does not apply to or in relation to a discharge that occurs in circumstances that constitute an offence against the **Environment Protection Act 1970**.

### 179 Special sewerage services

S. 179 substituted by No. 23/2019 s. 75.

(1) An Authority with the management and control of a sewerage district may, by notice in writing, declare any land within the district to be a serviced property for the purposes of providing services to the land under sections 180 or 183.

(2) Section 144(2), (3) and (4) apply to a notice under subsection (1) as if it were a notice under section 144(1).

(3) An Authority may impose a fee under a tariff on a property that is a serviced property because of a notice under subsection (1), in relation to any service provided by the Authority under section 180 or 183.

### 180 Septic tank permit applications

S. 180(1) amended by No. 17/2012 s. 34.

(1) A council that receives an application for a permit for a septic tank system in respect of land within an Authority's sewerage district must forward a copy of the application to the Authority, if the Authority has lodged with the council a standing written request for referral of those applications.

S. 180(2) amended by No. 17/2012 s. 34.

(2) The Environment Protection Authority must forward any applications it receives for a permit for a septic tank system in respect of land within an Authority's sewerage district if the Authority has lodged with the Environment Protection Authority a standing written request for referral of those applications.

(3) The Authority must, within 21 days after the copy of the application is forwarded to it, notify the council or the Environment Protection Authority (as appropriate) of—

(a) the location of the sewer nearest to the land; and

(b) the availability of works to service the land; and

(c) any requirements with which the council or the Environment Protection Authority must comply.

(4) The council and the Environment Protection Authority must comply with any requirement of the Authority in relation to the application that is notified to the council or the Environment Protection Authority within 21 days after the application is forwarded to the Authority.

(5) The council or the Environment Protection Authority must not make a decision in relation to an application within 21 days after the copy is forwarded to the Authority.

* * * * *

S. 181 amended by No. 85/2006 s. 75, repealed by No. 23/2019 s. 109.

### 182 Enforcement of agreement

Whether or not proceedings are instituted for the contravention of any terms or conditions of a trade waste agreement, an Authority may apply to a court for an order with respect to the enforcement of the agreement.

### 183 Powers in relation to septic tanks

(1) An Authority may inspect and measure existing septic tank systems within its sewerage district.

(2) An Authority may, by notice in writing served on the owner of land which is within its sewerage district and on which there is a septic tank system, require the owner to carry out in relation to that septic tank system any repairs or maintenance specified in the notice.

S. 183(3) amended by No. 46/2008 s. 292.

(3) The carrying out of any repairs or maintenance required by an Authority under subsection (2) does not relieve the owner from the duty to comply with the **Environment Protection Act 1970** and the **Public Health and Wellbeing Act 2008**.

(4) If a septic tank system is on land owned by more than one person, a notice under subsection (2) may be served on any or all of the owners of that land.

(5) Section 150(3) and (4) apply to a notice under subsection (2) as if it were a notice under section 150(1).

### 184 By-laws about private works and septic tank systems

S. 184(1) amended by No. 85/2006 s. 76.

(1) An Authority may, in accordance with section 160, make by-laws for or with respect to any of the following—

(a) regulating works or apparatus within its district that are part of any private works or of a septic tank system;

(b) requiring—

(i) the regular maintenance and cleaning of those works or apparatus; and

(ii) the payment of a fee for any maintenance or cleaning of those works or apparatus that is carried out by or on behalf of the Authority;

(c) prohibiting septic tank discharge within its district without the consent of the Authority;

(d) imposing penalties for contravention of the by-laws.

(2) A penalty imposed for a contravention of a by-law made under subsection (1)(c) must not exceed—

(a) for a first offence, 20 penalty units or imprisonment for 3 months; and

(b) for a subsequent offence, 40 penalty units or imprisonment for 6 months—

and, in the case of a continuing contravention, an additional penalty of 5 penalty units for each day on which the offence continues—

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

(d) if no notice of contravention is served, after conviction of the person for the offence.

## Division 2—Melbourne Water Corporation

Pt 9 Div. 2 (Heading and ss 184A, 184B) inserted by No. 85/2006 s. 77.

### 184A Sewerage functions of Melbourne Water Corporation

S. 184A inserted by No. 85/2006 s. 77.

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—

* * * * *

S. 184A(a)(i) repealed by No. 23/2019 s. 110.

(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 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.

S. 184B inserted by No. 85/2006 s. 77.

### 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".

# Part 10—Waterway management

## Division 1—Preliminary

### 185 Application of this Part

(1) This Part applies to—

(a) an Authority that has a waterway management district (in respect of Division 2, and in respect of Divisions 3, 4 and 5 to the extent provided in those Divisions); and

(b) an Authority appointed by the Minister (in respect of Division 6); and

S. 185(1)(b) amended by No. 121/1994 s. 190(1).

* * * * *

S. 185(1)(c) inserted by No. 121/1994 s. 190(1), repealed by No. 66/2000 s. 25.

(2) For the purposes of this Part, ***water management*** means the management of waterways, drainage or floodplains.

(3) The Governor in Council may, by Order published in the Government Gazette, declare a bulk entitlement to water in a designated waterway held by a generation company within the meaning of the **Electricity Industry Act 2000** to be a declared bulk entitlement for the purposes of this Part.

S. 185(3) inserted by No. 56/1995 s. 66(1), amended by No. 69/2000 s. 65(6).

### 186 Exercise of functions of Authorities

S. 186 amended by No. 121/1994 s. 190(2)(a).

(1) An Authority must not exercise its functions under Divisions 2, 3 and 4 outside its district, unless the Minister approves otherwise.

S. 186(1A) inserted by No. 56/1995 s. 66(2).

(1A) An Authority must not exercise its functions or powers under this Part (including its powers to make by-laws under section 219) in a manner which is inconsistent with any provision of an Order granting a declared bulk entitlement and any purported exercise of a function or power in such a manner is, to the extent to which it is so inconsistent, of no effect.

S. 186(2)(3) inserted by No. 121/1994 s. 190(2)(b), repealed by No. 66/2000 s. 26.

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S. 186A inserted by No. 99/2005 s. 36.

### 186A Statements of obligations of Authorities with waterway management functions

(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 Part or exercising powers it has under this Act as an Authority to which this Part applies; or

(b) amend, vary or revoke a statement of obligations after complying with subsection (5).

(2) The Minister must not issue, amend, vary or revoke a statement under subsection (1), unless the Minister has first consulted with the Minister administering Part 4 of the **Catchment and Land Protection Act 1994**.

(3) A statement of obligations may include provision relating to—

(a) standards as to the performance of any such functions;

(b) requirements as to community consultation in performing any such functions;

(c) the management of the environmental water reserve.

(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.

## Division 2—Waterway management

### 187 Application of Division

S. 187 amended by No. 121/1994 s. 190(3)(a).

(1) This Division applies to an Authority that has a waterway management district.

S. 187(1) amended by Nos 121/1994 s. 190(3)(b), 66/2000 s. 27(1).

S. 187(2) inserted by No. 121/1994 s. 190(3)(c), repealed by No. 66/2000 s. 27(2).

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### 188 Designated waterways and designated land or works

S. 188(1) amended by No. 85/2006 s. 78.

(1) An Authority, other than Melbourne Water Corporation, may—

(a) declare a waterway within its district or any part of a waterway within its district to be a designated waterway; or

(b) declare any of the following within its district to be designated land or works—

(i) any works or part of any works in or over which water occasionally flows, whether in a defined, naturally occurring channel or not;

(ii) any land which—

(A) abuts a waterway; or

(B) is within 20 metres of a waterway—

and which is significant, whether because of its use or otherwise, for the stability, conservation or functioning of the waterway.

(2) A declaration under subsection (1) must be made by notice in writing which—

(a) is published in the Government Gazette; and

(b) is published in a newspaper circulating generally in the area in which the designated waterway or the designated land or works is or are located; and

(c) adequately describes the designated waterway or the designated land or works; and

(d) specifies the Authority having the management and control of the designated waterway or the designated land or works; and

(e) specifies the waterway management district of that Authority.

(3) The Authority making a declaration must send a copy of the notice to every public statutory body that may have an interest in the waterway declared to be a designated waterway or in the designated land or works.

S. 188(4) substituted by No. 52/1998 s. 311(Sch. 1 item 105.23).

(4) A person whose interests are affected by a decision of an Authority to make a declaration under subsection (1)(b) may apply to the Tribunal for review of the decision.

S. 188(4A) inserted by No. 52/1998 s. 311(Sch. 1 item 105.23).

(4A) An application for review must be made within 28 days after the later of—

(a) the day on which the declaration is published in the Government Gazette;

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

(5) The Authority may, if a declaration is revoked, specify in the notice of the revoking declaration any Authority to which the management and control of the designated waterway or the designated land or works is transferred.

S. 188A inserted by No. 65/1995 s. 19, repealed by No. 66/2000 s. 28, new s. 188A inserted by No. 85/2006 s. 79.

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

(1) Any—

S. 188A(1)(a) amended by No. 45/2010 s. 58, substituted by No. 17/2012 s. 35.

(a) waterway that is within the waterway management district of Melbourne Water Corporation is a designated waterway of Melbourne Water Corporation; 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

(ii) declared to be designated works of Melbourne Water Corporation under subsection (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 subsection (3).

(5) In this section, ***pre-dating corporation*** has the same meaning as in Schedule 16.

### 189 Functions of Authorities

S. 189 amended by No. 99/2005 s. 37(2) (ILA s. 39B(1)).

(1) An Authority that has a waterway management district has the following functions in relation to designated waterways and designated land or works within that district—

S. 189(1)(a) substituted by No. 23/2019 s. 76(1).

(a) to identify and plan for State and local community needs relating to the uses and values of waterways and land, including—

(i) environmental values; and

(ii) Aboriginal cultural values and uses; and

(iii) social and recreational uses and values; and

(iv) economic values;

(b) to develop and to implement effectively schemes for the use, protection and enhancement of land and waterways;

S. 189(1)(ba) inserted by No. 99/2005 s. 37(1).

(ba) to—

(i) develop and implement plans and programs; and

(ii) carry out works and activities—

to maintain the environmental water reserve in accordance with the environmental water reserve objective;

S. 189(1)(bb) inserted by No. 99/2005 s. 37(1).

(bb) to—

(i) develop and implement plans and programs; and

(ii) carry out works and activities—

to improve the environmental values and health of water ecosystems, including their biodiversity, ecological functions, quality of water and other uses that depend on environmental condition;

(c) to investigate, promote and research any matter related to its functions, powers and duties in relation to waterway management;

(d) to educate the public about any aspect of waterway management.

S. 189(1A) inserted by No. 50/2010 s. 28.

(1A) In addition to the functions under subsection (1), an Authority that has a waterway management district has the following functions—

(a) to identify and plan for State and local community needs relating to the application or use of water in the Water Holdings or other exercise of rights in the Water Holdings within the waterway management district of the Authority; and

(b) to apply or use water in the Water Holdings or otherwise exercise rights in the Water Holdings within the waterway management district of the Authority in accordance with any relevant seasonal watering statement.

S. 189(2) inserted by No. 99/2005 s. 37(2), substituted by No. 23/2019 s. 76(2).

(2) In performing its functions under this Act, an Authority that has a waterway management district must—

(a) have regard to the need to maintain the environmental water reserve in accordance with the environmental water reserve objective; and

(b) consider opportunities to provide for the following, consistently with its objectives and the requirements of this Act or any other Act—

(i) Aboriginal cultural values and uses of waterways;

(ii) the social and recreational uses and values of waterways.

S. 190 repealed by No. 85/2006 s. 80, new s. 190 inserted by No. 50/2010 s. 29.

### 190 Preparation of regional waterway strategies

(1) For the purposes of performing its functions under section 189(1) and (1A), an Authority that has a waterway management district must prepare a regional waterway strategy for its waterway management district and submit it to the environment Minister and the Minister administering this Act for approval.

(2) A regional waterway strategy must include the following information in respect of the waterway management district to which the strategy relates—

(a) plans and priorities for performing the Authority's functions;

(b) a program of actions for implementing those plans and priorities;

(c) any other information required to be included by any relevant rules made under section 197A.

(3) In preparing a regional waterway strategy, an Authority must—

(a) take into account any relevant strategy for river health or sustainable water strategy prepared under Part 3; and

S. 190(3)(ba) inserted by No. 23/2019 s. 77(1)(a).

(ba) take into account any of the following agreements that are relevant to the area or waterways to which the regional waterway strategy applies—

(i) a recognition and settlement agreement and any further agreement to a recognition and settlement agreement;

(ii) an Aboriginal cultural heritage land management agreement within the meaning of the **Aboriginal Heritage Act 2006** that is recorded on the Victorian Aboriginal Heritage Register under section 145 of that Act; and

S. 190(3)(bb) inserted by No. 23/2019 s. 77(1)(a).

(bb) take into account any determination of native title that native title exists in relation to the area to which the regional waterway strategy applies; and

(b) take into account any relevant strategy or statement of policy or plan prepared under this Act, the **Catchment and Land Protection Act 1994**, the **Flora and Fauna Guarantee Act 1988**, the **Heritage Rivers Act 1992**, the **Planning and Environment Act 1987** and the **Environment Protection Act 1970**; and

(c) comply with any procedural or consultative requirements under any relevant rules made under section 197A; and

S. 190(3)(c) amended by No. 23/2019 s. 77(1)(b).

(d) take into account—

S. 190(3)(d) inserted by No. 23/2019 s. 77(1)(c).

(i) social and recreational uses and values of waterways within its waterway management district; and

(ii) Aboriginal cultural values and uses of waterways and other cultural values and uses of waterways within its waterway management district; and

(e) give notice of the preparation of the regional waterway strategy to all specified Aboriginal parties in relation to the area to which the regional waterway strategy applies.

S. 190(3)(e) inserted by No. 23/2019 s. 77(1)(c).

(3A) In preparing a regional waterway strategy that relates to the Yarra River, Melbourne Water Corporation must have regard to a Yarra Strategic Plan as it applies to the Yarra River.

S. 190(3A) inserted by No. 49/2017 s. 96.

(3B) In preparing a regional waterway strategy that relates to a declared area, an Authority that is a water corporation must have regard to a Statement of Planning Policy that applies to its waterway management district.

S. 190(3B) inserted by No. 17/2018 s. 33.

(3C) In preparing a regional waterway strategy in relation to land that forms part of the Great Ocean Road region, the Corangamite Catchment Management Authority or Glenelg Hopkins Catchment Management Authority (as the case requires) must have regard to an approved Great Ocean Road strategic framework plan as it applies to that land.

S. 190(3C) inserted by No. 19/2020 s. 115, amended by No. 42/2021 s. 140.

S. 190(4) substituted by No. 23/2019 s. 77(2).

(4) A notice under subsection (3)(e) must—

(a) specify the location where a copy of the proposed regional waterway strategy may be obtained; and

(b) invite submissions on the proposed regional waterway strategy to be made in the manner specified in the notice; and

(c) set a date by which submission must be made, which must be a day not less than 35 days after the day on which the notice is given.

(5) The environment Minister or the Minister administering this Act may direct the Authority in writing, before the regional waterway strategy is approved, to vary the plan as the environment Minister or the Minister administering this Act thinks fit.

S. 191 repealed by No. 85/2006 s. 80, new s. 191 inserted by No. 50/2010 s. 29.

### 191 Approval of regional waterway strategies

The environment Minister and the Minister administering this Act may approve a regional waterway strategy submitted under section 190 and notify the Authority in writing of its decision.

S. 192 amended by No. 121/1994 s. 190(4), repealed by No. 85/2006 s. 80, new s. 192 inserted by No. 50/2010 s. 29.

### 192 Variation of regional waterway strategies during operation of strategy

(1) A regional waterway strategy may be varied after it has been approved under section 191—

(a) at the direction of the environment Minister or the Minister administering this Act; or

(b) on the motion of the Authority.

(2) Before varying a regional waterway strategy under subsection (1)(b), an Authority must—

(a) comply with any procedural or consultative requirements under any relevant rules made under section 197A; and

(b) submit the proposed variation to the environment Minister and the Minister administering this Act.

(3) The environment Minister and the Minister administering this Act must decide whether or not to agree to the proposed variation within 60 days of a submission being made under subsection (2) and notify the Authority in writing of its decision.

### 192A Seasonal watering proposals

S. 192A inserted by No. 50/2010 s. 29.

(1) An Authority that has a waterway management district must prepare, for each water season, seasonal proposals for the application or use of water in the Water Holdings or other exercise of rights in the Water Holdings in that water season within its waterway management district.

(2) A proposal prepared by an Authority under subsection (1) must—

(a) be consistent with the Authority's regional waterway strategy approved under section 191; and

(b) comply with any procedural or consultative requirements under any relevant rules made under section 197A.

### 193 Closing of access by Authorities

(1) Subject to this section, an Authority may close, permanently or for a specified period, the access of people, animals or vehicles to the whole or any part of a designated waterway or designated land or works.

(2) The Authority must not close any access to—

(a) any Authority or public statutory body that needs access in order to carry out its functions; or

S. 193(2)(a) amended by Nos 121/1994 s. 190(5), 17/2012 s. 36.

S. 193(2)(b) amended by No. 56/1995 s. 66(3).

(b) any person who needs access in order to exercise rights under a licence under Part 4 or 5; or

S. 193(2)(c) inserted by No. 56/1995 s. 66(3), amended by No. 23/2019 s. 78(1)(a).

(c) any person who holds a declared bulk entitlement; or

S. 193(2)(d) inserted by No. 23/2019 s. 78(1)(b).

(d) any member of a traditional owner group who has rights including traditional owner rights in relation to the waterway or designated land or works under a recognition and settlement agreement; or

S. 193(2)(e) inserted by No. 23/2019 s. 78(1)(b).

(e) any native title holder for the area who has native title rights and interests within the meaning of section 223 of the Native Title Act 1993 of the Commonwealth.

S. 193(3) amended by No. 52/1998 s. 311(Sch. 1 item 105.24).

(3) The Authority must not close the access of the owner to any land referred to in section 188(1)(b)(ii) unless the owner has consented to the closure or the Tribunal has, on the application of the Authority, dispensed with the need to obtain the owner's consent.

S. 193(4) amended by No. 52/1998 s. 311(Sch. 1 item 105.24).

(4) The Authority must not apply to the Tribunal under subsection (3) unless the Authority has made reasonable attempts to obtain the owner's consent and that consent has been refused or withheld.

S. 193(5) amended by No. 52/1998 s. 311(Sch. 1 item 105.24).

(5) The Tribunal must not under subsection (3) make an order dispensing with the need to obtain an owner's consent unless it is satisfied that the closure of access to the owner is necessary to ensure the stability, conservation or functioning of the waterway.

(6) The Authority must—

(a) publish, 1 month before closing any access, a notice of its intention in a newspaper circulating generally in the area; and

(b) consider any submissions received as a result of that notice.

S. 193(7) substituted by No. 52/1998 s. 311(Sch. 1 item 105.25).

(7) A person whose interests are affected by a decision of an Authority to close access under this section may apply to the Tribunal for review of the decision.

S. 193(7A) inserted by No. 52/1998 s. 311(Sch. 1 item 105.25).

(7A) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

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

S. 193(8) amended by Nos 121/1994 s. 190(6), 23/2019 s. 111.

(8) This section does not apply to the closure of roads under section 137 of this Act.

S. 193(9) inserted by No. 23/2019 s. 78(2).

(9) In this section—

***traditional owner rights*** has the same meaning as in the **Traditional Owner Settlement Act 2010**.

### 194 Works that interfere with designated land or works[38]

S. 194(1) amended by Nos 121/1994 s. 190(7), 56/1995 s. 66(4), 17/2012 s. 37(1), substituted by No. 23/2019 s. 79(1).

(1) A person must not knowingly cause or permit a regulated action to be undertaken within an Authority's waterway management district, without the consent of the Authority or another authorisation under this Act, being an action that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 10 years imprisonment or 1200 penalty units or both;

For a body corporate, 6000 penalty units.

S. 194(1A) inserted by No. 23/2019 s. 79(1).

(1A) A person must not recklessly cause or permit a regulated action to be undertaken within an Authority's waterway management district, without the consent of the Authority or another authorisation under this Act, being an action that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 5 years imprisonment or 600 penalty units or both;

For a body corporate, 3000 penalty units.

S. 194(1B) inserted by No. 23/2019 s. 79(1).

(1B) A person must not cause or permit a regulated action to be undertaken within an Authority's waterway management district, without the

consent of the Authority or another authorisation under this Act.

Penalty: For an individual, 240 penalty units;

For a body corporate, 1200 penalty units.

(1C) Subsections (1), (1A) and (1B) do not apply to the holder of a declared bulk entitlement or a public statutory authority.

S. 194(1C) inserted by No. 23/2019 s. 79(1).

(2) A holder of a declared bulk entitlement or public statutory body that intends to undertake any regulated action must, before undertaking the regulated action, notify the Authority of its intention and take into account any comments made by the Authority.

S. 194(2) amended by Nos 121/1994 s. 190(8), 56/1995 s. 66(5), 17/2012 s. 37(2), 23/2019 s. 79(2).

(3) Section 154 applies to any dispute that arises between a holder of a declared bulk entitlement or public statutory body and an Authority over the undertaking of any regulated action as if that dispute were over a notice under section 152 or 153.

S. 194(3) amended by Nos 121/1994 s. 190(9), 56/1995 s. 66(5), 17/2012 s. 37(3), 23/2019 s. 79(3).

(4) In this section—

***regulated action*** means any work or works which interfere, or are likely to interfere, with designated land or works or the quality, quantity or flow of water in designated land or works.

S. 194(4) inserted by No. 121/1994 s. 190(10), repealed by No. 66/2000 s. 29(1), new s. 194(4) inserted by No. 23/2019 s. 79(4).

### 195 Control over connections and discharges[39]

S. 195(1) amended by Nos 121/1994 s. 190(11), 17/2012 s. 38(1), substituted by No. 23/2019 s. 80(1).

(1) A person must not knowingly cause or permit a regulated drainage activity to be carried out within an Authority's waterway management district, without the consent of the Authority, being an activity that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 10 years imprisonment or 1200 penalty units or both;

For a body corporate, 6000 penalty units.

S. 195(1A) inserted by No. 23/2019 s. 80(1).

(1A) A person must not recklessly cause or permit a regulated drainage activity to be carried out within an Authority's waterway management district, without the consent of the Authority, being an activity that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 5 years imprisonment or 600 penalty units or both;

For a body corporate, 3000 penalty units.

(1B) A person must not cause or permit a regulated drainage activity to be carried out within an Authority's waterway management district, without the consent of the Authority.

S. 195(1B) inserted by No. 23/2019 s. 80(1).

Penalty: For an individual, 240 penalty units;

For a body corporate, 1200 penalty units.

(1C) Subsections (1), (1A) and (1B) do not apply to a public statutory authority.

S. 195(1C) inserted by No. 23/2019 s. 80(1).

(2) A public statutory body that intends to do any regulated drainage activity must, before doing it, notify the Authority of its intention and take into account any comments made by the Authority.

S. 195(2) amended by Nos 121/1994 s. 190(12), 17/2012 s. 38(2), 23/2019 s. 80(2).

(3) Section 154 applies to any dispute that arises between a public statutory body and an Authority over the doing of any regulated drainage activity as if that dispute were over a notice under section 152 or 153.

S. 195(3) amended by Nos 121/1994 s. 190(13), 17/2012 s. 38(3), 23/2019 s. 80(3).

(4) In this section—

S. 195(4) inserted by No. 121/1994 s. 190(14), repealed by No. 66/2000 s. 29(2), new s. 195(4) inserted by No. 23/2019 s. 80(4).

***regulated drainage activity*** means any of the following—

(a) any connection of any drainage works to a designated waterway or designated land or works;

(b) any discharge (whether directly or indirectly) into a designated waterway or designated land or works;

(c) any alteration or removal of any drainage works that are connected to or that discharge into a designated waterway or designated land or works.

### 196 Owner finance

S. 196(1) amended by No. 85/2006 s. 81.

(1) An Authority may require the owner of any property in its waterway management district to meet or contribute to the present day cost of any works used for or in connection with or as incidental to the carrying out of its functions under this Part for that district.

(2) Division 6 of Part 13 (other than sections 268(3) and 271(1)(a)) applies to a requirement under subsection (1) as if it were a requirement under section 268(1).

S. 196(3) inserted by No. 121/1994 s. 190(15), repealed by No. 66/2000 s. 29(3).

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### 197 Finance for increased use of services

S. 197(1) amended by No. 85/2006 s. 82.

(1) An Authority may require the owner of a property in its waterway management district to contribute to the present day cost of any works used for or in connection with or as incidental to the carrying out of its functions under this Part for that district if the use of those works increases, or will increase, because of development of the land or any other change, or proposed change, in the use of the land.

(2) Division 6 of Part 13 (other than sections 268(3) and 271(1)(a)) applies to a requirement under subsection (1) as if it were a requirement under section 269(1).

S. 197(3) inserted by No. 121/1994 s. 190(16), repealed by No. 66/2000 s. 29(4).

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### 197A Ministerial rules for regional waterway strategies and seasonal proposals

S. 197A inserted by No. 50/2010 s. 30.

(1) The environment Minister, by Order published in the Government Gazette, may make rules in relation to—

(a) procedural and consultative requirements relating to the preparation of regional waterway strategies under section 190;

(b) matters that must be included in regional waterway strategies prepared under section 190;

(c) requirements as to the public availability of regional waterway strategies approved under section 191;

(d) procedural and consultative requirements related to the preparation of seasonal watering proposals under section 192A.

(2) An Order published under subsection (1) must include the place at which a copy of the Ministerial rules may be inspected.

(3) The environment Minister must not make, amend or vary any rules unless the environment Minister has given Authorities that have waterway management districts notice in writing of the proposed rule, amendment or variation, and has considered any written submission made by an Authority that has a waterway management district in response to that notice.

## Division 3—Regional drainage

### 198 Application of Division

S. 198 amended by No. 121/1994 s. 190(17)(a).

S. 198(1) amended by Nos 54/1992 s. 56(f), 121/1994 s. 190(17)(b), 66/2000 s. 30(1), substituted by No. 85/2006 s. 83.

(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.

S. 198(2) inserted by No. 121/1994 s. 190(17)(c), repealed by No. 66/2000 s. 30(2), new s. 198(2) inserted by No. 85/2006 s. 83.

(2) A declaration under this section must be in writing and published in the Government Gazette.

S. 198(3) inserted by No. 85/2006 s. 83.

(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.

## 199 Functions of Authorities

(1) An Authority other than Melbourne Water Corporation has the following functions—

S. 199(1) amended by No. 85/2006 s. 84(1)(a).

(a) to provide, operate and protect drainage systems, including the drainage of water into all designated waterways and all designated land or works within its district;

S. 199(1)(a) amended by No. 85/2006 s. 84(1)(b).

(b) to develop and implement programs for the protection and enhancement of instream uses;

(c) to investigate, promote and conduct research into any matter related to its functions, powers and duties in relation to drainage;

(d) to educate the public about any aspect of drainage.

(1A) Melbourne Water Corporation has the following functions—

S. 199(1A) inserted by No. 85/2006 s. 84(2).

(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 subsection (1) (c) and (d).

(2) An Authority must perform its functions in an environmentally sound way.

### 200 Control over diversion of drainage water[40]

(1) A person must not, without an Authority's consent, cause or permit the diversion of drainage waters into the Authority's district from outside that district.

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

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

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

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

(b) if no notice of contravention is served, after conviction of the person for the offence.

S. 200(2) amended by Nos 121/1994 s. 190(18), 17/2012 s. 39(1).

(2) A public statutory body that intends to do anything specified in subsection (1) must, before doing it, notify the Authority of its intention and take into account any comments made by the Authority.

S. 200(3) amended by Nos 121/1994 s. 190(19), 17/2012 s. 39(2).

(3) Section 154 applies to any dispute that arises between a public statutory body and an Authority over the doing of anything specified in subsection (1) as if that dispute were over a notice under section 152 or 153.

S. 200(4) inserted by No. 121/1994 s. 190(20), repealed by No. 66/2000 s. 31.

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## Division 4—Floodplain management

### 201 Application of Division

S. 201 amended by No. 49/1994 s. 6(a).

(1) This Division applies to—

(a) Melbourne Water Corporation, in relation to Melbourne Water Corporation's waterway management district; and

S. 201(1)(a) repealed by No. 54/1992 s. 56(g), new s. 201(1)(a) inserted by No. 85/2006 s. 85(1)(a).

(b) any other Authority—

S. 201(1)(b) amended by No. 85/2006 s. 85(1)(b).

(i) that has a waterway management district; and

(ii) that the Minister, by Order, declares to have the functions, or any specified functions, of an Authority under this Division—

S. 201(1)(b)(ii) substituted by No. 12/1996 s. 8(1).

in relation to the Authority's waterway management district; and

(c) the Minister, in relation to any other area.

S. 201(1)(c) amended by Nos 50/1992 s. 10(Sch. item 11.26), 49/1994 s. 6(b), 121/1994 s. 193.

(2) A declaration under subsection (1) must be in writing and published in the Government Gazette.

S. 201(2) inserted by No. 49/1994 s. 6(c), substituted by No. 85/2006 s. 85(2).

S. 201(3) inserted by No. 85/2006 s. 85(2).

(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 subsection (1)(c) applies, the Minister.

S. 202 amended by Nos 12/1996 s. 8(2), 85/2006 s. 86(1)(a)(b).

### 202 Floodplain management functions

(1) An Authority (other than Melbourne Water Corporation) has the following functions or such of those functions as are specified in the Order under section 201(1)(b)(ii), as the case requires—

(a) to find out how far floodwaters are likely to extend and how high they are likely to rise;

(b) to declare flood levels and flood fringe areas;

(c) to declare building lines;

(d) to control developments that have occurred or that may be proposed for land adjoining waterways;

(e) to develop and implement plans and to take any action necessary to minimise flooding and flood damage;

S. 202(1)(f) amended by Nos 46/1998 s. 7(Sch. 1), 85/2006 s. 86(1)(c).

(f) to provide advice about flooding and controls on development to local councils, the Secretary to the Department and the community.

S. 202(2) inserted by No. 85/2006 s. 86(2).

(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.

### 203 Declarations by Authorities

S. 203(1) amended by Nos 12/1996 s. 8(3), 85/2006 s. 87, 32/2010 s. 77(Sch.).

(1) An Authority that has the functions referred to in section 202(1)(b) and (c) or section 202(2)(b) and (c) may declare—

(a) a flood level in relation to a specified area; or

(b) a flood fringe area; or

(c) a building line in relation to either side of a designated waterway or of designated land or works.

(2) Notice of intention to make a declaration under subsection (1) must—

(a) be published in the Government Gazette; and

(b) be published in a newspaper circulating generally in the area concerned; and

(c) state that any person may, within 6 weeks after the date of notice, make a submission to the Authority.

(3) An Authority must, before making a declaration, consider any submissions received under subsection (2).

(4) The Authority may revoke or vary a declaration and must publish notice of any revocation or variation in the same way as the original declaration was published.

### 204 Adoption of flood level

(1) In making a declaration under section 203(1), an Authority may adopt a flood level, a flood fringe area or a building line which, in its opinion, is the best estimate, based on the available evidence, of a flood event which has a probability of occurrence of 1 per cent in any one year.

(2) Despite any other provision, an Authority may designate a flood level that allows a risk of flooding to exist in the use of lands.

### 205 Declarations by the Minister

S. 205(1) amended by No. 12/1996 s. 9(1).

(1) The Minister may, by Order published in the Government Gazette, declare any area to be an area of land liable to flooding or to be a floodway area.

(2) A declaration may only be made—

S. 205(2)(a) amended by No. 12/1996 s. 8(4), substituted by No. 85/2006 s. 88.

(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);

S. 205(2)(b) amended by No. 12/1996 s. 9(2)(3).

(b) in the case of a declaration of an area to be an area of land liable to flooding, on the basis of flood levels declared by the Authority under section 203 or, where flood levels have not been declared, on the basis of the Authority's best estimate of the area liable to flooding from a flood event which has a probability of occurrence of 1 per cent in any one year; and

(c) in the case of a declaration of an area to be a floodway area, on the basis of the Authority's best estimate of the area constituting the high hazard area of the floodplain comprising active flow paths or storage areas or both.

S. 205(2)(c) inserted by No. 12/1996 s. 9(3).

(3) Before requesting a declaration, an Authority must—

(a) notify any council or public statutory body that functions in the area of its intention; and

(b) notify the owners of land within the area of its intention, and advise them that they may, within 6 weeks after the date of the notice, make a submission to the Authority.

(4) An Authority must, before requesting a declaration, consider any submissions received under subsection (3).

**206 Notice of declarations**

(1) As soon as practicable after an Order is published in the Government Gazette under section 205, the Authority that requested the making of the Order must—

(a) publish notice of the Order in a newspaper circulating generally in the area affected; and

(b) notify any council or public statutory body that functions in the area; and

(c) notify the Secretary to the Department and all responsible authorities under the **Planning and Environment Act 1987** that are likely to be affected by the declaration; and

S. 206(1)(c) amended by Nos 46/1998 s. 7(Sch. 1), 85/2006 s. 89.

(d) notify the owners of land in the area.

(2) A responsible authority referred to in subsection (1)(c) must, in relation to any planning scheme, have regard to the particulars of the declaration.

(3) A council or other public statutory body that has power to do so must prevent land uses that are inconsistent with any identified flood hazards.

### 207 Review of declarations

(1) A person who is aggrieved by a declaration, revocation or variation under section 203 or a declaration under section 205 may apply, within 1 month after publication of the declaration, revocation or variation, to the Minister for review.

(2) The Minister must notify the applicant of his or her decision on the application.

(3) Subsection (1) does not apply if the person is aggrieved by a variation that was made at the direction of the Minister as a result of an earlier application by that person.

### 208 Control of works and structures[41]

S. 208(1) amended by Nos 12/1996 ss 8(5), 9(4), 85/2006 s. 90(1), 32/2010 s. 77(Sch.), substituted by No. 23/2019 s. 81(1).

(1) A person must not knowingly cause or permit the undertaking or erection of any regulated works or structure within a relevant Authority's waterway management district, without the consent of the relevant Authority, being an undertaking or erection that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 10 years imprisonment or 1200 penalty units or both;

For a body corporate, 6000 penalty units.

(1A) A person must not recklessly cause or permit the undertaking or erection of any regulated works or structure within a relevant Authority's waterway management district, without the consent of the relevant Authority, being an undertaking or erection that results in—

S. 208(1A) inserted by No. 53/2014 s. 5, substituted by No. 23/2019 s. 81(1).

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 5 years imprisonment or 600 penalty units or both;

For a body corporate, 3000 penalty units.

(1B) A person must not cause or permit the undertaking or erection of any regulated works or structure within a relevant Authority's waterway management district, without the consent of the relevant Authority.

S. 208(1B) inserted by No. 23/2019 s. 81(1).

Penalty: For an individual, 120 penalty units;

For a body corporate, 600 penalty units.

(1C) Subsections (1), (1A) and (1B) do not apply to—

S. 208(1C) inserted by No. 23/2019 s. 81(1).

(a) a public statutory authority; and

(b) a person who is acting under and in accordance with a levee maintenance permit.

(2) A public statutory body that intends to undertake or erect any regulated works or structure must, before undertaking or erecting the works or structure, notify the Authority (being an Authority to which this Division applies and that has the function referred to in section 202(d) or (e) or referred to in section 202(2)(d) or (e)) of its intention and take into account any comments made by the Authority.

S. 208(2) amended by Nos 12/1996 s. 8(6), 85/2006 s. 90(2), 23/2019 s. 81(2).

(3) Sections 153 and 154 apply to the determination of a dispute between a public statutory body and an Authority as if a notification under subsection (2) were a notice under section 153(2).

S. 208(4) amended by No. 23/2019 s. 81(3).

(4) If works or structures are undertaken or erected in contravention of this section, the Authority may, by notice in writing to the owner of the affected land, require the owner to demolish or modify the works or structures as specified in the notice, within 14 days of the notice being served on the owner.

S. 208(5) substituted by No. 23/2019 s. 81(4).

(5) A person must not fail to comply with any notice under subsection (4).

Penalty: For an individual, 60 penalty units;

For a body corporate, 300 penalty units.

(6) If an owner fails to comply with the notice within 14 days, or if there is an emergency, the Authority may—

(a) enter the land and carry out the demolition or modification specified in the notice; and

(b) recover its costs of doing so as a debt due to it from the owner of the land.

S. 208(7) inserted by No. 23/2019 s. 81(5).

(7) In this section—

***regulated works or structure*** means any of the following—

(a) works or a structure within an area of land declared to be liable to flooding or declared to be a floodway area, that may have the effect of—

(i) controlling or mitigating floodwaters; or

(ii) discharging stormwater; or

(iii) excluding tidal water; or

(iv) concentrating or diverting floodwater or stormwater;

(b) works or a structure between a building line and any part of the designated waterway or designated land or works in relation to which the building line was declared;

***relevant Authority*** means an Authority to which this Division applies and that has the function referred to in section 202(1)(d) or (e) or (2)(d) or (e).

### 209 Removal of existing works and structures

(1) An Authority to which this Division applies and that has the function referred to in section 202(1)(d) or (e) or referred to in section 202(2)(d) or (e) may, by notice in writing to the owner of the affected land, require the owner to allow the Authority to enter the land and demolish or modify any works or structures that—

**S. 209(1) amended by Nos 12/1996 s. 8(7), 85/2006 s. 91, 32/2010 s. 77(Sch.).**

(a) are within an area liable to flooding or a floodway area, or between a building line and any part of the designated waterway or designated land or works in relation to which the building line was declared; and

**S. 209(1)(a) amended by No. 12/1996 s. 9(5).**

(b) existed at the time of the declaration of the area liable to flooding or of the floodway area or of the building line.

**S. 209(1)(b) amended by No. 12/1996 s. 9(6).**

(2) An owner on whom a notice under subsection (1) is served may, within 60 days after service, apply to the Tribunal for review of the decision of the Authority to demolish or modify the works or structures.

**S. 209(2) amended by No. 52/1998 s. 311(Sch. 1 item 105.26).**

(3) The Authority may—

(a) if no application is made under subsection (2), after 60 days after the service of the notice; and

(b) if an application is made, after determination of the application in favour of the Authority—

carry out the demolition or modification.

S. 210 amended by No. 52/1998 s. 311(Sch. 1 item 105.26).

### 210 Compensation

In determining an application under section 209(2), the Tribunal may make any order for the payment of compensation that it thinks appropriate.

### 211 Indemnities

An Authority is not liable for any loss or damage sustained, directly or indirectly, as a result of a declaration under section 203 or an Order under section 205.

S. 212 amended by Nos 12/1996 s. 9(7), 85/2006 s. 92 (ILA s. 39B(1)).

### 212 Availability of information

(1) An Authority must make sure that information about any flood levels, flood fringe areas, building lines and areas of land declared to be liable to flooding or to be floodway areas is readily available for inspection by the public, free of charge, during business hours.

S. 212(2) inserted by No. 85/2006 s. 92.

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

## Division 5—Water management schemes

### 213 Functions of the Minister

The Minister has the following functions in relation to water management schemes throughout the State—

(a) to cause assessment and investigations connected with water resources and the environment in connection with waterways to be undertaken;

(b) to cause schemes for the improved management of waterways, drainage and floodplains to be prepared and implemented;

(c) to develop public education programs for promoting broad community awareness of the role of waterway management authorities in the overall resource conservation and development in Victoria.

### 214 Investigations

(1) The Minister may, if he or she decides that an investigation in relation to water management should be carried out, publish in the Government Gazette and in a newspaper circulating generally in the affected area a notice which—

(a) states the intention of the Minister to appoint a community-based committee to carry out the investigation; and

(b) briefly describes the proposal to be investigated; and

(c) describes the general area affected by the proposal.

(2) The following provisions apply with respect to the membership of a committee appointed under this section—

(a) more than one half of the membership must consist of persons who are owners or occupiers of land in the affected area;

(b) any council whose municipal district is wholly or partly within the affected area must be represented on the committee;

(c) any public statutory body which the Minister considers to be directly affected by the proposal must be represented on the committee;

(d) the Minister must make sure that, so far as possible, all relevant interests (including environmental interests) are fairly represented on the committee.

(3) The Minister must give the committee sufficient resources to enable it to carry out the investigation.

(4) Subsections (2) to (6) of section 318 apply to a committee appointed under this section.

(5) The committee must carry out an investigation in accordance with the terms of the notice.

(6) In carrying out an investigation, the committee must consult with all public statutory bodies that function in the area affected by the proposal.

(7) A committee performing functions under this section, section 215 or section 216 performs those functions as the delegate of the Minister.

**215 Water management schemes**

(1) When it has completed an investigation into a proposal the committee may prepare a water management scheme for the area affected by the proposal.

(2) When it has prepared a water management scheme the committee must publish in the Government Gazette and in a newspaper circulating generally in the area affected a notice which—

(a) states that the scheme has been prepared; and

(b) states where the scheme is available for inspection; and

(c) states the nature of the scheme and a description of it; and

(d) if the scheme provides for the execution of works, calls for all people affected by the proposed works to make submissions to the committee within 6 weeks after the date of publication in the Government Gazette.

**S. 215(2)(d) amended by No. 12/1996 s. 10(1).**

(3) The committee may modify the scheme as a result of any submission made in response to the notice.

**S. 215(3) amended by No. 12/1996 s. 10(2).**

(3A) The committee may submit the scheme to the Minister for his or her acceptance.

**S. 215(3A) inserted by No. 12/1996 s. 10(3).**

(3B) The Minister may—

**S. 215(3B) inserted by No. 12/1996 s. 10(3).**

(a) accept the scheme as submitted by the committee; or

(b) reject the scheme; or

(c) modify the scheme and accept the scheme as so modified.

(4) The Minister must publish in the Government Gazette and in a newspaper circulating generally in the area affected a notice—

**S. 215(4) amended by No. 12/1996 s. 10(4)(a).**

(aa) that states whether the scheme has been accepted or rejected;

**S. 215(4)(aa) inserted by No. 12/1996 s. 10(4)(b).**

S. 215(4)(a) amended by No. 12/1996 s. 10(4)(c).

(a) if the scheme has been accepted, that states that no modifications have been made to the scheme; or

(b) if modifications have been made, that gives details of the modifications.

S. 215(5) amended by No. 12/1996 s. 10(5), substituted by No. 52/1998 s. 311(Sch. 1 item 105.27).

(5) A person whose interests are affected by a decision of the Minister under subsection (3B) may apply to the Tribunal for review of the decision.

S. 215(6) inserted by No. 52/1998 s. 311(Sch. 1 item 105.27).

(6) An application for review must be made within 28 days after the later of—

(a) the day on which the relevant notice is published under subsection (4);

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

### 216 Approval of schemes

S. 216(1) amended by No. 52/1998 s. 311(Sch. 1 item 105.28).

(1) At least 6 weeks after the notice required by section 215(2) is published, and after any applications to the Tribunal have been determined, the Minister may by Order published in the Government Gazette and in a newspaper circulating generally in the area affected—

(a) declare the scheme to be an approved scheme; and

S. 216(1)(b) amended by No. 12/1996 s. 11(1).

(b) nominate the Authorities or, with its or their agreement, the council or councils responsible for implementing the scheme.

(2) After an Order has been published, an Authority or council nominated in the Order must notify the Secretary to the Department of Transport, Planning and Local Infrastructure and all responsible authorities under the **Planning and Environment Act 1987** that are likely to be affected by the scheme.

S. 216(2) amended by Nos 12/1996 s. 11(2), 46/1998 s. 7(Sch. 1), 28/2014 s. 19.

(3) A responsible authority referred to in subsection (2) must, in relation to any planning scheme, have regard to the provisions of the approved scheme.

(4) Any area that benefits from or is affected by the scheme may be identified in the Order as an area for which the Authority may, in accordance with Part 13, impose fees under a tariff or require contributions from other Authorities or councils under Part 13 to fund the scheme.

(5) The period (if limited) for which the tariff may be imposed must be specified in the Order.

### 217 Removal or modification of works

S. 217 amended by Nos 12/1996 s. 11(3), 52/1998 s. 311(Sch. 1 item 105.28).

The Authority or council responsible for implementing a water management scheme approved under section 216 may apply to the Tribunal under Division 2 of Part 2 for an Order with respect to the removal or modification of any works that—

(a) cause a flow of water which is not reasonable, or interfere with a reasonable flow; and

(b) are identified in that scheme—

whether or not the Authority or council owns the land on which those works are situated.

## Division 6—Drainage courses

### 218 Drainage courses[42]

S. 218(1) amended by No. 62/1995 s. 36(1).

(1) Subject to subsection (2), the Minister may declare any area of land along which water flows (whether continuously, intermittently or occasionally) or any designated works referred to in section 188(1) to be a drainage course.

(2) The Minister must not make a declaration unless—

(a) an application has been made to the Minister by—

(i) any Authority or public statutory body that is responsible for any drainage or related functions in that vicinity; or

S. 218(2)(a)(ii) amended by No. 50/1992 s. 10(Sch. item 11.27), repealed by No. 65/1995 s. 22(k).

* * * * *

(b) the applicant has—

(i) published, in the Government Gazette and in a newspaper circulating generally in the area concerned, a notice stating the terms of the application and advising that submissions are invited within 6 weeks after the publication of the notice; and

(ii) sent a copy of the notice to any relevant council, to the owner or occupier of any land in the vicinity and to the Minister for the time being administering the **Conservation, Forests and Lands Act 1987**; and

(c) the Minister has considered any submissions received within 6 weeks after publication of the notice.

(3) A declaration under subsection (1) must be made by notice in writing which—

(a) is published in the Government Gazette; and

(b) is published in a newspaper circulating generally in the area in which the drainage course is located; and

(c) adequately describes the drainage course; and

(d) specifies the Authority or public statutory body having the management and control of the drainage course.

(4) The Minister must—

(a) send a copy of the notice to every Authority or public statutory body that may have an interest in the land or works declared to be a drainage course; and

S. 218(4)(a) amended by No. 62/1995 s. 36(2).

(b) notify the Secretary to the Department and all responsible authorities under the **Planning and Environment Act 1987** that are likely to be affected by the declaration.

S. 218(4)(b) amended by Nos 46/1998 s. 7(Sch. 1), 85/2006 s. 93.

(5) The Minister may, by notice in writing in accordance with subsection (3), revoke a declaration, wholly or in part—

(a) on application by any person or body referred to in subsection (2)(a); and

(b) if the Minister is satisfied that the whole or any part of the area subject to the declaration should no longer be subject to it.

(6) Section 207 applies to a declaration under subsection (1) or a revocation under subsection (5) as if it were a declaration under section 203.

(7) The Authority or public statutory body must act in accordance with a management plan for the drainage course that is approved by the Minister, and a responsible authority referred to in subsection (4) must, in relation to any planning scheme, have regard to the particulars of the declaration.

(8) The Authority or public statutory body having the management and control of the drainage course may at any time by notice in writing to the owner or occupier of any land in the drainage course (or, with the consent of the Minister, to any other public statutory body) require the owner or occupier or the other public statutory body—

(a) to remove anything obstructing or interfering with the flow of water in the drainage course; or

(b) to carry out any works that are reasonably necessary to control that flow; or

(c) to maintain any structure or works in the drainage course in such a condition so as not to obstruct or interfere with that flow.

**S. 218(9) substituted by No. 52/1998 s. 311(Sch. 1 item 105.29).**

(9) A person whose interests are affected by a decision of the Authority or public statutory body to make a requirement under subsection (8) may apply to the Tribunal for review of the decision.

**S. 218(9A) inserted by No. 52/1998 s. 311(Sch. 1 item 105.29).**

(9A) An application for review must be made within 28 days after the later of—

(a) the day on which the requirement is made;

(b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision to make the requirement, the day on which the statement of reasons is given to the person or the person is informed under

section 46(5) of that Act that a statement of reasons will not be given.

(10) A public statutory body must—

(a) comply with a requirement of the kind referred to in subsection (8)(a) or (b) within 1 month after the making of the requirement, or any longer period that the Authority or public statutory body making the requirement allows; and

(b) comply with a requirement of the kind referred to in subsection (8)(c).

Penalty: 20 penalty units.

(11) An owner or occupier of land in a drainage course must—

(a) comply with a requirement of the kind referred to in subsection (8)(a) or (b)—

(i) if there has been no application for review under subsection (9)—within one month after the expiry of the time during which the person is entitled to apply, or any further period that the Authority or public statutory body allows; and

(ii) if there has been an unsuccessful application—within one month after the disallowance of the application, or any further period that the Authority or public statutory body allows; and

(b) comply with a requirement of the kind referred to in subsection (8)(c)—

(i) if there has been no application for review under subsection (9)—as from the expiry of the time during which the person is entitled to apply; and

(ii) if there has been an unsuccessful application—as from the disallowance of the application.

Penalty: 20 penalty units.

(12) A person must not, except in accordance with a requirement made under subsection (8) or with the consent of the Authority or public statutory body in any manner interfere with or obstruct the flow of water in a drainage course.

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

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

For a continuing offence, an additional penalty of 5 penalty units for each day on which the offence continues—

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

(b) if no notice of contravention is served, after conviction of the person for the offence.

**S. 218(12A) inserted by No. 53/2014 s. 6.**

(12A) Subsections (11) and (12) do not apply to a person who is acting under and in accordance with a levee maintenance permit.

**S. 218(13) amended by No. 52/1998 s. 311(Sch. 1 item 105.30).**

(13) If an Authority or a public statutory body has refused to consent to an interference with or obstruction of the flow of water in a drainage course, the person seeking the consent may, within 60 days after being notified of the refusal, apply to the Tribunal for review.

(14) An Authority or a public statutory body may, subject to the expiry of any relevant period referred to in subsection (10) or subsection (11), enter into and remain on the drainage course for

the purpose of doing anything that an owner or occupier of land in the drainage course or a public statutory body has failed to do in compliance with a notice under subsection (8).

(15) Any costs or expenses incurred by an Authority or a public statutory body in exercising the powers conferred on it by subsection (14) are a civil debt recoverable summarily from the owner or occupier of the land on which the powers are exercised, or the other public statutory body concerned, in any court of competent jurisdiction.

## Division 7—By-laws

### 219 By-laws

S. 219 amended by No. 121/1994 s. 190(21)(a).

(1) An Authority that has functions under Division 2 of this Part may, in accordance with section 160, make by-laws for or with respect to— S. 219(1) amended by No. 85/2006 s. 94(1).

(a) preventing or minimising interference with or obstruction of the flow of water;

(b) preventing or minimising the silting up of a designated waterway or designated land or works or any injury to or pollution of it or them, including prohibiting the deposit of any material in or near it or them;

(c) prohibiting or regulating the removal of any material from land forming part of a designated waterway or designated land or works;

(d) regulating activities carried out on land forming part of a designated waterway or designated land or works; S. 219(1)(d) amended by No. 85/2006 s. 94(2).

(e) the general management and control of any designated waterway or designated land or works.

**S. 219(1A) inserted by No. 65/1995 s. 20, repealed by No. 66/2000 s. 32.**

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**S. 219(2) inserted by No. 121/1994 s. 190(21)(b), repealed by No. 66/2000 s. 32.**

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# Part 11—Irrigation

Pt 11 (Heading and ss 220–232) amended by Nos 49/1994 s. 7, 121/1994 s. 194, 62/1995 ss 20–22, 24–27, 110/1997 ss 15(4)(5),19, 20, 35/1998 s. 21(3), 52/1998 s. 311(Sch. 1 items 105.31–105.35), 85/1998 s. 24(Sch. items 66.3–66.5), 22/1999 ss 3(6), 4, 48/2003 s. 12(3), substituted as Pt 11 (Heading and ss 220–231) by No. 99/2005 s. 61.

## Division 1—General

### 220 Definitions and application

S. 220 substituted by No. 99/2005 s. 61.

(1) In this Part—

***conditions determination*** means a determination of an Authority under section 227;

***delivery determination*** means a determination of an Authority under section 223;

***serviced property*** means a property in respect of which a declaration under section 144(1)(c)(i) of the Act has been made by the Authority in whose irrigation district the property is situated.

S. 220(1) def. of *serviced property* amended by No. 23/2019 s. 82.

(2) This Part applies to an Authority that has an irrigation district.

## Division 2—Functions, powers and duties of Authorities

S. 221 substituted by No. 99/2005 s. 61.

### 221 Functions of Authorities under this Part

An Authority has the following functions in relation to the irrigation district of the Authority—

(a) to provide, manage and operate systems for the delivery of water to lands and appropriate drainage and protection of those lands;

(b) to identify community needs relating to irrigation, drainage and salinity mitigation, and plan for the future needs of the community relating to irrigation, drainage and salinity mitigation;

(c) to develop and implement programs for improved irrigation practices, improved drainage practices and improved salinity mitigation practices;

(d) to investigate any matter related to its functions, powers and duties in relation to irrigation, drainage and salinity mitigation.

S. 222 substituted by No. 99/2005 s. 61.

### 222 General powers and duties of Authorities under this Part

(1) An Authority, subject to the provisions of this Part—

S. 222(1)(a) amended by No. 85/2006 s. 95.

(a) must provide the service of delivering water to the owner or occupier (where the occupier is not the owner) of each serviced property in its irrigation district—

S. 222(1)(a)(i) substituted by No. 85/2006 s. 95.

(i) for the purpose of irrigation; and

(ii) for stock and domestic use—

S. 222(1)(a)(ii) substituted by No. 85/2006 s. 95.

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

(b) may provide the service of delivering water to the owner or occupier of any property in its irrigation district; and

(c) may sell water the Authority owns or is authorised to take and use under a bulk entitlement to the owner or occupier of any land, whether within or outside its irrigation district.

(2) A service provided by an irrigation Authority under subsection (1) may be provided on any terms and conditions that are set out in a determination of the Authority.

(3) An Authority is not required to provide the service of delivering water to the owner or occupier of land under subsection (1), if—

(a) the owner is not the holder of a water-use licence or water-use registration (as the case requires); or

(b) neither the owner nor the occupier of the land has a water allocation.

(4) Nothing in this Act entitles any person to a service under subsection (1) other than during an irrigation period.

## Division 3—Specific provisions as to volume and period of delivery

S. 223 substituted by No. 99/2005 s. 61.

### 223 Authority to determine volumes and periods of delivery

(1) An Authority, when commencing the service of delivering water for irrigation or for domestic and stock use to a serviced property under section 222(1), must determine the volumes at which and the periods for which the water is to be delivered for irrigation or stock and domestic use to that property.

(2) A determination under subsection (1) may apply to more than one serviced property in a declared water system in an irrigation district of the Authority.

(3) A determination under subsection (1) must be in writing and must be made in the manner set out in a conditions determination of the Authority.

S. 224 substituted by No. 99/2005 s. 61.

### 224 Variation of delivery determinations on application

(1) An Authority may, on receiving an application to do so by the owner of a serviced property within the irrigation district of the Authority, vary a delivery determination that applies to that property by varying either or both the volumes at which and periods for which water is to be delivered to that property.

(2) On the making of a determination under subsection (1), the determination is deemed to have effect as so varied.

(3) In making a determination under subsection (1), the Authority must have regard to any matters set out in any conditions determination of the Authority.

(4) An owner of a serviced property may apply to an Authority for variation of a determination under subsection (1) in relation to that property.

(5) An Authority may refuse to make a determination under this section that reduces the level of service to the owner of a property unless the owner pays to the Authority an amount that the Authority reasonably believes represents the present value of fees that would otherwise be payable, under a tariff under section 259(1), by the owner of the property in respect of the irrigation service provided by the Authority before the variation.

**225 Variation of delivery determination on motion of Authority**

**S. 225 substituted by No. 99/2005 s. 61.**

(1) An Authority may, on its own motion, vary a delivery determination it has made by varying either or both the volumes at which and the periods for which water is to be delivered to a property or any of the properties to which the delivery determination relates.

(2) On the making of a determination under subsection (1), the delivery determination is deemed to have effect as so varied.

(3) A determination under this section that applies to more than one property, must apply the variation to all such properties equally.

(4) In making a determination under subsection (1), the Authority—

(a) must have regard to the matters (if any) set out in any conditions determination of the Authority; and

(b) must make the determination in the form and manner and in accordance with the process (if any) set out in any conditions determination of the Authority.

S. 226 substituted by No. 99/2005 s. 61.

### 226 Determination to transfer volume or periods

(1) An Authority may, on receiving an application to do so from the owners of two parcels of land in an irrigation district of the Authority, determine to transfer to one of the parcels of land specified in the application the whole or a part of—

(a) either or both the volumes at which and the periods for which water is to be delivered to the other parcel of land specified in the application; or

(b) either or both the volumes at which and the periods for which water is to be delivered to the other parcel of land specified in the application, for the limited period of time that is specified in the application.

S. 226(2) substituted by No. 85/2006 s. 96.

(2) An Authority must refuse an application under subsection (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.

(3) If the Authority refuses an application under subsection (1), the Authority must give the applicants reasons for that refusal.

(4) On making of a determination under subsection (1), any delivery determination that relates to either parcel of land is deemed to have effect in accordance with the transfer of the volumes and periods.

(5) For the purposes of a transfer under subsection (1), the Authority may—

(a) where a delivery determination ceases to apply to a parcel of land, declare that the land ceases to be a serviced property, or where the case so requires, that the land is a serviced property; or

(b) where a delivery determination commences to apply to a parcel of land, declare the land to be a serviced property.

(6) In making a determination under subsection (1), the Authority must have regard to any matters set out in any conditions determination of the Authority.

(7) The owners of parcels of land in the irrigation district of an Authority may apply to the Authority for a determination under subsection (1).

## Division 4—Conditions and Ministerial directions as to delivery

### 227 Authority to fix terms and conditions for the service of delivering water

S. 227 substituted by No. 99/2005 s. 61.

(1) An Authority may determine—

(a) in addition to any power to make determinations under Division 3, the terms and conditions on which it provides a service under section 222(1); and

(b) any conditions required to be determined for the purposes of Division 3.

(2) A determination under subsection (1) must be—

(a) published by the Authority; or

(b) made available at the offices of the Authority.

(3) A determination under subsection (1)—

(a) may be amended or revoked by the Authority in the same manner as that in which it is made; and

(b) remains in force until such time as it is so revoked.

(4) The conditions specified in the determination may deal with all or any of the following matters—

(a) the circumstances in which an approval to a variation under section 224 is conditional on the payment of an amount under section 224(5); and

(b) rules for restricting delivery as a result of insufficient capacity in the works of the Authority; and

(c) the circumstances in which the Authority will agree with an owner to provide a different level of service to a serviced property; and

(d) the circumstances in which the Authority will make a determination under section 224, 225 or 226; and

(e) the circumstances in which a declaration that a property is no longer a serviced property is conditional on the payment of an amount under section 229(6); and

(f) matters to be taken into account in determining the amount to be payable under sections 224(5) and 229(6); and

(g) methods by which disputes as to the interpretation or operation of the determination may be settled; and

(h) any other matter or thing that is, in the opinion of the Authority, necessary for the service to be delivered.

### 228 Ministerial directions

S. 228 substituted by No. 99/2005 s. 61.

(1) The Minister may, from time to time, by notice in writing, give directions to Authorities on any matter about which a condition may be specified under section 227(4).

(2) The Minister must cause a notice under subsection (1) to be published in the Government Gazette.

## Division 5—Miscellaneous

### 229 Declaration that property not to be serviced property

S. 229 substituted by No. 99/2005 s. 61.

(1) An owner of a serviced property in an irrigation district may apply to the Authority for that district for a declaration under subsection (2).

(2) On receiving an application under subsection (1), the Authority may, by notice in writing, declare the serviced property to which the application relates to cease to be a serviced property.

(3) An Authority must refuse an application under subsection (1) if the consent of any one of the recorded mortgagees of the serviced property has not been obtained to the application.

(4) A notice under subsection (2) must be given to the owner of the property.

(5) The notice must—

(a) specify the serviced property to which it applies; and

(b) fix a date on and from which the land must be taken to not to be a serviced property for the purposes of this Act.

(6) An Authority may refuse to make a declaration under this section unless the owner of the property pays to the Authority an amount that the Authority reasonably believes represents the present value of fees that would otherwise be payable by the owner of the property in respect of the irrigation service provided by the Authority under a tariff under section 259(1).

(7) This section does not affect the power of an Authority to make a declaration under section 144.

S. 230 substituted by No. 99/2005 s. 61.

### 230 Form of applications under this Part

An application under section 224, 226 or 229 must—

(a) be in a form approved by the Authority; and

(b) contain any prescribed particulars; and

S. 230(c) amended by No. 85/2006 s. 97.

(c) be accompanied by any documents or information required by the Authority; and

(d) be accompanied by the fee fixed by the Authority.

## Division 6—Powers to reduce etc. delivery service

S. 231 substituted by No. 99/2005 s. 61.

### 231 Authority may reduce, restrict or discontinue delivery of water

(1) An Authority may reduce or restrict the period over which water is to be delivered to any serviced property, or discontinue the delivery of water to any serviced property, if—

(a) the Authority is, because of insufficient capacity unable to deliver water to the property; or

(b) any private works for the delivery of water to the property—

(i) are, in the opinion of the Authority, inadequate or not properly constructed or maintained and a notice to repair has been issued under section 150 and not complied with by the time specified or allowed under that section; or

(ii) do not, in the opinion of the Authority, comply with the regulations; or

(c) the owner of the serviced property has contravened this Act, the regulations or the Authority's by-laws in relation to the taking of water; or

S. 231(1)(d) amended by No. 24/2013 s. 34.

(d) the owner of the serviced property has refused entry to an authorised water officer, or an officer of an Authority, who intended to exercise powers conferred by or under this Act to investigate any suspected contravention of this Act, the regulations or the Authority's by-laws in relation to the taking of water; or

(e) the owner of the serviced property has refused or failed to pay any money due to the Authority for the delivery of water to the serviced property.

(2) An Authority must reduce the delivery of water under subsection (1)(a) to all serviced properties in the same proportion.

(3) An Authority that reduces, restricts or discontinues the delivery of water to a serviced property may reduce or waive any amount of money payable to it for the delivery of water to the serviced property.

(4) An Authority may reduce or restrict the quantity of water delivered to a serviced property or discontinue the supply of water to a serviced property under subsection (1)(b), (c), (d) or (e) if it decides that the required circumstances exist, whether or not it has been proved to the satisfaction of a court that those circumstances do exist.

(5) A person may apply to the Tribunal for review of the Authority's decision to discontinue the delivery of water to the serviced property under subsection (1)(c).

(6) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

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

**S. 232 repealed by No. 99/2005 s. 61.**

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# Part 11A—Salinity mitigation

Pt 11A (Headings and ss 232–232F) inserted by No. 23/2019 s. 83.

## Division 1—Preliminary

### 232 Determination of salinity impact zones

New s. 232 inserted by No. 23/2019 s. 83.

(1) The Minister may determine an area of land on which use of water on the land under water-use licences causes or may cause an increase in salinity to land or water to be a salinity impact zone.

(2) Notice of the making of a determination under subsection (1) must be published in the Government Gazette.

(3) A determination under subsection (1) has effect—

(a) on the day on which notice of its making is published in the Government Gazette; or

(b) if a later day is specified in the determination, that day.

(4) A determination under subsection (1) may be amended in the same manner as that in which it is made.

(5) In a determination under subsection (1), a salinity impact zone may be described by reference to a plan lodged in the Central Plan Office.

(6) The Minister must—

(a) publish a copy of each determination under subsection (1) on the Internet site of the Department, together with any plan referred to in the determination; and

(b) maintain the copy of the determination and the plan on the Internet site for so long as the determination remains in force.

## Division 2—Functions and powers of the Minister

S. 232A inserted by No. 23/2019 s. 83.

### 232A Functions and powers of the Minister as to salinity mitigation

(1) The Minister has the following functions in relation to salinity mitigation—

(a) to carry out works and measures to mitigate or offset salinity impacts of irrigation;

(b) in relation to actions described in paragraph (a)—

(i) to carry out research, investigation and assessment into those actions or the need for those actions; or

(ii) to meet the State's obligations under the Murray-Darling Basin Agreement in relation to those actions;

(c) to operate and maintain works carried out under paragraph (a) or other works to mitigate or offset salinity impacts of irrigation;

(d) to monitor groundwater, surface water and irrigation development for salinity impacts of irrigation;

(e) to develop and manage programs—

(i) to mitigate or offset salinity impacts of irrigation; and

(ii) to improve irrigation, drainage and other salinity mitigation or offsetting practices;

(f) to monitor, evaluate, report on and account for programs or other actions to mitigate or offset salinity impacts of irrigation;

(g) in relation to actions described in paragraphs (c), (d), (e), and (f)—

(i) to carry out research, investigation and assessment into those actions or the need for those actions; or

(ii) to meet the State's obligations under the Murray-Darling Basin Agreement.

(2) The Minister has all the powers that are necessary to carry out the functions set out in subsection (1).

## Division 3—Imposition of salinity impact charges

### 232B Fixing salinity impact charges

S. 232B inserted by No. 23/2019 s. 83.

(1) The Minister may, by determination under this Division, fix—

(a) a charge for the carrying out of the functions set out in section 232A(1)(a) and (b); and

(b) a charge for the carrying out of the functions set out in section 232A(1)(c), (d), (e), (f) and (g).

(2) In the determination under subsection (1)(a), a capital works salinity impact charge may be fixed by reference to—

(a) a fixed amount; or

(b) an amount fixed by reference to all or any of the following—

(i) the salinity impact zone in which land subject to the charge is situated;

(ii) the class of change in use of water on land subject to the charge;

(iii) annual use limits for water-use licences subject to the charge;

(iv) any other relevant matter; or

(c) an amount fixed by reference to a formula calculated having regard to the matters set out in paragraph (b); or

(d) any combination of amounts referred to in paragraphs (a), (b) and (c).

(3) In the determination under subsection (1)(b), an annual salinity impact charge may be fixed by reference to—

(a) a fixed amount; or

(b) an amount fixed by reference to all or any of the following—

(i) the salinity impact zone in which land subject to the charge is situated;

(ii) the class of change in use of water on land subject to the charge;

(iii) annual use limits for water-use licences subject to the charge;

(iv) any other relevant matter; or

(c) any combination of amounts referred to in paragraphs (a) and (b).

(4) A capital works salinity impact charge or annual salinity impact charge may be fixed by reference to one case or a class of cases.

(5) Subject to this Act, a determination under this section may make provision for or with respect to any of the following—

(a) persons or classes of persons who are excepted from paying a charge;

(b) the method of payment of a charge, including payment by instalments;

(c) any other necessary matter or thing.

(6) A determination under this section must—

(a) be in writing; and

(b) be published in the Government Gazette.

### 232C Annual adjustment of determined amount

S. 232C inserted by No. 23/2019 s. 83.

(1) An amount fixed in a determination under section 232B(1)(a) or (b) may be adjusted, for each financial year that follows the financial year in which the determination is made, by the sum of the published consumer price index numbers for the consecutive reference periods in the period—

(a) commencing on 1 January in the financial year 2 years earlier than the financial year in respect of which the adjustment is being made; and

(b) ending on the next following 31 December in the financial year immediately preceding the financial year in respect of which the adjustment is being made.

S. 232C(2) amended by No. 42/2021 s. 141.

(2) For the purposes of subsection (1), the ***published consumer price index numbers for the consecutive reference periods*** are the numbers last published by the Australian Bureau of Statistics as at 15 April immediately preceding the financial year in respect of which the adjustment is being made.

### 232D Imposition of capital works salinity impact charge

S. 232D inserted by No. 23/2019 s. 83.

(1) A capital works salinity impact charge may be imposed as follows—

(a) on the holder of the water-use licence that is issued and that authorises the use of water on land in a salinity impact zone;

(b) on the holder of a water-use licence, if an annual use limit for the water-use licence authorises the use of water on land in a

salinity impact zone and the limit is varied to increase the limit;

(c) on the holder of a water-use licence, if the water-use licence is varied to authorise water to be used under the licence on land that is in a salinity impact zone.

(2) A capital works salinity impact charge may be imposed—

(a) under subsection (1)(a), on the making of the decision to issue the licence; and

(b) under subsection (1)(b), on the making of the decision to vary the annual use limit; and

(c) under subsection (1)(c), on the making of the decision to authorise the use of water in the salinity impact zone.

S. 232E inserted by No. 23/2019 s. 83.

### 232E Imposition of annual salinity impact charge

(1) An annual salinity impact charge may be imposed on the holder of a water-use licence if the water-use licence authorises water to be used on land in a salinity impact zone.

(2) An annual salinity impact charge may be imposed under subsection (1) on an annual basis.

S. 232F inserted by No. 23/2019 s. 83.

### 232F Minister may except persons from imposition of charge

In a determination under section 232B the Minister may set out cases or classes of cases in which a capital works salinity impact charge or an annual salinity impact charge that would otherwise be imposed on a licence holder under section 232D or 232E is not imposed on the licence holder.

# Part 12—Access over lands

## 233 Definitions and application

(1) In this Part, a reference to the owner of land includes a reference to—

(a) a person who acts with the consent of the owner; and

(b) a committee as defined in section 244; and

S. 233(1)(b) amended by No. 62/1995 s. 33(1).

(c) a person who holds the land as executor or administrator or trustee.

S. 233(1)(c) inserted by No. 62/1995 s. 33(1).

(2) An agreement entered into under this Part by a person acting with the consent of the owner of land must be taken to have been entered into by that owner.

(3) An agreement entered into by a committee must be taken to have been entered into by each participating landowner.

(4) Nothing in this Part empowers an Authority to seek or obtain a right of access in favour of land, whether or not that land is owned by the Authority.

(5) In this Part, a reference to an agreement under section 234 includes a reference to a declaration under section 234(5).

S. 233(5) inserted by No. 62/1995 s. 33(2).

## 234 Access by agreement

(1) An owner of land who seeks access for drainage, water supply or salinity mitigation purposes over land owned by another person may give notice to—

(a) the other owner; and

(b) to the occupier of the land over which access is sought, if the owner is not the occupier.

(2) Once notice has been given, the owner giving notice must try to arrange that access by agreement with the other owner.

(3) An agreement must—

(a) specify any compensation agreed to; and

(b) clearly describe the access agreed to; and

(c) be accompanied by a map of the land which shows the location and measurements of the proposed works.

S. 234(4) inserted by No. 62/1995 s. 33(3).

(4) An agreement made between the owner of one or more parcels of land and another owner must specify each parcel of land over, or in favour of, which the right of access is created.

S. 234(5) inserted by No. 62/1995 s. 33(3).

(5) An owner of more than one parcel of land who wishes to create a right of access over one parcel in favour of another parcel may declare in writing in the form approved by the Minister that such right of access has been created.

### 235 Access without agreement

S. 235(1) amended by No. 85/2006 s. 98.

(1) An owner of land who seeks access for drainage, water supply or salinity mitigation purposes over land owned by another person and who gives notice under section 234(1) may, if agreement has not been reached with the other owner about access within one month after service of the notice on the other owner, apply to the Minister for the appointment of an Authority to decide the issue.

S. 235(1)(a) repealed by No. 85/2006 s. 98.

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S. 235(1)(b) substituted by No. 52/1998 s. 311(Sch. 1 item 105.36), repealed by No. 85/2006 s. 98.

(2) The Minister must make an appointment if an application is made.

(3) In deciding whether a right of access should be created over land, the appointed body must have regard to the following—

(a) whether any damage will be caused to the property of the owner of the land;

(b) whether that owner may be fully compensated for that damage by money or otherwise.

(4) If the appointed body decides that a right of access should be created over land, that body must decide the nature and extent of that right and of the works that may be constructed on that land.

(5) A decision of the appointed body is, subject to subsection (6), binding on the parties and may include any order that the body thinks fit for the payment of compensation.

S. 235(6) substituted by No. 52/1998 s. 311(Sch. 1 item 105.37).

(6) A person whose interests are affected by the decision of the appointed body under subsection (1) may apply to the Tribunal for review of the decision.

S. 235(6A) inserted by No. 52/1998 s. 311(Sch. 1 item 105.37).

(6A) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

(b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the

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

S. 235(7) amended by No. 52/1998 s. 311(Sch. 1 item 105.38).

(7) On an application for review under subsection (6) the Tribunal may make any order that it thinks fit for the payment of compensation.

### 236 Registration of right of access

S. 236(1) substituted by No. 85/1998 s. 24(Sch item 66.6).

(1) An agreement under section 234, or a decision under section 235, by virtue of which a right of access is created over, or in favour of, land has no effect until it is recorded in the Register under the **Transfer of Land Act 1958**.

(2) An agreement or a decision referred to in subsection (1) is binding on the successors in title of the parties on registration under the **Transfer of Land Act 1958**.

S. 236(3)(4) repealed by No. 85/1998 s. 24(Sch item 66.7).

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S. 236(5) amended by Nos 62/1995 s. 34(1), 85/1998 s. 24(Sch item 66.8).

(5) The owner of the land in favour of which the right of access is created must lodge the agreement or decision for registration within one month after the agreement or decision is made.

S. 236(6) amended by No. 85/1998 s. 24(Sch item 66.8).

(6) If the person referred to in subsection (5) does not comply with that subsection, the owner of the land over which the right of access is created may register the agreement or decision and recover the reasonable costs of doing so from that person.

(7) If requested to do so by a party referred to in section 237(1), the Registrar of Titles must, in registering the agreement or decision, do both or either of the following—

S. 236(7) inserted by No. 50/1992 s. 8(1).

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

(b) register the agreement or decision by recordings in the relevant folio of the Register only.

(8) The amendment of this section by section 24 of the **Transfer of Land (Single Register) Act 1998** does not affect the operation, effect or enforcement of an agreement or decision registered under the **Property Law Act 1958** before the commencement of that section 24 and existing immediately before that commencement.

S. 236(8) inserted by No. 85/1998 s. 24(Sch item 66.9).

### 237 Revocation or variation of right of access

(1) The parties or the successors in title of the parties—

S. 237(1) amended by No. 62/1995 s. 33(4).

(a) to an agreement under section 234; or

(b) to a dispute decided by a body appointed by the Minister under section 235; or

(c) to an agreement made or altered as a result of an order of the Tribunal—

S. 237(1)(c) amended by No. 52/1998 s. 311(Sch. 1 item 105.39(a)).

may, by agreement, revoke or vary the terms of the original agreement or decision.

(2) If the parties referred to in subsection (1) do not agree on any proposed revocation or variation within 1 month after the party proposing it notifies the other parties, any party may apply to the Minister for the appointment of an Authority to decide the issue.

S. 237(2) amended by No. 85/2006 s. 99.

S. 237(2)(a) repealed by No. 85/2006 s. 99.

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S. 237(2)(b) substituted by No. 52/1998 s. 311(Sch. 1 item 105.39(b)), repealed by No. 85/2006 s. 99.

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S. 237(3) amended by No. 52/1998 s. 311(Sch. 1 item 105.39(c)).

(3) Section 235(5), (6), (6A) and (7) applies in relation to a decision under subsection (2) as if it were a decision under section 235(1).

(4) Section 236 applies to an agreement under subsection (1) and a decision under subsection (2) as if they were an agreement under section 234 and a decision under section 235 respectively.

### 238 Maintenance of works

S. 238(1) amended by No. 42/2021 s. 142.

(1) The owner of land in favour of which a right of access is created may enter the land over which the right of access is created to install, remove, alter or maintain any works on the land over which the right of access is created that are necessary for the use of the right of access.

(2) If that owner fails to maintain those works, the owner of the land over which the right of access is created may, after giving the other owner 14 days' notice of his or her intention to carry out the maintenance and recover from the other owner the reasonable costs of that maintenance, maintain the works and recover those costs.

(3) If a dispute arises over the maintenance or the costs of it, either owner may apply to the Minister for the appointment of an Authority to decide the issue.

S. 238(3) amended by No. 85/2006 s. 100.

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S. 238(3)(a) repealed by No. 85/2006 s. 100.

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S. 238(3)(b) substituted by No. 52/1998 s. 311(Sch. 1 item 105.40), repealed by No. 85/2006 s. 100.

(4) Section 235(5), (6) and (7) applies in relation to a decision under subsection (3) as if it were a decision under section 235(1).

### 239 Breaking up roads in maintaining etc. works

(1) The owner of land in favour of which a right of access is created may, subject to this Part, do any thing necessary to construct, maintain and alter works in the land over which the right of access is created, including breaking up the surface of any road.

(2) Before breaking up the surface of a road, the owner must give 14 days' notice to the person responsible for maintaining the road.

Penalty: 10 penalty units.

(3) The person responsible for maintaining the road may, if that person thinks fit, supervise the work.

(4) The owner must do as little damage as possible in exercising powers under subsection (1), and must, after exercising those powers, return the site, so far as possible, to the state it was in before the work was started.

Penalty: 10 penalty units.

(5) If the owner fails to comply with subsection (4), the person responsible for maintaining the road may, after giving the owner 14 days' notice of that person's intention to carry out the necessary works and recover from the owner the reasonable costs of those works, carry out the works and recover those costs.

(6) If the owner of land in favour of which a right of access is created—

(a) does not do as little damage as possible in exercising powers under subsection (1); and

(b) after exercising those powers, does not return the site, so far as possible, to the state it was in before the work was started—

the owner of the land over which the right of access is created may, after giving the other owner 14 days' notice of its intention to carry out the necessary works and recover from the other owner the reasonable costs of those works, carry out the works and recover those costs.

**240 Penalty for obstructing works**

A person must not—

(a) wilfully obstruct any person carrying out any works under this Part; or

(b) wilfully damage or obstruct any such works.

Penalty: 20 penalty units.

**241 Notice that right of access is sought over public land**

(1) If land in respect of which a right of access is sought is owned by the Crown, the notice required under section 234(1) must be served on the Minister administering the **Conservation, Forests and Lands Act 1987**, and the Minister may enter into an agreement under section 234 with the person seeking the right of access.

(2) If land in respect of which a right of access is sought is owned by the Public Transport Corporation, the notice required under section 234(1) must be served on that Corporation, and the Corporation may enter into an agreement under section 234 with the person seeking the right of access.

S. 241(2A) inserted by No. 104/1997 s. 58(1), amended by No. 6/2010 s. 203(1) (Sch. 6 item 51.2) (as amended by No. 45/2010 s. 22).

(2A) If land in respect of which a right of access is sought is owned by Victorian Rail Track within the meaning of section 3 of the **Transport Integration Act 2010**, the notice required under section 234(1) must be served on Victorian Rail Track, and Victorian Rail Track may enter into an agreement under section 234 with the person seeking the right of access.

S. 241(3) amended by Nos 104/1997 s. 58(2), 30/2000 s. 41(1).

(3) If the Minister or Victorian Rail Track publishes, within 8 weeks after service of the notice, a notice of dissent in the Government Gazette, the right of access is denied, despite any other provision in this Part.

S. 241(4) amended by Nos 104/1997 s. 58(2), 30/2000 s. 41(2).

(4) If the Minister or Victorian Rail Track publishes a notice in the Government Gazette stating that an agreement under this section—

(a) is revoked; or

(b) is varied as specified in the notice—

the agreement is, on the date of publication of the notice, revoked or varied as specified in the notice.

(5) The owner of land in favour of which a right of access is created by an agreement under this section has the rights and obligations that are specified in the agreement in relation to the construction, maintenance and alteration of works in the land over which the right of access is created.

(6) Sections 236, 238 and 239 do not apply in relation to a right of access granted by an agreement under this section.

### 242 Joint rights of access

If a right of access over any land is sought by more than one person, those people may together—

(a) give notice under section 234 to the owner of the land over which access is sought; and

S. 242(b) amended by No. 85/2006 s. 101.

(b) if agreement has not been reached with that owner within one month after service of the notice, apply to the Minister for the appointment of an Authority to decide the issue.

S. 242(b)(i) repealed by No. 85/2006 s. 101.

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S. 242(b)(ii) substituted by No. 52/1998 s. 311(Sch. 1 item 105.41), repealed by No. 85/2006 s. 101.

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### 243 Costs of investigations

S. 243(1) amended by Nos 52/1998 s. 311(Sch. 1 item 105.42), 85/2006 s. 102(1).

(1) An Authority may recover, as a debt due to it from the person who applied for its appointment, the reasonable costs of any investigations it undertakes in making a decision under this Part.

S. 243(2) substituted by No. 52/1998 s. 311(Sch. 1 item 105.43), amended by No. 85/2006 s. 102(2).

(2) A person whose interests are affected by a decision of the Authority as to the amount of costs may apply to the Tribunal for review of the decision.

(3) An application for review must be made within 28 days after the later of—

S. 243(3) inserted by No. 52/1998 s. 311(Sch. 1 item 105.43).

(a) the day on which the decision is made;

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

### 244 Community drainage and salinity schemes

(1) In this section and sections 245 and 246—

***committee*** means a committee set up under a community agreement to act on behalf of participating landowners;

***community agreement*** means an agreement by which a group of landowners voluntarily establishes—

S. 244(1) def. of *community agreement* substituted by No. 62/1995 s. 35(1).

(a) a community drainage or salinity mitigation scheme to combat drainage or salinity problems in their area; or

(b) a community water supply scheme whose primary purpose is to supply water to farms.

(2) A community agreement must—

(a) describe in detail the works to be constructed, altered or maintained and their location; and

(b) clearly identify the land affected by the scheme; and

(c) provide for the establishment of a committee.

S. 244(3) substituted by No. 85/1998 s. 24(Sch item 66.10).

(3) A community agreement must be taken to be capable of being registered under the **Transfer of Land Act 1958** and has no effect until it is recorded in the Register under that Act.

(4) A community agreement referred to in subsection (3) is binding on the successors in title of the parties on registration under the **Transfer of Land Act 1958**.

S. 244(4A) inserted by No. 50/1992 s. 8(2).

(4A) If requested to do so by a party to a community agreement referred to in subsection (3), the Registrar of Titles must, in registering the agreement, do both or either of the following—

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

(b) register the agreement by recordings in the relevant folio of the Register only.

S. 244(5)(6) repealed by No. 85/1998 s. 24(Sch item 66.11).

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S. 244(7) amended by Nos 50/1992 s. 10(Sch. item 11.28), 49/1994 s. 5(1)(g)(i), 62/1995 ss 34(2), 35(2), 85/1998 s. 24(Sch. item 66.12).

(7) The committee set up under a community agreement must, within 30 days after the agreement is lodged for registration under subsection (3), lodge a copy of that agreement with any Authority in whose district (being a district described in a column of item 102 of Schedule 12) and any council in whose municipal district land affected by a community drainage or salinity mitigation or community water supply scheme is situated.

(8) If the scheme involves—

S. 244(8) amended by No. 85/1998 s. 24(Sch item 66.13).

(a) the outfall of the scheme's drain to works of an Authority, the consent of that Authority must be obtained; and

S. 244(8)(a) amended by Nos 50/1992 s. 10(Sch. item 11.29), 49/1994 s. 5(1)(g)(ii).

(b) the construction of a drain across a road reserve, the consent of the municipal council in whose municipal district the road reserve is situated must be obtained—

before the agreement is registered.

S. 244(9) inserted by No. 85/1998 s. 24(Sch item 66.14).

(9) The amendment of this section by section 24 of the **Transfer of Land (Single Register) Act 1998** does not affect the operation, effect or enforcement of a community agreement registered under the **Property Law Act 1958** before the commencement of that section 24 and existing immediately before that commencement.

### 245 Powers of committee

(1) A committee may collect levies, in accordance with the community agreement, from participating landowners.

(2) A committee may, if authorised by the participating landowners, act as the agent of the participating landowners—

(a) to seek access over land owned by others; and

(b) to negotiate variation or revocation of the community agreement.

S. 245(2A) inserted by No. 62/1995 s. 35(3).

(2A) An agreement which varies a community agreement includes an agreement which adds to or removes from the community agreement—

(a) a participating landowner; or

(b) land affected by the scheme established by the community agreement.

S. 245(3) substituted by No. 85/1998 s. 24(Sch item 66.15).

(3) An agreement which varies or revokes a community agreement must be taken to be capable of being registered under the **Transfer of Land Act 1958** and has no effect until it is recorded in the Register under that Act.

S. 245(4) repealed by No. 85/1998 s. 24(Sch item 66.15).

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S. 245(4A) inserted by No. 50/1992 s. 8(3).

(4A) If requested to do so by a party to an agreement which varies or revokes a community agreement that affects land under the operation of the **Transfer of Land Act 1958**, the Registrar of Titles must, in registering the agreement, do both or either of the following—

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

(b) register the agreement by recordings in the relevant folio of the Register only.

S. 245(5) amended by No. 62/1995 s. 35(4).

(5) A committee may take out insurance for damage resulting from the community drainage or salinity mitigation or community water supply scheme, and for that purpose the committee must be taken to have an insurable interest.

### 246 Powers of Corporation and councils for community schemes

S. 246 amended by Nos 50/1992 s. 10(Sch. item 11.30), 49/1994 s. 5(1)(h), 62/1995 s. 35(5)(a)(b).

(1) An Authority or a council in whose municipal district land affected by a community drainage or salinity mitigation or community water supply scheme is situated may, if requested by the committee to do so, exercise the powers and perform the functions of the committee.

S. 246(2) inserted by No. 62/1995 s. 35(5)(c).

(2) Despite anything to the contrary in any other Act, a council may, if requested under subsection (1), exercise powers and perform functions under this section where part of the affected land is situated outside the municipal district of the council.

# Part 13—Finance and accountability

Pt 13 Div. 1 (Heading and ss 247, 248) substituted as Pt 13 Div. 1 (Heading and ss 247–249) by No. 110/1997 s. 21.

## Division 1—Corporate plans

S. 247 substituted by No. 110/1997 s. 21.

### 247 Corporate plans

S. 247(1) substituted by No. 85/2006 s. 103(1), amended by No. 32/2010 s. 64.

(1) A water corporation 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) A corporate plan must be in or to the effect of a form approved by the Minister and must include—

(a) a statement of corporate intent in accordance with section 248;

(b) a business plan and financial statements containing the information that the Minister requires;

S. 247(2)(c) repealed by No. 48/2003 s. 9.

* * * * *

(2A) The Treasurer may make any comments on the plan that he or she thinks fit to the water corporation, and the water corporation must have regard to any comments made by the Treasurer under this subsection.

S. 247(2A) inserted by No. 85/2006 s. 103(2), amended by No. 32/2010 s. 77(Sch.).

(3) A water corporation may implement a corporate plan 2 months (or any shorter time allowed by the Minister) after its submission to the Minister, unless the Minister, within that time, directs in writing any variations that the Minister thinks fit to be made in any corporate plan submitted in accordance with this section.

S. 247(3) amended by No. 32/2010 s. 77(Sch.).

(4) The Minister must publish in the Government Gazette any direction made under subsection (3).

(5) The Minister must not give a direction under subsection (3) without first having consulted the water corporation about the direction.

S. 247(5) amended by No. 32/2010 s. 77(Sch.).

(6) A water corporation 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.

S. 247(6) amended by No. 32/2010 s. 77(Sch.).

(7) The Minister may issue guidelines as to what are major deviations for the purposes of subsection (6).

(8) The corporate plan of a water corporation at any time is that plan as varied under subsection (3), or as revised by any deviation under subsection (6), at that time.

S. 247(8) amended by No. 32/2010 s. 77(Sch.).

(9) In addition to any matters Melbourne Water Corporation is required to include in a corporate plan under this section, Melbourne Water Corporation is required to include, in relation to its functions as a Catchment Management Authority—

S. 247(9) repealed by No. 48/2003 s. 9, new s. 247(9) inserted by No. 48/2021 s. 67.

(a) in the statement of corporate intent, the information referred to in section 19D of the **Catchment and Land Protection Act 1994**; and

(b) in the business plan and financial statements, the information referred to in section 19C of the **Catchment and Land Protection Act 1994**.

S. 248 substituted by No. 110/1997 s. 21, amended by No. 32/2010 s. 77(Sch.).

### 248 Statement of corporate intent: contents

Each statement of corporate intent must specify for the water corporation, in respect of the financial year to which it relates and each of the 4 following financial years, the following information—

S. 248(a) amended by No. 32/2010 s. 77(Sch.).

(a) the business objectives of the water corporation;

S. 248(b) amended by No. 32/2010 s. 77(Sch.).

(b) the main business undertakings of the water corporation;

S. 248(c) amended by No. 32/2010 s. 77(Sch.).

(c) the nature and scope of the activities to be undertaken by the water corporation;

S. 248(d) amended by No. 32/2010 s. 77(Sch.).

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

S. 248(e) amended by No. 32/2010 s. 77(Sch.).

(e) the kind of information to be provided to the Minister by the water corporation during the course of those financial years;

S. 248(f) amended by No. 32/2010 s. 77(Sch.).

(f) any other matters that may be agreed on by the Minister and the water corporation from time to time.

### 249 Inspection of corporate plans

New s. 249 inserted by No. 110/1997 s. 21, amended by No. 32/2010 s. 77(Sch.).

A water corporation must make sure that an up to date copy of its corporate plan is available at its office during its business hours for inspection on request.

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

New s. 250 inserted by No. 85/2006 s. 104, amended by No. 32/2010 s. 77(Sch.).

If the board of directors of a water corporation forms the opinion that matters have arisen—

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

S. 250(a) amended by No. 32/2010 s. 77(Sch.).

(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

New s. 251 inserted by No. 85/2006 s. 104.

(1) The Minister or the Treasurer may, from time to time, require a water corporation to provide a report on the progress the water corporation is making in achieving any targets or objectives in its corporate plan.

S. 251(1) amended by No. 32/2010 s. 77(Sch.).

(2) A report under subsection (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.

Pt 13 Div. 2 (Heading and ss 249–251) repealed by No. 31/1994 s. 4(Sch. 2 item 106).

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## Division 3—Funds of Authorities

### 252 Use of income

Subject to this Act, an Authority may, for or in connection with, or incidental to, the performance of its functions and the achievement of its objects, use any income received by it.

### 253 Investment

S. 253(1) amended by Nos 99/1993 s. 23(1), 23/2022 s. 11(1).

(1) An Authority other than a relevant Authority within the meaning of Division 4, may invest its money—

S. 253(1)(a) amended by No. 104/1995 s. 6(Sch. 1 item 31).

(a) in any manner in which money may be invested under the **Trustee Act 1958**; or

(b) in any other manner that the Minister approves.

(2) Section 4(2) of the **Trustee Act 1958** does not apply in relation to investments made under subsection (1)(a) of this section.

S. 253(3) inserted by No. 99/1993 s. 23(2), amended by No. 23/2022 s. 11(2).

(3) A relevant Authority within the meaning of Division 4 may invest its money in accordance with powers conferred on it under the **Borrowing and Investment Powers Act 1987**.

### 253A Payments by Treasurer in 1997/98

S. 253A inserted by No. 110/1997 s. 23.

(1) The Treasurer may, during the financial year commencing on 1 July 1997, pay out of the Consolidated Fund (which is to the necessary extent appropriated accordingly) to an Authority that has a water supply district and a sewerage district an amount determined by the Treasurer in respect of that Authority.

(2) The aggregate amount that may be paid to Authorities under subsection (1) shall not exceed the sum of $410 000 000.

## Division 4—Borrowing

### 254 Borrowing powers of Authorities

(1) In this Division—

S. 254(1) amended by No. 99/1993 s. 23(3)(a).

***financial accommodation*** includes, but is not limited to—

(a) a loan; and

(b) an overdraft; and

(c) non-conventional forms of financial funding;

***Authority*** does not include a relevant Authority;

S. 254(1) def. of *Authority* amended by Nos 50/1992 s. 10(Sch. item 11.31), 99/1993 s. 23(3)(b), 65/1995 s. 22(l), 23/2022 s. 11(3)(b).

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S. 254(1) def. of *declared Authority* inserted by No. 99/1993 s. 23(3)(c), amended by No. 85/2006 s. 105, repealed by No. 23/2022 s. 11(3)(c).

S. 254(1) def. of *relevant Authority* inserted by No. 23/2022 s. 11(3)(a).

***relevant Authority*** means—

(a) Melbourne Water Corporation; or

(b) an authority within the meaning of the **Borrowing and Investment Powers Act 1987** in respect of which a section of that Act has been prescribed as applying to that authority.

(2) An Authority may obtain financial accommodation, subject to subsection (3), at a rate of interest approved by the Treasurer and on any terms and conditions imposed by the Minister.

S. 254(3) amended by No. 69/1993 s. 6(a).

(3) The total financial accommodation obtained by an Authority in any financial year must not exceed the limit set by the Minister for that Authority for that year, or any higher limit allowed, or lower limit imposed, by the Minister.

S. 254(4) substituted by No. 69/1993 s. 6(b).

(4) A contract for financial accommodation entered into by an Authority is void if, as a result of the contract, the financial accommodation obtained by the Authority would exceed any limit applying to the Authority, at the time of entering into the contract, under subsection (3).

S. 254(5) inserted by No. 99/1993 s. 23(4), amended by No. 23/2022 s. 11(4).

(5) A relevant Authority may obtain financial accommodation subject to and in accordance with the **Borrowing and Investment Powers Act 1987**.

(6) The payment of amounts payable as a result of or in connection with financial accommodation obtained by a relevant Authority (including the payment of expenses of enforcement) in accordance with powers conferred on the relevant Authority under the **Borrowing and Investment Powers Act 1987** may be secured in such manner as the Treasurer approves.

S. 254(6) inserted by No. 99/1993 s. 23(4), amended by No. 23/2022 s. 11(5).

### 255 Securities and guarantees

(1) In borrowing in accordance with this Division an Authority may—

(a) issue bonds that are secured on its revenue; or

(b) issue notes or any other securities that are approved by the Treasurer; or

(c) mortgage its revenue.

(2) In borrowing in accordance with this Division the Geelong and District Water Board, unless it is a relevant Authority, may issue inscribed stock.

S. 255(2) amended by Nos 99/1993 s. 23(5), 23/2022 s. 11(6).

(3) The due repayment of any money borrowed by the issue of inscribed stock in accordance with subsection (2), and the payment of any interest on that money, is guaranteed by the Government of Victoria.

### 256 Investment by public bodies

The providing of financial accommodation in accordance with section 254 is a lawful investment for any money that any company, or any body that is incorporated by or under this or any other Act, is authorised or directed to invest.

## Division 5—Payment for services

### 257 Definitions

S. 257 amended by No. 85/2006 s. 106 (ILA s. 39B(1)).

(1) In this Division—

***development tariff*** means a scale of charges by reference to which a fee is imposed by an Authority on the owner of a property for the development of a service by that Authority;

S. 257 def. of *tariff* amended by No. 49/1994 s. 8(c).

***tariff*** means a scale of charges by reference to which a fee is imposed by an Authority on the owner or occupier of a property for works or services provided by that Authority;

***valuation equalisation factor*** means a factor determined by the Valuer-General which, when applied to valuations returned at different dates, allows the calculation of different tariffs so that the amounts payable in respect of properties of equal value are adjusted to compensate for the variations caused by different valuation dates.

S. 257(2) inserted by No. 85/2006 s. 106.

(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.

### 258 Properties subject to tariff

(1) A tariff that is based on the valuation of a property may only be set in relation to land that is rateable under section 154 of the **Local Government Act 1989**.

(1A) A tariff that is not based on the valuation of a property may only be set in relation to land that is not rateable under section 154 of the **Local Government Act 1989** and that is within a water supply district or a sewerage district of an Authority if the land is connected to the Authority's works.

S. 258(1A) inserted by No. 110/1997 s. 24(1), amended by No. 23/2019 s. 84.

(2) For the purpose of applying section 154(2)(a) of the **Local Government Act 1989**, land which is the property of the Crown must be taken to be occupied if any housing on that land is in a habitable condition.

(3) Subsection (1A) does not apply to Melbourne Water Corporation.

S. 258(3) inserted by No. 85/2006 s. 107.

(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 subsection (1).

S. 258(4) inserted by No. 85/2006 s. 107.

(5) For the purposes of subsection (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.

S. 258(5) inserted by No. 85/2006 s. 107.

(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

S. 258(6) inserted by No. 85/2006 s. 107.

subsection (4), is deemed to be land that is rateable for the purposes of subsection (1).

S. 258(7) inserted by No. 85/2006 s. 107.

(7) The amount to be levied in lieu of a fee under a tariff in accordance with subsection (6) is the amount agreed between the public statutory authority and Melbourne Water Corporation or, in the absence of agreement, determined by the Treasurer.

S. 258(8) inserted by No. 85/2006 s. 107.

(8) An approval may only be given by the Treasurer under subsection (6) on the application of Melbourne Water Corporation.

S. 258(9) inserted by No. 85/2006 s. 107.

(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.

### 259 Tariffs

(1) An Authority may impose fees under—

(a) a tariff on serviced properties within its district; and

(b) a development tariff on unserviced properties within its district; and

S. 259(1)(c) amended by Nos 62/1995 s. 41(1), 110/1997 s. 24(2), 99/2005 s. 62 28/2007 s. 3(Sch. item 75.4), repealed by No. 23/2019 s. 85(1).

* * * * *

S. 259(1)(d) inserted by No. 110/1997 s. 24(2).

(d) a tariff on any properties for the purposes of a management plan for a groundwater supply protection area.

(2) A fee imposed under a tariff or development tariff on a property may be—

(a) a fixed amount; or

(b) an amount fixed according to the value or size of the property; or

(c) an amount fixed according to the extent of use of or benefit from the service; or

S. 259(2)(c) amended by No. 62/1995 s. 41(2).

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

S. 259(2)(ca) inserted by No. 85/2006 s. 108(1)(a).

(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

(d) any combination of amounts referred to in paragraphs (a), (b) and (c) and in the case of Melbourne Water Corporation, amounts referred to in paragraph (ca).

S. 259(2)(d) amended by No. 85/2006 s. 108(1)(b).

(3) In fixing the fees imposed under a tariff that is based on the valuation of a property an Authority may use a valuation equalisation factor.

(4) An Authority that imposes fees under a tariff or development tariff (other than fees of a fixed amount) may, by resolution, fix a minimum amount or no amount payable under the tariff for any property or class of property in respect of which a fee is imposed.

S. 259(4) amended by No. 85/2006 s. 108(2).

(5) An Authority that imposes fees under a tariff or development tariff may, by resolution, fix different fees payable for different properties or for different periods on the basis of any criteria specified in the resolution.

(6) A resolution under subsection (4) or (5) has no effect until the day on which notice of the making of the resolution is published in a newspaper circulating generally in the area concerned.

(7) An Authority may impose fees under a tariff or development tariff for any particular purpose specified in the Authority's by-laws.

(8) An Authority may, in respect of a property that becomes liable during a financial year to a fee imposed under a tariff, impose a proportion of—

(a) the fee imposed under the tariff for that part of the year during which the property is liable to a fee under the tariff; and

(b) the fee imposed under a development tariff for that part of the year during which the property was liable to a fee under a development tariff.

S. 259(9) inserted by No. 78/1991 s. 20.

(9) An Authority may, in respect of a property, separately impose fees under a tariff or development tariff in respect of each separate occupancy on that property.

S. 259(10) inserted by No. 78/1991 s. 20, substituted by No. 23/2019 s. 85(2).

(10) In determining what constitutes a separate occupancy, the Authority must have regard to—

(a) any regulations prescribing the following—

(i) any class of land or part of land as constituting an occupancy;

(ii) any considerations for determining what constitutes an occupancy; or

(b) if there are no such regulations, the principles set out in the **Valuation of Land Act 1960**.

* * * * *

S. 259(11) inserted by No. 78/1991 s. 20 (as amended by No. 22/1992 s. 21(2)), repealed by No. 23/2019 s. 85(3).

### 260 Setting a tariff

(1) An Authority that sets a tariff must do so by resolution.

(2) A resolution under subsection (1) has no effect until the day on which notice of the making of the resolution is published in a newspaper circulating generally in the area concerned.

(3) An Authority that sets a tariff must specify in the notice under subsection (2)—

(a) the district to which the tariff applies; and

(b) the method of calculating fees imposed under the tariff; and

(c) the period for which the tariff is set; and

* * * * *

S. 260(3)(d) repealed by No. 85/2006 s. 109.

### 260A Limits on power of certain Authorities to set tariffs

S. 260A inserted by No. 65/1999 s. 4.

(1) A Catchment Management Authority must not set a tariff in respect of a function the Authority has under Part 10 other than any function the Authority has under Division 3 or Division 4 of that Part.

(2) Subsection (1) does not apply to Melbourne Water Corporation.

S. 260A(2) repealed by No. 85/2006 s. 110, new s. 260A(2) inserted by No. 48/2021 s. 68.

### 261 Valuation equalisation factor

An Authority whose district includes parts of more than one municipal district may, if the most recent valuations of properties within those municipal districts were not made in the same year, request the Valuer-General to determine a valuation equalisation factor for each of those municipal districts.

S. 262 amended by No. 85/2006 s. 111(2) (ILA s. 39B(1)).

### 262 Valuations

(1) An Authority that sets a tariff may—

S. 262(1)(a) amended by No. 67/2017 s. 79(1).

(a) use the most recent general valuation; or

S. 262(b) amended by Nos 91/1994 s. 36(12), 85/2006 s. 111(1)(a).

(b) cause its own valuation to be made by a valuer; or

S. 262(c) inserted by No. 85/2006 s. 111(1)(b).

(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—

for the purposes of fixing the amount of any fee imposed in relation to that property under the tariff.

S. 262(2) inserted by No. 85/2006 s. 111(2).

(2) In this section—

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

***general valuation*** has the same meaning as in the **Valuation of Land Act 1960**;

S. 262(2) def. of *general valuation* inserted by No. 67/2017 s. 79(2).

***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.

**263 Supplementary valuations**

(1) An Authority may alter the amount of a fee imposed under a tariff in respect of a property if a supplementary valuation of the property is made in accordance with section 13DF of the **Valuation of Land Act 1960**.

(2) An Authority may request a municipal council to arrange for a supplementary valuation to be made at the Authority's expense.

(3) The **Valuation of Land Act 1960** applies, with any necessary modifications, to a supplementary valuation made at the request of an Authority as if it were a supplementary valuation made in accordance with section 13DF of that Act.

(4) If a supplementary valuation is made because of an event that happens during a financial year, a proportion of the amount of the fee imposed under the tariff, as altered, is payable for the part of the financial year after the supplementary valuation, and a proportion of the original amount of the fee

imposed under the tariff is payable for the part of the financial year before the supplementary valuation.

S. 263A inserted by No. 17/2012 s. 40.

### 263A Liability of owners corporation or lot owners for fees for services supplied to subdivision

(1) An owners corporation of a subdivision to which a service of water supply or sewage disposal is supplied under this Act is liable to pay any fees imposed by an Authority under a tariff for the provision of that service being any fee imposed—

(a) in respect of the land affected by the owners corporation; and

(b) in respect of the common property, or any part of the common property, affected by the owners corporation.

(2) Instead of requiring an owners corporation to pay any fee imposed under a tariff referred to in subsection (1), an Authority may apportion the amount for which the owners corporation would otherwise be liable between the lots affected by it, on the basis of—

(a) the number of lots affected by it; or

S. 263A(2)(b) amended by No. 24/2013 s. 35(1)(a).

(b) the lot liability of each lot affected by it; or

S. 263A(2)(c) inserted by No. 24/2013 s. 35(1)(b).

(c) the volume of water used at each lot as measured by the meter installed for the lot; or

S. 263A(2)(d) inserted by No. 24/2013 s. 35(1)(b).

(d) a combination of the methods set out in paragraphs (a), (b) and (c)—

and the owners of each lot to which an amount is apportioned are liable to pay it accordingly.

(3) An owners corporation may request an Authority to use any, or a combination, of the methods set out in subsection (2) when apportioning amounts under that subsection.

S. 263A(3) amended by No. 24/2013 s. 35(2).

(4) The request must be in writing.

S. 263A(4) substituted by No. 24/2013 s. 35(3).

(4A) A request that includes a request for an Authority to use the method set out in subsection (2)(b) must give details of lot liability for each lot affected by the owners corporation.

S. 263A(4A) inserted by No. 24/2013 s. 35(3).

(4B) A request that includes a request for an Authority to use the method set out in subsection (2)(c) must specify each lot to which the request relates.

S. 263A(4B) inserted by No. 24/2013 s. 35(3).

(5) An owners corporation that makes a request under subsection (3) for an Authority to apportion amounts under subsection (2) on the basis of lot liability must give written notice to an Authority of any change in lot liability of any lot affected by it as soon as possible after the change occurs.

S. 263A(5) amended by No. 24/2013 s. 35(4).

(6) If requested to do so in accordance with this section, an Authority must use the method, or combination of methods, specified in the request, in apportioning an amount to which an owners corporation would otherwise be liable in respect of amounts payable for the year following the year in which the request is made and each subsequent year, and may base the apportionment on information given to it by the owners corporation under this section.

S. 263A(6) amended by No. 24/2013 s. 35(5).

(7) If a subdivision has more than one owners corporation and the Authority considers it impracticable to determine how much water is supplied to the land affected by each owners corporation it may—

(a) under subsection (1), treat one of those owners corporations as being the only owners corporation for the subdivision; and

S. 263A(7)(b) amended by No. 24/2013 s. 35(6).

(b) under subsection (2)(a), apportion the amount for which that owners corporation would otherwise be liable between all the lots in the subdivision.

(8) Any fee imposed under a tariff on the owner of a lot affected by an owners corporation (other than a lot used primarily for residential purposes) must be offset against the amount for which the owners corporation is liable under subsection (1).

(9) Any amount for which an owner of a lot is liable under subsection (2) must be offset against the amount for which the owners corporation affecting that lot is liable under subsection (1).

(10) The liability imposed by subsection (1) does not relieve any other person from liability to pay the fee imposed under a tariff on, and the charges payable by, that person.

(11) Terms used in this section have the same meaning as in the **Subdivision Act 1988**.

### 264 Power to charge

(1) An Authority may, by by-law or otherwise, set charges for anything it does in the performance of its functions, including any function delegated to it.

S. 264(1A) inserted by No. 99/2005 s. 63.

(1A) An Authority that is acting as a delegate of the Minister in performing a function under this Act may, despite section 9(2) of the **Financial Management Act 1994** or any other provision of any Act or rule of law to the contrary—

(a) collect any fee or charge that is authorised by or under this Act to be imposed for the performance of the function; and

(b) retain the fee or charge so collected—

as if the Authority were performing the function in its own right and not as delegate of the Minister.

(2) A by-law made under subsection (1) may prescribe a charge by reference to a number (whether whole or fractional) of charge units and that charge may be determined by multiplying the number of charge units by a number of dollars fixed by resolution of the Authority.

(3) The power in subsection (1) is in addition to any other powers of an Authority under this Division.

### 264A Authority may charge for securing bulk entitlements

S. 264A (Heading) inserted by No. 85/2006 s. 112(1).

S. 264A inserted by No. 69/1993 s. 7.

(1) An Authority (***the first Authority***) may, by notice in writing to another Authority (***the other Authority***) that has a bulk entitlement to take water from any waterway (including the River Murray) or from any works of the first Authority, charge the other Authority—

S. 264A(1) substituted by No. 49/1994 s. 5(2).

(a) for operating and maintaining any works that are associated with; or

(b) in respect of any other costs incurred by the first Authority in connection with—

supplying, or securing the supply of, water for that bulk entitlement.

(1A) Subsection (1) has effect despite any provision to the contrary made before the commencement of Division 1 of Part 4 by or under an Act granting the relevant Authority an entitlement to take water.

S. 264A(1A) inserted by No. 49/1994 s. 5(2).

(2) A charge imposed under subsection (1)—

(a) is for the period specified in the notice to the Authority;

(b) must be paid by the date specified in the notice to the Authority, being a date at least 28 days after the date of issue of the notice.

S. 264A(3) inserted by No. 85/2006 s. 112(2).

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

S. 265 amended by No. 25/1993 s. 14(a).

### 265 Charges for property that is not rateable[43]

Subject to section 273A, the owner of any property (including land owned by a council) that is not rateable under section 154 of the **Local Government Act 1989** must pay any fee or charge imposed for services provided to the property, and any interest imposed for late payment.

### 266 Application for review

(1) A person who is aggrieved by the setting of a tariff, or the imposing of a fee under a tariff, by an Authority may, within 1 month after receipt of the demand for payment, object in writing to the Authority on any of the following grounds—

(a) where the fee imposed under the tariff is based on valuation of the land, that the land is not rateable;

(b) that the person is not liable for the tariff;

S. 266(1)(c) amended by No. 110/1997 s. 22(2), substituted by No. 85/2006 s. 113.

(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**;

(d) that the Authority did not give the required notice that the property is a serviced property;

(e) that the fee imposed by the Authority is not a correct application of the tariff as set.

(2) An Authority must, within 2 months after receipt of an objection from a person, notify the person of its decision on the objection.

(3) If an Authority has not notified the person of its decision within 2 months after the objection was made, the Authority must be taken to have notified the person of its decision to overrule the objection at the expiry of the 2 month period.

S. 266(4) substituted by No. 52/1998 s. 311(Sch. 1 item 105.44).

(4) A person who has objected may apply to the Tribunal for review of the Authority's decision on the objection on any of the grounds specified in subsection (1).

S. 266(4A) inserted by No. 52/1998 s. 311(Sch. 1 item 105.44).

(4A) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

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

(5) An objection does not prevent the recovery of any fee or interest due under a tariff.

S. 266(6) amended by Nos 91/1994 s. 31, 52/1998 s. 311 (Sch. 1 item 105.45) (as amended by No. 101/1998 s. 22(1)(q)).

(6) A person who objects to—

(a) the calculation or application of a valuation equalisation factor; or

(b) the fixing of different fees imposed under a tariff under section 259(5) that are based on valuation—

may apply to the Tribunal for review in accordance with Part III of the **Valuation of Land Act 1960**.

S. 266(6A) inserted by No. 52/1998 s. 311(Sch. 1 item 105.46).

(6A) The provisions of Division 4 of Part III of the **Valuation of Land Act 1960**, with such modifications as are necessary, apply to an application under subsection (6).

S. 266(7) amended by No. 52/1998 s. 311(Sch. 1 item 105.47).

(7) If a tariff is quashed by the Tribunal under this section, the Authority may—

(a) set a new tariff for the particular year, even if the year has ended; and

(b) retain any amount paid to it by a person in respect of that tariff on account of any amount payable by that person in respect of the next effective tariff set.

S. 266(8) inserted by No. 50/2011 s. 10, amended by No. 52/2021 s. 102.

(8) A person is not entitled to object under subsection (1) to a tariff or the imposing of a fee under a tariff set by an Authority, if the tariff or the fee is a Basin water charge regulated under Part 1B of the **Water Industry Act 1994**.

S. 266(9) inserted by No. 50/2011 s. 10.

(9) In this section—

***Basin water charge*** means a regulated charge for a service in relation to Basin water resources provided by an Authority;

***Basin water resources*** has the same meaning as ***State water resources*** has in the Water Charge (Infrastructure) Rules 2010 of the Commonwealth in relation to Victoria;

***regulated charge*** has the same meaning as in the Water Charge (Infrastructure) Rules 2010 of the Commonwealth.

## Division 6—Owner finance

### 266A Definition

S. 266A inserted by No. 85/2006 s. 114.

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.

### 267 Operation of Division

The provisions of this Division are in addition to any provisions empowering an Authority to enter agreements and provide works in the exercise of its functions.

### 268 Authority may require payment[44]

(1) An Authority that intends to provide services which will benefit a property may, by notice in writing, require the owner of the property to meet or contribute to the present day cost of any works that are used or will be able to be used directly or indirectly for the provision of those services, and any fireplugs attached to those works.

(2) If a proposal for the subdivision of land is referred to an Authority under the **Planning and Environment Act 1987**, the Authority may, by notice in writing, require the owner of the property to meet or contribute to the present day cost of any works that are used or will be able to be used directly or indirectly for the provision of services that will benefit the property, and any fireplugs attached to those works.

(3) The amount of payment required from an owner must be assessed by the Authority to be fair and reasonable, taking into account the benefit to that property relative to the benefit to other properties.

(4) The notice must specify—

(a) the amount of the payment required; and

(b) the reason why the payment is required; and

(c) any works or services that have been or will be provided; and

(d) the property in relation to which payment is required; and

(e) if payments are required in relation to a group of properties, the amounts required in relation to each property; and

(f) the right of the owner to object and apply for a review under section 271; and

(g) in the case of a notice under subsection (1), that details of the proposed services and the costs are available for inspection, free of charge, at the Authority's office during normal business hours.

(5) In the case of a notice under subsection (1), the Authority must make sure that details of the proposed services and the costs are available for inspection, free of charge, at the Authority's office during normal business hours.

(6) An Authority must bear any cost that would otherwise, under this section, be borne by the Crown in respect of land that—

(a) is used or reserved for a public purpose which specifically benefits the area; and

(b) does not require the service which is being provided.

### 269 Contributions for increased services[45]

(1) An Authority that provides services to a property may, by notice in writing, require the owner of the property to contribute to the present day cost of any works referred to in section 268(1) if the use of any service for which those things are used increases, or will increase, because of development of the land or any other change, or proposed change, in the use of the land.

(2) The amount of the payment required from an owner must—

(a) be assessed by the Authority to be fair and reasonable in all the circumstances; and

(b) take into account any payment that the owner has made or is liable to make under section 268 or 270 in relation to that property.

(3) The notice must specify the things set out in section 268(4)(a) to (f).

(4) An owner of land who changes, or proposes to change, the use of the land in such a way that the use of any service provided by an Authority increases, or will increase, must notify the Authority of the change, or the proposed change.

Penalty: 10 penalty units.

(5) Failure of an owner to give notice as required by subsection (4) does not prevent an Authority from requiring a payment under this section.

### 270 Payments on connection[46]

(1) An Authority may, by notice in writing, require the owner of a property which becomes a serviced property to meet or contribute to the present day cost of any works that are used or will be able to be used directly or indirectly for the provision of services to that property.

(2) The amount of the payment must—

(a) be assessed by the Authority to be fair and reasonable in all the circumstances; and

(b) take into account any payment that the owner has made or is liable to make under section 268 in relation to that property.

(3) The notice must specify the things set out in section 268(4)(a) to (f).

### 271 Review of required payments

(1) An owner who is required to make a payment under section 268, 269 or 270 may, within 1 month after receipt of the notice (or any longer time allowed by the Authority and specified in the notice), object in writing to the Authority on any of the following grounds—

(a) in the case of a notice under section 268, that the property of the owner will not benefit from the provision of the services;

(b) if there are several properties that will benefit, that the basis of distribution of the cost between the owners of those properties is unreasonable;

(c) that the amount is excessive;

(d) if there are several properties that will benefit, that any owner who has been required to pay should not be required to do so, or that any owner who has not been required to pay should be required to do so;

(e) in the case of a notice under section 269, that the use of the services has not increased, or will not increase, as the case requires;

S. 271(1)(ea) inserted by No. 85/2006 s. 115.

(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**;

(f) in the case of a notice under section 268(1), any other grounds.

(2) An Authority must, within 2 months after receipt of an objection, notify the person of its decision on the objection.

(3) An owner may apply to the Tribunal for review of the Authority's decision on the owner's objection on any of the grounds specified in subsection (1)(a) to (e).

S. 271(3) substituted by No. 52/1998 s. 311(Sch. 1 item 105.48).

(4) An application for review must be made within 28 days after the later of—

S. 271(4) inserted by No. 52/1998 s. 311(Sch. 1 item 105.48).

(a) the day on which the decision is made;

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

(5) A person is not entitled to object under subsection (1) to a payment the person is required to make under section 268, 269 or 270, if the payment is a Basin water charge regulated under Part 1B of the **Water Industry Act 1994**.

S. 271(5) inserted by No. 50/2011 s. 11, amended by No. 52/2021 s. 103.

(6) In this section—

S. 271(6) inserted by No. 50/2011 s. 11.

***Basin water charge*** means a regulated charge for a service in relation to Basin water resources provided by an Authority;

***Basin water resources*** has the same meaning as ***State water resources*** has in the Water Charge (Infrastructure) Rules 2010 of the Commonwealth in relation to Victoria;

***regulated charge*** has the same meaning as in the Water Charge (Infrastructure) Rules 2010 of the Commonwealth.

### 272 Authority may require further payment

(1) An Authority that has required payments under section 268, 269 or 270 from the owners of any properties may—

(a) if the total amount collected is not enough to meet the costs in respect of which the payments were required, require further payments from the owners of those properties; and

(b) if the total amount collected is more than enough to meet those costs, refund the excess to the owners of those properties.

(2) The provisions of sections 268(4), 268(5), 271 and 273 apply in relation to any further payments required, as if they were payments originally required under section 268, 269 or 270, except that in the case of payments required by a notice under section 268(1)—

(a) the Authority may require further payments of not more than 20 per cent of the amount specified in that notice, if those further payments are necessary to meet the cost of the works; and

(b) the cost of those further payments must be fairly distributed over the group of properties that is to receive the service, if there is such a group.

### 273 When payment is due

(1) The date by which payment must be made is—

(a) if there have been no objections, any date that is set by the Authority and that is after the expiry of 1 month after the receipt of the

notice, or of any longer time allowed by the Authority and specified in the notice; or

(b) if each person to whom a notice was issued agrees in writing not to object, any date that is set by the Authority and that is after the date of the last of those agreements; or

(c) if there are objections, or if any person to whom a notice was issued does not agree in writing not to object, any date that is set by the Authority and that is after each person who objected, or who did not agree in writing not to object, has been notified by the Authority of its decision on any objections made.

(2) The due date for payment of any further payments required under section 272(1)(a) is the date (not earlier than 14 days after the date of the notice) that is specified in the notice requiring the further payment.

## Division 7—Payment and recovery of money

### 273AA Application of Division

S. 273AA inserted by No. 85/2006 s. 116, substituted by No. 23/2019 s. 86.

This Division does not apply—

(a) to Melbourne Water Corporation; or

(b) in relation to salinity impact charges.

### 273A Liability of occupier

S. 273A inserted by No. 25/1993 s. 13, amended by No. 109/1997 s. 533(Sch. 2 items 12.1, 12.2), substituted by No. 17/2012 s. 41.

(1) The occupier of property is liable for any water usage charge or sewage disposal charge imposed in respect of the property if—

(a) the property is—

S. 273A(1)(a)(i) amended by No. 45/2018 s. 379.

(i) within the meaning of the **Residential Tenancies Act 1997** let to a renter under a residential rental agreement; or

(ii) within the meaning of the **Residential Tenancies Act 1997**, a site in a caravan park occupied by a resident of the caravan park; or

(iii) within the meaning of the **Residential Tenancies Act 1997**, a Part 4A site occupied by a site tenant; and

(b) the quantity of water supplied to the property is measured by a meter provided or installed by an Authority that only measures that quantity; and

(c) the owner has notified the Authority that the property is so occupied or is such a site and has given the Authority the particulars of the occupier required by the Authority; and

(d) the Authority has recorded the reading on the meter measuring the quantity of water supplied to the property as a result of a notice under paragraph (c).

(2) The Authority must ensure that the reading on the meter measuring the quantity of water supplied to the property is recorded—

(a) within 48 hours after the Authority is given notice under subsection (1)(c); or

(b) as soon as practicable after the Authority is given notice under subsection (1)(c)—

whichever occurs last.

(3) If the cost of water supplied to a property during the time the occupier occupies the property is only partly based on the amount of water supplied to the property, the occupier of the property is liable

for that part of the cost that is based on the amount of water supplied to the property.

### 273B Vacation of property

S. 273B inserted by No. 25/1993 s. 13, amended by Nos 109/1997 s. 533(Sch. 2 items 12.3, 12.4), 46/1998 s. 7(Sch. 1), substituted by No. 17/2012 s. 41.

(1) A vacating occupier may—

(a) notify the Authority of his or her vacation or intended vacation of the property; and

(b) request the Authority to read the meter supplying water to the property.

(2) The Authority must ensure that the reading on the meter measuring the quantity of water supplied to the property is recorded—

(a) on the day the vacating occupier vacates the property; or

(b) as soon as practicable after that day; or

(c) within 48 hours after the Authority is given a notice under subsection (1); or

(d) as soon as practicable after the Authority is given notice under subsection (1)—

whichever occurs last.

(3) The vacating occupier is taken to cease to be the occupier of the property for the purposes of section 273A(1) on the reading of the meter under subsection (2).

(4) If a vacating occupier does not notify the Authority under subsection (1), the vacating occupier is liable for the cost of all water supplied to the property and all sewage disposed from the property until—

(a) the Authority next records the reading on the meter; or

(b) the end of the billing period in which the vacation occurred—

whichever happens first.

(5) The owner of a property is liable for any water usage charge or sewage disposal charge imposed in respect of the property for the period beginning when the vacating occupier ceases to be liable under this section and ending when a new notice is given under section 273A(1)(c).

(6) In this section—

***property owner*** includes an owner of a property who has disposed of that property if the Authority has not been notified of that disposition in accordance with section 159;

***vacating occupier*** means a person whose particulars have been given to an Authority under section 273A(1)(c) who vacates or intends to vacate the property in respect of which the particulars have been given.

### 274 Payment to Authorities

S. 274(1) amended by Nos 25/1993 s. 14(b)(i)(A)(B), 69/1993 s. 8(a), 23/2019 s. 87(1).

(1) A fee imposed under a tariff is due and must be paid by the date specified in the notice requiring payment, being a date—

(a) after the date on which notice of the resolution that sets the tariff was published under section 260(2); and

S. 274(1)(b) substituted by No. 85/2006 s. 117.

(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—

unless payment may be made by instalments and the person liable to pay the amount chooses

to pay by instalments in accordance with subsections (2) and (3).

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S. 274 (1A)–(1D) inserted by No. 69/1993 s. 8(b), repealed by No. 23/2019 s. 87(2).

(2) A person who is liable to pay to an Authority—

S. 274(2) amended by No. 121/1994 s. 195(1).

(a) a fee imposed on an annual basis under a tariff; or

S. 274(2)(a) substituted by No. 23/2019 s. 87(3).

* * * * *

S. 274(2)(b) amended by No. 69/1993 s. 8(c), repealed by No. 23/2019 s. 87(3).

(c) with the consent of the Authority, any other fee or amount—

may, by notice in writing to the Authority within 14 days after receipt of the notice setting the due date for payment, choose to pay by instalments, and must make each payment, and any payment of interest due in respect of it, by the date specified by the Authority.

(3) The date specified for the payment of the first instalment must be at least 14 days after the date of issue of the notice to the person that payment is required.

S. 274(3A) inserted by No. 121/1994 s. 195(2), amended by No. 23/2019 s. 87(4).

(3A) A person who is liable to pay to an Authority an amount under Division 6 which under subsection (1) the person has chosen to pay by instalments, is liable to pay interest in accordance with section 281 on any part of that amount that is unpaid from the due date for payment despite the arrangement for payment of that amount by instalments.

S. 274(4) amended by Nos 25/1993 s. 14(b)(ii), 99/2005 s. 64.

(4) Any amount due to an Authority in relation to a property (including interest and including any amount in respect of a licence under Part 4, 4B or 5) is a debt due to the Authority by the person liable to pay the amount.

S. 274(4A) inserted by No. 25/1993 s. 14(b)(iii), substituted by No. 17/2012 s. 42.

(4A) If—

(a) the person liable to pay an amount to an Authority in relation to a property owns that property; and

(b) a code made by the Essential Services Commission under the **Water Industry Act 1994** does not otherwise provide—

the amount owed is a charge on the property, whether or not the Authority has agreed to defer the payment of the whole or any part of that amount.

S. 274(5) amended by No. 25/1993 s. 14(b)(iv).

(5) In subsections (4) and (4A), ***Authority*** includes the Minister.

S. 274(6) inserted by No. 78/1991 s. 21.

(6) At the written request of the person liable to make a payment to an Authority, the Authority may send the notice requiring the payment to a person specified in the request.

### 274A Application of payments made to metropolitan water corporations

S. 274A inserted by No. 17/2012 s. 43.

(1) Any money paid to a metropolitan water corporation by or on behalf of a person or body must be applied by the metropolitan water corporation as follows—

(a) first towards any amount owing to the corporation by the person or body in respect of any water usage charge or any other fee or charge imposed by that corporation;

(b) secondly, towards any amount owing to the rating authority by that person or body that is being collected by the corporation on behalf of the rating authority;

(c) thirdly, towards any amount owing to the Melbourne Water Corporation by that person or body that is being collected by the corporation on behalf of the Melbourne Water Corporation.

(2) Any dispute arising between a metropolitan water corporation and the rating authority or Melbourne Water Corporation over the application of any money under subsection (1) may be referred to the Treasurer by any party to the dispute and the decision of the Treasurer on the matter is binding on the parties.

(3) In this section ***rating authority*** means the Minister administering Part 4 of the **Water Industry Act 1994**.

### 275 Person who acquires property is liable

S. 275(1) amended by No. 25/1993 s. 14(c).

(1) A person who becomes the owner of a property must pay to the Authority at the time the person becomes the owner of the property any amount that is, under section 274(4A), a charge on that property.

(2) In subsection (1), ***Authority*** includes the Minister.

S. 276 amended by No. 25/1993 s. 14(d), repealed by No. 17/2012 s. 44(1).

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### 277 Recovery as between owner and occupier

(1) If an Authority recovers any contribution or fee, or any amount in respect of a licence under Part 4 or 5, from an owner, and the owner had an agreement with the occupier that the occupier would pay the fee, contribution or amount, the owner may recover from the occupier, as a debt due to the owner, the amount paid to the Authority by the owner.

(2) For the purposes of subsection (1)—

(a) the owner has the burden of proving that the occupier had agreed to pay the fee, contribution or amount; and

(b) ***Authority*** includes the Minister.

S. 278 amended by Nos 25/1993 s. 14(e), 91/1994 s. 36(12), 62/1995 s. 38, repealed by No. 17/2012 s. 44(2).

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S. 279 repealed by No. 17/2012 s. 44(3).

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S. 280 amended by No. 85/1998 s. 24(Sch item 66.16), repealed by No. 17/2012 s. 44(4).

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### 281 Interest on unpaid money[47]

(1) Any money due to an Authority under this Act, including an agreement which does not provide otherwise, bears interest at the rate set from time to time for the purposes of this section by the Authority from the date that the money becomes due to the date that it is paid.

S. 281(1) amended by No. 78/1991 s. 22(1).

(1A) The rate set by the Authority must not be more than the rate fixed from time to time for the purposes of subsection (1) by the Essential Services Commission under a Code under section 4F of the **Water Industry Act 1994**.

S. 281(1A) inserted by No. 78/1991 s. 22(2), amended by Nos 17/2012 s. 45(1), 24/2013 s. 36(1).

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S. 281(1B) inserted by No. 78/1991 s. 22(2), amended by No. 17/2012 s. 45(2), repealed by No. 24/2013 s. 36(2).

(1C) If the Authority sets a new rate, the new rate takes effect on the date set by the Authority, and applies from that date to all money (other than interest) owing to the Authority on that date.

S. 281(1C) inserted by No. 78/1991 s. 22(2).

(2) No interest is payable—

(a) in respect of a fee imposed under a tariff if the amount due is paid within the period after it becomes due fixed by the Authority by resolution; or

S. 281(2)(a) substituted by No. 69/1993 s. 9(a).

(b) except in the case of an amount under Division 6, if the person liable to pay the amount has arranged with the Authority for payment by instalments of the amount due, and any instalments that have become due have been paid.

S. 281(2)(b) amended by No. 121/1994 s. 195(3).

S. 281(2A) inserted by No. 69/1993 s. 9(b).

(2A) A resolution under subsection (2)(a) has no effect until the day on which notice of the making of the resolution is published in a newspaper circulating generally in the area concerned.

(3) An Authority may exempt any person from paying the whole or part of any interest either generally or specifically.

(4) In this section, ***Authority*** includes the Minister.

Pt 13 Div 7A (Heading and ss 281A–281C) inserted by No. 85/2006 s. 118.

## Division 7A—Payment and recovery of money owed to Melbourne Water Corporation

S. 281A inserted by No. 85/2006 s. 118.

### 281A Agreements with respect to collection of fees under tariffs

S. 281A(1) amended by No. 17/2012 s. 46(1)(b).

(1) Melbourne Water Corporation may enter into an agreement with—

S. 281A(1)(a) amended by No. 17/2012 s. 46(1)(a).

(a) a metropolitan water corporation; or

(b) a Council; or

(c) any other person—

with respect to the collection by that metropolitan water corporation, 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 metropolitan water corporation must collect, on behalf of Melbourne Water Corporation, fees under tariffs, charges, interest and other money referred to in subsection (1) that relate to the water supply districts or sewerage districts of the metropolitan water corporation on the terms and conditions agreed with Melbourne Water Corporation or, in default of agreement, determined by the Essential Services Commission.

**S. 281A(2) substituted by No. 17/2012 s. 46(2), amended by No. 23/2019 s. 88.**

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

(4) A person who receives a notice from a metropolitan water corporation, a Council or any other person under subsection (1) must pay the amount set out in the notice to the metropolitan water corporation, Council or person (as the case requires).

**S. 281A(4) amended by No. 17/2012 s. 46(3).**

### 281B Recovery of fees under tariffs

**S. 281B inserted by No. 85/2006 s. 118.**

(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 subsection (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.

S. 281C inserted by No. 85/2006 s. 118.

### 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 subsection (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.

## Division 8—Concessions and exemptions

### 282 Deferred payment

(1) On application by a person who is liable to pay an amount to an Authority, the Authority may, by notice to the person, defer payment of the whole or a specified part of that amount, for the time, and subject to any conditions, specified in the notice.

(2) A person who receives a notice and complies with any conditions specified in it is not liable to pay the amount until—

(a) the time specified in the notice; or

(b) the time specified in a notice given to the person under subsection (3)—

whichever is sooner.

(3) An Authority may, by notice to a person, require the person to pay, by a specified date, all or a specified part of any deferred amount, together with any specified interest (at the appropriate rate referred to in section 281(1)) on the outstanding amount from the date of the notice.

(4) An Authority must not issue a notice under subsection (3) unless—

(a) the person never owned or no longer owns the property in respect of which the amount was payable; or

S. 282(4)(a) amended by No. 25/1993 s. 14(f).

(b) it considers that the circumstances because of which payment was deferred have changed.

(5) A person must not—

(a) give false or misleading information to an Authority in or in relation to an application under subsection (1); or

(b) fail to advise the Authority of any change in circumstances which is material to the application.

Penalty: 10 penalty units.

### 283 Waiver

(1) On application by a person who is liable to pay an amount to an Authority, the Authority may, by notice to the person, waive the whole or a specified part of the amount, together with any interest for late payment.

(2) An Authority may require an applicant to give more details, or to verify any matter, in relation to the application.

S. 283(3) substituted by No. 25/1991 s. 4(1).

(3) An Authority must, in accordance with the regulations, waive all or part of any amount or interest due to it—

(a) from a prescribed person; or

(b) from an owner if—

(i) the occupier is liable to pay the amount, whether under an agreement with the owner or for any other reason; and

(ii) the occupier is a prescribed person; or

(c) from the owner of retirement village land if—

(i) the owner has an agreement with the holder of a residence right in the village that the holder is to pay—

(A) the amount; or

(B) a maintenance charge which includes a proportion of the amount; and

(ii) the holder of the residence right is a prescribed person—

on application by the prescribed person in accordance with the regulations.

(3A) Terms used in subsection (3)(c) that are defined in the **Retirement Villages Act 1986** have the same meanings as in that Act.

S. 283(3A) inserted by No. 25/1991 s. 4(1).

(3B) The Minister after consultation with the Treasurer may, by Order published in the Government Gazette, make provision for or with respect to specifying circumstances in which, the manner in which and the extent to which an Authority that has a water supply district or a sewerage district must waive all or part of any amount due to it.

S. 283(3B) inserted by No. 110/1997 s. 25(1).

(3BA) An Order under subsection (3B) may—

S. 283(3BA) inserted by No. 41/2013 s. 52.

(a) confer a discretionary authority or impose a duty on the Commissioner of State Revenue; and

(b) require any matter affected by the Order to be approved by or to the satisfaction of the Commissioner of State Revenue.

(3C) An Authority must, on the application in the form approved by the Authority of a person entitled by an Order under subsection (3B) to so apply, in accordance with that Order, waive all or part of any amount due to it.

S. 283(3C) inserted by No. 110/1997 s. 25(1).

(3D) An Order under subsection (3B) must not be inconsistent with any regulations made for or with respect to waivers under subsection (3).

S. 283(3D) inserted by No. 110/1997 s. 25(1).

(3E) An Authority, on the application of a person entitled to so apply under a concession order within the meaning of the **State Concessions Act 2004** in relation to any amount due to it under this Act, must, in accordance with that concession order, waive all or part of that amount.

S. 283(3E) inserted by No. 82/2004 s. 13(Sch. item 7.1).

S. 283(3F) inserted by No. 82/2004 s. 13(Sch. item 7.1).

(3F) If a concession order within the meaning of the **State Concessions Act 2004** is made, a regulation made for or with respect to waivers under subsection (3) or an Order made under subsection (3B) must not—

(a) be inconsistent with the concession order; or

(b) be applied to provide a less advantageous waiver to a person than that to which the person is entitled under the concession order.

(4) A person must not—

S. 283(4)(a) amended by Nos 110/1997 s. 25(2), 82/2004 s. 13(Sch. item 7.2).

(a) give false or misleading information to an Authority in or in relation to an application under subsection (1), (3), (3C) or (3E); or

(b) fail to advise the Authority of any change in circumstances which is material to the application.

Penalty: 10 penalty units.

(5) The Governor in Council may make regulations for or with respect to waivers under subsection (3), including but not limited to regulations for or with respect to—

S. 283(5)(a) amended by No. 25/1991 s. 4(2)(a).

(a) the person or class of person to which a waiver or class of waivers applies;

S. 283(5)(b) substituted by No. 25/1991 s. 4(2)(b).

(b) the extent of a waiver applying to any person or class of persons;

(c) the making of applications for waivers;

(d) limitations and restrictions on applications for, or the granting of, any waiver;

(e) any other matter or thing necessary or convenient to be prescribed for the purposes of this section.

### 284 Reimbursement by State

(1) The Minister must ensure that an Authority is reimbursed by the State any amount waived by the Authority in accordance with section 283(3) or (3C).

S. 284(1) substituted by No. 110/1997 s. 25(3).

(1A) The Commissioner of State Revenue may pay any amounts required to be reimbursed under subsection (1).

S. 284(1A) inserted by No. 41/2013 s. 53(1).

(2) An Authority must provide any information that the Minister or the Minister administering Part 7 of the **Financial Management Act 1994** or the Commissioner of State Revenue may require for the purposes of subsection (1) or (1A).

S. 284(2) amended by Nos 110/1997 s. 25(4)(a)(b), 46/1998 s. 7(Sch. 1), 41/2013 s. 53(2).

## Division 9—Contributions from councils and other Authorities

### 285 Pre-requisites for requirement of contribution

(1) An Authority that intends to require a contribution under section 286(1) or a special contribution under section 287(1) must publish notice of its intention in a newspaper circulating in the area affected.

(2) The notice must state that submissions may be made within 60 days after the publication of the notice.

(3) Any submission that is received within 60 days after the publication of the notice must be considered by the Authority.

(4) If the Authority decides to require the contribution it must notify the Minister and send to the Minister all submissions received by it.

(5) If the Minister approves the proposed requirement, the Authority may proceed under section 286 or 287.

S. 285(6) amended by No. 9/2020 s. 390(Sch. 1 item 111.3).

(6) The Minister must not approve a requirement for a contribution to be made by a council unless he or she has first consulted with the Minister for the time being administering the **Local Government Act 2020**.

(7) This section only applies to a contribution required from another Authority or a council under section 286 if the Authority has not previously required a contribution for that purpose from the other Authority or the council under that section.

### 286 Authorities may require contributions from councils and other Authorities

(1) An Authority (the ***first Authority***) that is responsible for a water management scheme or that has a waterway management district may, subject to section 285, by notice in writing require—

(a) any council whose municipal district is wholly or partly within—

(i) an area covered by that water management scheme; or

(ii) that waterway management district; or

(b) any Authority whose district is wholly or partly within—

(i) an area covered by that water management scheme; or

(ii) that waterway management district—

to contribute to the revenue of the first Authority.

(2) The contribution payable by a council or an Authority is, subject to subsection (3), calculated as follows—

$$C = \frac{X}{Y} \times Z$$

where—

C is the amount of the contribution;

X is the value of all rateable land under section 154 of the **Local Government Act 1989** that is common to—

(a) the municipal district and the area covered by the scheme or waterway management district; or

(b) the district and the area covered by the scheme; or

(c) the two districts—

as appropriate;

Y is the total value of all rateable land under section 154 of the **Local Government Act 1989** that is within—

(a) the area covered by the scheme; or

(b) the waterway management district of the first Authority;

Z is the estimated revenue of the first Authority for that year in relation to that area or district.

(3) The contribution payable by a council or an Authority must not be more than 2% of X.

(4) A council or an Authority that receives a notice under subsection (1)—

(a) may rate the properties that are common to both districts or the district and the area, or

set a tariff for them (as the case requires); and

(b) must pay to the first Authority the contribution required, less a charge of not more than 5% for collecting the money.

(5) The first Authority may charge the council or Authority interest (at the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**) if the contribution is not paid by the date specified in the notice to be the due date.

(6) The provisions of the **Local Government Act 1989** about rates apply to a rate made under subsection (4)(a), and the council is authorised to make the payment required under subsection (4)(b).

(7) A council may prepare a separate budget to allow for contributions under this section.

(8) In this section, ***water management scheme*** means a scheme approved under section 216.

**287 Authorities may require special contributions**

(1) An Authority (the ***first Authority***) that has a waterway management district may, subject to section 285, by notice in writing require—

(a) any council whose municipal district is wholly or partly within the area of the first Authority's waterway management district to which the special contribution applies; or

(b) any other Authority whose district is wholly or partly within the area of the first Authority's waterway management district to which the special contribution applies—

to make a special contribution to the first Authority's revenue for the purposes, related to that area, specified in the notice.

(2) The special contribution payable by a council or an Authority is calculated as follows—

$$S = \frac{X}{Y} \times A$$

where—

S is the amount of the special contribution;

X and Y have the same meanings as in section 286(2);

A is the amount to be spent by the first Authority in the area of the first Authority's waterway management district to which the special contribution applies.

(3) Section 286(4), (5), (6) and (7) applies to a special contribution with any necessary changes.

(4) An Authority must not spend the money received under this section for any purposes other than those specified in the notice.

## Division 10—Salinity impact charges

**Pt 13 Div. 10 (Heading and s. 287A) inserted by No. 99/2005 s. 65, substituted by No. 23/2019 s. 89.**

### 287A Minister may require payment of salinity impact charges

**S. 287A inserted by No. 99/2005 s. 65, substituted by No. 23/2019 s. 89.**

(1) The Minister, by notice in writing, may require a person on whom a capital works salinity impact charge may be imposed under section 232D to pay a capital works salinity impact charge fixed in accordance with a determination under section 232B(1)(a).

(2) The Minister, by notice in writing, may require a person on whom an annual salinity impact charge may be imposed under section 232E to pay an annual salinity impact charge fixed in accordance with a determination under section 232B(1)(b).

S. 287AB inserted by No. 23/2019 s. 89.

### 287AB Notice of salinity impact charges

(1) A notice under section 287A must specify—

(a) the amount of the salinity impact charge, or, if the salinity impact charge may be paid in instalments, the amount of each instalment; and

(b) the date by which the person must pay the salinity impact charge, or, if the salinity impact charge may be paid in instalments, the date by which the person must pay each instalment; and

(c) whether the salinity impact charge is a capital works salinity impact charge or an annual salinity impact charge; and

(d) the property and the water use licence to which the salinity impact charge relates.

(2) A notice under section 287A is not invalid merely because of a minor error or defect.

S. 287AC inserted by No. 23/2019 s. 89.

### 287AC Payment of salinity impact charges

(1) Subject to subsection (2), a salinity impact charge must be paid by the date specified in the notice given under section 287A, being a date that is at least 28 days after the date of issue of the notice.

(2) If a salinity impact charge is payable in instalments, each instalment must be paid by the date specified in the notice, being a date that is at least 14 days after the date of issue of the notice.

### 287AD Unpaid salinity impact charges debts due to Crown

S. 287AD inserted by No. 23/2019 s. 89.

Any unpaid salinity impact charge due to the Minister (including interest) is a debt due to the Crown by the person liable to pay the charge and may be recovered in any court of competent jurisdiction.

### 287AE Interest on unpaid salinity impact charges

S. 287AE inserted by No. 23/2019 s. 89.

(1) Any unpaid salinity impact charge bears interest at the rate set from time to time for the purposes of this section by the Minister from the date specified in the notice under section 287A by which the person must pay the charge to the date that it is paid.

(2) The rate set by the Minister must not be more than the rate fixed from time to time for the purposes of subsection (1) by the Essential Services Commission under a Code under section 4F of the **Water Industry Act 1994**.

(3) If the Minister sets a new rate, the new rate takes effect on the date set by the Minister and applies from that date to all salinity impact charges (other than interest) owing to the Minister on that date.

(4) No interest is payable if the person liable to pay the amount has arranged with the Minister for payment by instalments of the amount due, and any instalments that have become due have been paid by the date specified in the notice under section 287A for the instalments.

(5) The Minister may exempt any person from paying the whole or any part of any interest either generally or specifically.

S. 287AF inserted by No. 23/2019 s. 89.

### 287AF Unpaid salinity impact charges are charges on property

(1) If a person who owns property and has a water-use licence that authorises the use of water on the property is liable to pay a salinity impact charge to the Minister in relation to the licence, any unpaid amount of the salinity impact charge is a charge on the property, whether or not the Minister has agreed to defer the payment of the whole or any part of that amount.

(2) A person who becomes the owner of a property must pay to the Minister at the time the person becomes the owner of the property any amount that is a charge under this section on that property.

S. 287AG inserted by No. 23/2019 s. 89.

### 287AG Collection of salinity impact charges

(1) The Minister may collect a salinity impact charge from a person on whom the charge is imposed.

(2) Section 9(2) of the **Financial Management Act 1994** does not apply to the collection under this Division of salinity impact charges by the Minister.

S. 287AH inserted by No. 23/2019 s. 89.

### 287AH Application of salinity impact charges

(1) The Minister may apply salinity impact charges that have been collected—

(a) for the payment of such amounts as are determined or required by the Minister to perform the Minister's functions in relation to salinity mitigation under section 232A; and

(b) for the payment of the costs of the administration of Part 11A and this Division.

(2) For the purposes of subsection (1)(a), the Minister may apply salinity impact charges that have been collected for the payment of amounts in relation to—

(a) land within Victoria, whether or not the land is within a salinity impact zone; or

(b) land that is outside of Victoria, if the application of the charges is to meet the State's obligations under the Murray-Darling Basin Agreement.

## Division 11—Recovery of fees etc. under Part 3A

Pt 13 Div. 11 (Heading and ss 287B–287D) inserted by No. 99/2005 s. 65.

### 287B Disposal of water shares for unpaid contributions, fees and other amounts

S. 287B inserted by No. 99/2005 s. 65.

(1) An Authority may sell, or cause to be transferred to itself, any water share in relation to which any fee imposed under Division 9 of Part 3A has been due to the Authority and unpaid for at least 3 years.

(2) Subsection (1) does not apply if—

(a) the fee has been waived; or

(b) the fee has been deferred for the period for which it is unpaid; or

(c) the person liable to pay has arranged with the Authority for payment by instalments of the amount due, and any instalments that have become due have been paid; or

(d) the person liable to pay is not the owner of the water share.

(3) An Authority must not sell the water share or cause it to be transferred unless it has, at least once in the 3 years, tried to recover the money due to it.

(4) An Authority must pay, for a transfer of a water share under subsection (1), an amount equal to or greater than a valuation of the water share that is made by a valuer not more than 6 months before the date of the proposed transfer.

(5) An Authority must in selling a water share under subsection (1) sell the share for an amount equal to or greater than a valuation of the share that is made by a valuer not more than 6 months before the date of the proposed sale.

(6) At least 4 weeks before selling any share, or causing it to be transferred, under subsection (1), the Authority must—

(a) give public notice of its intention to do so; and

S. 287B(6)(b) amended by No. 32/2010 s. 77(Sch.).

(b) serve, on any person who appears from the water register to be the share owner or a mortgagee or a holder of a limited term transfer recorded on the water share, a notice requiring payment of any outstanding amounts referred to in subsection (1).

(7) The Registrar may register a transfer of a water share by an Authority under this section if the transfer is in a form approved by the Registrar.

S. 287C inserted by No. 99/2005 s. 65.

### 287C Application of proceeds

(1) An Authority that sells a water share, or causes it to be transferred, under section 287B must apply the proceeds of the sale, or the amount for which the share was transferred, as follows—

(a) first, in payment of all expenses incurred in connection with the sale or transfer;

(b) secondly, in payment of the outstanding fees, including interest;

(c) thirdly, in discharging any recorded mortgages of which the Authority has notice, according to the priority of those mortgages.

S. 287C(1)(c) substituted by No. 32/2010 s. 65.

(2) The Authority must, if the owner of the water share can be traced, refund to the owner any surplus after all payments have been made that subsections (1)(a), (b) and (c) apply to.

(3) If the owner cannot be traced, the Authority may, subject to subsection (5), retain and use any surplus after all payments have been made that subsections (1)(a), (b) and (c) apply to.

(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.

S. 287C(4) substituted by No. 85/2006 s. 119.

(5) If the Authority is satisfied that an applicant is entitled to any payment it must make that payment.

### 287D Sale or transfer cancels encumbrances

S. 287D inserted by No. 99/2005 s. 65, amended by No. 32/2010 s. 66(2) (ILA s. 39B(1)).

(1) When an Authority sells a water share, or causes it to be transferred, under section 287B—

(a) the sale or transfer is free from all rights of the owner of the water share or any mortgagee over the water share; and

S. 287D(1)(a) amended by No. 32/2010 s. 66(1).

(b) the Registrar must, when registering the transfer, cancel any recorded mortgages on the water share.

(2) The application of this section to the sale or transfer of water share is not to be taken to affect the rights of any holder of a limited term transfer under the water share.

S. 287D(2) inserted by No. 32/2010 s. 66(2).

Pt 13A (Heading and ss 287E–287U) inserted by No. 85/2006 s. 120.

# Part 13A—Process for transfer of property etc. of Authorities

S. 287E inserted by No. 85/2006 s. 120.

## 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;

S. 287E(1) def. of *former transferor property* amended by No. 17/2012 s. 47.

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

***instrument*** includes a document and an oral agreement;

***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 subsection (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 Requirements for preparation of allocation statement

**S. 287F (Heading) substituted by No. 17/2012 s. 48(1).**

**S. 287F inserted by No. 85/2006 s. 120.**

(1) If two or more Authorities jointly propose that property, rights or liabilities of any or all of those Authorities that is of a specified kind be transferred from an Authority making the proposal to another Authority making the proposal, the

**S. 287F(1) substituted by No. 17/2012 s. 48(2), amended by No. 23/2019 s. 90.**

Authorities may submit the proposal to the Minister for his or her approval.

(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.

S. 287G inserted by No. 85/2006 s. 120.

### 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 subsection (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 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

S. 287H inserted by No. 85/2006 s. 120.

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

S. 287I inserted by No. 85/2006 s. 120.

(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.

S. 287J inserted by No. 85/2006 s. 120.

### 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.

S. 287K inserted by No. 85/2006 s. 120.

### 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 subsection (2), admissible in evidence 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 subsection (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

S. 287L inserted by No. 85/2006 s. 120.

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

S. 287M inserted by No. 85/2006 s. 120.

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

(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

S. 287N inserted by No. 85/2006 s. 120.

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.

S. 287O inserted by No. 85/2006 s. 120.

### 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.

S. 287P inserted by No. 85/2006 s. 120.

### 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—

(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.

S. 287Q inserted by No. 85/2006 s. 120, amended by No. 17/2012 s. 49.

### 287Q Easements

If a transferee 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

S. 287R inserted by No. 85/2006 s. 120.

(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 subsection (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

S. 287S inserted by No. 85/2006 s. 120.

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

S. 287T inserted by No. 85/2006 s. 120.

(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.

S. 287T(2) amended by No. 69/2009 s. 54(Sch. Pt 1 item 62.1).

(2) The **Evidence Act 2008** applies 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, as if those books of account and entries were business records.

S. 287U inserted by No. 85/2006 s. 120.

### 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 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

Pt 13B (Heading and ss 287V–287ZL) inserted by No. 85/2006 s. 120.

## Division 1—Preliminary

### 287V Definitions

S. 287V inserted by No. 85/2006 s. 120.

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

S. 287W inserted by No. 85/2006 s. 120, amended by No. 17/2012 s. 50 (ILA s. 39B(1)).

(1) 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.

S. 287W(2) inserted by No. 17/2012 s. 50.

(2) Despite subsection (1), an Authority that is making a by-law extending the operation of another by-law under section 287ZL(3) is not required to use the procedure set out in Division 2 or Division 3, except that section 287ZI(2) and (3) applies to the making of the by-law.

## Division 2—Procedure for making by-laws using model by-laws

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

S. 287X inserted by No. 85/2006 s. 120.

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.

S. 287Y inserted by No. 85/2006 s. 120.

### 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 subsection (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).

S. 287Z inserted by No. 85/2006 s. 120.

### 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

S. 287ZA inserted by No. 85/2006 s. 120.

(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 subsection (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

S. 287ZB inserted by No. 85/2006 s. 120.

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

S. 287ZC inserted by No. 85/2006 s. 120.

(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 subsection (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

S. 287ZD inserted by No. 85/2006 s. 120.

### 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.

S. 287ZE inserted by No. 85/2006 s. 120.

### 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 subsection (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

(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

S. 287ZF inserted by No. 85/2006 s. 120.

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

S. 287ZG inserted by No. 85/2006 s. 120.

(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 subsection (2) must be received by the Authority within one month of the publication of the notice under section 287ZE(1).

S. 287ZH inserted by No. 85/2006 s. 120.

### 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 subsection (3), may approve the proposed by-law for making.

S. 287ZI inserted by No. 85/2006 s. 120.

### 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 subsection (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

S. 287ZJ inserted by No. 85/2006 s. 120.

(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

S. 287ZK inserted by No. 85/2006 s. 120.

(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.

### 287ZL Automatic revocation of by-laws

S. 287ZL inserted by No. 85/2006 s. 120.

(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 subsection (2) applies may on the certification of the Minister under subsection (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 subsection (2) in relation to any particular by-law.

# Part 14—Enforcement

## Division 1—General offences

Pt 14 Div. 1 (Heading) inserted by No. 29/2007 s. 18.

### 288 Offences as to Authority's property[48]

S. 288 amended by Nos 121/1994 s. 189(2), 12/1996 s. 12, 90/2003 s. 4, 17/2012 s. 51, substituted by No. 23/2019 s. 91.

(1) A person must not knowingly destroy, damage, remove, alter or in any way interfere with any property of an Authority without the consent of the Authority or another authorisation under this or any other Act, being a destruction, damage, removal, alteration or interference that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 10 years imprisonment or 1200 penalty units or both;

For a body corporate, 6000 penalty units.

(2) A person must not recklessly destroy, damage, remove, alter or in any way interfere with any property of an Authority without the consent of the Authority or another authorisation under this or any other Act, being a destruction, damage, removal, alteration or interference that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 5 years imprisonment or 600 penalty units or both;

For a body corporate, 3000 penalty units.

(3) A person must not destroy, damage, remove, alter or in any way interfere with any property of an Authority without the consent of the Authority or another authorisation under this or any other Act.

Penalty: For an individual, 240 penalty units;

For a body corporate, 1200 penalty units.

(4) In this section and in section 288A—

***property of an Authority*** includes works or other real or personal property that—

(a) belongs to an Authority; or

(b) is under the control and management of an Authority.

S. 288A inserted by No. 23/2019 s. 91.

### 288A Evidentiary provisions for offences under section 288[49]

(1) In a proceeding for an offence under section 288(1), (2) or (3), evidence that property of an Authority on land owned or occupied by a person has been destroyed, damaged, removed, altered or in any way interfered with, is evidence and, in the absence of evidence to the contrary, is proof that the destruction, damage, removal, alteration or interference with has been done by that person.

(2) In this section—

***property of an Authority on land owned or occupied by a person*** includes—

(a) property of an Authority situated on land owned or occupied by a person; or

(b) property of an Authority that services only land owned or occupied by a person; or

(c) property of an Authority that records the amount of water taken to, delivered to, supplied to or used on land owned or occupied by a person.

### 289 Wrongful taking etc. of water[50]

**S. 289 amended by Nos 121/1994 s. 189(3), 5/2002 s. 51, 90/2003 s. 4, 17/2012 s. 52, substituted by No. 23/2019 s. 92.**

(1) A person must not knowingly take, use or divert an Authority's water without the consent of the Authority or another authorisation under this or any other Act, being a taking, use or diversion that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 10 years imprisonment or 1200 penalty units or both;

For a body corporate, 6000 penalty units.

(2) A person must not recklessly take, use or divert an Authority's water without the consent of the Authority or another authorisation under this or any other Act, being a taking, use or diversion that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 5 years imprisonment or 600 penalty units or both;

For a body corporate, 3000 penalty units.

(3) A person must not take, use or divert an Authority's water without the consent of the Authority or another authorisation under this or any other Act.

Penalty: For an individual, 240 penalty units;

For a body corporate, 1200 penalty units.

(4) In this section—

***Authority's water*** means water—

(a) that is under the control and management of an Authority; or

(b) that is supplied by an Authority for the use of another person.

S. 289A inserted by No. 23/2019 s. 92.

### 289A Evidentiary provisions for offences under section 289[51]

(1) In any proceeding for an offence under section 289(1), (2) or (3) against a person, evidence that water has been taken to, diverted to or used on land that is specified in a relevant authorisation held by that person, is evidence that the person took, used or diverted the water and, in the absence of evidence to the contrary, is proof of that fact.

(2) In any proceeding for an offence under section 289(1), (2) or (3) against a person, in a case where subsection (1) does not apply, evidence that water has been taken to, diverted to or used on land occupied by the person is evidence that the person

took, used or diverted the water and, in the absence of evidence to the contrary, is proof of that fact.

(3) To avoid doubt, subsection (2) applies to a person who is the occupier of land who is also the owner of the land.

(4) In a proceeding for an offence under section 289(1), (2) or (3), if a person has been found guilty of an offence under section 288(1), (2) or (3) in relation to a meter of an Authority that records the amount of water that is taken to, delivered to, supplied to or used on land owned or occupied by the person, the finding of guilt is evidence that—

(a) the person took, used or diverted water and, in the absence of evidence to the contrary, is proof of that fact; and

(b) the person was not authorised to take, use or divert that water and, in the absence of evidence to the contrary, is proof of that fact.

(5) In this section—

***relevant authorisation*** means a consent of the Authority or another authorisation under this or any other Act.

### 289B Offence to interfere with flow of water[52]

**S. 289B inserted by No. 23/2019 s. 92.**

(1) A person must not knowingly interfere with the flow of water in any waterway, aquifer or works under the control and management of an Authority, without the consent of the Authority or another authorisation under this or any other Act, being an interference that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 10 years imprisonment or 1200 penalty units or both;

For a body corporate, 6000 penalty units.

(2) A person must not recklessly interfere with the flow of water in any waterway, aquifer or works under the control and management of an Authority, without the consent of the Authority or another authorisation under this or any other Act, being an interference that results in—

(a) land, works or water being seriously damaged; or

(b) another person suffering substantial economic loss.

Penalty: For an individual, 5 years imprisonment or 600 penalty units or both;

For a body corporate, 3000 penalty units.

(3) A person must not interfere with the flow of water in any waterway, aquifer or works under the control and management of an Authority, without the consent of the Authority or another authorisation under this or any other Act.

Penalty: For an individual, 240 penalty units;

For a body corporate, 1200 penalty units.

### 289C Power to issue infringement notice in relation to offences under sections 289(3) and 289B(3)[53]

S. 289C inserted by No. 23/2019 s. 92.

(1) An authorised water officer may serve an infringement notice on a person whom the officer has reason to believe has contravened section 289(3) if the person—

(a) was not authorised to take, use or divert water by the consent of the Authority or under another authorisation under this or any other Act; and

(b) took, used or diverted an amount of water equal to, or less than, 10 megalitres.

(2) An authorised water officer may serve an infringement notice on a person whom the officer has reason to believe has contravened section 289(3) if the person—

(a) was authorised to take, use or divert a specified amount of water by the consent of the Authority or under another authorisation under this or any other Act (the ***authorised amount***); and

(b) took, used or diverted an amount of water in addition to the authorised amount and the amount of that additional water—

(i) was an amount equal to, or less than, 20% of the authorised amount; and

(ii) was an amount equal to, or less than, 10 megalitres.

(3) An authorised water officer may serve an infringement notice on a person whom the officer has reason to believe has contravened section 289B(3) if the person—

(a) did not have the consent of the Authority and was not authorised under this or any other Act to interfere with the flow of water in any

waterway, aquifer or works under the control and management of an Authority; and

(b) interfered with the flow of water by taking or diverting an amount of water equal to, or less than, 10 megalitres.

(4) An authorised water officer may serve an infringement notice on a person whom the officer has reason to believe has contravened section 289B(3) if the person—

(a) had the consent of the Authority or held an authorisation under this or any other Act to interfere with the flow of water in any waterway, aquifer or works under the control and management of the Authority and that consent or authorisation authorised the taking or diverting of a specified amount of water (the ***authorised amount***); and

(b) interfered with the flow of water by taking or diverting an amount of water in addition to the authorised amount and that additional water was an amount equal to or less than 20% of the authorised amount.

S. 290 amended by No. 121/1994 s. 189(4)(a).

### 290 Uncovering or exposing works[54]

(1) Except in an emergency, a person must not open any ground and thereby uncover or expose any works belonging to or under the control and management of an Authority without—

(a) the permission of the Authority; or

(b) having given to the Authority at least 5 days' written notice.

Penalty: 10 penalty units.

* * * * *

S. 290(2) inserted by No. 121/1994 s. 189(4)(b), repealed by No. 17/2012 s. 53.

### 291 Trespass

A person must not wilfully trespass on the land or premises of an Authority.

Penalty: 10 penalty units.

## Division 2—Appointment etc. of authorised water officers

Pt 14 Div. 2 (Heading and ss 291A–291C) inserted by No. 29/2007 s. 19.

Pt 14 Div. 2 (Heading) amended by No. 17/2012 s. 54(1).

### 291A Appointment of authorised water officers

S. 291A inserted by No. 29/2007 s. 19.

(1) An Authority may appoint a person as an authorised water officer.

S. 291A(1) amended by No. 17/2012 s. 54(2).

(2) An appointment under subsection (1)—

(a) must be in writing; and

(b) must specify the Authority on whose behalf the person is appointed to act.

S. 291A(2)(b) substituted by No. 17/2012 s. 54(3).

(3) An Authority may require a person appointed under this section to undertake specified training before exercising any powers, functions or duties under this Act.

S. 291B inserted by No. 29/2007 s. 19.

### 291B Identification of authorised water officers

(1) An Authority must issue to each person appointed as an authorised water officer an identity card that—

(a) contains a photograph of the person; and

(b) states the full name of the person to whom it is issued; and

(c) states that the person is an authorised water officer for the purposes of this Act.

(2) An authorised water officer must produce his or her identity card for inspection at any time during the exercise of a power under this Act if asked to do so.

S. 291C inserted by No. 29/2007 s. 19.

### 291C Offence to impersonate authorised water officer

A person must not impersonate an authorised water officer.

Penalty: 60 penalty units.

Pt 14 Div. 3 (Heading and s. 291D) inserted by No. 29/2007 s. 19.

## Division 3—Powers of authorised water officers

S. 291D inserted by No. 29/2007 s. 19.

### 291D Authorised water officer may require person to state name and address

(1) An authorised water officer may require a person to state his or her name and address if that authorised water officer has reasonable grounds for believing that the person has contravened, or is contravening—

(a) an offence set out in section 170F in relation to a permanent water saving plan of the Authority that appointed the authorised water officer;

(b) an offence set out in a by-law made under section 171(1)(ba) by the Authority that appointed the authorised water officer.

(2) Subject to subsections (3) and (4), a person who is required under this section to state his or her name and address must not—

(a) refuse to state that name or address; or

(b) state a false name or address.

Penalty: 10 penalty units.

(3) An authorised water officer must produce his or her identity card for inspection before exercising a power under subsection (1).

(4) It is not an offence for a person to fail to comply with subsection (2) if the authorised water officer did not comply with subsection (3).

### 291E Entry with warrant

S. 291E inserted by No. 17/2012 s. 55.

(1) An authorised water officer, who is an officer of an Authority, may apply to a magistrate for the issue of a search warrant in relation to land used primarily for residential purposes if he or she believes on reasonable grounds that it is necessary for the purpose of inspecting any works, or making any test on the land, to find out whether there is evidence that this Act, or any regulation or any by-law of the Authority is not being complied with.

S. 291E(2) amended by No. 6/2018 s. 68(Sch. 2 item 137).

(2) The magistrate may issue a search warrant in accordance with the **Magistrates' Court Act 1989** if the magistrate is satisfied, by the evidence on oath or by affirmation or by affidavit of the authorised water officer, that it is necessary to issue the warrant for the purpose of inspecting any works, or making any test on the land, to find out whether there is evidence that this Act, or any

regulation or any by-law of the Authority is not being complied with.

(3) A search warrant issued under this section authorises the authorised water officer named in the warrant—

(a) to enter the land named in the warrant, on one occasion and, if necessary, on one subsequent occasion; and

S. 291E(3)(b) amended by No. 37/2014 s. 10(Sch. item 182.2(a)).

(b) to enter with the assistance of a police officer or any other necessary assistance that the authorised water officer requires; and

S. 291E(3)(c) amended by No. 37/2014 s. 10(Sch. item 182.2(b)).

(c) to enter with force if the entry is being made with the assistance of a police officer; and

(d) to inspect any works, or make any test on the land that is specified in the warrant and to seize any evidence that this Act, or any regulation or any by-law of the Authority is not being complied with that is found during the course of inspecting the works or conducting the test; and

(e) to take any action necessary to collect the evidence of an offence found during the course of inspecting the works or making the test including the following—

(i) observing the condition of the land;

(ii) taking photographs or measurements on the land;

(iii) making recordings on the land;

(iv) taking samples of water, soil or other substances found on the land.

(4) When acting under a search warrant issued under this section, the authorised water officer named in the warrant may use any necessary equipment.

(5) A search warrant issued under this section must state—

(a) the name of the authorised water officer to whom the warrant is issued; and

(b) particulars of the alleged offence in respect of which the warrant has been issued; and

(c) the land to which the warrant relates; and

(d) any conditions to which the warrant is subject; and

(e) whether any entry under the warrant is authorised to be made at any time of the day or night or only during the hours specified in the warrant; and

(f) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

(6) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to search warrants issued under this section.

(7) Despite subsection (6) and anything in the **Magistrates' Court Act 1989**, a search warrant under this section does not authorise an authorised water officer to arrest a person.

### 291F Announcement before entry

**S. 291F inserted by No. 17/2012 s. 55.**

(1) Before executing a search warrant issued under section 291E, the authorised water officer executing the warrant—

(a) must announce that he or she is authorised by the warrant to enter the land; and

(b) must give any person on the land an opportunity to allow entry to the land.

(2) The officer need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the land is required to ensure—

(a) the safety of any person; or

(b) that the effective execution of the warrant is not frustrated.

S. 291G inserted by No. 17/2012 s. 55.

### 291G Details of warrant to be given to occupier

(1) If the occupier is present on land where a search warrant issued under section 291E is being executed, the authorised water officer must—

(a) identify himself or herself to the occupier; and

(b) give a copy of the warrant to the occupier.

(2) If the occupier is not present on land where a search warrant issued under section 291E is being executed but another person is present, the authorised water officer must—

(a) identify himself or herself to the person; and

(b) give a copy of the warrant to the person.

S. 291H inserted by No. 17/2012 s. 55.

### 291H Seizure of things not named in the warrant

A search warrant issued under section 291E authorises the authorised water officer executing the warrant, in addition to seizing any thing under the warrant, to seize any thing if the authorised water officer believes, on reasonable grounds—

(a) that the thing is of a kind that could have been included in or seized under the warrant and that will afford evidence about the commission of an offence against this Act, or

any regulation or by-law made under this Act; and

(b) that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the commission of an offence against this Act, or any regulation or by-law made under this Act.

## Division 4—Further enforcement provisions

Pt 14 Div. 4 (Heading) inserted by No. 29/2007 s. 19.

### 292AA Interpretation

S. 292AA inserted by No. 17/2012 s. 56.

In sections 292, 293 and 294 a reference to ***officer of an Authority*** includes a reference to ***authorised water officer***, where the case so applies.

### 292 Offence of obstructing etc. officers

A person must not obstruct, threaten, abuse, insult or intimidate—

(a) an officer of an Authority in the execution of his or her duty under this Act; or

(b) any person lawfully performing duties under this Act, whether or not for or on behalf of an Authority; or

(c) any person lawfully assisting an officer of an Authority in the execution of his or her duty under this Act.

Penalty: 20 penalty units.

### 293 Power to require person to state name and address

S. 293(1) amended by Nos 29/2007 s. 20(1), 37/2014 s. 10(Sch. item 182.3).

(1) An officer of an Authority or a police officer may require a person to state his or her name and address if that officer of an Authority or police officer has reasonable grounds for believing that he or she has committed or is committing an offence against—

S. 293(1)(a) inserted by No. 29/2007 s. 20(1).

(a) this Act, except section 170F of this Act; or

S. 293(1)(b) inserted by No. 29/2007 s. 20(1).

(b) regulations made under this Act; or

S. 293(1)(c) inserted by No. 29/2007 s. 20(1).

(c) by-laws made under this Act, except by-laws made under section 171(1)(ba) of this Act.

(2) A person who is required under this section to state his or her name and address must not—

(a) refuse to state that name or address; or

(b) state a false name or address.

Penalty: 10 penalty units.

Note to s. 293(2) inserted by No. 29/2007 s. 20(2), substituted by No. 17/2012 s. 57.

**Note**

For further powers of authorised water officers see section 291D.

### 294 Occupier or manager required to state owner's etc. name and address

(1) An officer of an Authority may require the occupier of any land or premises or any person who is employed in the management of any land or premises to state the name and address of the owner of that land or those premises or of any person who has an interest in that land or those premises or who is employed in the management of that land or those premises.

(2) A person who is required under this section to state the name and address of a person must not, if he or she knows that name or address—

(a) refuse to state that name or address; or

(b) state a false name or address.

Penalty: 10 penalty units.

* * * * *

S. 295 amended by No. 90/2003 s. 12, repealed by No. 23/2019 s. 93.

### 295A Power to issue infringement notices

S. 295A inserted by No. 85/2006 s. 121, amended by No. 29/2007 s. 21, substituted by No. 23/2019 s. 94.

(1) Subject to sections 33EB, 63B and 289C, an authorised water officer appointed by an Authority may serve an infringement notice on a person whom the officer has reason to believe has committed a water infringement offence.

(2) A water infringement offence, for which an infringement notice may be served, is an infringement offence within the meaning of the **Infringements Act 2006**.

### 295B Indictable offences

S. 295B inserted by No. 23/2019 s. 94.

Offences against sections 33E(1) and (2), 63(1) and (2), 75A(1) and (2), 76A(1) and (2), 145A(1), (2), (4) and (5), 169A(1) and (2), 194(1) and (1A), 195(1) and (1A), 208(1) and (1A), 288(1) and (2), 289(1) and (2) and 289B(1) and (2) are indictable offences.

### 296 Prosecutions

(1) Proceedings for an offence against a provision of this Act or of regulations or by-laws made under this Act may only be brought by—

(a) a police officer; or

S. 296(1)(a) substituted by No. 37/2014 s. 10(Sch. item 182.4).

S. 296(1)(ab) inserted by No. 24/2013 s. 37.

(ab) a person employed under Part 3 of the **Public Administration Act 2004** who is authorised by the Minister, by instrument, to do so either generally or in a particular case; or

(b) a person authorised to do so, either generally or in any particular case, by the Authority which has responsibility for the enforcement of the provision; or

S. 296(1)(ba) inserted by No. 90/2003 s. 7(1), substituted by No. 29/2007 s. 22, repealed by No. 17/2012 s. 58(1).

* * * * *

S. 296(1)(bb) inserted by No. 29/2007 s. 22.

(bb) in the case of an offence against section 170F or 291D, in relation to a permanent water saving plan of an Authority, an authorised water officer appointed by the Authority responsible for implementing the plan; or

S. 296(1)(bc) inserted by No. 29/2007 s. 22.

(bc) in the case of a by-law made by an Authority under section 171(1)(ba), an authorised water officer appointed by the Authority; or

(c) a prescribed person or a prescribed class of persons.

(2) In a proceeding for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceeding was authorised to bring it.

S. 296(3) inserted by No. 90/2003 s. 7(2), repealed by No. 17/2012 s. 58(2).

* * * * *

### 297 Offences by corporations and partnerships etc.

S. 297(1) substituted by No. 44/2001 s. 3(Sch. item 127.1).

(1) In this section, ***officer***—

(a) in relation to a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and

(b) in relation to a corporation that is not a corporation within the meaning of that Act, means any person (by whatever name called) who is concerned or takes part in the management of the corporation—

but does not include an employee of the corporation.

(2) If a corporation is guilty of an offence against this Act or against any regulation or by-law made under this Act, any officer of the corporation who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of that offence and liable to the penalty for that offence.

(3) If in a proceeding for an offence against this Act or against any regulation or by-law made under this Act it is necessary to establish the intention of a corporation, it is sufficient to show that a servant or agent of the corporation had that intention.

(4) A statement made by an officer of a corporation is admissible as evidence against the corporation in any proceeding against the corporation for an offence against this Act or against any regulation or by-law made under this Act.

(5) If this Act or a regulation or by-law made under this Act provides that a person is guilty of an offence, that reference to a person must—

(a) if the person is a partnership, be read as a reference to each member of the partnership; and

(b) if the person is an unincorporated association, be read as a reference to each member of the committee of management of the association.

### 298 Application of penalties

All penalties imposed on a person in a proceeding for an offence against this Act or against any regulation or by-law made under this Act must, when recovered, be paid to and applied to the purposes of the Authority by or on behalf of whom the proceeding was brought.

S. 299 amended by Nos 121/1994 s. 189(5)(a), 17/2012 s. 59(1).

### 299 Civil remedies not affected by bringing of proceeding

The bringing of a proceeding or the imposition of a penalty for, or the entering of a conviction in respect of, an offence under this Act or the regulations or by-laws made under this Act does not take away from the right of an Authority or any other person to recover from any person—

S. 299(a) amended by Nos 121/1994 s. 189(5)(b), 17/2012 s. 59(2).

(a) any sum for loss or damage suffered by the Authority or person due to the contravention, including the value of any water wrongfully taken, used or diverted; or

S. 299(b) amended by Nos 121/1994 s. 189(5)(b), 17/2012 s. 59(2).

(b) the costs and expenses incurred by the Authority or person in remedying that loss or damage.

S. 300 amended by No. 50/1992 s. 10(Sch. item 11.32(a)).

### 300 Proof of certain matters not required

(1) In any proceeding under this or any other Act or the regulations or by-laws made under this or any other Act until evidence is given to the contrary proof is not required as to any of the following—

(a) the constitution of an Authority;

(b) the due election or appointment of the members of an Authority;

(c) the appointment of any officer of an Authority;

(d) the appointment of an officer of an Authority to do an act or for a particular purpose;

(e) the size, location or boundaries of a district of an Authority or of an environmental or recreational area determined under Division 5 of Part 6A;

S. 300(1)(e) substituted by No. 17/2012 s. 60.

(f) the fact that a particular property is located within a particular district of an Authority;

(g) the authority of any person to bring or defend any proceeding on behalf of an Authority;

(h) the presence of a quorum at any meeting of an Authority;

(i) that a document purporting to be made or issued by an Authority was made or issued by that Authority;

(j) the setting of any tariff;

(k) the validity of the contents of any records or minutes of an Authority.

* * * * *

S. 300(2) inserted by No. 50/1992 s. 10(Sch. item 11.32(b)), repealed by No. 49/1994 s. 4(1)(l).

### 301 General evidentiary provisions

(1) If in any proceeding under this Act or the regulations or by-laws made under this Act the amount of water taken to, supplied to, delivered to, or used on, a property during any period is

S. 301(1) amended by No. 23/2019 s. 95(1).

relevant, evidence of the amount of water recorded by a water meter as having passed through the meter to the property during that period is, in the absence of evidence to the contrary, proof that that amount of water was delivered to that property during that period.

S. 301(2) substituted by No. 23/2019 s. 95(2).

(2) Subsection (3) applies if, in any proceeding under this Act or the regulations or by-laws under this Act in which the amount of water taken to, supplied to, delivered to, or used on, a property is relevant and—

(a) as a result of a water meter having malfunctioned or having been destroyed, damaged, altered or in any way interfered with, the Authority considers that the water meter did not accurately record the amount of water taken to, supplied to, delivered to, or used on the property; or

(b) there is no accurately working meter on the property.

S. 301(3) substituted by No. 23/2019 s. 95(2).

(3) In any proceeding described in subsection (2), evidence may be given of the amount of water estimated by the Authority in accordance with section 142A and any relevant regulations, to have been taken to, supplied to or delivered to, or used on the property, during the relevant period and, in the absence of evidence to the contrary, the evidence is proof that that amount of water was taken to, supplied to, delivered to, or used on that property during that period.

(4) A document purporting to contain a copy of any by-law, regulation, order or notice made or issued by an Authority (whether before or after the commencement of this subsection) and purporting to be signed by an authorised person is admissible in evidence in any proceeding under this Act or the regulations or by-laws made under this Act

and, in the absence of evidence to the contrary, is proof that a by-law, regulation, order or notice in the words written in that document was duly made or issued by the Authority.

(5) In any proceeding under this Act or the regulations or by-laws made under this Act the production of a copy of the Government Gazette purporting to contain a by-law, regulation, order or notice made or issued by an Authority (whether before or after the commencement of this subsection) is, in the absence of evidence to the contrary, proof that a by-law, regulation, order or notice in the words appearing in the Government Gazette was duly made or issued by the Authority.

(6) The provisions of subsection (5) are additional to and do not take away from the provisions of section 153 of the **Evidence Act 2008**.

**S. 301(6) amended by No. 69/2009 s. 54(Sch. Pt 1 item 62.2).**

(7) A document purporting—

(a) to be a map or plan made or issued by an Authority (whether before or after the commencement of this subsection); and

(b) to show the location of any land or works or other thing or the physical features of any area; and

(c) to be verified by an authorised person—

is admissible in evidence in any proceeding under this Act or the regulations or by-laws made under this Act and, in the absence of evidence to the contrary, is proof of the matters shown in the map or plan.

(8) In any proceeding under this Act or the regulations or by-laws made under this Act—

(a) evidence that a person is subject to a fee imposed under a tariff set under this Act in respect of any land; or

(b) evidence that a person's name appears in any records kept by an Authority as the owner or occupier of any land; or

(c) evidence by the certificate of the Registrar of Titles or any Deputy Registrar of Titles or Assistant Registrar of Titles and authenticated by the seal of the Office of Titles that a person's name appears in the Register kept under the **Transfer of Land Act 1958** as the proprietor of an estate in fee simple or of a leasehold estate held of the Crown in any land; or

(d) evidence by the certificate of the Registrar-General or any Deputy Registrar-General that a person appears from a memorial of registration of any deed, conveyance or other instrument to be the owner of any land—

is, in the absence of evidence to the contrary, proof that that person is the owner or occupier (as the case requires) of that land.

(9) In any proceeding for the recovery of a fee imposed under a tariff by an Authority, the entry in the rate records of a council or a copy of that entry verified by the statutory declaration of the person making it is admissible in evidence in the proceeding and, in the absence of evidence to the contrary, is proof of the ownership or occupation of the property rated by the person named in the entry or copy of the entry.

(10) In any proceeding under this Act or the regulations or by-laws made under this Act, the statement of any person that on a particular date he or she was an officer of a corporation is admissible in evidence and, in the absence of evidence to the contrary, is proof that on that date he or she was an officer of that corporation.

* * * * *

S. 301(11) inserted by No. 50/1992 s. 10(Sch. item 11.33), repealed by No. 49/1994 s. 4(1)(m).

### 302 Use of analyst's certificate in prosecutions

(1) If in respect of a proceeding for an offence against this Act or against any regulation or by-law made under this Act a copy of an analyst's certificate is obtained on behalf of the informant and served with the summons to answer to the charge, the analyst's certificate is admissible in evidence and, in the absence of evidence to the contrary, is proof of the matters stated in it and of the facts on which they are based unless the accused has at least 7 days before the contest mention date given written notice to the informant requiring the analyst to be called as a witness.

S. 302(1) amended by No. 68/2009 s. 97(Sch. item 133.2).

(2) Service of a copy of an analyst's certificate with a summons to answer to a charge may be proved in any manner in which service of the summons may be proved and the evidence of service must state that a copy of the certificate was served with the summons.

### 303 Authentication of documents

Despite anything to the contrary in any other Act, a document requiring authentication by an Authority may be sufficiently authenticated without the seal of the Authority if signed by the

secretary of the Authority or by any other person authorised in writing by the Authority either generally or particularly to authenticate that document.

S. 303A inserted by No. 17/2012 s. 61.

### 303A Issues of evidence and proof

S. 303A(1) amended by No. 24/2013 s. 38.

(1) Any instrument or monitoring, recording or other equipment or installation used by an officer of the Authority, an authorised water officer, an authorised person or an analyst in connection with any evidence given in a proceeding under this Act, the regulations or by-laws made under this Act relating to the discharge of anything into the works of an Authority or a sewerage system under the control and management of an Authority must be presumed, unless evidence to the contrary is presented, to be accurate and precise.

(2) Despite the rule against hearsay, the results of any analysis based on analytical techniques which by their nature infringe that rule are admissible in evidence in any proceeding referred to in subsection (1).

S. 303A(3) amended by No. 24/2013 s. 38.

(3) Each attribute of a sample taken under this Act, the regulations or by-laws made under this Act must, for the purpose of any proceeding referred to in subsection (1), be presumed, unless evidence to the contrary is presented, not to be materially affected by its method of storage or preservation.

(4) A finding by a court that an attribute of a sample referred to in subsection (3) was materially affected by its method of storage or preservation does not rebut the presumption created by that subsection in relation to the other attributes of the sample.

(5) If—

(a) a corporation has entered into a trade waste agreement with an Authority; and

(b) that corporation shares premises with a corporation that is a subsidiary of that corporation within the meaning of the Corporations Act; and

(c) there occurs on the premises an act or omission that is capable of constituting a contravention of the trade waste agreement—

the corporation that entered into the trade waste agreement must be presumed, for the purpose of any proceeding under this Act, the regulations or by-laws made under this Act relating to that contravention, to have caused that act or omission until the contrary is proved.

(6) For the purpose of any proceeding under this Act, the regulations or by-laws made under this Act, anything found in a sewer on a property or which exclusively services a property or in any drain or other works on a property connected to such a sewer, must be presumed, in the absence of evidence to the contrary, to have been discharged into that sewer, drain or other works by the occupier of that property.

### 304 Service of documents on an Authority

**S. 304(1) substituted by No. 85/2006 s. 122.**

(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.

(2) The provisions of this section are additional to and do not take away from the provisions of any rules of court concerning service of documents.

S. 305 amended by No. 25/1991 s. 5(1).

### 305 Service of documents by an Authority

(1) If by or under this Act a document is required or permitted to be served by an Authority on a person then, unless otherwise expressly provided by this Act, the document may be served—

(a) by delivering it personally to the person to be served; or

(b) by leaving it at that person's usual or last known place of residence with a person apparently over the age of 16 years and apparently residing there; or

(c) by sending it by post addressed to the person to be served at that person's usual or last known place of residence; or

(d) in the case of service on an owner of any land or premises whose name and address are not known to the Authority, by delivering it personally to the occupier of the land or premises concerned or leaving it at the land or premises with a person apparently over the age of 16 years and apparently residing there or, if there is no occupier, by putting it up on a conspicuous part of the land or premises; or

(e) in the case of service on an occupier of any land or premises whose name and address are not known to the Authority, by putting it up on a conspicuous part of the land or premises.

(2) A document that is to be served on the owner or occupier of any land or premises may be addressed by the description of "the owner" or "the occupier" of the land or premises concerned (naming it or them), without further name or description.

(3) An occupier of any land or premises to whom under subsection (1)(d) there is personally delivered a document that is intended to be served on the owner of that land or those premises must immediately send that document by registered post addressed to the owner at the owner's usual place of residence (if known to the occupier) or the owner's place of residence last known to the occupier.

Penalty: 10 penalty units.

**S. 305(4) amended by No. 44/2001 s. 3(Sch. item 127.2).**

(4) The provisions of this section are additional to and do not take away from the provisions of sections 109X and 601CX of the Corporations Act.

(5) If a document is properly served on the owner or occupier of any land or premises, that service is binding on every subsequent owner or occupier to the same extent as if it had been served on that subsequent owner or occupier.

* * * * *

**Pt 14A (Heading and ss 305AA–305HH) inserted by No. 35/2003 s. 3, amended by Nos 108/2004 s. 117(1) (Sch. 3 item 232.6), 80/2006 s. 26(Sch. item 116.2), 4/2008 s. 32(Sch. item 37.2), repealed by No. 23/2019 s. 112.**

# Part 15—General

## 305A Application to Tribunal for declaration

S. 305A inserted by No. 52/1998 s. 311(Sch. 1 item 105.49).

(1) A person may apply to the Tribunal for a declaration concerning any matter that could form the subject of an application for review to the Tribunal under this Act (other than an application for review under section 266(6)).

(2) On an application under subsection (1) the Tribunal may make any declaration it thinks appropriate in the circumstances.

(3) The Tribunal's power to make a declaration under this section is exercisable only by a presidential member of the Tribunal.

## 305B Matters Tribunal must take into account in review proceedings

S. 305B inserted by No. 52/1998 s. 311(Sch. 1 item 105.49), amended by No. 39/2018 s. 61(4) (as amended by No. 27/2019 s. 47).

In determining an application under this Act for review of a decision (other than an application for review under section 266(6)) the Victorian Civil and Administrative Tribunal must—

(a) take into account any relevant planning scheme; and

S. 305B(b) amended by No. 81/2004 s. 52.

(b) where appropriate, have regard to any planning scheme or amendment adopted by a planning authority under the **Planning and Environment Act 1987** but not, as at the date the application is determined, approved by the Minister or the planning authority; and

take account of any environment reference standard within the meaning of the **Environment Protection Act 2017** and any Order made by the Governor in Council under section 156 of the **Environment Protection Act 2017**.

S. 305C inserted by No. 48/2005 s. 15.

### 305C Incorporation of documents in certain orders or other instruments

(1) An order or other instrument made under a section specified in subsection (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 the order or other instrument; or

S. 305C(1)(b) amended by No. 85/2006 s. 123(1)(a).

(b) as formulated, issued, prescribed or published at the time the order or other instrument is made or at any time before then.

S. 305C(1)(c) repealed by No. 85/2006 s. 123(1)(b).

* * * * *

(2) Subsection (1) applies in respect of the following sections—

(a) section 3(2);

(b) section 4;

S. 305C(2)(ba) inserted by No. 85/2006 s. 123(2).

(ba) section 6A;

S. 305C(2)(c) repealed by No. 85/2006 s. 123(3).

* * * * *

(d) section 22A;

(e) section 27;

(f) section 28;

(g) section 32A;

(h) section 32E;

(ha) section 33AAA;

S. 305C(2)(ha) inserted by No. 85/2006 s. 123(4).

(i) section 35;

S. 305C(2)(i) repealed by No. 85/2006 s. 123(5), new s. 305C(2)(i) inserted by No. 32/2010 s. 67(a).

(j) section 44;

S. 305C(2)(j) repealed by No. 85/2006 s. 123(5), new s. 305C(2)(j) inserted by No. 32/2010 s. 67(a).

(k) section 48B;

S. 305C(2)(k) repealed by No. 85/2006 s. 123(5), new s. 305C(2)(k) inserted by No. 32/2010 s. 67(a).

(l) section 48K;

S. 305C(2)(l) repealed by No. 85/2006 s. 123(5), new s. 305C(2)(l) inserted by No. 32/2010 s. 67(a).

(m) section 122GAA;

S. 305C(2)(m) repealed by No. 85/2006 s. 123(5), new s. 305C(2)(m) inserted by No. 17/2012 s. 62.

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S. 305C(2)(n) repealed by No. 32/2010 s. 67(b).

S. 305C(2)(na) inserted by No. 85/2006 s. 123(6).

(na) section 122H;

S. 305C(2)(nb) inserted by No. 85/2006 s. 123(6).

(nb) section 122I;

S. 305C(2)(nc) inserted by No. 85/2006 s. 123(6).

(nc) section 122J;

S. 305C(2)(nd) inserted by No. 85/2006 s. 123(6).

(nd) section 122K;

S. 305C(2)(ne) inserted by No. 85/2006 s. 123(6).

(ne) section 122T;

S. 305C(2)(nf) inserted by No. 85/2006 s. 123(6).

(nf) section 122U;

S. 305C(2)(ng) inserted by No. 85/2006 s. 123(6).

(ng) section 122Y;

S. 305C(2)(nh) inserted by No. 85/2006 s. 123(6).

(nh) section 122Z;

S. 305C(2)(ni) inserted by No. 85/2006 s. 123(6).

(ni) section 122ZA;

(nj) section 122ZK;

S. 305C(2)(nj) inserted by No. 85/2006 s. 123(6).

(o) section 131;

(p) section 160;

(q) section 188;

(qa) section 188A(3);

S. 305C(2)(qa) inserted by No. 85/2006 s. 123(7).

(r) section 201;

S. 305C(2)(r) amended by No. 32/2010 s. 67(c).

(s) section 203;

(t) section 205;

(u) section 214;

(v) section 215;

(w) section 216;

(x) section 218.

### 305D Validation of certain orders or other instruments

S. 305D inserted by No. 48/2005 s. 15.

An order or other instrument made or purported to be made under section 3(2), 4, 13, 27, 28, 32A, 32E, 64A, 64B, 96(11), 97, 98, 104, 106, 107, 131, 160, 188, 202, 203, 205, 214, 215, 216 or 218 on or after 1 July 1984 and in force, or purportedly in force, immediately before the commencement of Part 5 of the **Environment and Water Legislation (Miscellaneous Amendments) Act 2005** that would have been validly made if section 305C had been in operation at the time the relevant order or other instrument was made or purported to be made has, and is deemed always to have had, the same force and effect as it would have had—

(a) if section 305C 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.

S. 306 amended by No. 12/1996 s. 8(8)(a).

### 306 Power of Minister to delegate

S. 306(1) amended by No. 32/2010 s. 68(a).

(1) The Minister may delegate, by instrument, to any person or class of persons any power, discretion, function, authority or duty of the Minister under this or any other Act or under any subordinate instrument made under this Act, other than—

S. 306(1)(a) amended by No. 12/1996 s. 8(8)(b).

(a) subject to subsection (2), this power of delegation; and

S. 306(1)(b) amended by Nos 62/1995 s. 23(5), 110/1997 s. 25(5), 5/2002 s. 52(a)–(c), 99/2005 s. 66, 85/2006 s. 124, 28/2007 s. 3(Sch. item 75.5), 32/2010 s. 68(b), 23/2019 s. 96(1).

(b) the Minister's powers under sections 4, 22A, 27 to 32A, 32E to 32G, 33AAB(1), 33AD, 47DA, 48MA, 62A, 232, 232B, 283(3B), 287AH(2)(b) and 307.

S. 306(2) inserted by No. 12/1996 s. 8(9).

(2) If any power, discretion, function, authority or duty of the Minister as an Authority to which Division 4 of Part 10 applies is delegated under this section, the Minister may also delegate to the delegate the power of delegation conferred by this

section in relation to the power, discretion, function, authority or duty so delegated.

(3) A delegate to whom a power of delegation is delegated under this section may, subject to the terms of the instrument of delegation, sub-delegate, by instrument, to any person or class of persons any power, discretion, function, authority or duty delegated to the delegate under this section, other than the power of sub-delegation.

S. 306(3) inserted by No. 12/1996 s. 8(9).

(4) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply in relation to a sub-delegation in the same manner as they apply in relation to a delegation.

S. 306(4) inserted by No. 12/1996 s. 8(9).

(5) To avoid doubt, if the Minister delegates a power, discretion, function, authority or duty under section 232A, 287A, 287AG or 287AH(1) or (2)(a) to an Authority, the Minister may give directions in writing to the Authority in relation to the exercise or performance of the power, discretion, function, authority or duty.

S. 306(5) inserted by No. 23/2019 s. 96(2).

### 307 Power of Minister to give directions

(1) The Minister, after consulting with the Treasurer, may give a written direction to an Authority in relation to the performance of any of its functions or the exercise of any of its powers.

S. 307(1) amended by Nos 62/1995 s. 17, 85/2006 s. 125(1), substituted by No. 32/2010 s. 69.

(1AA) Without limiting subsection (1), a direction may be given in relation to—

S. 307(1AA) inserted by No. 32/2010 s. 69.

(a) compliance with the specifications of or the conditions in a bulk entitlement; or

(b) compliance with—

(i) any conditions in; or

(ii) any duties imposed by the Minister on imposing—

a qualification on the holder of a bulk entitlement under Division 4 of Part 3.

S. 307(1A) inserted by No. 85/2006 s. 125(2).

(1A) An Authority to which a direction has been given under subsection (1) must comply with the direction.

(2) The Minister must give an Authority 14 days' notice of his or her intention to give a direction under subsection (1).

(3) If the Minister gives a direction to an Authority, the Minister must make sure that notice of the giving of the direction, and a statement or summary of the contents of the direction, is published in the Government Gazette.

(4) An Authority to which the Minister gives a direction must make sure that a statement or summary of the contents of the direction is included in the annual report of the Authority.

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

S. 307A inserted by No. 85/2006 s. 126.

### 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 subsection (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 subsection (1), the Authority becomes entitled to the payment of the amount so determined.

(4) A reference in subsection (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.

(5) A determination under subsection (1) must be made in writing.

**308 Power of Minister to exempt**

The Minister may by Order published in the Government Gazette exempt—

(a) any person or class of persons; or

(b) any works or class of works—

**S. 308(b) amended by No. 5/2002 s. 53(a).**

* * * * *

**S. 308(c) repealed by No. 5/2002 s. 53(b).**

from any of the provisions of Parts 3, 4 or 5, either unconditionally or on specified conditions or in specified circumstances.

S. 309 (Heading) inserted by No. 32/2010 s. 77(Sch.).

### 309 Powers of the Minister in enforcing certain Parts of this Act

S. 309(1) amended by No. 99/2005 s. 67, substituted by No. 23/2019 s. 97.

(1) For the purposes of Parts 3A, 4, 4B and 5, the Minister—

(a) has the powers given by section 133 to an officer of an Authority; and

(b) may authorise a person in writing to exercise the powers given by section 133.

(2) Section 134 applies to the Minister in the exercise of those powers as if he or she were an officer of an Authority.

(3) For the purposes of ensuring that Parts 4 and 5 are complied with, the Minister has the powers given by section 151 to an Authority.

(4) This Act applies to a notice of contravention issued by the Minister as if it were issued by an Authority under section 151.

### 310 Establishment of Drillers' Licensing Board

(1) There is established a Board called the Drillers' Licensing Board.

(2) The Board consists of 3 members appointed by the Minister, of whom—

S. 310(2)(a) amended by No. 76/1998 s. 29(f).

(a) one is nominated by the Department Head; and

S. 310(2)(b) substituted by No. 62/1995 s. 39, amended by No. 76/1998 s. 29(f).

(b) one is a person with specialist knowledge in areas relevant to the functions of the Board nominated by the Department Head; and

(c) one is appointed from a panel of 3 names submitted by the Victorian Branch of the Australian Drilling Industry Association.

(3) The person appointed under subsection (2)(a) is the chairperson of the Board.

(4) If the body referred to in subsection (2)(c) fails to submit a panel of 3 names on or before the date specified by the Minister when requesting a panel, the Minister may appoint as a member of the Board another person as representing well-drillers.

**311 Application for licence**

(1) A person may apply to the Drillers' Licensing Board in writing for a driller's licence.

(2) An application must be accompanied by the prescribed fee.

**312 Board may grant licence**

(1) Subject to the regulations, the Drillers' Licensing Board may grant a driller's licence to an applicant entitling the applicant to use the method of drilling or bore construction endorsed on the licence.

(2) The Board must advise each applicant in writing of the outcome of the application and, if the application has been refused, must give the applicant the reasons for the refusal.

**313 Licences may be revoked or suspended**

(1) If in the opinion of the Drillers' Licensing Board the licensee has—

(a) contravened any provision of Part 5 or the regulations made for the purposes of that Part; or

(b) used a method of drilling or bore construction not endorsed on the licence; or

**S. 313(1)(b) amended by No. 5/2002 s. 54(a).**

S. 313(1)(c) inserted by No. 5/2002 s. 54(b).

(c) contravened a condition of a licence issued under section 67—

the Board may, by written notice served on the licensee, revoke the driller's licence or suspend it for the period specified in the notice.

(2) A notice served under subsection (1) must specify the reasons for the revocation or suspension.

### 314 Register of licences

The Drillers' Licensing Board must keep a register of licences granted under section 312 and must record in the register any revocation or suspension of those licences.

S. 315 amended by No. 62/1995 s. 40.

### 315 Term of licence

Unless sooner revoked, a driller's licence remains in force for 10 years and, subject to the regulations, may be renewed from time to time on application to the Drillers' Licensing Board and on payment of the prescribed fee.

### 316 Requirement that licensed driller carry out work

(1) If it is a condition of a licence issued under section 67 that all or any part of the work authorised by the licence must be carried out by, or under the direction of, a licensed driller, a person must not carry out that work unless he or she is—

(a) a licensed driller; or

(b) an employee or agent of a licensed driller and the work is carried out under the direct supervision of a licensed driller.

Penalty: 20 penalty units.

(2) If it is a condition of a licence issued under section 67 that all or any part of the work authorised by the licence must be carried out using a specified method of drilling or bore construction, then subsection (1) applies as if the references to a licensed driller were references to a licensed driller whose licence is endorsed so as to entitle him or her to use the specified method of drilling or bore construction.

S. 316(3) inserted by No. 5/2002 s. 55.

(3) If it is a condition of a licence issued under section 67 that all or any part of the work authorised by the licence must be carried out by, or under the direction of, a licensed driller, the licensed driller must ensure that the work, or that part of the work, carried out by, or under the direction of, the licensed driller complies with the conditions of the licence.

Penalty: 20 penalty units.

**317 Appeals**

(1) Any person who is aggrieved by the refusal of the Drillers' Licensing Board to grant him or her a driller's licence or to endorse the licence with respect to a particular method of drilling or bore construction or by any revocation or suspension of his or her licence or by any endorsement on his or her licence may within 30 days after the refusal, revocation or suspension appeal to the Minister.

(2) The Minister must hear and determine the appeal and his or her decision is final and must be given effect to by the Board.

(3) The Minister may in writing designate any person (other than an officer or employee of the public service or of any public statutory body) to—

(a) hear the whole or any part of an appeal under this section; and

(b) report to him or her on that hearing; and

(c) make any recommendation on the appeal.

(4) A hearing by a person designated by the Minister under subsection (3) is for the purposes of this section to be taken to be a hearing by the Minister but in every case the final determination of the matter must be made by the Minister himself or herself.

### 318 Advisory committees established by Minister

(1) The Minister may establish advisory committees to advise the Minister on any matter referred by the Minister.

(2) The Minister may at any time remove from office a member of a committee.

S. 318(3) substituted by No. 62/1995 s. 44(3), amended by No. 46/1998 s. 7(Sch. 1), substituted by Nos 108/2004 s. 117(1) (Sch. 3 item 232.7), 80/2006 s. 26(Sch. item 116.3).

(3) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of a committee in respect of the office of member.

(4) Subject to this Act and any rules made under subsection (5), a committee may regulate its own procedure.

(5) The Minister may make rules, with which committees must comply, about—

(a) their quorums; and

(b) voting powers of their members; and

(c) their proceedings.

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

### 319 Department Head

(1) If an Authority requests the Department Head to carry out an investigation into any aspect of water services or resources or related areas, the Department Head may carry out the investigation at the Authority's cost.

S. 319(1) amended by No. 76/1998 s. 29(g).

(2) The Department Head may delegate, by instrument, to any person or class of persons any power, discretion, function, authority or duty of the Department Head under this or any other Act, other than this power of delegation.

S. 319(2) amended by No. 76/1998 s. 29(g).

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S. 320 repealed by No. 17/2012 s. 63.

### 321 Officers appointed or transferred to Authorities

(1) In this section, a reference to an appointment includes a reference to a transfer as a result of an Order under section 98(1) as in force before the commencement of section 54 of the **Water (Governance) Act 2006**.

S. 321(1) amended by Nos 50/1992 s. 10(Sch. item 11.34), 17/2012 s. 64.

(2) A person appointed as an officer of an Authority who, immediately before that appointment, was—

(a) an officer within the meaning of the **State Superannuation Act 1988** or any corresponding previous enactment; or

(b) a permanent employee within the meaning of the **State Employees Retirement Benefits Act 1979**—

may, subject to those Acts, elect in writing, within 6 months after commencing duties as an officer of the Authority, to continue to be an officer or permanent employee for the purposes of the appropriate Act for the period of his or her appointment.

(3) A person appointed as an officer of an Authority (other than a person referred to in subsection (2)) who, immediately before that appointment, was a member of or contributor to a scheme of superannuation may, subject to the rules governing that scheme, elect in writing, within 6 months after commencing duties as an officer of the Authority, to continue as a member of or contributor to that scheme for the period of his or her appointment.

(4) A person referred to in subsection (2) or (3) who has not, 6 months after commencing duties as an officer of the Authority, made an election under subsection (2) or (3) must, on and after the end of that period, be taken to be an employee within the meaning of the **Local Authorities Superannuation Act 1988** and, despite anything to the contrary in that Act, must be taken to have become such an employee as from the end of that period.

(5) A person appointed as an officer of an Authority who makes an election under subsection (2) or (3) must be taken not to be an employee within the meaning of the **Local Authorities Superannuation Act 1988**.

(6) Until an officer referred to in subsection (2) or (3) makes an election under those subsections, or 6 months after the date on which he or she commences duties as an officer of the Authority (whichever is earlier) the officer must—

(a) in the case of an officer referred to in subsection (2), be taken to continue to be an officer within the meaning of the **State Superannuation Act 1988** or any corresponding previous enactment, or a permanent employee within the meaning of

the **State Employees Retirement Benefits Act 1979**, as the case requires; and

(b) in the case of an officer referred to in subsection (3), continue as a member of or contributor to the scheme of superannuation.

### 322 Guidelines as to terms and conditions of employment

(1) This section applies to—

(a) officers of an Authority other than a Catchment Management Authority; and

S. 322(1)(a) amended by No. 85/2006 s. 127.

(b) officers or employees of a council that is an Authority who are employed solely, mainly or partly to perform duties for or in connection with the exercise by the council of any powers, functions or duties conferred on it by or under this Act; and

(ba) officers or employees of a Catchment Management Authority that is an Authority who are employed solely, mainly or partly to perform duties for or in connection with the exercise by the Catchment Management Authority of any powers, functions or duties conferred on it by or under this Act; and

S. 322(1)(ba) inserted by No. 25/2001 s. 12(1)(a).

(c) officers or employees of a council or Catchment Management Authority who carried out duties for or on behalf of an abolished Authority immediately before its abolition—

S. 322(1)(c) amended by No. 25/2001 s. 12(1)(b).

if the Minister has made an Order under section 98(1) in respect of that Authority.

(2) The Minister may determine guidelines as to—

(a) the salaries, wages or other remuneration of people to whom this section applies; and

(b) the terms and conditions of service or employment of people to whom this section applies; and

(c) the payments to be made, or benefits to be provided, to people to whom this section applies who are dismissed from their employment because of redundancy.

(3) Any guidelines determined by the Minister under subsection (2) may be determined so as to apply—

(a) generally or in specified cases or in a specified class of case or specified classes of cases; and

(b) to all people to whom this section applies or to specified people or people included in a specified class of people; and

(c) at all times or at a specified time or specified times.

S. 322(4) substituted by No. 25/2001 s. 12(2).

(4) Before determining any guidelines under subsection (2), the Minister must consult any persons that appear to the Minister to represent the interests of Authorities, councils and Catchment Management Authorities and people employed by them respectively.

S. 322(4A) inserted by No. 25/2001 s. 12(2).

(4A) Before determining any guidelines under subsection (2) with respect to any officer or employee referred to in subsection (1)(c), the Minister must consult with—

S. 322(4A)(a) amended by No. 9/2020 s. 390(Sch. 1 item 111.3).

(a) in the case of an officer or employee of a council, the Minister administering the **Local Government Act 2020**; and

(b) in the case of an officer or employee of a Catchment Management Authority, the Minister administering the **Catchment and Land Protection Act 1994**.

(5) The Minister must serve a copy of all guidelines determined under subsection (2) on every Authority and—

S. 322(5) substituted by No. 25/2001 s. 12(3).

(a) if the guidelines relate to an officer or employee of a council referred to in subsection (1)(c), the council; or

(b) if the guidelines relate to an officer or employee of a Catchment Management Authority referred to in subsection (1)(c), the Catchment Management Authority.

(6) The Minister may at any time amend guidelines determined under subsection (2), and must serve a copy of every amendment on every Authority and—

S. 322(6) substituted by No. 25/2001 s. 12(3).

(a) if the guidelines relate to an officer or employee of a council referred to in subsection (1)(c), the council; or

(b) if the guidelines relate to an officer or employee of a Catchment Management Authority referred to in subsection (1)(c), the Catchment Management Authority.

(7) Despite anything in this or any other Act to the contrary, every Authority and every council and Catchment Management Authority in respect of which an Order under section 98(1) is made and which has an officer or employee referred to in subsection (1)(c) must comply with any guidelines determined by the Minister under subsection (2), as amended from time to time under subsection (6), and those guidelines are in all respects binding on the Authority, the council or the Catchment Management Authority (as the case requires) and on all other persons affected by them.

S. 322(7) amended by No. 25/2001 s. 12(4)(a)(b).

### 323 Saving of rights of public servants appointed to Authorities

S. 323(1) amended by Nos 42/1995 s. 224(Sch. 2 item 48), 62/1995 s. 44(4)(a)(b), substituted by No. 46/1998 s. 7(Sch. 1).

(1) If a person ceases to be an officer of an Authority and that person—

(a) was immediately before his or her appointment as an officer of the Authority an employee in the public service; and

(b) has continuously been an officer of the Authority since he or she ceased to be an employee in the public service—

the person is entitled to be employed in the public service with a classification and emolument corresponding with or higher than those which he or she last held or received in the public service immediately before his or her appointment as an officer of an Authority as if the period of service as an officer of an Authority had been service in the public service and, for the purpose of long service leave, that person must be taken to have been an employee in the public service during the period of his or her service as an officer of an Authority.

S. 323(1A) inserted by No. 50/1992 s. 10(Sch. item 11.35).

(1A) In subsection (1) a reference to an appointment includes a reference to a transfer as a result of an Order made under section 98(1) or by virtue of clause 20(2)(e) of Schedule 3.

S. 323(2) amended by No. 25/2001 s. 13.

(2) Subsection (1) applies, with any necessary modifications, with respect to an officer or employee of a council or Catchment Management Authority that is an Authority who is employed solely, mainly or partly to perform duties for or in connection with the exercise by the council or Catchment Management Authority of any powers, functions or duties conferred on it by or under this Act in the same manner as it applies to an officer of an Authority.

### 323A Supreme Court—limitation of jurisdiction

S. 323A inserted by No. 22/1999 s. 5.

It is the intention of section 222(1C) to alter or vary section 85 of the **Constitution Act 1975**.

### 324 Regulations

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

(a) prescribing standards for houseboats (expressed in terms of performance, types of material, methods of construction or otherwise) in relation to— S. 324(1)(a) amended by No. 39/1996 s. 11(3)(a).

(i) sewerage and water supply; and

(ii) services, installations and ancillary equipment, including those for the provision of water supply services, for sanitary purposes and for sewerage; and S. 324(1)(a)(ii) amended by No. 39/1996 s. 11(3)(b).

(ab) prescribing fees that may differ according to the class or nature of the application, licence, permit, registration, variation, renewal, transfer or assignment; and S. 324(1)(ab) inserted by No. 99/2005 s. 68(1), amended by Nos 32/2010 s. 70(1), 23/2019 s. 98(1)(a).

(ac) prescribing the form and manner in which the water register is to be established and maintained, including, but not limited to, the establishment, maintenance and alteration of the system of the water register; and S. 324(1)(ac) inserted by No. 99/2005 s. 68(1).

(ad) prescribing fees for— S. 324(1)(ad) inserted by No. 99/2005 s. 68(1).

(i) making recordings in the part of the water register for which the Registrar or the Minister is responsible; or

(ii) searching for or obtaining information or records in the part of the water register for which the Registrar or the Minister is responsible; or

(iii) any other matters related to the water register in relation to water shares; or

(iv) any other matters in relation to the water register, including, but not limited to, services provided by the Registrar or the Minister as a recording body under Part 5A; and

S. 324(1)(ae) inserted by No. 99/2005 s. 68(1).

(ae) prescribing, in respect of the water register—

(i) persons or classes of person who may search for or obtain information or records in the water register; and

(ii) information or records or classes of information or records which may be searched or obtained by those persons; and

(iii) information or records or classes of information or records which are not available to the public; and

S. 324(1)(af) inserted by No. 99/2005 s. 68(1).

(af) regulating places at which water may be taken and times and rates at which water may be taken; and

S. 324(1)(ag) inserted by No. 99/2005 s. 68(1).

(ag) prescribing matters, in addition to those set out in section 33G, that the Minister must determine when issuing a water share; and

S. 324(1)(b) substituted by No. 17/2012 s. 65(1), amended by No. 23/2019 s. 98(1)(b).

(b) the management, protection and use of all lands, waterways and works under the management and control of an Authority; and

S. 324(1)(c) inserted by No. 17/2012 s. 65(1), substituted by No. 23/2019 s. 98(1)(c).

(c) the control, management and use of environmental areas and recreational areas under the control and management of an Authority, 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; and

(ii) the protection of the land, services and facilities; and

(iii) the protection of people in the area from injury or nuisance; and

(iv) setting aside areas in which activities may be permitted, restricted or prohibited; and

(v) the conservation and preservation of flora, fauna and habitat in the area; and

(vi) the control of the introduction of any new flora or fauna to the area; and

(vii) the control of the numbers of any flora or fauna in the area; and

**S. 324(1)(ca) inserted by No. 23/2019 s. 98(1)(c).**

(ca) the granting of leases or licences for environmental areas and recreational areas, and in particular as to the following matters—

(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

**S. 324(1)(cb) inserted by No. 23/2019 s. 98(1)(c).**

(cb) the charging of fees for leases or licences over environmental areas and recreational areas; and

S. 324(1)(cc) inserted by No. 23/2019 s. 98(1)(c).

(cc) the powers of the Authority in relation to the removal of any unregistered or abandoned motor vehicle from an environmental area or a recreational area and its subsequent sale, including provisions about—

(i) notice of removal; and

(ii) surrender of the motor vehicle to its owner or an agent of the owner; and

(iii) sale of the motor vehicle; and

(iv) the circumstances in which clear title to the motor vehicle passes on sale; and

(v) disposal of the proceeds of sale; and

(vi) protection of the Authority from liability in relation to payments of the proceeds of sale; and

(vii) any other necessary or convenient matter; and

S. 324(1)(d) inserted by No. 17/2012 s. 65(1).

(d) sanitary drainage plans held by a water corporation, including—

(i) the lodging of plans of sanitary drains as they appear after they have been installed or altered; and

(ii) specifying the details that the plans must contain; and

(iii) the providing of the copies of the plans; and

S. 324(1)(e) inserted by No. 17/2012 s. 65(1).

(e) prescribing standards for any saline or other matter (whether in liquid form or not) that may be discharged—

(i) into works under the control of a water corporation; or

(ii) into any waterway; or

(iii) onto any place from which it may enter into—

(A) any works under the control of a water corporation; or

(B) any waterway; or

(C) any aquifer; or

(D) any bore; and

(f) prescribing ways of measuring the supply, delivery, taking or using of water by meter or other measuring device, including ways of calculating water use by reading a meter after the ending of a billing period; and

S. 324(1)(f) inserted by No. 17/2012 s. 65(1), amended by No. 23/2019 s. 98(2)(a).

(g) prescribing ways of determining the quantity of water supplied or delivered to land, used on land or taken to land, other than by a meter or other measuring device; and

S. 324(1)(g) inserted by No. 17/2012 s. 65(1), amended by No. 23/2019 s. 98(2)(b).

(h) prohibiting any act which would cause wastage of water; and

S. 324(1)(h) inserted by No. 17/2012 s. 65(1).

(i) regulating or prohibiting any activity—

(i) that is carried out within 40 metres of works or waterways forming part of the water supply system of a water corporation; and

(ii) that may affect the system; and

S. 324(1)(i) inserted by No. 17/2012 s. 65(1).

(j) prohibiting people who are not entitled to water supply from using water from the works of a water corporation; and

S. 324(1)(j) inserted by No. 17/2012 s. 65(1).

(k) regulating or prohibiting the access to or use of land and works under the management and control of a water corporation; and

S. 324(1)(k) inserted by No. 17/2012 s. 65(1).

S. 324(1)(l) inserted by No. 17/2012 s. 65(1).

(l) regulating the use of water for fire-fighting purposes; and

S. 324(1)(m) inserted by No. 17/2012 s. 65(1).

(m) regulating or prohibiting the discharge of any trade waste into the sewers of a water corporation; and

S. 324(1)(n) inserted by No. 17/2012 s. 65(1).

(n) prescribing the terms and conditions to be included in agreements for the receipt and disposal of trade waste by a water corporation, including the grounds on which a water corporation may disconnect the service; and

S. 324(1)(o) inserted by No. 17/2012 s. 65(1).

(o) prescribing any waste as trade waste for the purposes of this Act; and

S. 324(1)(p) inserted by No. 17/2012 s. 65(1).

(p) prescribing the information to be provided to a water corporation by any person whose trade waste the water corporation agrees to receive; and

S. 324(1)(q) inserted by No. 17/2012 s. 65(1).

(q) the resolution of disputes under or in connection with a trade waste agreement or a proposed trade waste agreement; and

S. 324(1)(r) inserted by No. 17/2012 s. 65(1).

(r) regulating works or apparatus that are part of any private works; and

S. 324(1)(s) inserted by No. 17/2012 s. 65(1).

(s) requiring—

(i) the regular maintenance and cleaning of those works or apparatus; and

(ii) the payment of a fee for any maintenance or cleaning of those works or apparatus that is carried out by or on behalf of a water corporation; and

(t) prohibiting septic tank discharge within an area in respect of which a water corporation has functions without the consent of the water corporation; and

S. 324(1)(t) inserted by No. 17/2012 s. 65(1).

(ta) prescribing conditions to which levee maintenance permits are subject; and

S. 324(1)(ta) inserted by No. 53/2014 s. 7.

(u) imposing penalties for contraventions of the regulations; and

S. 324(1)(u) inserted by No. 17/2012 s. 65(1).

(ua) prescribing offences to be water infringement offences, including that a water infringement offence applies or does not apply—

S. 324(1)(ua) inserted by No. 23/2019 s. 98(3).

(i) at times, on days, in circumstances or at places specified in the regulations; and

(ii) to a person or to a class of person specified in the regulations; and

(ub) prescribing infringement penalties for water infringement offences, including prescribing different infringement penalties for water infringement offences consisting of different conduct, facts things or circumstances; and

S. 324(1)(ub) inserted by No. 23/2019 s. 98(3).

(v) any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

S. 324(1)(v) inserted by No. 17/2012 s. 65(1).

(1A) Regulations fixing fees under subsection (1)(ad), Part 3A or Part 4B may provide for the waiver, in whole or in part of the fees.

S. 324(1A) inserted by No. 99/2005 s. 68(2), substituted by No. 32/2010 s. 70(2).

S. 324(1B) inserted by No. 32/2010 s. 70(2).

(1B) A power conferred under this Act to make regulations fixing fees may be exercised by fixing one fee for two or more matters in respect of which fees are required to be paid under this Act.

(2) A power conferred by this Act to make regulations may be exercised—

(a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and

(b) so as to make, as respects the cases in relation to which the power is exercised—

(i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or

(ii) any such provision either unconditionally or subject to any specified condition.

(3) Regulations made under this Act may be made—

(a) so as to apply—

(i) at all times or at a specified time; or

(ii) throughout the whole of the State or in a specified part of the State; or

(iii) as specified in both subparagraphs (i) and (ii); and

(b) so as to require a matter affected by the regulations to be—

(i) in accordance with a specified standard or specified requirement; or

(ii) approved by or to the satisfaction of a specified person or a specified class of persons; or

(iii) as specified in both subparagraphs (i) and (ii); and

(c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person whether—

(i) wholly or partially or as amended by the regulations; or

(ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time; and

(d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and

(e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and

**S. 324(3)(f) substituted by No. 23/2019 s. 98(4).**

(f) so as to impose a penalty for a contravention of the regulations not exceeding 20 penalty units, for an individual, or 100 penalty units, for a body corporate; and

**S. 324(3)(g) inserted by No. 23/2019 s. 98(4).**

(g) so as to impose an infringement penalty for a contravention of the regulations not exceeding 12 penalty units, for an individual, or 60 penalty units, for a body corporate.

(4) If under subsection (3)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, the document, code, standard, rule, specification or method is for the purpose of the regulation to be taken to have not been so amended until notice of the amendment is published in the Government Gazette.

S. 324(4A) inserted by No. 17/2012 s. 65(2).

(4A) If a regulation made under this Act is inconsistent with a by-law made by an Authority, the regulation prevails to the extent of the inconsistency.

S. 324(5) amended by No. 78/2010 s. 24(Sch. 1 item 36.1).

(5) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of Parliament.

S. 324(6) repealed by No. 78/2010 s. 24(Sch. 1 item 36.2).

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S. 324A inserted by No. 85/2006 s. 128, repealed by No. 17/2012 s. 8(1).

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S. 325 repealed by No. 32/2010 s. 71(1).

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S. 325A inserted by No. 85/2006 s. 129(1).

### 325A Effect of Schedule 15

Schedule 15 has effect.

## 326 Savings and transitionals

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S. 326(1)(2) repealed by No. 32/2010 s. 72(1).

(3) The amendments of section 47 made by section 3(1) and (2) of the **Water Acts (Amendment) Act 1999** apply only with respect to applications made under section 47 after the commencement of section 3 of that Act.

S. 326(3) inserted by No. 22/1999 s. 3(7).

(4) The amendments of section 47B made by section 3(3), (4) and (5) of the **Water Acts (Amendment) Act 1999** apply only with respect to requests made under section 47B(1) after the commencement of section 3 of that Act.

S. 326(4) inserted by No. 22/1999 s. 3(7).

(5) The amendments of this Act made by section 3(6) of the **Water Acts (Amendment) Act 1999** apply with respect to applications under section 44 or 47 or requests under section 47B(1), whether made before or after the commencement of section 3 of that Act.

S. 326(5) inserted by No. 22/1999 s. 3(7).

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Ss 327, 328 repealed by No. 62/1995 s. 44(5).

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S. 329 repealed by No. 17/2012 s. 66.[55]

## 330 Transitional provisions for removal of power to set fees under tariffs

S. 330 inserted by No. 65/1999 s. 5.

(1) Subject to this section, any notice by a Catchment Management Authority declaring any land to be a serviced property for the purposes of this Act ceases to have effect on the commencement of the **Water (Waterway Management Tariffs) Act 1999**.

(2) The commencement of the **Water (Waterway Management Tariffs) Act 1999** does not affect any right a Catchment Management Authority had before that commencement to set a tariff and impose a fee under Division 5 of Part 13 for any period before 1 July 1999, and the Authority may continue to collect any unpaid fee under a tariff which has been imposed in respect of a property before that commencement for any such period.

(3) If a Catchment Management Authority has, before the commencement of the **Water (Waterway Management Tariffs) Act 1999**, set a tariff and imposed a fee under Division 5 of Part 13 for the period beginning on 1 July 1999 and ending on 30 June 2000, then—

(a) if that fee or any part of that fee has been paid to the Authority, the Authority must repay the amount so paid to the person who paid it; and

(b) if that fee or any part of that fee has not been paid to the Authority, the Authority is not entitled to collect it.

(4) Any amount required to be repaid to a person under subsection (3)(a) is a debt due to the person by the Authority and may be recovered in a court of competent jurisdiction.

(5) In this section ***Catchment Management Authority*** has the same meaning as in section 260A.

**S. 330A inserted by No. 85/2006 s. 129(2), repealed by No. 23/2019 s. 113.**

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Ss 330B, 330C inserted by No. 17/2012 s. 67, repealed by No. 23/2019 s. 113.

### 331 Transitional provisions—Water (Irrigation Farm Dams) Act 2002

S. 331 inserted by No. 5/2002 s. 56 (as amended by No. 6/2002 s. 4(4)).

(1) A groundwater supply protection area declared by Order under section 27(1) that is in force immediately before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002** is deemed, on and from that commencement, to be a water supply protection area for the protection of the groundwater resources in the area concerned and may be abolished, or its boundaries amended, in accordance with Division 3 of Part 3 accordingly.

(2) A management plan approved by the Minister under section 30(4) that is in force immediately before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002** is deemed, on and from that commencement, to be an approved management plan for groundwater resources for the relevant water supply protection area and may be amended or revoked in accordance with Division 3 of Part 3 accordingly.

(3) A notice of an application for the declaration of an area to be a groundwater supply protection area—

(a) that was published under section 27(3)(b)(i) as in force at any time before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**; and

(b) in relation to which an Order declaring the area to be a groundwater supply protection area had not been made before that commencement—

is deemed, on that commencement, to be a notice published under section 27(4)(a)(i).

(4) A notice to amend the boundaries of, or abolish, a groundwater supply protection area—

(a) that was published in accordance with section 28(2) as in force at any time before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**; and

(b) in relation to which an Order amending the boundaries of, or abolishing, the groundwater supply protection area (as the case requires) had not been made before that commencement—

is deemed, on that commencement, to be a notice published under section 28(2) (as substituted by section 10 of the **Water (Irrigation Farm Dams) Act 2002**).

(5) A consultative committee appointed under section 29(1), as in force before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**, and existing immediately before that commencement is deemed, on that commencement, to be a consultative committee appointed under section 29(1) (as substituted by section 10 of the **Water (Irrigation Farm Dams) Act 2002**).

(6) A draft management plan that—

(a) had been prepared under Division 3 of Part 3 at any time before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**; and

(b) had not been approved by the Minister under section 30(5) before that commencement—

is deemed, on that commencement, to be a draft management plan prepared under Division 3 of Part 3 (as substituted by section 10 of the **Water (Irrigation Farm Dams) Act 2002**).

(7) An Authority that immediately before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002** had the duty of administering and enforcing an approved management plan under section 30 as in force immediately before that commencement must—

(a) prepare a report in respect of its activities in carrying out its duties for the period beginning on that commencement and ending on 30 June next; and

(b) give a copy of that report to the Minister and any relevant Catchment Management Authority in accordance with section 32C(2); and

(c) release and make available the report in accordance with section 32D.

(8) A person who—

(a) at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using water from a spring or soak or water from a dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; and

(b) before 1 July 2003 applies for a licence under section 51(1)(ba) in relation to the spring or soak or dam—

is not liable to pay an application fee in respect of the application.

(9) A licence issued under section 67 to abandon any works, private dam or a bore that is in force immediately before the commencement of section 35 of the **Water (Irrigation Farm Dams) Act 2002** is, on and from that commencement, deemed to be a licence to decommission those works, or that private dam or bore.

Ss 332, 333 inserted by No. 85/2006 s. 130, repealed by No. 23/2019 s. 114.

* * * * *

S. 334 inserted by No. 32/2010 s. 73.

### 334 Certificate as to land taken over by another body

(1) If a body—

(a) has taken over land under an Order under section 98 (as in force before the commencement of section 54 of the **Water (Governance) Act 2006**); or

(b) is the successor in law of a body that has so taken over land—

the chief executive officer (however described) of the body may apply to the Registrar of Titles to have the Register amended.

(2) An application under subsection (1) must be accompanied by—

(a) a certificate, signed by the chief executive officer, certifying that the land specified in the certificate is land that has been taken over by that body under any such Order with

effect from the coming into operation of the Order; and

(b) any relevant certificate of title.

(3) On receiving a certificate under subsection (2) and any relevant certificate of title, the Registrar of Titles must make any amendments in the Register that are necessary because of the operation of the Order specified in the certificate.

Pt 16 (Headings and ss 335–346) inserted by No. 23/2019 s. 99.

# Part 16—Transitional, validation and other provisions—Water and Catchment Legislation Amendment Act 2019

## Division 1—Serviced property, transitional and validation provisions

S. 335 inserted by No. 23/2019 s. 99.

### 335 Definitions

In this Division—

***amending Act*** means the **Water and Catchment Legislation Amendment Act 2019**;

***serviced property commencement*** means the day on which section 5(2) of the amending Act comes into operation.

S. 336 inserted by No. 23/2019 s. 99.

### 336 Serviced property immediately before the serviced property commencement

On the serviced property commencement—

(a) any property that was, immediately before that commencement, serviced property because of paragraph (c), (d), (e), (f), (g) or (h) of the definition of ***serviced property*** in section 3(1) (as in force immediately before that commencement) is taken to be serviced property as if it had been declared to be serviced property under section 144(1); and

(b) any property that was, immediately before that commencement, deemed to be serviced property within the meaning of section 220(1) because of clause 12 of Schedule 15, is taken to be serviced property as if it had been declared to be serviced property under section 144(1)(c)(i).

### 337 Certain land taken to be serviced property

S. 337 inserted by No. 23/2019 s. 99.

(1) Within 12 months of the serviced property commencement—

(a) an Authority may—

(i) identify land as serviced property for the purposes of Part 8, 9, 10 or 11; and

(ii) lodge a plan in the Central Plan Office under this section showing the identified land; and

(b) as soon as practicable after the plan is lodged in the Central Plan Office under subsection (1), the Authority must publish notice of the plan in the Government Gazette.

(2) Any land identified in the plan notified in the Government Gazette under subsection (1)(b)—

(a) as serviced property for the purposes of Part 8 is taken to be land declared to be serviced property by the Authority under section 144(1)(a); or

(b) as serviced property for the purposes of Part 9 is taken to be land declared to be serviced property by the Authority under section 144(1)(b); or

(c) as serviced property for the purposes of—

(i) water delivery services to the land under Part 11 is taken to be land declared to be serviced property by the Authority under section 144(1)(c)(i); or

(ii) irrigation drainage or salinity mitigation services under Part 11 in relation to the land or that directly benefit the land, is taken to be serviced property by the

Authority under section 144(1)(c)(ii); or

(d) as serviced property for the purposes of Part 10 is taken to be land declared to be serviced property by the Authority under section 144(1)(d).

(3) For the purposes of this section, land may be identified as serviced property in a plan lodged under subsection (1) by an Authority if—

(a) for Part 8, the land—

(i) is within the water supply district of the Authority; and

(ii) the Authority has made provision for water supply services to the land; and

(iii) the Authority identifies the land on the plan lodged under this section as land to which the services have been provided; and

(iv) the Authority has imposed or purported to impose fees under a tariff under section 259 for the provision of those services to that land for 2 years or more before the serviced property commencement; or

(b) for Part 9, the land—

(i) is within the sewerage district of the Authority; and

(ii) the Authority has made provision for sewerage services to the land; and

(iii) the Authority identifies the land on a plan prepared under this section as land to which the services have been provided; and

(iv) the Authority has imposed or purported to impose fees under a tariff under section 259 for the provision of those services to that land for 2 years or more before the serviced property commencement; or

(c) for Part 11, the land—

(i) is within the irrigation district of the Authority; and

(ii) the Authority has made provision for—

(A) water delivery services to the land; or

(B) irrigation drainage or salinity mitigation services in relation to the land or that directly benefit the land; and

(iii) the Authority identifies the land on a plan prepared under this section as land for which the Authority has made provision for those services; and

(iv) the Authority has imposed or purported to impose fees under a tariff under section 259 for the provision of those services to that land for 2 years or more before the serviced property commencement; or

(d) for Part 10, the land—

(i) is within the waterway management district of the Authority; and

(ii) the Authority has made provision for regional drainage or floodplain management services that are of direct benefit to the land; and

(iii) the Authority identifies the land on a plan prepared under this section as land for which the Authority has made provision for those services; and

(iv) the Authority has imposed or purported to impose fees under a tariff under section 259 for the provision of those services to that land for 2 years or more before the serviced property commencement.

S. 338 inserted by No. 23/2019 s. 99.

### 338 Certain properties taken to have been serviced properties for the purposes of fees for services under Parts 8, 9, 10 and 11

This Act is taken to have applied to any fee to which section 337(3)(a)(iv), (b)(iv), (c)(iv) or (d)(iv) applies as if, at the time at which the fee was imposed or purported to be imposed and for the period to which the fee was related or purported to be related, the property was serviced property.

## Division 2—Validation of charges in relation to salinity mitigation

S. 339 inserted by No. 23/2019 s. 99.

### 339 Meaning of validation date

In this Division—

***validation date*** means 19 March 2019.

S. 340 inserted by No. 23/2019 s. 99.

### 340 Validation provision in respect of section 287A

(1) Subject to section 342—

(a) a requirement to make a payment or a number of payments, or a purported requirement to make a payment or a number of payments, under section 287A(1) as in force at any time before the validation date is to be taken to be, and always to have been, a

valid requirement, despite a failure by any person to comply with that section; and

(b) any payment collected or received, or purportedly collected or received, under or for the purposes of section 287A(1) as in force at any time before the validation date is to be taken to be, and always to have been, validly collected or received, despite a failure by any person to comply with that section; and

(c) any action, matter or thing taken, arising or done as a result or consequence of, or in reliance upon, such a requirement, collection or receipt or purported requirement, collection or receipt, whether under this Act or otherwise, is taken to be, and to always have been, valid and effective.

(2) Without limiting subsection (1), that subsection applies with respect to the following—

(a) a failure to consider either of the following matters in making a decision under or for the purposes of section 287A(1) as in force at any time before the validation date—

(i) a change in use (however described) as specified in section 287A(1)(a) as in force at any time before the validation date;

(ii) whether particular works or measures carried out, or to be carried out, offset the impact of change in use on the environment;

(b) a failure to comply with section 287A as in force at any time before the validation date in respect of one or more of the following matters—

(i) the nature or location of particular works or measures carried out, or to be carried out, including but not limited to whether the particular works or measures are capital works or measures, or relate to operation and maintenance;

(ii) the person or body that carried out, or is to carry out, particular works or measures;

(iii) the giving of, or failure to give, notices;

(iv) the matters specified, or not specified, in notices;

(c) a failure to comply with section 287A as in force at any time before the validation date in respect of the property to which a requirement to make a particular payment or a number of particular payments purported to relate, including but not limited to the following—

(i) that the person imposing the requirement did so on the basis that the person was satisfied that particular environmental impacts were a result of a change in use in respect of that property and other properties, rather than a change in use in respect of that property only;

(ii) otherwise in relation to the ownership or location of the property;

(d) compliance, or lack of compliance, with a policy direction issued by the Minister.

(3) To avoid doubt, a reference in this section to particular works or measures to be carried out includes a reference to particular works or

measures to be carried out after the commencement of this section.

### 341 Validation provision in respect of section 64R

S. 341 inserted by No. 23/2019 s. 99.

(1) Subject to section 342—

(a) a fee relating to salinity mitigation or offsetting that is fixed, or purportedly fixed, under section 64R as in force at any time before the validation date is to be taken to be, and always to have been, validly fixed, despite a failure by any person to comply with that section; and

(b) a fee relating to salinity mitigation or offsetting that is collected or received, or purportedly collected or received, under or for the purposes of section 64R as in force at any time before the validation date is to be taken to be, and always to have been, validly collected or received, despite a failure by any person to comply with that section; and

(c) any action, matter or thing taken, arising or done as a result or consequence of, or in reliance upon, such a fixing, collection or receipt or purported fixing, collection or receipt, whether under this Act or otherwise, is taken to be, and to always have been, valid and effective.

(2) Without limiting subsection (1), that subsection applies with respect to a failure to provide services of a particular kind or to a particular person.

### 342 Proceedings on foot not affected

S. 342 inserted by No. 23/2019 s. 99.

(1) Despite section 340 and 341, nothing in those sections is to be taken to affect the outcome of proceedings that had commenced in a court or tribunal before the validation date, but were not completed as at that date.

(2) For the purposes of subsection (1), proceedings are ***completed*** when any period for appeal or review in relation to matters arising in the proceedings has expired.

## Division 3—Salinity impact charge determinations

S. 343 inserted by No. 23/2019 s. 99.

### 343 Regulatory impact statement not required for first salinity impact determination

(1) Section 12E of the **Subordinate Legislation Act 1994** does not apply to—

(a) the first determination made under section 232 immediately after the commencement of that section and any amendment of that determination; and

(b) the first determination made under section 232B immediately after the commencement of that section and any amendment of that determination.

(2) A determination referred to in subsection (1) expires 12 months from the day on which it is published in the Government Gazette.

## Division 4—General

S. 344 inserted by No. 23/2019 s. 99.

### 344 Transitional provision—Sustainable Water Strategies—Water and Catchment Legislation Amendment Act 2019

(1) Subject to subsection (2), on and from the commencement day Division 1B of Part 3 as amended by the **Water and Catchment Legislation Amendment Act 2019** applies in relation to an uncompleted Sustainable Water Strategy, to that part of the process that has not been completed.

(2) On and from the commencement day the following provisions as in force immediately before the commencement day apply to an uncompleted Sustainable Water Strategy—

(a) section 22D(2);

(b) section 22E(b).

(3) In this section—

***commencement day*** means the day on which section 9 of the **Water and Catchment Legislation Amendment Act 2019** comes into operation;

***uncompleted Sustainable Water Strategy*** means a draft of a Sustainable Water Strategy that is being prepared under Division 1B of Part 3 but that has not been endorsed as a Sustainable Water Strategy under section 22G(1) before the commencement day.

### 345 Savings provision—Infringement notices—Water and Catchment Legislation Amendment Act 2019

**S. 345 inserted by No. 23/2019 s. 99.**

(1) An infringement notice issued under section 295A of the old Act that is outstanding immediately before the commencement day is taken not to be affected by that commencement and the old Act continues to apply to that infringement notice as if section 94 of the **Water and Catchment Legislation Amendment Act 2019** had not come into operation.

(2) In this section—

***commencement day*** means the day on which section 94 of the **Water and Catchment Legislation Amendment Act 2019** comes into operation;

***old Act*** means this Act as in force immediately before the commencement day.

S. 346 inserted by No. 23/2019 s. 99.

### 346 Savings provision—Water (Estimation, Supply and Sewerage) Regulations 2014—Water and Catchment Legislation Amendment Act 2019

On the commencement of section 56 of the **Water and Catchment Legislation Amendment Act 2019**, regulation 9 of the Water (Estimation, Supply and Sewerage) Regulations 2014 is taken to continue in force as if that regulation were made under section 142A(2)(b) of this Act (as in force on and from that commencement) and may be amended or revoked accordingly.

# Part 17—Transitional provisions—Water and Catchment Legislation Amendment Act 2021

Pt 17 (Headings and ss 347–369) inserted by No. 48/2021 s. 108.

## Division 1—Definitions

### 347 Definitions

S. 347 inserted by No. 48/2021 s. 108.

In this Part—

***old standing direction*** means a standing direction (within the meaning of this Act as in force before the commencement of section 9 of the 2021 Act) that was in force immediately before that commencement;

***2021 Act*** means the **Water and Catchment Legislation Amendment Act 2021**.

## Division 2—Transitional provisions for Part 2 of the 2021 Act

### 348 Certain property taken to be serviced property

S. 348 inserted by No. 48/2021 s. 108.

Any land that was, immediately before 19 March 2020, serviced property or taken to be serviced property under the operation of a provision of this Act, as in force immediately before that date, is taken to be and to have been on and from that date serviced property as if it had been declared to be serviced property under section 144(1).

### 349 Standing direction taken to be standing assignment

S. 349 inserted by No. 48/2021 s. 108.

On and from the commencement of section 9 of the 2021 Act—

(a) an old standing direction is taken to be a standing assignment; and

(b) any reference to an old standing direction in any legislative instrument, agreement or

other document is taken to be a reference to a standing assignment.

S. 350 inserted by No. 48/2021 s. 108.

### 350 Transitional provision for old zones in water systems

On the commencement of section 6 of the 2021 Act, any area in a declared water system that was, immediately before that commencement, declared as a zone in that system under rules made under section 33AZ, 47E, 48P or 64AZ is taken to be declared as a water system zone for that water system under section 6B.

S. 351 inserted by No. 48/2021 s. 108.

### 351 Transitional provision for interstate rights

(1) An equivalent interstate right that is the equivalent of a water share and that was the subject of an approval under this Act immediately before the commencement of section 16 of the 2021 Act, on and from that commencement is taken to be approved under section 33AG as amended by the 2021 Act.

(2) An equivalent interstate right that is the equivalent of a water allocation and that was the subject of an approval under this Act immediately before the commencement of section 16 of the 2021 Act, on and from that commencement is taken to be approved under section 33AG as amended by the 2021 Act.

## Division 3—Transitional provisions for Part 4AA

### Subdivision 1—Definition

S. 352 inserted by No. 48/2021 s. 108.

### 352 Definition

In this Division—

***commencement day*** means the day on which section 32 of the 2021 Act comes into operation.

## Subdivision 2—Transitional provisions for holders of water-use licences and water-use registrations

### 353 Transition to general place of take approval for licence and registration holders

S. 353 inserted by No. 48/2021 s. 108.

On the commencement day, a person who, immediately before the commencement day, was the holder of a water-use licence or water-use registration is taken to be the holder of a general place of take approval for the place at which the water can be taken for use on the land specified in the licence or registration.

### 354 Transition of notional rationing rates for general place of take approvals under section 353

S. 354 inserted by No. 48/2021 s. 108.

(1) On the commencement day, subsection (2) applies to a person, who is taken to hold a general place of take approval under section 353 for a place that is not in an irrigation district.

(2) The person is taken to have a notional rationing rate fixed to the approval that is the same as the rate under the extraction share condition—

(a) that was fixed to the licence under section 67 for the works through which water could be taken for use on the land specified in the water-use licence or water-use registration; and

(b) that applied immediately before the commencement day.

(3) On the commencement day, the extraction share condition referred to in subsection (2) is taken to be removed from the licence.

### 355 Transition to particular place of take approval

S. 355 inserted by No. 48/2021 s. 108.

On the commencement day, a person who is taken to hold a general place of take approval under

section 353, is taken to hold a particular place of take approval for the approved place for—

(a) any relevant water allocations to be taken under any water share held by the person, being a water share—

(i) that is associated with the land specified in the water-use licence or water-use registration; or

(ii) under which, before the commencement day, relevant water allocations taken from the approved place were approved under section 64K(4) to be used on land; and

(b) any relevant water allocations to be taken under any limited term transfer or standing assignment held by that person, under which before the commencement day, relevant water allocations taken from the approved place were approved under section 64K(4) to be used on land; and

(c) any assigned relevant water allocation held by that person, under which before the commencement day, water taken from the approved place was approved under section 64K(4) to be used on land.

## Subdivision 3—Transitional provisions for persons who do not hold water-use licences or water-use registrations

S. 356 inserted by No. 48/2021 s. 108.

### 356 Transition to general place of take approval for persons who do not hold water-use licences or water-use registrations

(1) On the commencement day, a person who, immediately before the commencement day, was the holder of a water share that is associated with land specified in a water-use licence or water-use

registration not held by that person, is taken to hold a general place of take approval for the place at which water can be taken for use on the land specified in the licence or registration.

(2) On the commencement day subsection (3) applies to a person who, immediately before the commencement day—

(a) had approval under section 64K(4) to use relevant water allocations on land specified in a water-use licence or water-use registration not held by the person; and

(b) was authorised to take the water to be used on that land under relevant water allocations under a water share, a limited term transfer or an assignment of water allocations, including a further or standing assignment.

(3) The person who had the approval under section 64K(4) is taken to hold a general place of take approval for the place at which water can be taken under the relevant water allocations.

**357 Notional rationing rate for general place of take approvals under section 356**

**S. 357 inserted by No. 48/2021 s. 108.**

On the commencement day, a person, who is taken to hold a general place of take approval under section 356(1) or (3) for a place that is not in an irrigation district, is taken to have a notional rationing rate fixed to the approval of zero.

**358 Transition to particular place of take approval**

**S. 358 inserted by No. 48/2021 s. 108.**

On the commencement day, a person who is taken to hold a general place of take approval under section 356 is taken to hold a particular place of take approval, for the approved place for the general place of take approval, for—

(a) any relevant water allocations authorised to be taken under any water share held by that person, being a water share—

(i) that is associated with the land specified in the water-use licence or water-use registration; or

(ii) under which before the commencement day, relevant water allocations taken from the approved place were approved under section 64K(4) to be used on land; and

(b) any relevant water allocations to be taken under any limited term transfer or standing assignment held by that person, under which before the commencement day, relevant water allocations taken from the approved place were approved under section 64K(4) to be used on land; and

(c) any assigned relevant water allocation held by that person, under which before the commencement day, water taken from the approved place was approved under section 64K(4) to be used on land.

Pt 17 Div. 3 Subdiv. 3A (Heading and s. 358A) inserted by No. 10/2023 s. 20.

## Subdivision 3A—Transitional provision for external place of take approvals

S. 358A inserted by No. 10/2023 s. 20.

### 358A Transition to external place of take approval for certain approvals under section 33AI

(1) On the commencement day, a person who, immediately before the commencement day, was the holder of a transitioning section 33AI approval, is taken to hold an external place of take approval.

(2) For the purposes of subsection (1), the external place of take approval is taken to be—

(a) an approval to take water from the same place as that to which the transitioning section 33AI approval applied; and

(b) subject to the same terms and conditions (if any) as those that applied to the transitioning section 33AI approval.

(3) In this section—

***transitioning section 33AI approval*** means an approval under section 33AI, as in force before the commencement day, to take water from a place—

(a) that is outside Victoria; or

(b) that is not in a declared water system.

## Subdivision 4—Transitional provisions for Authorities and the Water Holder

### 359 Transition to general place of take approval for Authorities or the Water Holder

**S. 359 inserted by No. 48/2021 s. 108.**

(1) On the commencement day, subsection (2) applies to an Authority or the Water Holder in respect of any relevant water allocations held by the Authority or the Water Holder immediately before the commencement day.

(2) The holder of the relevant water allocations is taken to be the holder of a general place of take approval for the place at which the water was taken under the relevant water allocations before the commencement day.

S. 360 inserted by No. 48/2021 s. 108.

### 360 Notional rationing rate for general place of take approvals under section 359

(1) On the commencement day, subsection (2) applies to an Authority or the Water Holder if that person is taken to hold a general place of take approval under section 359(2) for a place—

(a) that is subject to a licence under section 67; and

(b) that is not in an irrigation district.

(2) The Authority or Water Holder is taken to have a notional rationing rate fixed to the approval that is the same as the rate under the extraction share condition—

(a) that was fixed to the licence under section 67 for the works through which water was taken; and

(b) that applied immediately before the commencement day.

(3) On the commencement day, if an Authority or the Water Holder is taken to hold a general place of take approval under section 359(2), the notional rationing rate fixed to the approval is zero if the approved place—

(a) is not subject to a licence under section 67; and

(b) is not in an irrigation district.

S. 361 inserted by No. 48/2021 s. 108.

### 361 Transition to particular place of take approval

On the commencement day, if an Authority or the Water Holder is taken to hold a general place of take approval under section 359(2), the Authority or Water Holder is taken to be the holder of a particular place of take approval, for the approved place for the general place of take approval, for any relevant water allocations held by the

Authority or Water Holder under which water was taken from the approved place before the commencement day.

## Subdivision 5—General provisions

### 362 Notional rationing rate where there is more than one general place of take approval for one place

S. 362 inserted by No. 48/2021 s. 108.

If the effect of this Division is that there is taken to be more than one general place of take approval for a place at which water is taken, the Minister may make rules under section 367 to specify how the notional rationing rate will be apportioned between the general place of take approvals.

### 363 Determining place of take

S. 363 inserted by No. 48/2021 s. 108.

For the purpose of this Division, a place from which water was taken before the commencement day is taken to be one of the following, where the case so requires—

(a) the location of the meter which measured the water taken for use on the land specified in the water-use licence or the water-use registration;

(b) the place at which estimates were made of the water taken for use on the land specified in the water-use licence or the water-use registration;

(c) for an Authority or the Water Holder, the place at which the water taken was measured or estimated.

S. 364 inserted by No. 48/2021 s. 108.

### 364 Applications under section 33AQ

An application under section 33AQ, as in force immediately before the commencement day, for a determination under section 33AL as so in force, that is on foot immediately before the commencement day, is taken to be an application—

(a) for a general place of take approval to take water at the place specified in the application; and

(b) for a particular place of take approval to take water under the relevant water allocation or class of relevant water allocation to which the application applies at the place specified in the application.

S. 365 inserted by No. 48/2021 s. 108.

### 365 Applications under section 64K

An application under section 64K(4), as in force immediately before the commencement day, for an approval under section 64K(1) or (1A), that is on foot immediately before the commencement day, is taken to be an application—

(a) for a general place of take approval to take water at the place specified in the application; and

(b) for a particular place of take approval to take water under the relevant water allocation or class of relevant water allocation to which the application applies at the place specified in the application.

S. 366 inserted by No. 48/2021 s. 108.

### 366 Regulatory impact statement not required for first rules made under section 64FZP

(1) Section 12E of the **Subordinate Legislation Act 1994** does not apply to any Order made under section 64FZP that comes into effect on the commencement day.

(2) An Order referred to in subsection (1) expires 12 months from the day on which notice of its making is published in the Government Gazette.

S. 366(3) inserted by No. 10/2023 s. 21.

(3) If an exemption certificate is issued by the Minister under section 12F of the **Subordinate Legislation Act 1994** in respect of an Order made under section 64FZP that comes into effect on the commencement day, subsections (1) and (2) do not apply to that Order.

### 367 Conversion rules

S. 367 inserted by No. 48/2021 s. 108.

(1) Before the commencement day, the Minister may make a determination setting out the rules for the determination, application or implementation of rights and approvals to which this Division applies, including any terms and conditions of those rights or approvals.

(2) A determination under subsection (1) may provide for—

(a) any procedures that an Authority or the Minister is required to carry out to identify, verify, apportion and calculate information relating to—

(i) rights and approvals to which this Division applies and any terms and conditions of those rights and approvals; and

(ii) any matters that are to be determined under this Division; and

(b) any submission procedures and dispute resolution procedures an Authority, the Minister or the Registrar is required to undertake for the purposes of performing functions under paragraph (a); and

(c) any other matters that are required or permitted to be set out by this Division.

(3) A determination under subsection (1)—

(a) comes into operation on the day specified in the determination; and

(b) expires 4 months after the commencement day.

(4) A determination under subsection (1) must be in writing and notice of the making of the determination and of the day on which it comes into operation must be published in the Government Gazette.

S. 368 inserted by No. 48/2021 s. 108.

### 368 Minor or technical alterations

(1) The Minister may make any minor or technical alterations to approvals a person is taken to hold under this Part or to licences under section 67 that are necessary to give effect to Part 4AA.

(2) This section is **repealed** on the first anniversary of the commencement day.

## Division 4—Transitional provisions for Part 5 of the 2021 Act

S. 369 inserted by No. 48/2021 s. 108.

### 369 Effect of change of name of City West Water Corporation

(1) Greater Western Water Corporation is the same body as the body that was, immediately before the commencement of section 63 of the 2021 Act, named City West Water Corporation and, despite the change of name made by that section—

(a) no right, liability, act, matter or thing is affected because of that change of name; and

(b) to avoid doubt, Greater Western Water Corporation is a metropolitan water corporation.

(2) On and from the commencement of section 63 of the 2021 Act, a reference in any Act, subordinate instrument or other document to City West Water Corporation is taken to be a reference to Greater Western Water Corporation, unless the contrary intention appears.

Pt 18 (Heading and ss 370–374) inserted by No. 52/2021 s. 104.

# Part 18—Amendments consequential to the repeal of Part 1B of the Water Industry Act 1994

S. 370 inserted by No. 52/2021 s. 104.

## 370 Commencement of Part

This Part comes into operation on 1 July 2024.

S. 371 inserted by No. 52/2021 s. 104.

## 371 Objections to tariffs or fees

Section 266(8) and (9) is **repealed**.

S. 372 inserted by No. 52/2021 s. 104.

## 372 Objections to required payments

Section 271(5) and (6) is **repealed**.

S. 373 inserted by No. 52/2021 s. 104.

## 373 Objections following repeals

(1) Despite the repeal of section 266(8) and (9), those subsections continue to apply, on and after that repeal, in relation to a tariff, or a fee imposed under a tariff, that was set before 1 July 2024.

(2) Despite the repeal of section 271(5) and (6), those subsections continue to apply, on and after that repeal, in relation to a notice referred to in section 271(1) that was given in relation to a tariff, or a fee imposed under a tariff, that was set before 1 July 2024.

S. 374 inserted by No. 52/2021 s. 104.

## 374 Repeal of Part

This Part is **repealed** on 1 July 2025.

# Schedules

## Schedule 1—Water Corporations and Former Water Authorities

Sch. 1 amended by Nos 12/1992 ss 6(a)(b), 7(1)(2), 62/1995 s. 44(6), 65/1995 s. 21, 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 232.8), 80/2006 s. 26(Sch. item 116.4), substituted by No. 85/2006 s. 131, amended by Nos 17/2012 s. 8(3), 48/2021 s. 62.

**Table**

| *Item* | *Column 1*<br>*Water Corporations* | *Column 2*<br>*Former Water Authorities* |
|---|---|---|
| 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 |
| | * * | * * * |
| 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 |
| 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 |

| *Item* | *Column 1*<br>*Water Corporations* | *Column 2*<br>*Former Water Authorities* |
|---|---|---|
| 15. | Wannon Region Water Corporation | Wannon Region Water Authority |
| | * * | * * * |
| 17. | Westernport Region Water Corporation | Westernport Region Water Authority |

# Schedule 1A—Metropolitan water corporations—Old licensees under the Water Industry Act 1994

Sch. 1A inserted by No. 17/2012 s. 68, amended by No. 48/2021 s. 63.

**Table**

| | *Column 1* | *Column 2* |
|---|---|---|
| *Item* | *Water Corporations* | *Old licensees under **Water Industry Act 1994*** |
| 1 | Greater Western Water Corporation | City West Water Ltd. A.C.N. 066 902 467 |
| 2 | South East Water Corporation | South East Water Ltd. A.C.N. 066 902 547 |
| 3 | Yarra Valley Water Corporation | Yarra Valley Water Ltd. A.C.N. 066 902 501 |

Sch. 2 amended by Nos 121/1994 s. 192(2)(3), 62/1995 s. 43, substituted by No. 85/2006 s. 132.

# 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;

***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 subclause (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).

### 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.

# Schedule 3—Particular powers of Melbourne Water Corporation

Sch. 3 substituted by No. 50/1992 s. 4, amended by No. 49/1994 ss 4(1)(n)–(p), 10(c)(i)(ii), repealed by No. 65/1995 s. 16(8), new Sch. 3 inserted by No. 39/1998 s. 13(Sch. 3), substituted by No. 85/2006 s. 133.

## 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 subsection (1) applies is Melbourne Water Corporation, subject to any regulations for the purposes of section 37(1)(c) of that Act.

| | | | | | |
|---|---|---|---|---|---|
| **Sch. 4 repealed by No. 110/1997 s. 16(2), new Sch. 4 inserted by No. 50/2010 s. 31, repealed by No. 23/2019 s. 115.** | * | * | * | * | * |
| **Sch. 5 repealed by No. 54/1992 s. 56(h).** | * | * | * | * | * |
| **Sch. 6 amended by Nos 22/1999 s. 6, 99/2005 s. 69, 85/2006 s. 134, repealed by No. 17/2012 s. 8(4).** | * | * | * | * | * |
| **Sch. 7 amended No. 76/1998 s. 29(h), repealed by No. 85/2006 s. 135.** | * | * | * | * | * |

| | | | | | |
|---|---|---|---|---|---|
| * | * | * | * | * | **Sch. 8 amended by S.G. (No. 26) 16.5.91 p. 2, Nos 130/1993 s. 122(Sch. 4 item 17.3), 110/1994 s. 41(Sch. 1 item 11.4), repealed by No. 110/1997 s. 16(5), new Sch. 8 inserted by No. 48/2003 s. 10, repealed by No. 85/2006 s. 135.** |
| * | * | * | * | * | **Sch. 9 repealed by No. 54/1992 s. 56(i).** |
| * | * | * | * | * | **Sch. 10 amended by S.G. (No. 27) 31.3.95 pp 1, 2, repealed by No. 110/1997 s. 16(6).** |
| * | * | * | * | * | **Sch. 11 repealed by No. 85/2006 s. 136.** |
| * | * | * | * | * | **Sch. 12 amended by No. 13/1990 s. 46(a)(b), repealed by No. 85/2006 s. 136.** |

Sch. 12A inserted by No. 99/2005 s. 70.

# Schedule 12A—Recording mortgages of water shares

## 1 Recording of mortgages

(1) If the owner of a water share mortgages it, a person may lodge with the Registrar a document for the recording of the mortgage to be made in the water register in respect of that share.

Sch. 12A cl. 1(2) substituted by No. 85/2006 s. 137.

(2) The owner of a water share must not mortgage an undivided portion of the water share.

Sch. 12A cl. 1(2A) inserted by No. 85/2006 s. 137.

(2A) The holder of a limited term transfer of a water share must not mortgage the limited term transfer of the water share.

(3) A document lodged for the recording in the water register of a mortgage under subclause (1) must be in the approved form.

(4) When the Registrar records a mortgage in the water register under this clause, that mortgage—

(a) has effect as a security;

(b) does not operate as a transfer of the water share to which it applies.

Note to Sch. 12A cl. 1 inserted by No. 24/2013 s. 39.

**Note**

Sections 33W and 33X apply to mortgages recorded under this clause.

## 2 Variation of recorded mortgage of water share

(1) The parties to a recorded mortgage of a water share may agree, in writing, to vary—

(a) the terms of the mortgage; or

(b) the principal sum or interest secured by the mortgage.

(2) If the water share is subject to any subsequent recorded mortgage of a water share, the agreement in writing to the variation referred to in subclause (1) must be obtained from that subsequent mortgagee.

(3) If a recorded mortgage of a water share is varied under this clause, the mortgagee may lodge with the Registrar a document for the recording of the variation to be made in the water register.

(4) A document for the recording of a variation under subclause (3) must be in the approved form.

(5) When the Registrar records a variation of a recorded mortgage of a water share under this clause in the water register, that mortgage has effect as varied from the time the document for the recording of the variation is lodged with the Registrar.

**3 Variation of priority of recorded mortgages**

(1) The priority between or amongst themselves of the recorded mortgages of a water share may be varied from time to time, if each of those mortgages affects that water share only.

(2) A variation under subclause (1) must—

(a) be in the approved form; and

(b) set out in the order in which the recorded mortgages of a water share affecting the water share concerned are to rank in priority; and

(c) subject to this Act, be executed by the holder of each mortgage to be postponed to a mortgage over which it previously had priority.

(3) On the recording of a variation referred to in subclause (1), the recorded mortgages of a water share—

(a) have priority between or amongst themselves in the order set out in the approved form of variation; and

(b) are deemed to have been recorded in that order.

**4 Transfer of recorded mortgage**

(1) If a mortgagee of a water share transfers it to another person, the person transferring the mortgage may lodge with the Registrar a document for the recording of the transfer of the mortgage to be made in the water register in respect of that share.

(2) A transfer of mortgage lodged under subclause (1) must be in the approved form.

**5 Procedure in case of default in payment of money secured or covenant**

(1) If—

(a) default is made in the payment of the principal sum or the interest secured by a recorded mortgage of a water share or in the performance of any express or implied covenant in that mortgage; and

(b) that default continues for one month or any other period expressly fixed in the instrument of mortgage—

the mortgagee may serve notice in writing to pay the money owing or perform and observe the covenant (as the case requires) on—

(c) the mortgagor; and

(d) any other person who has a recorded mortgage of that water share; and

(e) any person who is recorded in the water register as having a limited term transfer.

(2) If money secured by a recorded mortgage of a water share is made payable on demand, a demand in writing under the mortgage is, for the purposes of this Act, equivalent to serving a notice under subclause (1).

**6 Power of sale under a recorded mortgage**

(1) The mortgagee of a recorded mortgage of a water share, in good faith and having regard to the interests of the mortgagor or other persons specified in clause 5(1)(d) and (e), may sell the water share that is subject to the mortgage if the mortgagor or those other persons do not comply with that notice or demand—

(a) within one month after the service of a notice or demand under clause 5; or

(b) any other period fixed in the instrument of mortgage.

(2) A mortgagee who exercises a power of sale under this clause may, in accordance with this Act—

(a) sell the water share subject to any terms and conditions that the mortgagee thinks fit; and

(b) make and sign any transfers; and

(c) do any acts or things necessary for effectuating a sale.

(3) In the case of a mortgage to which clause 26 of Schedule 15 applies, where the mortgage is over one or more persons' undivided portion in a share—

(a) the mortgagee can exercise a power of sale under this clause in relation to that part of the share; and

(b) the exercise of that power of sale does not divide the water share.

**7 Notifying the Registrar**

(1) Subject to this Schedule, if a mortgagee of a recorded mortgage of a water share exercises a power of sale under clause 6, a person may lodge with the Registrar a transfer for the recording of that sale in the water register.

(2) A transfer under subclause (1) must be in the approved form.

(3) If transfer under this clause is in the approved form and is expressed to be in exercise of a power of sale under clause 6, the Registrar may accept that transfer as sufficient evidence that the power has been duly exercised.

**8 Application of purchase money**

The purchase money received arising from a sale under clause 6 must be applied as follows—

(a) firstly, in payment of all costs, charges and expenses properly incurred in relation to the sale;

(b) secondly, in payment of the money due or owing on the mortgage;

(c) thirdly, in payment of the money owing under or in respect of subsequent recorded mortgages of the water share in the order of their respective priorities;

(d) fourthly, in payment of the residue (if any) to the mortgagor.

### 9 Vesting of water share in purchaser

(1) On the recording in the water register of a transfer under clause 7 pursuant to the exercise of a power of sale under clause 6, the interest of the mortgagor in the water share vests in the purchaser as owner by transfer, freed and discharged from all liability on account of—

(a) the mortgage; and

(b) except where the mortgagor is the purchaser, of any subsequent recorded mortgage of a water share; and

(c) any subsequent recorded limited term transfer, except for a transfer to which the mortgagee gave consent.

(2) Subclause (1) does not apply to a mortgage that is for any reason binding on the mortgagee.

(3) The title of a purchaser of a water share is not impeachable on the ground that no case had arisen to authorise the sale under clause 6 or that due notice was not given or that the power of sale under clause 6 was otherwise improperly or irregularly exercised but any person affected by that sale may seek a remedy in damages in a court of competent jurisdiction against the person exercising the power.

### 10 Recording of discharge of recorded mortgage

(1) A person may lodge with the Registrar a discharge of mortgage signed by the mortgagee, for the Registrar to record in the water register the discharge of the recorded mortgage from the water share.

**Sch. 12A cl. 10(1) substituted by No. 32/2010 s. 74.**

(1A) On a discharge being lodged under subsection (1), the Registrar—

**Sch. 12A cl. 10(1A) inserted by No. 32/2010 s. 74.**

(a) may make a recording in the water register discharging the mortgage; and

(b) on the making of that recording, the water share ceases to be subject to, or liable for, the money secured by the mortgage.

(2) A discharge of mortgage under subclause (1) must be in the approved form.

(3) The Registrar may record in the water register that a recorded mortgage of a water share is discharged despite no discharge of mortgage being produced if—

(a) a mortgagor submits to the Registrar evidence of that person's ownership of the water share; and

(b) proof to the satisfaction of the Registrar that—

(i) all the principal and interest due in respect of the mortgage have been paid to the person entitled to receive them; and

(ii) that the person entitled to receive the amounts referred to in subparagraph (i) is dead, cannot be found or in the case of a body corporate, has ceased to exist.

(4) On the recording of a discharge of a recorded mortgage of a water share by the Registrar under subclause (3), the water share ceases to be subject to, or liable for, that mortgage or any money due in respect of it.

# Schedule 12B—Electronic transactions in the water register

Sch. 12B inserted by No. 99/2005 s. 70, amended by No. 17/2014 s, 160(Sch. 2 item 109).

## 1 Registrar may provide electronic lodgement network

(1) The Registrar may provide or cause to be provided an electronic lodgement network for the purpose of lodging electronic documents for recordings to be made in the water register in respect of water shares.

(2) The Registrar, from time to time, may determine requirements for the electronic lodgement network which may include—

(a) conditions of access to the electronic lodgement network;

(b) requirements for the retention of documents supporting or authenticating electronic documents, including periods for retention;

(c) insurance requirements;

(d) any other prescribed matter.

(3) The Registrar must publish notice in the Government Gazette of any requirements determined under this clause.

## 2 Restriction on lodgement of electronic instruments

(1) The Registrar is not required to accept an electronic document for recording in the water register in respect of a water share unless—

(a) the electronic document contains the information required by the Registrar and is in the form (if any) approved by the Registrar; and

(b) the electronic document complies with the prescribed requirements (if any); and

(c) the electronic document is lodged in the electronic lodgement network established under clause 1 in the manner required by the Registrar; and

(d) any relevant certificate required under clause 9 is lodged in the electronic lodgement network; and

(e) the parties to the electronic document have specified the person who is to be the responsible party under this Schedule (the ***responsible party***) for the recording of the electronic document.

(2) If the Registrar refuses to register an electronic document and the parties to the electronic document wish to proceed with the relevant recording in the water register, the Registrar may require the relevant documents to be executed and lodged for recording in a form other than an electronic communication.

(3) The Registrar must publish notice in the Government Gazette of any information, form or manner of lodgement required by the Registrar under this clause.

**3 Agents for lodging electronic documents must be eligible persons**

(1) A person (the ***agent***) must not lodge an electronic document for recordings to be made in the water register on behalf of any person (the ***principal***) unless—

(a) the agent is an eligible person; and

(b) the principal has authorised the agent in writing signed by the principal to execute the electronic document and lodge it with the Registrar for a recording to be made in the water register on the principal's behalf.

(2) For the purposes of this clause ***eligible person*** means—

(a) an Australian legal practitioner; or

(b) a person who holds insurance of a kind and amount acceptable to the Registrar; or

(c) a person who complies with any other eligibility requirements determined by the Registrar.

(3) The Registrar may at any time require evidence of a person's eligibility or authority to act as agent under subclause (1).

(4) The Registrar may from time to time publish details of—

(a) the kinds and amounts of insurance that are acceptable for the purposes of this clause;

(b) the criteria for a person to be an eligible person under subclause (2)(c).

**4 Registrar may deal exclusively with responsible party**

If an electronic document is lodged in the electronic lodgement network for recording in the water register, the Registrar is only required to deal with the person nominated under clause 2(1)(e) as the responsible party for the purposes of—

(a) requiring the person to submit any documents or provide any information in relation to the electronic document and the relevant water share;

(b) returning any documents lodged with the Registrar in respect of the relevant water share or the electronic document;

(c) Part 5A or this Schedule in relation to the electronic document.

### 5 Notification of recording

If the Registrar makes a recording in relation to a water share in the water register pursuant to an electronic document under this Schedule, the Registrar must cause a notification of that recording to be given to—

(a) the owner of the water share or that person's agent (if any); or

(b) the person nominated under clause 2(1)(e) as the responsible party in respect of the electronic document or a person nominated by that responsible party.

### 6 Evidence of recording of electronic document

(1) On the application of any person, the Registrar must produce a document in writing recording information that was recorded in the water register as a result of an electronic document.

(2) A document produced under subclause (1) must be certified by the Registrar as a true representation of the record or information in the water register.

(3) A document produced under this clause is evidence of the matters contained in the document.

(4) An application under this clause must be in the approved form.

### 7 Electronic lodgement network malfunction

(1) The Registrar may amend the water register to correct errors in the water register and supply entries or recordings omitted to be made in the water register if the error or omission resulted from a malfunction of the electronic lodgement network.

(2) The Registrar must keep a record of every correction under subclause (1).

(3) Every correction under subclause (1) is to have the same validity and effect as if the error or omission had not occurred.

**8 Registrar may require production of documents**

(1) For the purposes of Part 5A and this Schedule, the Registrar, by notice in writing, may require any person who has lodged, or proposes to lodge, an electronic document in the electronic lodgement network to produce any document supporting or authenticating an electronic document that is required to be retained under any requirement determined by the Registrar under clause 1(2)(b).

(2) A person who has received a notice under subclause (1) must comply with a requirement in that notice within the period specified in the notice, being not less than 14 days.

(3) If a person fails to comply with a notice under subclause (1), the Registrar may terminate that person's access to the electronic lodgement network.

**9 Registrar may specify matters to be certified**

The Registrar, by notice published in the Government Gazette, may specify—

(a) any matters relating to an electronic document that must be certified under this Schedule; and

(b) the method of electronic certification required for those matters; and

(c) the class or classes of person who may certify those matters.

### 10 Evidence of electronic documents

(1) On the application of any person, the Registrar must produce a document in writing recording information contained in an electronic document that has been lodged for recording in the water register.

(2) A document produced under subclause (1) must be certified by the Registrar as a true representation of the information in the electronic document.

(3) A document certified under subclause (2) is evidence of the matters contained in the document.

(4) An application under this clause must be in the approved form and be accompanied by the prescribed fee (if any).

### 11 Electronic certification of electronic documents

(1) The Registrar may produce in an electronic form a representation of any electronic document lodged in the electronic lodgement network.

(2) The Registrar may certify the electronic representation in any manner determined by the Registrar.

(3) A representation of an electronic document certified in accordance with this clause is evidence of the contents and nature of the electronic document.

* * * * *

**Sch. 13 amended by Nos 13/1990 s. 46(c), 12/1992 s. 7(3), 62/1995 s. 44(7), repealed by No. 32/2010 s. 71(2).**

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**Sch. 14 amended by No. 52/1998 s. 311(Sch. 1 item 105.50), repealed by No. 32/2010 s. 72(2).**

Sch. 15 inserted by No. 99/2005 s. 71.

# Schedule 15—Transitional arrangements—Water (Resource Management) Act 2005

## Part 1—General

### 1 Definitions

(1) In this Schedule—

***appointed day***, in relation to a water system means the day on which a water system becomes a declared water system under a declaration under section 6A;

***combined parcel*** in relation to land, means more than one parcel of land, each of which is, in accordance with the conversion rules, contiguous with the others;

***conversion rules***, in relation to a water system, mean the rules determined for that water system by the Minister under Part 8;

***entitled person***, in relation to a holding in a water system, means any person who is—

(a) an owner of; or

(b) the holder of a mortgage over; or

(c) a person who is entitled to a limited term transfer of—

the land that comprised the holding, immediately before the appointed day for the water system;

***holder***, in relation to—

(a) a prior domestic and stock right, prior joint right or prior water right; or

(b) a prior 222(1)(c) sales water agreement or 222(1)(d) sales water agreement—

in a declared water system, means the owner of the holding to which the right applied or in respect of which the agreement was in force (as the case requires) immediately before the appointed day for the water system;

***holding*** means the lands shown in any single entry in the prior holdings register immediately before the appointed day;

***owner***—

Sch. 15 cl. 1(1) def. of *owner* amended by No. 85/2006 s. 138.

(a) in the case of land that is under the **Transfer of Land Act 1958** means the registered proprietor of an estate in fee simple in the land, or, if the registered proprietor is a life tenant, the holder of the remainder interest;

(b) in the case of land that is not under the **Transfer of Land Act 1958**, means—

(i) where there is a mortgage over an estate in fee simple in the land under which the mortgagee is the owner of the legal estate, the holder of the equity of redemption; or

(ii) in the case of any other estate in fee simple, the owner of the legal estate;

***parcel***, in relation to—

(a) land under the **Transfer of Land Act 1958**, means land that comprises an individual folio of the Register under the **Transfer of Land Act 1958**; and

(b) land not under the **Transfer of Land Act 1958**, means land that, under section 8A of the **Sale of Land Act 1962**, can be disposed of separately, without subdivision;

***prior domestic and stock right*** means an obligation owed by an Authority under section 222(1)(a) to make quantities of water available for supply in an irrigation district of the Authority from a water system to a holding in that district, being an obligation that was in force immediately before the appointed day for that water system;

***prior holdings register*** means the register kept under section 230, as in force in the relevant declared water system, immediately before the appointed day for the water system;

***prior joint right*** means a prior water right and a prior domestic and stock right, where each right applies to the same holding;

***prior water right*** means an obligation owed by an Authority under section 222(1)(b) to make an amount of water available for supply in an irrigation district of the Authority from a water system to a holding in that district, being an obligation that was in force immediately before the appointed day for that water system;

***prior 222(1)(c) sales water agreement*** means an agreement under section 222(1)(c) for the sale of water by an Authority from a water system that supplies an irrigation district with water to the owner or occupier of a holding within that irrigation district being an agreement that was in force immediately before the appointed day for the water system;

***prior 222(1)(d) sales water agreement*** means an agreement under section 222(1)(d) between an Authority and the owner or occupier of land, for the supply of water by the Authority from a water system, being an agreement that was in force immediately before the appointed day;

***purchaser*** has the same meaning as in the **Sale of Land Act 1962**;

***Registrar of Titles*** has the same meaning as *Registrar* has in the **Transfer of Land Act 1958**;

***take and use licence*** means a licence to take and use water issued under section 51(1);

***terms contract*** has the same meaning as in the **Sale of Land Act 1962**;

***unconfirmed water share*** means a water share in respect of which there is in force a qualification under clause 31;

***vendor*** has the same meaning as in the **Sale of Land Act 1962**.

(2) In this Schedule (unless otherwise specified in the Schedule) a reference—

(a) to section 222(1)(a), in relation to a declared water system, is a reference to section 222(1)(a) as in force immediately before the appointed day for that water system; and

(b) to section 222(1)(b), in relation to a declared water system, is a reference to section 222(1)(b) as in force immediately before the appointed day for that water system; and

(c) to section 222(1)(c), in relation to a declared water system, is a reference to section 222(1)(c) as in force immediately before the appointed day for that water system; and

(d) to section 222(1)(d), in relation to a declared water system, is a reference to section 222(1)(d) as in force immediately before the appointed day for that water system.

(3) For the purposes of Part 3, where the holder of a take and use licence is recorded to be—

(a) a partnership, each partner in the partnership is deemed to be a holder of the licence; or

(b) an unincorporated body (however described), each member of the body is deemed to be a holder of the licence.

**2 Non-application of certain provisions to non-declared water systems**

The amendment of this Act by sections 38(2), 61 and 62 of the **Water (Resource Management) Act 2005** does not apply to a water system until the water system becomes a declared water system under a declaration under section 6A.

# Part 2—Conversion of Part 11 rights

**3 Definition**

In this Part—

***managing Authority***, in relation to a holding, means the Authority responsible for managing the irrigation district in which the holding is situated.

### 4 Conversion of water right and domestic and stock right (prior joint right)

Sch. 15 cl. 4(1) amended by No. 85/2006 s. 139.

(1) On and from the appointed day for a water system, the following subclauses apply to each prior joint right within the water system, that does not relate to Crown land.

**Entitlement to water share**

(2) The holder of each prior joint right is deemed to be the owner of a water share, deemed to be issued under section 33F—

(a) that authorises water to be taken at the maximum volume that is the sum of—

(i) the volume for the part of the prior joint right that is the prior water right; and

(ii) the volume for the part of the prior joint right that is the prior domestic and stock right—

as shown in the relevant prior holdings register (immediately before the appointed day); and

(b) that has a class of reliability that is determined in accordance with the conversion rules.

**Entitlement to water-use licence**

(3) The holder of each prior joint right is deemed to be, the holder of a water-use licence, deemed to be granted under section 64L, for each combined parcel of land that comprised the holding and for each other parcel of land that comprised the holding, that authorises water to be used—

(a) on that land; and

(b) subject to the same conditions as those that applied to the use of water immediately before the appointed day; and

(c) subject to an annual use limit determined in accordance with the conversion rules.

**Delivery entitlement**

(4) The holder of each prior joint right is deemed to be entitled to the service of having water delivered by the managing Authority under section 222(1) (as in force on and from the appointed day)—

(a) to the place or places determined by the Authority in accordance with the conversion rules;

(b) at the volume that is the proportion (as specified in the conversion rules) of the volume that is the sum of the volume of the prior water right and prior domestic and stock right immediately before the appointed day, or any other method that is set out in the conversion rules; and

(c) during the periods determined by the Authority in accordance with the conversion rules—

and for the purposes of Part 11, the matters determined under paragraphs (b) and (c) are deemed to have been determined under section 223.

**Ownership of water share**

(5) If a prior joint right is held by more than one person, the proportions of ownership of the water share by each holder of the right are to be determined in the manner set out in clause 17.

### 5 Conversion of water right only (prior water right)

Sch. 15 cl. 5(1) amended by No. 85/2006 s. 140.

(1) On and from the appointed day for a water system, the following subclauses apply to each prior water right within the water system, that does not relate to Crown land.

**Entitlement to water share**

(2) The holder of each prior water right is deemed to be the owner of a water share, deemed to be issued under section 33F—

(a) that authorises water to be taken at the maximum volume that is the same as that shown for the prior water right in the relevant prior holdings register (immediately before the appointed day); and

(b) that has a class of reliability that is determined in accordance with the conversion rules.

**Entitlement to water-use licence**

(3) The holder of each prior water right is deemed to be, the holder of a water-use licence, deemed to be granted under section 64L, for each combined parcel of land that comprised the holding and for each other parcel of land that comprised the holding, that authorises water to be used—

(a) on that land; and

(b) subject to the same conditions as those that applied to the use of water immediately before the appointed day; and

(c) subject to an annual use limit determined in accordance with the conversion rules.

**Delivery entitlement**

(4) The holder of each prior water right is deemed to be entitled to the service of having water delivered by the managing Authority under section 222(1) (as in force on and from the appointed day)—

**Sch. 15 cl. 5(4) amended by No. 85/2006 s. 141.**

(a) to the place or places determined by the Authority in accordance with the conversion rules;

(b) at the volume that is the proportion (as specified in the conversion rules) of the prior water right immediately before the appointed day, or that is determined in accordance with any other method that is set out in the conversion rules; and

(c) during the periods determined by the Authority in accordance with the conversion rules—

and for the purposes of Part 11 of this Act, the matters determined under paragraphs (b) and (c) are deemed to have been determined under section 223.

**Ownership of water share**

(5) If a prior water right is held by more than one person, the proportions of ownership of the water share by each holder of the right are to be determined in the manner set out in clause 17.

### 6 Conversion of domestic and stock allowance (prior domestic and stock right)

Sch. 15 cl. 6(1) amended by No. 85/2006 s. 142.

(1) On and from the appointed day for a declared water system, the following subclauses apply to each prior domestic and stock right within the water system, that does not relate to Crown land.

**Entitlement to water share**

(2) The holder of each prior domestic and stock right is deemed to be the owner of a water share, deemed to be issued under section 33F—

(a) that authorises water to be taken at the maximum volume that is the same as that shown for the prior domestic and stock right in the relevant prior holdings register (immediately before the appointed day); and

(b) that has a class of reliability that is determined in accordance with the conversion rules.

**Entitlement to water-use registration**

(3) The holder of each prior domestic and stock right is deemed to be, the holder of a water-use registration, deemed to be granted under section 64AP, for each combined parcel of land that comprised the holding and for each other parcel of land that comprised the holding, that authorises water to be used—

(a) on that land; and

(b) subject to the same conditions as those that applied to the use of water immediately before the appointed day; and

(c) subject to an annual use limit determined in accordance with the conversion rules.

**Delivery entitlement**

**Sch. 15 cl. 6(4) amended by No. 85/2006 s. 143.**

(4) The holder of each prior domestic and stock right is deemed to be entitled to the service of having water delivered by the managing Authority under section 222(1) (as in force on and from the appointed day)—

(a) to the place or places determined by the Authority in accordance with the conversion rules;

(b) at the volume that is the proportion (as specified in the conversion rules) of the prior domestic and stock right immediately before the appointed day, or that is determined in accordance with any other method that is set out in the conversion rules; and

(c) during the periods determined by the Authority in accordance with the conversion rules—

and for the purposes of Part 11, the matters determined under paragraphs (b) and (c) are deemed to have been determined under section 223.

**Ownership of water share**

(5) If a prior domestic and stock right is held by more than one person, the proportions of ownership of the water share by each holder of the right are to be determined in the manner set out in clause 17.

**7 Prior 222(1)(c) sales water agreements**

(1) On and from the appointed day for a water system, the following subclauses apply to each prior 222(1)(c) sales water agreement entered into by the Authority responsible for managing the water system.

**Entitlement to water share**

(2) The owner of the holding in respect of which the agreement was entered into is deemed to be the owner of a water share, deemed to be issued under section 33F—

(a) that authorises water to be taken at the maximum volume that is the proportion (as specified in the conversion rules) of the volume of the prior water right shown in the prior holdings register (immediately before the appointed day); and

(b) that has a class of reliability that is determined in accordance with the conversion rules.

**Ownership of water share**

(3) If a prior 222(1)(c) sales water agreement has been entered into in respect of a holding owned by more than one person, the proportions of ownership of the water share by each owner of the holding are to be the same as the proportions determined for each such owner for the prior joint right or prior water right (as the case requires) applying to the holding.

### 8 Holdings to which no rights apply

(1) A managing Authority must provide to an applicant under subclause (2), the service of delivering to the land specified under subclause (2), the volumes of water during the periods determined in accordance with the conversion rules applying to the water system.

(2) A person who was, immediately before the appointed day for a declared water system, the owner of a holding that was serviced by the water system, being a holding in respect of which there was no prior water right or prior joint right, may, within 6 months or any other period (not being more than 12 months) specified in the conversion rules of the appointed day for the water system, apply to the managing Authority for the provision of a service under subclause (1) to the land that comprised the holding immediately before the appointed day.

**Sch. 15 cl. 8(2) amended by No. 85/2006 s. 144.**

### 9 Other interest holders

(1) On the appointed day for a water system, if the registered proprietor of land in a holding in the water system is a life tenant, the life tenant is deemed to be the holder of a limited term transfer of the water share, in respect of the land, that the owner of the land is deemed to be the holder of under this Schedule.

(2) A limited term transfer under subclause (1) continues in force, despite any other provision of this Act, until the cessation of the life tenancy.

Sch. 15 cl. 9(2A) inserted by No. 32/2010 s. 75.

(2A) Section 33AV(4) does not apply to a limited term transfer under subclause (1).

(3) If, immediately before the appointed day for a water system—

(a) a purchaser under a terms contract of a holding in the water system is—

(i) in occupation of the holding; and

(ii) entitled to water, on or after that day under the terms of the contract; and

(b) the vendor under the contract is on and from the appointed day deemed to be the holder of a water share in respect of the holding under this Schedule—

on and from the appointed day, the purchaser is deemed to be the holder of a limited term transfer, if the Minister, on application, so approves before the appointed day.

(4) A limited term transfer under subsection (3) continues in force for so long as the purchaser is entitled to receive water under the contract.

(5) The vendor or purchaser under a terms contract of a holding in a water system may apply to the Minister for approval under subsection (3), before the appointed day, in the form approved by the Minister.

**10 Water share deemed to be associated water share**

On and from the appointed day for a water system, a water share in the system that is deemed to be owned by a person—

(a) under clause 4, 5 or 6, is deemed to be determined to be an associated water share under Division 10, that is associated with the land specified in the water-use licence or water-use registration (as the case requires) that that person is deemed to be the holder of under that section; and

(b) under clause 7 is deemed to be determined to be an associated water share under Division 10, that is associated with the land specified in the water-use licence that that person is deemed to be the holder of under clause 4, 5 or 6, as the case requires.

### 11 Application of section 64AE

For the purposes of Division 6 of Part 4B, a condition that a water-use licence is deemed to be subject to by clause 4, 5 or 6—

(a) is deemed to be a particular condition imposed under Division 5 of Part 4B; and

(b) is deemed to have been imposed before any standard water-use condition applying to that licence.

### 12 Properties deemed to be serviced properties

**Sch. 15 cl. 12 amended by No. 85/2006 s. 145.**

Where, under this Part, an owner of a parcel of land is deemed to be entitled to the service of having water delivered to a place or places determined by a managing Authority for the purposes of use on the parcel of land, the parcel of land is deemed to be serviced property within the meaning of section 220.

# Part 3—Conversion of other rights

## 13 Conversion of take and use licences

Sch. 15 cl. 13(1) amended by No. 29/2007 s. 23.

(1) On and from the appointed day for a water system, the following subclauses apply to each take and use licence in force immediately before the appointed day within the water system that is not a licence under which—

Sch. 15 cl. 13(1)(a) inserted by No. 29/2007 s. 23.

(a) the water to be taken and used is subject to a condition that a proportion of the water so taken and used is returned to the water system; or

Sch. 15 cl. 13(1)(b) inserted by No. 29/2007 s. 23.

(b) the water is to be taken and used for a purpose prescribed for the purposes of section 51(1AA).

**Entitlement to water share**

(2) The holder of each take and use licence is deemed to be the owner of a water share, deemed to be issued under section 33—

(a) that authorises water to be taken at the maximum volume that is the same as the volume shown on the take and use licence immediately before the appointed day; and

(b) that has a class of reliability that is determined in accordance with the conversion rules.

**Entitlement to water-use licence**

(3) The owner of the land to which each take and use licence relates is deemed to be the holder of a water-use licence, deemed to be granted under section 64L, that authorises water to be used—

(a) on that land; and

(b) subject to the same conditions as those that applied to the use or drainage of water under the take and use licence immediately before the appointed day; and

(c) subject to an annual use limit determined in accordance with the conversion rules.

**Entitlements to works licences**

(4) The holder of each take and use licence that, immediately before the appointed day, authorised the construction, alteration or operation of works, is deemed to be the holder of a licence under section 67 that authorises the construction, alteration or operation of any such works, subject to—

(a) any conditions as to the maximum amounts of water which may be taken in any particular periods or circumstances—

(i) that applied under the licence immediately before the appointed day; or

(ii) as determined in accordance with the conversion rules—

whichever is the greater; and

(b) any conditions of the take and use licence as to—

(i) the installation and use of measuring devices and pumps; and

(ii) the operation of any bores or works for extracting water from waterways.

**Ownership of water share**

(5) If a take and use licence is held by more than one person, the proportions of ownership of the water share by each holder of the licence are to be determined in the manner set out in clause 18.

### 14 Prior 222(1)(d) sales water agreements

(1) On and from the appointed day for a declared water system, the following subclauses apply to each prior 222(1)(d) sales water agreement entered into by an Authority to supply water to land from the water system.

**Entitlement to water share**

(2) The owner or occupier of the land with whom the agreement was entered into is deemed to be the owner of a water share, deemed to be issued under section 33F—

(a) that authorises water to be taken at the maximum volume that is the proportion (as specified in the conversion rules) of the volume that is the same as that shown in the licence, immediately before the appointed day; and

(b) that has a class of reliability that is determined in accordance with the conversion rules.

**Ownership of water share**

(3) If the prior 222(1)(d) right is held by more than one person, the proportions of ownership of the water share by each holder of the right are to be determined in the manner set out in clause 17.

### 15 Water share deemed to be associated water share

On and from the appointed day for a water system—

(a) if a water share is deemed to be issued under clause 13 in relation to a take and use licence, the water share is deemed to be determined to be an associated water share under Division 10, that is associated with the land to which the take and use licence applied, in so far as a water-use licence is

deemed to be issued under clause 13 in respect of that land;

(b) if a water share is deemed to be issued under clause 14 in relation to a prior 222(1)(d) sales water agreement, the water share is deemed to be determined to be an associated water share under Division 10, that is associated with the land to which the agreement applied, in so far as a water-use licence is deemed to be issued under clause 13 in respect of that land.

### 16 Conversion of temporary transfers

(1) On and from the appointed day for a declared water system, the following subclauses apply where a prior water right has been transferred (whether in whole or in part) under section 224 (as in force before the appointed day) for a consecutive period of 3 years immediately preceding the appointed day, where the owner of the land to which the right has been transferred is not the holder of—

(a) a prior joint right or prior water right; or

(b) a take and use licence.

**Entitlement to water-use licence**

(2) The owner of the land to which such a right has been transferred is deemed to be the holder of a water-use licence that authorises water to be used—

(a) on the land to which the right had been transferred; and

(b) subject to the same terms and conditions relating to the use of water as those that applied to the use of the water under the transferred rights, immediately before the appointed day; and

(c) subject to an annual use limit determined in accordance with the conversion rules.

# Part 4—Determination of portions of ownership of water shares

## 17 Determination of portions generally

(1) For the purposes of Part 2, the ownership of the persons' water share is deemed to be the same as the ownership of the land that comprised the holding unless—

(a) parcels of land in the holding are owned by different persons or in a different manner; or

(b) different mortgages apply to different parcels of land in the holding; or

(c) in the opinion of the Minister, ownership of the whole or a part of the water share cannot be clearly established.

(2) Subject to Part 2, where subclause (1)(a) or (b) applies, the ownership of the water share is to be determined as agreed between all entitled persons.

(3) If—

(a) an agreement has not been reached under subclause (2); and

(b) 18 calendar months have expired since the appointed day for the water system and an application for arbitration under clause 19 has not been made—

ownership of the water share is to be determined as follows—

(c) the owner of each parcel of land that comprised the holding—

(i) is deemed, in respect of the ownership of that parcel, to hold the water share as a tenant in common, in equal undivided portions with the owner of each other parcel of the land that comprised the holding; and

(ii) if there is more than one owner for a portion of the water share those persons own that portion in the same manner as that in which, they hold the parcel of land that entitles them to ownership of that portion of the share.

(4) Where subclause (1)(c) applies ownership of the water share is to be determined—

(a) as agreed between all entitled parties; or

(b) if agreement cannot be reached under paragraph (a), in accordance with the conversion rules.

(5) For the purposes of this section, ***mortgage*** in relation to land under the **Transfer of Land Act 1958**, means a recorded mortgage under that Act.

**18 Determination of portions on conversion of take and use licences**

(1) If a take and use licence to which clause 13 applies is held by more than one person, the holders of the licence are deemed to own the water share as tenants in common in equal undivided portions (unless subclause (2) applies).

(2) If a take and use licence to which clause 13 applies is held by an unincorporated association, the ownership of the share is to be determined as agreed between all persons who are members of the association.

### 19 Arbitration

Sch. 15 cl. 19(1) amended by No. 50/2011 s. 46(Sch. item 15.1).

(1) If, within—

(a) a period of 6 calendar months from the appointed day for a water system; or

(b) where the conversion rules so provide, any later date determined in accordance with the rules—

the entitled persons have not reached agreement under clause 17 on the proportions of ownership, any of the entitled persons may refer the matter to arbitration in accordance with the **Commercial Arbitration Act 2011**.

Sch. 15 cl. 19(2) amended by No. 50/2011 s. 46(Sch. item 15.2).

(2) If—

(a) within a period of 6 calendar months from the appointed day for a water system; or

(b) where the conversion rules so provide, any later date determined in accordance with the rules—

the members of an unincorporated association have not reached agreement under clause 18(2), any member of the association may refer the matter to arbitration in accordance with the **Commercial Arbitration Act 2011**.

Sch. 15 cl. 19(3) amended by No. 50/2011 s. 46(Sch. item 15.3).

(3) An arbitration under this section must be conducted before a sole arbitrator selected by agreement by all the entitled persons, or, in the absence of such an agreement, by the Secretary-General of the Australian Centre for International Commercial Arbitration Limited ACN 006 404 664.

(4) The costs of the arbitration are to be borne by all the entitled persons equally, unless otherwise awarded by the arbitrator.

### 20 Procedure and findings of arbitration

(1) The arbitrator must make an award in the matter within 9 calendar months of his or her appointment, unless—

(a) the arbitrator believes there are exceptional circumstances which require a longer period; or

(b) all the entitled persons agree to a longer period.

(2) The arbitrator may determine the procedures that apply to the arbitration, having regard to the commercial value of the subject matter of the dispute.

### 21 Matters to be taken into account in making finding

In making an award the arbitrator must—

(a) in the case of a dispute under clause 17(3), relating to an amalgamated holding that comprises several parcels of land, have regard to the volume of prior water rights and prior domestic and stock rights of each parcel of land in the holding, before the parcels became part of the holding, and, if the arbitrator considers that the consideration set out above would lead to an unfair or unjust result, have regard to—

(i) any relevant agreements; and

(ii) any transfers under section 226 (as in force before the appointed day), entered into after the parcels of land were amalgamated; and

(iii) any other relevant matters;

(b) in any other case, have regard to—

(i) any relevant agreements; and

(ii) any transfers under section 226 (as in force before the appointed day); and

(iii) any other relevant matters.

### 22 Notification of award of arbitration

The arbitrator must give a copy of his or her award in the matter to each entitled person and to the Registrar.

### 23 Registrar to register ownership in accordance with the award of the arbitrator

On receiving a copy of an award under clause 21, the Registrar must record the ownership of the water share in the Water Register in accordance with the award of the arbitrator.

## Part 5—Mortgages

### 24 Application of Part

This Part does not apply to a water share in a declared water system if the volume of water that is to be made available under the water share is 5 megalitres or less.

### 25 Mortgagee notices and agreements

Sch. 15 cl. 25(1) amended by No. 85/2006 s. 146(1).

(1) In the case of a mortgage over the whole or a part of any parcel of land where the owner of the whole or a part of the parcel is deemed to be the owner of a water share by the operation of Part 2, the Authority, responsible for managing the irrigation district in which the water system from which the water share is derived is situated, must notify the owner, in the form and manner specified in the conversion rules, of the existence of the mortgage over the land and advise the owner that clause 26 will apply to the mortgage.

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

Sch. 15 cl. 25(1A) inserted by No. 85/2006 s. 146(2).

(2) For the purposes of this section, ***mortgage*** in relation to land under the **Transfer of Land Act 1958**, means a recorded mortgage under that Act.

### 26 Conversion of mortgages

(1AA) On and from the appointed day for a water system, the following subclauses 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.

Sch. 15 cl. 26(1AA) inserted by No. 85/2006 s. 146(3).

(1) The mortgage is deemed to become, in addition to being a mortgage over the whole or the part of the parcel of land specified in the mortgage, a mortgage over the water share to secure the debt secured by the mortgage, immediately before the appointed day, and amounts that may be advanced under the mortgage on or after that day, subject to the same terms and conditions as those that applied to the mortgage immediately before the appointed day.

Sch. 15 cl. 26(1) amended by No. 85/2006 s. 146(4).

(2) For the purposes of subclause (1)—

(a) where the whole or part of the parcel of land is owned by one person only, and that person owns the water share as a tenant in common with other persons, the mortgage is deemed to be over that person's undivided interest in the water share; or

(b) where the whole or the part of the parcel of land is owned by more than one person, and those persons own the water share as tenant

in common with other persons, the mortgage is deemed to be over those persons' undivided interest in the water share.

(3) For the purposes of this Act, Schedule 12A applies to a mortgage that, under subclause (1), is deemed to be over a water share.

(4) Mortgages that are deemed to be over a water share under subclause (1) that were previously over the one parcel of land are deemed to rank in the same priority to each other as that in which they were ranked when over the parcel of land.

(5) In the case of land not under the **Transfer of Land Act 1958**, over which there is a mortgage where the mortgagee is the owner of the legal estate, where that mortgage is deemed to become (under subclause (1)) (in addition to being a mortgage over the land) a mortgage over a water share, the mortgage over the water share does not take effect as a transfer of the ownership of the mortgage, but takes effect in accordance with the provisions of this Act.

# Part 6—Miscellaneous conversion issues

Sch. 15 cl. 27 amended by No. 85/2006 s. 147.

### 27 Works licences

On and from the appointed day for a declared water system, a licence under section 67 that is in force immediately before the appointed day and that relates to a bore or works for extracting water from a waterway in that system where conditions relating to that bore or those works are set out in a take and use licence, is deemed to be subject to—

(a) any conditions as to the maximum amounts of water which may be taken in any particular periods or circumstances from that bore or through those works—

(i) under the take and use licence, as applying immediately before the appointed day; or

(ii) as determined in accordance with the conversion rules—

whichever is the greater; and

(b) any conditions as to—

(i) the installation and use of measuring devices and pumps; and

(ii) the operation of any bores or works for extracting water from waterways—

under the take and use licence, as applying immediately before the appointed day.

### 28 Continuing operation of registration licences

Sch. 15 cl. 28 amended by No. 24/2013 s. 40.

Despite a water system becoming a declared water system, any registration licence issued in the declared water system is deemed to continue in force.

### 29 References to rights

On and from the appointed day for a declared water system, a reference in any document to—

(a) a prior domestic and stock right (however described in the document) in the water system;

(b) a prior water right (however described in the document) in the water system;

(c) a prior joint right (however described in the document) in the water system;

(d) a prior 222(1)(c) sales water agreement (however described in the document) in the water system;

(e) a prior 222(1)(d) sales water agreement (however described in the document) in the water system;

(f) take and use licence (however described in the document) in the water system—

is to be taken to be a reference to the water share the holder of that right is deemed to own by the operation of this Schedule.

### 30 Amendment of bulk entitlements

(1) The Minister, by notice in writing, may make any amendments to a bulk entitlement that are necessary as a consequence of a water system becoming a declared water system.

(2) A notice under this section must be made before the appointed day for the declared water system and must come into effect on that day.

(3) Notice of the making of a notice under this section must be published in the Government Gazette before or on the appointed day for the water system.

(4) A copy of a notice made under this section must be given to the holder of the bulk entitlement before or on the appointed day for the water system.

## Part 7—Unconfirmed water shares

### 31 Unconfirmed water shares

(1) Where on the appointed day for a declared water system the ownership of a water share is to be determined in accordance with clause 17 or clause 18 and—

(a) agreement has not been reached on the ownership of the share; or

(b) ownership of the whole or a part of the share cannot be clearly established—

the ownership of the share under this Schedule is capable of being registered in the Register, subject to the qualification that the details recorded as to the share are unconfirmed.

(2) A qualification that is in force under subclause (1) remains in force until the ownership is determined—

(a) in accordance with this Schedule; or

(b) in accordance with the conversion rules.

**32 Dealings in unconfirmed water shares**

(1) The following dealings are the only dealings that may take place in relation to unconfirmed water shares—

(a) transfer of ownership of the share under section 33S;

(b) limited term transfer of the water share;

(c) discharge of a mortgage over the water share;

**Sch. 15 cl. 32(1)(c) amended by No. 32/2010 s. 76(1)(a).**

(d) assignment of a water allocation under the water share under section 33U or 33V;

**Sch. 15 cl. 32(1)(d) inserted by No. 32/2010 s. 76(1)(b).**

(e) surrender of the water share under section 33AA;

**Sch. 15 cl. 32(1)(e) inserted by No. 32/2010 s. 76(1)(b).**

(f) surrender of limited term transfer under section 33T(5).

**Sch. 15 cl. 32(1)(f) inserted by No. 32/2010 s. 76(1)(b).**

(2) In addition to any requirements applying to the transfer of water shares under Part 3A—

(a) any transfer of ownership of an unconfirmed water share under section 33S does not have effect until the Authority (that is responsible for managing the irrigation district in which the water system in which the water share is issued) approves the transfer, in accordance with any relevant rules made under Part 3A, and notifies the Registrar of that approval; and

(b) any limited term transfer of an unconfirmed water share must not be recorded in the water register until the Authority (that is responsible for managing the irrigation district in which the water system in which the water share is issued) approves the transfer, in accordance with any relevant rules made under Part 3A, and notifies the Registrar of that approval.

Sch. 15 cl. 32(3) inserted by No. 32/2010 s. 76(2).

(3) In the case of an assignment of a water allocation under a water share to which subclause (1)(d) applies, all persons who own the water share, in whole or in part, and all persons who have limited term transfers under the water share, in whole or in part are to be taken to be the holder of the water share.

# Part 8—Conversion procedures

## 33 Conversion Rules

(1) Before the appointed day for a declared water system, the Minister may—

(a) make a determination setting out the rules that are to apply to the conversion of rights in the water system; and

(b) amend any determination made under paragraph (a).

(2) A determination under subclause (1) may provide for—

(a) any procedures that an Authority is required to carry out to identify, verify, apportion and calculate information relating to rights to which Part 2, 3, 4, 5 or 6 applies and any matters that are to be determined under Part 2, 3, 4, 5 or 6; and

(b) any procedures that the Minister is required to carry out to identify, verify, apportion and calculate information relating to rights to which Part 2, 3, 4, 5 or 6 applies and any matters that are to be determined under Part 2, 3, 4, 5 or 6; and

(c) any submission procedures and dispute resolution procedures any Authority, the Minister or the Registrar is required to undertake for the purposes of performing functions under paragraph (a) or (b) (as the case requires); and

(d) any other matters that are required or permitted to be set out by this Schedule.

(3) A determination under subclause (1) comes into operation on the day specified in the determination.

(4) A determination under subclause (1) must be in writing and notice of the making of the declaration and of the day on which it comes into operation must be published in the Government Gazette.

(5) A declaration under subclause (1)—

(a) must not be amended, unless to correct any clerical, factual or other inadvertent mistake in the declaration; and

(b) must not be revoked.

(6) Before making a determination under subclause (1), the Minister must consult with—

(a) the Authority or Authorities responsible for the supply of water from the water system to which the determination relates; and

(b) the Registrar.

**34 Disclosure of information for purposes of conversion**

(1) The Registrar of Titles must ensure that all records and information for which the Registrar of Titles is responsible which are necessary to enable—

(a) an Authority to carry out its functions under this Schedule or to give effect to this Schedule; or

(b) the Minister to carry out the Minister's functions under this Schedule or to give effect to this Schedule; or

(c) the Registrar to carry out the Registrar's functions under this Schedule or to give effect to this Schedule—

are disclosed to the Authority, Minister or Registrar, as the case requires, for those purposes.

(2) An Authority must ensure that all records and information for which the Authority is responsible which are necessary to disclose to the Registrar of Titles for the purposes of this Schedule are disclosed to the Registrar of Titles, for those purposes.

(3) The Minister must ensure that all records and information for which the Minister is responsible which are necessary to disclose to the Registrar of Titles for the purposes of this Schedule are disclosed to the Registrar of Titles, for those purposes.

(4) The Registrar must ensure that all records and information for which the Registrar is responsible which are necessary to disclose to the Registrar of Titles for the purposes of this Schedule are disclosed to the Registrar of Titles, for those purposes.

### 35 Offence to provide false or misleading information

A person must not knowingly give false or misleading information to an Authority in the course of claiming that that person has a right to which Part 2 or 3 of this Schedule applies.

Penalty: 60 penalty units or 6 months imprisonment.

# Part 9—Tariffs, fees and charges

## Division 1—Fees under tariffs

### 36 Definitions

In this Division—

***fee*** means the fee imposed under a tariff under Part 13 of this Act;

***prior right*** means any of the following—

(a) a prior joint right;

(b) prior water right; or

(c) prior domestic and stock right.

### 37 Power of Authority to require payment after appointed day

The declaration of an appointed day for a water system, is to be taken not to affect the power of an Authority under Part 13 of this Act to obtain payment on or after the appointed day for that part of a fee, imposed by an Authority on a property in respect of a prior right in the water system, that applies to any period before the appointed day.

### 38 Application of fees by Authorities after the appointed day

(1) If, before the appointed day for a water system, the holder of a prior right in the water system, has made a payment of money to which this section applies to an Authority, the Authority may apply that money, on and after the appointed day, to satisfy any fee imposed for any service provided by the Authority on or after the appointed day to the holder of the prior right in respect of any—

(a) water share; or

(b) water-use licence; or

(c) delivery service under Part 11—

deemed to be issued, granted or provided in respect of that prior right under this Schedule.

(2) In this section, ***payment of money to which this section applies*** means a payment in satisfaction of a part of a fee imposed by the Authority under a tariff under Part 13 on a property in respect of the prior right, being that part of the fee that applies to a period on or after the appointed day.

### 39 Evidentiary provision, fees under Part 13

(1) If, in any proceedings under this Act or regulations or by-laws made under this Act, the amount of water supplied to a property from a water system during the fee period, is relevant,

evidence may be given of the amount of water computed by the Authority having regard to—

(a) any quantity of water supplied to the property concerned before the appointed day; and

(b) the total amount of water recorded by a water meter as having been supplied or delivered to that property in that period, both before the appointed day and after the appointed day—

and that evidence, in the absence of evidence to the contrary, is proof of the amount of water supplied or delivered to the property.

(2) In this section, ***fee period***, in relation to a prior water right, means the period for which a fee is imposed in respect of a property that has water supplied or delivered to it under the prior right and in which the appointed day for the water system from which the water is so supplied or delivered occurs.

## Division 2—Charges under section 264

### 40 Power of Authority to require payment after appointed day

The declaration of an appointed day for a water system, is to be taken not to affect the power of an Authority under section 264 to obtain payment on or after the appointed day for that part of a fee, fixed by the Authority for a take and use licence in the water system, that applies to any period before the appointed day.

### 41 Application of fees under section 264 by an Authority after the appointed day

(1) If, before the appointed day for a water system, the holder of a take and use licence in the water system, has made a payment of money to which this section applies to an Authority, the Authority may apply that money on and after the appointed day to satisfy any fee—

(a) payable on or after the appointed day in respect of any—

(i) water share; or

(ii) water-use licence—

deemed to be issued or granted in respect of that take and use licence under this Schedule; and

(b) payable under section 74AA in respect of any works licence under section 67.

(2) In this section ***payment of money to which this section applies*** means a payment in satisfaction of a part of a fee fixed by an Authority under section 264 for the licence, being that part of the fee that relates to any period on or after the appointed day.

### 42 Evidentiary provision, fees under section 264

(1) If, in any proceedings under this Act or regulations or by-laws made under this Act, the amount of water taken under a take and use licence in a water system during the fee period for the purposes of the land specified in the licence, is relevant, evidence may be given of the amount of water computed by the Authority having regard to the total amount of water recorded by a water meter as having been taken during the fee period for the purposes of that land, and that evidence, in the absence of evidence to the contrary, is proof of

the amount of water taken for the purposes of the land.

(2) In this section, ***fee period***, in relation to a take and use licence, means the period for which a fee is fixed under section 264 in respect of the licence and in which the appointed day for the water system from which water is taken under the licence occurs.

## Division 3—Fees under Part 4 of this Act

### 43 Power of Authority to require payment after appointed day

The declaration of an appointed day for a water system, is to be taken not to affect the power of the Minister under Part 4 of this Act to obtain payment on or after the appointed day for that part of a fee, fixed by the Minister for a take and use licence in the water system, that applies to any period before the appointed day.

### 44 Application of fees under Part 4 of this Act by the Minister after the appointed day

(1) If, before the appointed day for a water system, the holder of a take and use licence in the water system, has made a payment of money to which this section applies to the Minister, the Minister may apply that money on and after the appointed day to satisfy any fee—

(a) payable on or after the appointed day in respect of any—

(i) water share; or

(ii) water-use licence—

deemed to be issued or granted in respect of that take and use licence under this Schedule; and

(b) payable under section 74AA in respect of any works licence under section 67.

(2) In this section ***payment of money to which this section applies*** means a payment in satisfaction of a part of a fee fixed by the Minister under Part 4 of this Act for the licence, being that part of the fee that relates to any period on or after the appointed day.

### 45 Evidentiary provision, fees under Part 4 of this Act

(1) If, in any proceedings under this Act or regulations or by-laws made under this Act, the amount of water taken under a take and use licence in a water system during the fee period for the purposes of the land specified in the licence, is relevant, evidence may be given of the amount of water computed by the Minister having regard to the total amount of water recorded by a water meter as having been taken during the fee period for the purposes of that land, and that evidence, in the absence of evidence to the contrary, is proof of the amount of water taken for the purposes of the land.

(2) In this section, ***fee period***, in relation to a take and use licence, means the period for which a fee is fixed under Part 4 of this Act in respect of the licence and in which the appointed day for the water system from which water is taken under the licence occurs.

## Part 10—Miscellaneous provisions

### 46 Transitional provisions—Water (Resource Management) Act 2005

Despite the repeal of section 13 by section 7 of the **Water (Resource Management) Act 2005**, any qualification made by the Minister under that section before its repeal continues to apply.

| | | | | | |
|---|---|---|---|---|---|
| * | * | * | * | * | **Sch. 16 inserted by No. 85/2006 s. 148, repealed by No. 23/2019 s. 116.** |
| * | * | * | * | * | **Sch. 17 inserted by No. 17/2012 s. 69, repealed by No. 23/2019 s. 117.** |

# Endnotes

## 1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 26 May 1989*

*Legislative Council: 15 November 1989*

The long title for the Bill for this Act was "A Bill to re-state, with amendments, the law relating to water in Victoria, to repeal the **Dandenong Valley Authority Act 1963**, the **Drainage of Land Act 1975**, the **Geelong Waterworks and Sewerage Act 1958**, the **Groundwater Act 1969**, the **Latrobe Valley Act 1958**, the **Mildura Irrigation Trusts and Sunraysia Water Board Act 1958**, the **River Improvement Act 1958**, the **Sewerage Districts Act 1958**, the **Victorian Water and Sewerage Authorities Association Act 1981**, the **Water Act 1958**, the **West Moorabool Water Board Act 1968** and certain other Acts, to amend the **Land Act 1958** and for other purposes.".

The **Water Act 1989** was assented to on 5 December 1989 and came into operation as follows:

Section 328 on 5 December 1989: section 2(2); section 329 on 6 July 1988: section 2(3); rest of Act (*except* Schedule 13 items 10, 23, 24) on 1 November 1990: Government Gazette 15 August 1990 page 2473; Schedule 13 items 10, 23, 24 on 1 September 1991: section 2(1).

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

**Style changes**

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

**References to ILA s. 39B**

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

**Interpretation**

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

## 2 Table of Amendments

This publication incorporates amendments made to the **Water Act 1989** by Acts and subordinate instruments.

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**Local Government (Amendment) Act 1990, No. 13/1990**

| | |
|---|---|
| *Assent Date:* | 8.5.90 |
| *Commencement Date:* | Ss 45, 46 on 8.5.90: s. 2(1)(a) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water (Waivers) Act 1991, No. 25/1991**

| | |
|---|---|
| *Assent Date:* | 12.6.91 |
| *Commencement Date:* | All of Act (*except* s. 5) on 1.11.90: s. 2(1); s. 5 on 5.12.89: s. 2(2) |
| *Current State:* | All of Act in operation |

**Subdivision (Miscellaneous Amendments) Act 1991, No. 48/1991**

| | |
|---|---|
| *Assent Date:* | 25.6.91 |
| *Commencement Date:* | S. 74 on 25.6.91: s. 2(4) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Administrative Appeals Tribunal (Planning) Act 1991, No. 62/1991**

| | |
|---|---|
| *Assent Date:* | 12.11.91 |
| *Commencement Date:* | S. 39 on 29.5.90: s. 2(2); rest of Act on 8.1.92: Government Gazette 8.1.92 p. 2 |
| *Current State:* | All of Act in operation |

**Local Government (Rating) Act 1991, No. 78/1991** (as amended by No. 22/1992)

| | |
|---|---|
| *Assent Date:* | 3.12.91 |
| *Commencement Date:* | Ss 20–22 on 3.12.91: s. 2(5) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water (Elections) Act 1992, No. 12/1992**

| | |
|---|---|
| *Assent Date:* | 2.6.92 |
| *Commencement Date:* | All of Act (*except* s. 7(3)) on 2.6.92: s. 2(1); s. 7(3) on 1.11.90: s. 2(2) |
| *Current State:* | All of Act in operation |

**Heritage Rivers Act 1992, No. 36/1992**

| | |
|---|---|
| *Assent Date:* | 16.6.92 |
| *Commencement Date:* | S. 21 on 10.9.92: Government Gazette 9.9.92 p. 2635 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water (Rural Water Corporation) Act 1992, No. 50/1992**

| | |
|---|---|
| *Assent Date:* | 30.6.92 |
| *Commencement Date:* | 1.7.92: Government Gazette 1.7.92 p. 1629 |
| *Current State:* | All of Act in operation |

**Melbourne Water Corporation Act 1992, No. 54/1992**

| | |
|---|---|
| *Assent Date:* | 30.6.92 |
| *Commencement Date:* | S. 2 on 30.6.92: s. 2 (2); rest of Act on 1.7.92: Government Gazette 1.7.92 p. 1629 |
| *Current State:* | All of Act in operation |

**Residential Tenancies (Water and Utilities Charges) Act 1993, No. 25/1993**

| | |
|---|---|
| *Assent Date:* | 25.5.93 |
| *Commencement Date:* | Pt 1 (ss 1, 2) on 25.5.93: s. 2 (1); Pts 2, 3 (ss 3–12) on 1.7.93: s. 2(2); Pts 4–6 (ss 13–16) on 1.7.94: s. 2(3) |
| *Current State:* | All of Act in operation |

**Water (Amendment) Act 1993, No. 69/1993**

| | |
|---|---|
| *Assent Date:* | 5.10.93 |
| *Commencement Date:* | 5.10.93 |
| *Current State:* | All of Act in operation |

**Borrowing and Investment Powers (Amendment) Act 1993, No. 99/1993**

| | |
|---|---|
| *Assent Date:* | 23.11.93 |
| *Commencement Date:* | Pt 1 (ss 1–3) on 23.11.93: s. 2(1); rest of Act on 23.5.94: s. 2(3) |
| *Current State:* | All of Act in operation |

**Electricity Industry (Amendment) Act 1993, No. 130/1993**

| | |
|---|---|
| *Assent Date:* | 14.12.93 |
| *Commencement Date:* | S. 122(Sch. 4 item 17) on 3.1.94: Special Gazette (No. 97) 23.12.93 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Financial Management (Consequential Amendments) Act 1994, No. 31/1994**

| | |
|---|---|
| *Assent Date:* | 31.5.94 |
| *Commencement Date:* | S. 4(Sch. 2 item 106) on 1.1.95: Government Gazette 28.7.94 p. 2055 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water (Further Amendment) Act 1994, No. 49/1994**

| | |
|---|---|
| *Assent Date:* | 7.6.94 |
| *Commencement Date:* | Ss 1, 2 on 7.6.94: s. 2(1); s. 8 (*except* (a)(c)) on 1.7.92: s. 2(2); rest of Act on 1.7.94: s. 2(4) |
| *Current State:* | All of Act in operation |

**Electricity Industry (Amendment) Act 1994, No. 53/1994**

| | |
|---|---|
| *Assent Date:* | 15.6.94 |
| *Commencement Date:* | S. 34 on 3.10.94: Special Gazette (No. 64) 27.9.94 p. 1; Sch. 1 items 11.1–1.3 on 3.10.94: s. 2(4A) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Valuation of Land (Amendment) Act 1994, No. 91/1994**

| | |
|---|---|
| *Assent Date:* | 6.12.94 |
| *Commencement Date:* | S. 31 on 23.1.95: Government Gazette 19.1.95 p. 121 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Electricity Industry (Further Amendment) Act 1994, No. 110/1994**

| | |
|---|---|
| *Assent Date:* | 20.12.94 |
| *Commencement Date:* | S. 41(Sch. 1 item 11) on 20.12.94: Special Gazette (No. 100) 20.12.94 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Industry Act 1994, No. 121/1994**

| | |
|---|---|
| *Assent Date:* | 20.12.94 |
| *Commencement Date:* | Ss 1, 2 on 20.12.94; s. 2(1); rest of Act on 1.1.95: Special Gazette (No. 105) 23.12.94 p. 1 |
| *Current State:* | All of Act in operation |

**Equal Opportunity Act 1995, No. 42/1995**

| | |
|---|---|
| *Assent Date:* | 14.6.95 |
| *Commencement Date:* | S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 item 48 on 1.1.96: Government Gazette 21.12.95 p. 3571 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Electricity Industry (Amendment) Act 1995, No. 56/1995**

| | |
|---|---|
| *Assent Date:* | 20.6.95 |
| *Commencement Date:* | Ss 65, 66 on 20.6.95: Special Gazette (No. 52) 20.6.95 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water (Amendment) Act 1995, No. 62/1995**

| | |
|---|---|
| *Assent Date:* | 20.6.95 |
| *Commencement Date:* | 20.6.95 |
| *Current State:* | All of Act in operation |

**Water Industry (Amendment) Act 1995, No. 65/1995**

| | |
|---|---|
| *Assent Date:* | 27.6.95 |
| *Commencement Date:* | Ss 15, 16(1)–(7), 17–21, 22(b)–(d)(f)(i)–(k) on 29.6.95: Government Gazette 29.6.95 p. 1587; ss 16(8), 22(a)(e)(g)(h)(l) on 27.12.95: s. 2(4) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Electricity Industry (Further Amendment) Act 1995, No. 79/1995**

| | |
|---|---|
| *Assent Date:* | 28.11.95 |
| *Commencement Date:* | Ss 34–36 on 28.11.95: Special Gazette (No. 116) 28.11.95 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water (Further Amendment) Act 1995, No. 86/1995**

| | |
|---|---|
| *Assent Date:* | 28.11.95 |
| *Commencement Date:* | 28.11.95 |
| *Current State:* | All of Act in operation |

**Trustee and Trustee Companies (Amendment) Act 1995, No. 104/1995**

| | |
|---|---|
| *Assent Date:* | 5.12.95 |
| *Commencement Date:* | 1.1.96: s. 2 |
| *Current State:* | All of Act in operation |

**Water Acts (Amendment) Act 1996, No. 12/1996**

| | |
|---|---|
| *Assent Date:* | 25.6.96 |
| *Commencement Date:* | Ss 3–12 on 25.6.96: s. 2(1) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Building (Amendment) Act 1996, No. 39/1996**

| | |
|---|---|
| *Assent Date:* | 12.11.96 |
| *Commencement Date:* | Ss 11, 12 on 24.3.97: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Electricity Industry (Miscellaneous Amendment) Act 1997, No. 35/1997**

| | |
|---|---|
| *Assent Date:* | 3.6.97 |
| *Commencement Date:* | S. 29 on 3.6.97: Special Gazette (No. 58) 3.6.97 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Rail Corporations (Amendment) Act 1997, No. 104/1997**

| | |
|---|---|
| *Assent Date:* | 16.12.97 |
| *Commencement Date:* | S. 58 on 31.3.98: Special Gazette (No. 23) 31.3.98 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Residential Tenancies Act 1997, No. 109/1997**

| | |
|---|---|
| *Assent Date:* | 23.12.97 |
| *Commencement Date:* | S. 533(Sch. 2 items 12.1–12.4) on 1.7.98: Government Gazette 18.6.98 p. 1512 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Acts (Further Amendment) Act 1997, No. 110/1997**

| | |
|---|---|
| *Assent Date:* | 23.12.97 |
| *Commencement Date:* | Ss 13–16, 19, 20, 23–25 on 1.1.98: Government Gazette 24.12.97 p. 3783; ss 17, 18, 21, 22 on 1.7.98: Government Gazette 24.12.97 p. 3783 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Victorian Plantations Corporation (Amendment) Act 1998, No. 35/1998**

| | |
|---|---|
| *Assent Date:* | 19.5.98 |
| *Commencement Date:* | S. 21 on 26.6.98: Government Gazette 25.6.98 p. 1561 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Catchment and Land Protection (Amendment) Act 1998, No. 39/1998**

| | |
|---|---|
| *Assent Date:* | 26.5.98 |
| *Commencement Date:* | Ss 12, 13 on 26.5.98: s. 2(1) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998**

| | |
|---|---|
| *Assent Date:* | 26.5.98 |
| *Commencement Date:* | S. 7(Sch. 1) on 1.7.98: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998** (as amended by No. 101/1998)

| | |
|---|---|
| *Assent Date:* | 2.6.98 |
| *Commencement Date:* | S. 311(Sch. 1 item 105) on 1.7.98: Government Gazette 18.6.98 p. 1512 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Conservation, Forests and Lands (Miscellaneous Amendments) Act 1998, No. 76/1998**

| | |
|---|---|
| *Assent Date:* | 10.11.98 |
| *Commencement Date:* | S. 29 on 15.12.98: s. 2(5) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Transfer of Land (Single Register) Act 1998, No. 85/1998**

| | |
|---|---|
| *Assent Date:* | 17.11.98 |
| *Commencement Date:* | S. 24(Sch. item 66) on 1.1.99: s. 2(3) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Acts (Amendment) Act 1999, No. 22/1999**

| | |
|---|---|
| *Assent Date:* | 18.5.99 |
| *Commencement Date:* | Ss 3–6(5), 6(7), 7 on 18.5.99: s. 2(1); s. 6(6) on 18.5.00: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water (Waterway Management Tariffs) Act 1999, No. 65/1999**

| | |
|---|---|
| *Assent Date:* | 21.12.99 |
| *Commencement Date:* | 21.12.99: s. 2 |
| *Current State:* | All of Act in operation |

**Transport (Amendment) Act 2000, No. 30/2000**

| | |
|---|---|
| *Assent Date:* | 30.5.00 |
| *Commencement Date:* | 31.5.00: s. 2 |
| *Current State:* | All of Act in operation |

**Essential Services Legislation (Dispute Resolution) Act 2000, No. 59/2000**

| | |
|---|---|
| *Assent Date:* | 8.11.00 |
| *Commencement Date:* | S. 6 on 13.4.01: Government Gazette 29.3.01 p. 523 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Industry (Amendment) Act 2000, No. 66/2000**

| | |
|---|---|
| *Assent Date:* | 8.11.00 |
| *Commencement Date:* | Ss 25–32 on 1.12.01: s. 2(4) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Electricity Industry Legislation (Miscellaneous Amendments) Act 2000, No. 69/2000**

| | |
|---|---|
| *Assent Date:* | 21.11.00 |
| *Commencement Date:* | S. 65 on 1.1.01: s. 2(4) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water (Amendment) Act 2001, No. 25/2001**

| | |
|---|---|
| *Assent Date:* | 29.5.01 |
| *Commencement Date:* | 30.5.01: s. 2 |
| *Current State:* | All of Act in operation |

**Corporations (Consequential Amendments) Act 2001, No. 44/2001**

| | |
|---|---|
| *Assent Date:* | 27.6.01 |
| *Commencement Date:* | S. 3(Sch. item 127) on 15.7.01: s. 2 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Statute Law Further Amendment (Relationships) Act 2001, No. 72/2001**

| | |
|---|---|
| *Assent Date:* | 7.11.01 |
| *Commencement Date:* | S. 3(Sch. item 12) on 20.12.01: Government Gazette 20.12.01 p. 3127 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water (Irrigation Farm Dams) Act 2002, No. 5/2002** (as amended by No. 6/2002)

| | |
|---|---|
| *Assent Date:* | 3.4.02 |
| *Commencement Date:* | Ss 4–19(1), 19(3), 21–24, 25(2)–(4), 29, 30, 32–56 on 4.4.02: s. 2(1); ss 19(2)(4), 20, 25(1), 26–28, 31 on 1.7.02: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Statute Law (Further Revision) Act 2002, No. 11/2002**

| | |
|---|---|
| *Assent Date:* | 23.4.02 |
| *Commencement Date:* | S. 3(Sch. 1 item 66) on 24.4.02: s. 2(1) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Electoral Act 2002, No. 23/2002**

| | |
|---|---|
| *Assent Date:* | 12.6.02 |
| *Commencement Date:* | S. 205 on 1.9.02: Government Gazette 29.8.02 p. 2333 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Utility Meters (Metrological Controls) Act 2002 No. 48/2002**

| | |
|---|---|
| *Assent Date:* | 22.10.02 |
| *Commencement Date:* | S. 75 on 1.1.03: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water (Victorian Water Trust Advisory Council) Act 2003, No. 35/2003**

| | |
|---|---|
| *Assent Date:* | 27.5.03 |
| *Commencement Date:* | 1.12.03: s. 2(2) |
| *Current State:* | All of Act in operation |

**Safe Drinking Water Act 2003, No. 46/2003**

| | |
|---|---|
| *Assent Date:* | 11.6.03 |
| *Commencement Date:* | S. 59(1) on 1.7.04: s. 2 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Legislation (Essential Services Commission and Other Amendments) Act 2003, No. 48/2003**

| | |
|---|---|
| *Assent Date:* | 11.6.03 |
| *Commencement Date:* | S. 12(1) on 4.4.02: s. 2(2); ss 8, 10 on 12.6.03: s. 2(1); ss 7, 12(2)(3) on 1.1.04: Government Gazette 11.12.03 p. 3117; s. 9 on 1.7.05: s. 2(4) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Legislation (Amendment) Act 2003, No. 90/2003**

| | |
|---|---|
| *Assent Date:* | 11.11.03 |
| *Commencement Date:* | Ss 3–7, 12 on 12.11.03: s. 2 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Road Management Act 2004, No. 12/2004**

| | |
|---|---|
| *Assent Date:* | 11.5.04 |
| *Commencement Date:* | Ss 175, 176 on 1.1.05: s. 2(4) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Planning and Environment (General Amendment) Act 2004, No. 81/2004**

| | |
|---|---|
| *Assent Date:* | 16.11.04 |
| *Commencement Date:* | S. 52 on 23.5.05: Government Gazette 19.5.05 p. 930 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**State Concessions Act 2004, No. 82/2004**

| | |
|---|---|
| *Assent Date:* | 16.11.04 |
| *Commencement Date:* | S. 13(Sch. item 7) on 1.3.05: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Public Administration Act 2004, No. 108/2004**

| | |
|---|---|
| *Assent Date:* | 21.12.04 |
| *Commencement Date:* | S. 117(1)(Sch. 3 item 232) on 5.4.05: Government Gazette 31.3.05 p. 602 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Environment and Water Legislation (Miscellaneous Amendments) Act 2005, No. 48/2005**

| | |
|---|---|
| *Assent Date:* | 24.8.05 |
| *Commencement Date:* | Ss 13–15 on 25.8.05: s. 2 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Groundwater (Border Agreement) (Amendment) Act 2005, No. 79/2005**

| | |
|---|---|
| *Assent Date:* | 22.11.05 |
| *Commencement Date:* | S. 5 on 31.10.06: Government Gazette 26.10.06 p. 2286 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water (Resource Management) Act 2005, No. 99/2005** (as amended by No. 85/2006)

| | |
|---|---|
| *Assent Date:* | 7.12.05 |
| *Commencement Date:* | Ss 4, 11, 34 on 15.12.05: Government Gazette 15.12.05 p. 2901; ss 3, 5–10, 12–33, 35–57, 59–68, 70, 71 on 3.8.06: Special Gazette (No. 191) 2.8.06 p. 1; s. 58 on 21.12.06: Government Gazette 21.12.06 p. 2768; s. 69 on 1.7.07: Government Gazette 28.6.07 p. 1304 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Rail Safety Act 2006, No. 9/2006**

| | |
|---|---|
| *Assent Date:* | 4.4.06 |
| *Commencement Date:* | S. 161 on 1.8.06: Special Gazette (No. 181) 25.7.06 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Owners Corporations Act 2006, No. 69/2006**

| | |
|---|---|
| *Assent Date:* | 19.9.06 |
| *Commencement Date:* | S. 224(Sch. 3 item 12) on 31.12.07: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006**

| | |
|---|---|
| *Assent Date:* | 10.10.06 |
| *Commencement Date:* | S. 26(Sch. item 116) on 11.10.06: s. 2(1) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water (Governance) Act 2006, No. 85/2006** (as amended by No. 28/2007)

| | |
|---|---|
| *Assent Date:* | 17.10.06 |
| *Commencement Date:* | Ss 3(k), 5, 7–20, 27–33, 35, 36, 38–46, 48–53, 68, 69(2)(3), 95–97, 121, 123(1)–(4), 124, 129(1), 130, 137–147 on 21.12.06: Government Gazette 21.12.06 p. 2768; ss 3(a)–(j)(l)(m), 4, 6, 21–26, 34, 37, 47, 54–67, 69(1), 70–94, 98–120, 122, 123(5)–(7), 125–128, 129(2), 131–136, 148 on 1.7.07: s. 2(3) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Statute Law Revision Act 2007, No. 28/2007**

| | |
|---|---|
| *Assent Date:* | 26.6.07 |
| *Commencement Date:* | S. 3(Sch. item 75) on 27.6.07: s. 2(1) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Acts Amendment (Enforcement and Other Matters) Act 2007, No. 29/2007**

| | |
|---|---|
| *Assent Date:* | 26.6.07 |
| *Commencement Date:* | Ss 13–24 on 27.6.07: s. 2 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Motor Car Traders Amendment Act 2008, No. 4/2008**

| | |
|---|---|
| *Assent Date:* | 4.3.08 |
| *Commencement Date:* | S. 32(Sch. item 37) on 1.12.08: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Relationships Act 2008, No. 12/2008**

| | |
|---|---|
| *Assent Date:* | 15.4.08 |
| *Commencement Date:* | S. 73(1)(Sch. 1 item 65) on 1.12.08: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Public Health and Wellbeing Act 2008, No. 46/2008**

| | |
|---|---|
| *Assent Date:* | 2.9.08 |
| *Commencement Date:* | S. 292 on 1.1.10: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Greenhouse Gas Geological Sequestration Act 2008, No. 61/2008**

| | |
|---|---|
| *Assent Date:* | 5.11.08 |
| *Commencement Date:* | S. 323 on 1.12.09: Special Gazette (No. 439) 1.12.09 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water (Commonwealth Powers) Act 2008, No. 75/2008**

| | |
|---|---|
| *Assent Date:* | 4.12.08 |
| *Commencement Date:* | Ss 21–23 on 15.12.08: Special Gazette (No. 358) 11.12.08 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009**

| | |
|---|---|
| *Assent Date:* | 10.2.09 |
| *Commencement Date:* | S. 37(Sch. 1 item 29) on 1.12.09: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Amendment (Non Water User Limit) Act 2009, No. 54/2009**

| | |
|---|---|
| *Assent Date:* | 15.9.09 |
| *Commencement Date:* | Ss 4–14 on 16.9.09: s. 2 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009**

| | |
|---|---|
| *Assent Date:* | 24.11.09 |
| *Commencement Date:* | S. 97(Sch. item 133) on 1.1.10: Government Gazette 10.12.09 p. 3215 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009**

| | |
|---|---|
| *Assent Date:* | 24.11.09 |
| *Commencement Date:* | S. 54(Sch. Pt 1 item 62) on 1.1.10: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Consumer Affairs Legislation Amendment Act 2010, No. 1/2010**

| | |
|---|---|
| *Assent Date:* | 9.2.10 |
| *Commencement Date:* | S. 93 on 1.8.10: Government Gazette 22.7.10 p. 1628 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Transport Integration Act 2010, No. 6/2010** (as amended by No. 45/2010)

| | |
|---|---|
| *Assent Date:* | 2.3.10 |
| *Commencement Date:* | S. 203(1)(Sch. 6 item 51) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Amendment (Entitlements) Act 2010, No. 32/2010**

| | |
|---|---|
| *Assent Date:* | 8.6.10 |
| *Commencement Date:* | Ss 3–60, 63–77, Sch. on 24.6.10: Government Gazette 24.6.10 p. 1275; ss 61, 62 on 1.1.11: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Transport Legislation Amendment (Ports Integration) Act 2010, No. 45/2010**

| | |
|---|---|
| *Assent Date:* | 17.8.10 |
| *Commencement Date:* | S. 58 on 1.9.10: Special Gazette (No. 337) 24.8.10 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Amendment (Victorian Environmental Water Holder) Act 2010, No. 50/2010** (as amended by No. 29/2011)

| | |
|---|---|
| *Assent Date:* | 24.8.10 |
| *Commencement Date:* | Ss 9–12, 24–27 on 28.10.10: Government Gazette 28.10.10 p. 2584; ss 3–8, 13–23, 28–31 on 1.7.11: Special Gazette (No. 141) 3.5.11 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Traditional Owner Settlement Act 2010, No. 62/2010**

| | |
|---|---|
| *Assent Date:* | 21.9.10 |
| *Commencement Date:* | Ss 130, 131 on 23.9.10: Special Gazette (No. 382) 22.9.10 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Subordinate Legislation Amendment Act 2010, No. 78/2010**

| | |
|---|---|
| *Assent Date:* | 19.10.10 |
| *Commencement Date:* | S. 24(Sch. 1 item 36) on 1.1.11: s. 2(1) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Statute Law Revision Act 2011, No. 29/2011**

| | |
|---|---|
| *Assent Date:* | 21.6.11 |
| *Commencement Date:* | S. 3(Sch. 1 item 105) on 22.6.11: s. 2(1) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Commercial Arbitration Act 2011, No. 50/2011**

| | |
|---|---|
| *Assent Date:* | 18.10.11 |
| *Commencement Date:* | S. 46(Sch. item 15) on 17.11.11: Special Gazette (No. 369) 15.11.11 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Legislation Amendment (Water Infrastructure Charges) Act 2011, No. 63/2011**

| | |
|---|---|
| *Assent Date:* | 15.11.11 |
| *Commencement Date:* | Ss 9–11 on 16.11.11: s. 2 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Amendment (Governance and Other Reforms) Act 2012, No. 17/2012**

| | |
|---|---|
| *Assent Date:* | 3.4.12 |
| *Commencement Date:* | Ss 3–69 on 1.7.12: Special Gazette (No. 172) 29.5.12 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Traditional Owner Settlement Amendment Act 2013, No. 4/2013**

| | |
|---|---|
| *Assent Date:* | 19.2.13 |
| *Commencement Date:* | S. 34 on 8.3.13: Special Gazette (No. 70) 5.3.13 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Rail Safety National Law Application Act 2013, No. 22/2013**

| | |
|---|---|
| *Assent Date:* | 23.4.13 |
| *Commencement Date:* | Ss 77–79 on 19.5.14: Special Gazette (No. 148) 13.5.14 p. 2 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Legislation Amendment Act 2013, No. 24/2013**

| | |
|---|---|
| *Assent Date:* | 23.4.13 |
| *Commencement Date:* | Ss 3–6, 9–38, 40 on 19.6.13: Special Gazette (No. 211) 18.6.13 p. 1; ss 7, 8, 39 on 1.12.13: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**State Tax Laws Amendment (Budget and Other Measures) Act 2013, No. 41/2013**

| | |
|---|---|
| *Assent Date:* | 28.6.13 |
| *Commencement Date:* | Ss 52, 53 on 29.6.13: s. 2(1) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Statute Law Revision Act 2013, No. 70/2013**

| | |
|---|---|
| *Assent Date:* | 19.11.13 |
| *Commencement Date:* | S. 4(Sch. 2 item 56) on 1.12.13: s. 2(1) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Legal Profession Uniform Law Application Act 2014, No. 17/2014**

| | |
|---|---|
| *Assent Date:* | 25.3.14 |
| *Commencement Date:* | S. 160(Sch. 2 item 109) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Amendment (Water Trading) Act 2014, No. 28/2014**

| | |
|---|---|
| *Assent Date:* | 8.4.14 |
| *Commencement Date:* | Ss 3–19 on 1.7.14: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014**

| | |
|---|---|
| *Assent Date:* | 3.6.14 |
| *Commencement Date:* | S. 10(Sch. item 182) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Amendment (Flood Mitigation) Act 2014, No. 53/2014**

| | |
|---|---|
| *Assent Date:* | 12.8.14 |
| *Commencement Date:* | Ss 3–7 on 1.3.15: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Emergency Management (Control of Response Activities and Other Matters) Act 2015, No. 43/2015**

| | |
|---|---|
| *Assent Date:* | 22.9.15 |
| *Commencement Date:* | S. 39 on 19.9.16: Special Gazette (No. 284) 13.9.16 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Justice Legislation Further Amendment Act 2016, No. 3/2016**

| | |
|---|---|
| *Assent Date:* | 16.2.16 |
| *Commencement Date:* | S. 97 on 1.5.16: Special Gazette (No. 114) 26.4.16 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Traditional Owner Settlement Amendment Act 2016, No. 67/2016**

| | |
|---|---|
| *Assent Date:* | 15.11.16 |
| *Commencement Date:* | S. 35 on 1.5.17: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Yarra River Protection (Wilip-gin Birrarung murron) Act 2017, No. 49/2017**

| | |
|---|---|
| *Assent Date:* | 26.9.17 |
| *Commencement Date:* | Ss 93–96 on 1.12.17: s. 2(3) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Parks and Crown Land Legislation Amendment Act 2017, No. 53/2017**

| | |
|---|---|
| *Assent Date:* | 24.10.17 |
| *Commencement Date:* | S. 94 on 15.12.17: Special Gazette (No. 433) 12.12.17 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**State Taxation Acts Further Amendment Act 2017, No. 67/2017**

| | |
|---|---|
| *Assent Date:* | 19.12.17 |
| *Commencement Date:* | S. 79 on 20.12.17: s. 2(4) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Oaths and Affirmations Act 2018, No. 6/2018**

| | |
|---|---|
| *Assent Date:* | 27.2.18 |
| *Commencement Date:* | S. 68(Sch. 2 item 137) on 1.3.19: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Planning and Environment Amendment (Distinctive Areas and Landscapes) Act 2018, No. 17/2018**

| | |
|---|---|
| *Assent Date:* | 29.5.18 |
| *Commencement Date:* | Ss 30–33 on 30.5.18: s. 2 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Environment Protection Amendment Act 2018, No. 39/2018** (as amended by Nos 27/2019, 11/2020)

| | |
|---|---|
| *Assent Date:* | 28.8.18 |
| *Commencement Date:* | S. 61 on 1.7.21: Special Gazette (No. 124) 16.3.21 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Residential Tenancies Amendment Act 2018, No. 45/2018** (as amended by Nos 11/2020, 25/2020)

| | |
|---|---|
| *Assent Date:* | 18.9.18 |
| *Commencement Date:* | S. 379 on 29.3.21: Special Gazette (No. 42) 27.1.21 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water and Catchment Legislation Amendment Act 2019, No. 23/2019**

| | |
|---|---|
| *Assent Date:* | 20.8.19 |
| *Commencement Date:* | Ss 4, 5(1)(3)–(7)(9)(10), 6–82, 84, 85, 87, 88, 90–95, 97–117 on 9.10.19: Special Gazette (No. 409) 8.10.19 p. 1; ss 5(8), 83, 86, 89, 96 on 1.1.20: Special Gazette (No. 514) 10.12.19 p. 1; s. 5(2) on 19.3.20: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Rail Safety Legislation Amendment (National Services Delivery and Related Reforms) Act 2019, No. 41/2019**

| | |
|---|---|
| *Assent Date:* | 6.11.19 |
| *Commencement Date:* | S. 117(Sch. 1 item 13) on 2.12.19: Special Gazette (No. 480) 26.11.19 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Local Government Act 2020, No. 9/2020**

| | |
|---|---|
| *Assent Date:* | 24.3.20 |
| *Commencement Date:* | S. 390(Sch. 1 item 111) on 6.4.20: Special Gazette (No. 150) 24.3.20 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Great Ocean Road and Environs Protection Act 2020, No. 19/2020**

| | |
|---|---|
| *Assent Date:* | 23.6.20 |
| *Commencement Date:* | Ss 112−115 on 1.12.20: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Great Ocean Road and Environs Protection Amendment Act 2021, No. 42/2021**

| | |
|---|---|
| *Assent Date:* | 19.10.21 |
| *Commencement Date:* | Ss 139−142 on 1.9.22: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Suburban Rail Loop Act 2021, No. 43/2021**

| | |
|---|---|
| *Assent Date:* | 19.10.21 |
| *Commencement Date:* | S. 219(Sch. 1 item 14) on 1.12.21: Special Gazette (No. 649) 23.11.21 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water and Catchment Legislation Amendment Act 2021, No. 48/2021**

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|---|---|
| *Assent Date:* | 3.11.21 |
| *Commencement Date:* | S. 7(1) on 19.3.20: s. 7(3); ss 7(2)(3), 62−68, 108 on 1.1.22: Special Gazette (No. 717) 14.12.21 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Windfall Gains Tax and State Taxation and Other Acts Further Amendment Act 2021, No. 52/2021**

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|---|---|
| *Assent Date:* | 30.11.21 |
| *Commencement Date:* | Ss 102–104 on 1.12.21: s. 2(1) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022, No. 1/2022**

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|---|---|
| *Assent Date:* | 15.2.22 |
| *Commencement Date:* | S. 107 on 29.3.22: Special Gazette (No. 157) 29.3.22 p. 1 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**State Taxation and Treasury Legislation Amendment Act 2022, No. 23/2022**

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|---|---|
| *Assent Date:* | 15.6.22 |
| *Commencement Date:* | S. 11 on 1.7.22: s. 2(2) |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

**Water Legislation Amendment Act 2023, No. 10/2023**

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|---|---|
| *Assent Date:* | 23.5.23 |
| *Commencement Date:* | Ss 20, 21 on 24.5.23: s. 2 |
| *Current State:* | This information relates only to the provision/s amending the **Water Act 1989** |

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|---|---|
| Special Gazette (No. 26) | 16 May 1991 pages 1–3 |
| Special Gazette (No. 27) | 31 March 1995 pages 1–3 |

## 3 Explanatory details

[1] S. 3(1) def. of ***waterway***: In sections 36, 51 and 63, ***waterway*** has an extended meaning.

[2] S. 7(1): Section 8 confers water rights on persons other than the Crown, including the right to use rainwater that falls on land occupied by them. Section 10(1)(b) confers the right to construct works to store rainwater.

[3] S. 8(1)(c): Section 385 of the **Land Act 1958**, No. 6284/1958 was inserted by section 327 of this Act (*repealed*).

[4] S. 8(7): Section 15 protects rights conferred by or under this Act.

[5] S. 8(7)(b): Liability may arise under section 16 if a flow of water is obstructed or deflected.

[6] S. 12: The Crown is bound by this section (see s. 5(a)).

[7] S. 15: See note 6.

[8] S. 16: See note 6.

[9] S. 17: Section 157 sets out the liability of Authorities in respect of a flow of water from their works.

[10] S. 23: The Crown is bound by this section (see s. 5(b)).

[11] S. 33E: The Crown is bound by this section (see s. 5(ba)).

[12] S. 40(1)(ja): Section 22 of the **Heritage Rivers Act 1992**, No. 36/1992 reads as follows:

**S. 22 amended by No. 68/2006 s. 10 (ILA s. 39B(1)).**

### 22 Transitional provision

(1) This Act is not to be taken to disturb the continuity, operation or effect of any instrument made granted or issued under any other Act before the commencement of this Act which authorises the carrying out of the grazing of domestic stock in a natural catchment area or heritage river area.

**S. 22(2) inserted by No. 68/2006 s. 10.**

(2) Despite section 10(1), an impoundment that was in existence immediately before the commencement of section 6 of the **Heritage Rivers (Further Protection) Act 2006** may be replaced or maintained.

[13] S. 55A: The Crown is bound by this section (see s. 5(bb)).

[14] S. 63: The Crown is bound by this section (see s. 5(c)).

[15] S. 68(d): See note 12.

[16] S. 70A: See note 13.

[17] S. 75A: The Crown is bound by this section (see s. 5(d)).

[18] S. 76A: See note 17.

[19] S. 78A: See note 17.

[20] S. 79A: See note 17.

[21] S. 80AA: See note 17.

[22] S. 81: See note 17.

[23] Pt 6 (Heading and ss 85–122) amended by Nos 25/1991 s. 3, 12/1992 s. 5, 50/1992 ss 7(a)–(i), 10(Sch. items 11.6–11.16,), 54/1992 s. 56(b)–(e), 69/1993 s. 5(a)(b), 49/1994 s. 4(1)(c)–(i), 8(a)(b), 121/1994 ss 191, 192(1), 62/1995 s. 42, 65/1995 ss 16(1)–(7), 17, 22(b)–(e), 79/1995 s. 35, 86/1995 ss 13, 14, 12/1996 ss 6, 7, 110/1997 s. 16, 39/1998 s. 12, 46/1998 s. 7(Sch. 1), 85/1998 s. 24(Sch. items 66.1, 66.2), 22/1999 s. 7, 59/2000 s. 6, 69/2000 s. 65(4), 25/2001 ss 4–11, 72/2001 s. 3(Sch. items 12.3–12.5), 11/2002 s. 3(Sch. 1 item 66.1), 23/2002 s. 205, 48/2003 ss 7, 8, 108/2004 s. 117(1)(Sch. 3 item 232.5), 99/2005 s. 34, 80/2006 s. 26(Sch. item 116.1), substituted as Pt 6 (Heading and ss 85–122F) by No. 85/2006 s. 54.

[24] S. 141: The Crown is bound by this section (see s. 5(e)).

[25] S. 143: See note 24.

[26] S. 145: See note 24.

[27] S. 145A: See note 24.

[28] S. 148(1): The Crown is bound by this subsection (see s. 5(e)).

[29] S. 149: See note 24.

[30] S. 150: See note 24.

[31] S. 151: See note 24.

[32] S. 153: See note 24.

[33] S. 154: See note 24.

[34] S. 157: By virtue of section 17(2) Authorities cannot be liable under section 16 in respect of a flow of water from their works.

[35] S. 166 (*repealed*): Section 59(2) of the **Safe Drinking Water Act 2003**, No. 46/2003 reads as follows:

> **59 Repeal of immunity provision**
>
> (2) Despite the repeal of section 166, that section continues to apply to a person who, immediately before that repeal, was a member of an Authority in respect of any action taken by the person in connection with the treatment of water (including disinfection or fluoridation) in accordance with any Act for the remainder of the current term of that member.

[36] S. 169A: The Crown is bound by this section (see s. 5(ea)).

[37] S. 178: The Crown is bound by this section (see s. 5(f)).

[38] S. 194: The Crown is bound by this section (see s. 5(g)).

[39] S. 195: See note 38.

[40] S. 200: See note 38.

[41] S. 208: See note 38.

[42] S. 218: See note 38.

[43] S. 265: The Crown is bound by this section (see s. 5(h)).

[44] S. 268: See note 43.

[45] S. 269: See note 43.

[46] S. 270: See note 43.

[47] S. 281: See note 43.

[48] S. 288: The Crown is bound by this section (see s. 5(i)).

[49] S. 288A: See note 48.

[50] S. 289: See note 48.

[51] S. 289A: See note 48.

[52] S. 289B: See note 48.

[53] S. 289C: See note 48.

[54] S. 290: See note 48.

[55] S. 329 (*repealed*): The amendment to section 329(1)(b) proposed by section 226(Schedule 5 item 26) (*repealed*) of the **Associations Incorporation Reform Act 2012**, No. 20/2012 (*repealed*) is not included in

this publication due to the earlier repeal of section 329 by section 66 of the **Water Amendment (Governance and Other Reforms) Act 2012**, No. 17/2012 (*repealed*).