

TASMANIA

**WATER AND SEWERAGE INDUSTRY
(COMMUNITY SERVICE OBLIGATION) BILL
2009**

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2 – CONCESSIONS

4. Effect of concession
5. Eligibility for concession
6. Application for concession
7. Billing period in which concession begins and ends
8. Grant of concessions
9. Concession rate
10. Regulated entities to be notified when person ceases to be eligible for concession
11. Offence of giving false information &c.
12. Notice of concession to be placed on accounts
13. Regulated entity may require repayment

PART 3 – REIMBURSEMENT BY COUNCILS

14. Councils to reimburse relevant regulated entities the cost of concession
15. Agreements to reimburse

PART 4 – MISCELLANEOUS

16. Status of instruments under this Act
17. Regulations
18. Administration of Act
19. Transitional provisions

PART 5 – CONSEQUENTIAL AMENDMENT OF *LOCAL GOVERNMENT (RATES AND CHARGES REMISSIONS) REGULATIONS 2004*

20. Principal Regulations
21. Regulation 5 amended (Maximum remission)
22. Amendment of regulation not to constrain future regulations

**WATER AND SEWERAGE INDUSTRY
(COMMUNITY SERVICE OBLIGATION) BILL
2009**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
21 May 2009

*(Brought in by the Minister for Primary Industries and Water,
the Honourable David Edward Llewellyn)*

A BILL FOR

An Act to establish obligations of regulated entities to reduce the cost of regulated services provided to certain customers by the entities, to amend the *Local Government (Rates and Charges Remissions) Regulations 2004* and for related purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Water and Sewerage Industry (Community Service Obligation) Act 2009*.

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

s. 2

Part 1 – Preliminary

2. Commencement

This Act commences on 1 July 2009.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

“**billing period**”, in relation to a customer of a regulated entity, means the period to which an account received by the customer from the regulated entity relates;

“**concession**” means a concession granted under section 8;

“**concession amount**”, for a billing period, has the meaning it has in section 9(7);

“**eligible customer of a regulated entity in respect of a dwelling**” has the meaning it has in section 5;

“**region**” means the northern region, the north-western region or the southern region;

“**relevant regulated entity**” means a Regional Corporation within the meaning of the *Water and Sewerage Corporations Act 2008*;

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

Part 1 – Preliminary

s. 3

“spouse”, in relation to a person, means a person who is married to the person or who is in a significant relationship, within the meaning of the *Relationships Act 2003*, with the person;

“statutory authority” means a body or authority, whether incorporated or not, that is established or constituted under a written law of the Commonwealth or the State or under the royal prerogative.

- (2) Unless the contrary intention appears, an expression used in this Act has the same meaning as it has in the *Water and Sewerage Industry Act 2008*.

PART 2 – CONCESSIONS

4. Effect of concession

- (1) An eligible customer of a regulated entity in respect of a dwelling who is granted the concession is entitled to have the amount, for a billing period, of a relevant fixed charge that the customer is liable to pay to the entity in respect of that dwelling reduced by the concession amount for the billing period.
- (2) Despite subsection (1), if the amount of a fixed charge in respect of a dwelling only relates to a water service, or a sewerage service, in respect of that dwelling, but not both, the customer is only entitled to have the amount, of that fixed charge, that the customer is liable to pay reduced by half the concession amount for the billing period.
- (3) Nothing in this section is to be taken to entitle a person to have any part of the concession amount for a billing period carried over to any other billing period.
- (4) In this section –
 - “**fixed charge**”, in relation to a dwelling, means a charge that is not calculated by reference to –
 - (a) the volume of water actually supplied to; or

- (b) the volume of sewage or waste actually removed from –

the dwelling, but does not include any penalty or interest charges imposed on the person.

5. Eligibility for concession

- (1) A person is an eligible customer of a regulated entity in respect of a dwelling if the person –
 - (a) is a member of a class of persons prescribed in the regulations to be eligible for the concession; and
 - (b) occupies the dwelling as his or her principal place of residence; and
 - (c) is a customer of the regulated entity in relation to the dwelling.
- (2) A person is an eligible customer of a regulated entity in respect of a dwelling if the person –
 - (a) is a member of a class of persons prescribed in the regulations to be eligible for the concession; and
 - (b) resides in a prescribed institution; and
 - (c) is a customer of a regulated entity in relation to the dwelling; and

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

s. 5

Part 2 – Concessions

- (d) does not receive rental income from the dwelling; and
 - (e) does not have a spouse, or if the person has a spouse, the spouse resides in a prescribed institution and does not receive rental income from the dwelling.
- (3) A person is an eligible customer of a regulated entity in respect of a dwelling if the person –
- (a) is a member of a class of persons prescribed in the regulations to be eligible for the concession; and
 - (b) resides in a prescribed institution; and
 - (c) is a customer of a regulated entity in relation to the dwelling; and
 - (d) has a spouse who occupies the dwelling as his or her principal place of residence.
- (4) A person is an eligible customer of a regulated entity in respect of a dwelling if –
- (a) the person was, immediately before the death of another person, the spouse of the other person; and
 - (b) the other person was, immediately before his or her death, an eligible customer of a regulated entity in respect of the dwelling who had been granted the concession; and

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

Part 2 – Concessions

s. 6

- (c) the person occupies the dwelling as his or her principal place of residence; and
 - (d) the person is a customer of the regulated entity in relation to the dwelling.
- (5) This section does not apply in relation to a person in respect of more than one dwelling.
- (6) At the end of the period of 2 years after a person who is eligible for the grant of the concession under subsection (2) or (3) is granted the concession, subsections (2) or (3), respectively, cease to apply to the person.
- (7) Subsection (4) does not apply to a person at the end of the period of 2 years after the person's spouse dies.

6. Application for concession

- (1) An eligible customer of a regulated entity in respect of a dwelling may apply to the entity for the concession to be granted in relation to a water service or a sewerage service, or both, provided, or to be provided, in relation to the dwelling by the entity.
- (2) An application under subsection (1) to a regulated entity is to be –
- (a) in the manner and form required by the regulated entity; and

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

s. 7

Part 2 – Concessions

- (b) accompanied by the documents or information that the regulated entity reasonably requires.
- (3) Without limiting subsection (2)(b), the information that may reasonably be required to accompany an application under subsection (1) by a person includes –
 - (a) a number, or evidence of a card, that identifies the person for the purposes of another statutory authority of Tasmania or the Commonwealth; and
 - (b) if section 5(2), (3) or (4) applies to the person, a statutory declaration as to any of the matters specified in one of those subsections.

7. Billing period in which concession begins and ends

- (1) An eligible customer of a regulated entity in respect of a dwelling may make an application under section 6(1) at any time after he or she becomes a customer of the entity in relation to the dwelling.
- (2) A concession granted to an eligible customer of a regulated entity in respect of a dwelling applies to the customer –
 - (a) for each day, in the billing period in which the concession was granted to the customer by the regulated entity, that

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

Part 2 – Concessions

s. 8

occurs after the day on which the concession was granted; and

- (b) for each day in a billing period, after the billing period referred to in paragraph (a), that is a billing period in which the customer was, for part or all of the period, an eligible customer of the regulated entity in respect of the dwelling.

8. Grant of concessions

- (1) A regulated entity that receives from a person an application for a concession under section 6(1) must, within 21 days, by notice to the person, determine the application.
- (2) Subsection (1) only applies to a regulated entity in relation to an application from a person, if the entity has obtained from the person all the information it requires to determine the application.
- (3) The regulated entity is to determine the application from the person –
 - (a) by granting the concession to the person, if the entity is satisfied the person is an eligible customer of the regulated entity in respect of the dwelling to which the application relates; or

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

s. 9

Part 2 – Concessions

- (b) by refusing to grant the concession to the person, if the entity is not satisfied the person is an eligible customer of the regulated entity in respect of the dwelling to which the application relates.
- (4) Only one eligible customer of a regulated entity in respect of a dwelling may be granted a concession in respect of a dwelling.

9. Concession rate

- (1) The regulations must prescribe an amount in dollars to be the base amount for regulated entities for each financial year.
- (2) The councils within a region may, in a financial year, determine by notice in the *Gazette* that the base amount for regulated entities within the region for each subsequent financial year is to be an amount, specified in the notice, that is greater than the base amount prescribed in the regulations for the purpose of subsection (1).
- (3) A determination may only be made under subsection (2) if more than 50% of the councils in the region agree to the making of the determination.
- (4) Despite subsection (1), if the councils within a region make a determination under subsection (2) for each subsequent financial year, the base amount for regulated entities within the region for each subsequent financial

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

Part 2 – Concessions

s. 9

year is to be the amount specified in the determination.

- (5) The regulations may prescribe a percentage amount by which the base amount for regulated entities under subsection (1) or (4) is to be increased or decreased for a financial year.
- (6) If the regulations prescribe a percentage amount by which the base amount for regulated entities is to be increased or decreased for a financial year then, despite subsections (1) and (4) –
 - (a) the base amount for regulated entities for that financial year is increased or decreased in accordance with that percentage amount; and
 - (b) the base amount for regulated entities for each subsequent financial year is the base amount for the previous year, as increased or decreased, if at all, for that subsequent financial year under paragraph (a).
- (7) The concession amount for a billing period in respect of a regulated entity is, for each day, within the billing period, for which the concession applies in accordance with section 7, the amount equal to $1/365$ th of the base amount for the regulated entity for the financial year.

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

s. 10

Part 2 – Concessions

10. Regulated entities to be notified when person ceases to be eligible for concession

- (1) A person who –
- (a) is an eligible customer of a regulated entity in respect of a dwelling; and
 - (b) has been granted a concession by the regulated entity –

must not fail, without reasonable excuse, to notify the entity within 21 days of ceasing to be an eligible customer of the entity in respect of a dwelling.

Penalty: 2 penalty units.

- (2) A notification under subsection (1) to a regulated entity is to be made in the manner approved by the regulated entity.

11. Offence of giving false information &c.

A person must not, in giving any information under this Act –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Penalty: 2 penalty units.

12. Notice of concession to be placed on accounts

A regulated entity must include, in a notice charging a customer an amount for a regulated service provided by the regulated entity, a statement that concessions are available for eligible customers.

13. Regulated entity may require repayment

- (1) A regulated entity, by written notice to a person granted the concession under this Act, may require the person to repay to the entity an amount that the person would have, but for the concession, been required to pay to the entity.
- (2) A regulated entity may only require a person to repay an amount that the person would have, but for the concession, been required to pay to the entity, if the person was not entitled to the concession in respect of the amount.

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

s. 14

Part 3 – Reimbursement by councils

PART 3 – REIMBURSEMENT BY COUNCILS

14. Councils to reimburse relevant regulated entities the cost of concession

- (1) A council is liable to pay to a relevant regulated entity the total amounts foregone in a financial year by the entity because of concessions in force in respect of dwellings situated in the municipal area of the council.
- (2) The total amounts foregone in a financial year by a relevant regulated entity in respect of dwellings is the total of the amounts that the entity has not been paid for the financial year by eligible customers of the entity in respect of the dwellings because of the concessions granted to the customers in relation to the dwellings.

15. Agreements to reimburse

- (1) The councils in a region must together enter into an agreement under this section with a relevant regulated entity established in the region.
- (2) An agreement under this section between the councils and a relevant regulated entity is to include provisions relating to –
 - (a) the manner and form in which payments are to be made to the regulated entity by the councils in accordance with section 14; and

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

Part 3 – Reimbursement by councils

s. 15

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- (b) the timing of the payments; and
 - (c) the information and records to be provided to the councils by the regulated entity in relation to concessions granted to eligible customers of the entity; and
 - (d) the manner in which disputes between the regulated entity and the councils in relation to matters set out in the agreement are to be resolved; and
 - (e) other matters that the regulations may prescribe.
- (3) An agreement under this section may include provisions requiring a council to pay to the relevant regulated entity a penalty, of an amount specified in the agreement, for failing to pay to the entity an amount that is due to the entity in accordance with the agreement.
- (4) An agreement under this section is to be entered into within 6 months after the day on which this Act commences.
- (5) If the relevant regulated entities and the councils in a region do not enter into an agreement under this section within 6 months after the day on which this Act commences –
- (a) the Treasurer is to prepare an agreement; and
 - (b) the relevant regulated entities and the councils in the region are to be taken to

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

s. 15

Part 3 – Reimbursement by councils

have entered into the agreement on the day specified in the agreement.

- (6) In preparing an agreement under subsection (5)(a), the Treasurer is to have regard to any draft agreement for the purpose of this section to which more than half of the councils in the region have agreed.
- (7) An agreement under this section remains in force for the period, of not more than 3 years, specified in the agreement.
- (8) No later than 6 months before the expiry of an agreement under this section entered into by the councils in a region and a relevant regulated entity, the councils and the relevant regulated entity must enter into a further agreement under this section.
- (9) If the councils and a relevant regulated entity do not, in accordance with subsection (8), enter into a further agreement under this section in the period specified in that subsection, then –
 - (a) despite subsection (7), the agreement under this section that is in force does not expire at the end of the period specified in the agreement but instead remains in force until a further agreement is entered into in accordance with paragraph (b); and
 - (b) the councils and the relevant regulated entity may, in accordance with this

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

Part 3 – Reimbursement by councils

s. 15

paragraph, enter into a further agreement
under this section.

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

s. 16

Part 4 – Miscellaneous

PART 4 – MISCELLANEOUS

16. Status of instruments under this Act

Unless the contrary intention appears, a notice under this Act is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

17. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may prescribe matters necessary or convenient to be prescribed for the purposes of this Act.
- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.

18. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Treasurer; and

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

Part 4 – Miscellaneous

s. 19

- (b) the department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.

19. Transitional provisions

- (1) In this section –

“automatically eligible person” means a person who was, immediately before the commencement day –

- (a) an eligible pensioner under the *Local Government (Rates and Charges Remissions) Act 1991*; and
- (b) a person in respect of whom an application under that Act was granted and was in force; and
- (c) a person to whom a water service or a sewerage service was provided by a council in respect of the dwelling to which the application relates;

“commencement day” means the day on which this Act comes into force.

- (2) A council in a regional area must, within 30 days after the commencement day, notify each regulated entity established in the region of –

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

s. 19

Part 4 – Miscellaneous

- (a) the names and addresses of all persons who had paid, or were liable to pay, to the council rates in respect of a water service or a sewerage service for the 2008-2009 financial year and who were, immediately before that day, automatically eligible persons; and
 - (b) any other relevant information that is held in respect of those persons by the council and that the councils are requested by an entity to provide to the entity.
- (3) On and from the commencement day, an automatically eligible person to whom section 5(1), (2) or (3) applies who is a customer of a regulated entity in relation to a dwelling is to be taken to be –
- (a) an eligible customer of the regulated entity in respect of the dwelling under section 5(1), (2) or (3) respectively; and
 - (b) a person who has been granted the concession under this Act because the person was eligible under section 5(1), (2) or (3), as the case may be.
- (4) Despite subsection (3), a person to whom that subsection applies ceases to be an eligible customer of the regulated entity in respect of the dwelling under section 5(1), (2) or (3) if section 5(1), (2) or (3), respectively, ceases to apply to the person.

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

Part 4 – Miscellaneous

s. 19

- (5) Despite section 5(6), a person who has, under subsection (3), been granted the concession under this Act because the person was eligible under section 5(2) or (3) is not entitled to the concession after he or she has received the concession, or a remission of rates or charges under section 4 of the *Local Government (Rates and Charges Remissions) Act 1991*, or a combination of both, for 2 consecutive years.
- (6) A regulated entity, within 60 days after the commencement day, must in writing inform each automatically eligible person of whom the entity is notified under subsection (2) that the person has been granted the concession under this Act.

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

s. 20 Part 5 – Consequential Amendment of Local Government (Rates and Charges Remissions) Regulations 2004

**PART 5 – CONSEQUENTIAL AMENDMENT OF
LOCAL GOVERNMENT (RATES AND CHARGES
REMISSIONS) REGULATIONS 2004**

20. Principal Regulations

In this Part, the *Local Government (Rates and Charges Remissions) Regulations 2004** are referred to as the Principal Regulations.

21. Regulation 5 amended (Maximum remission)

Regulation 5 of the Principal Regulations is amended by inserting after subregulation (2) the following subregulation:

- (2A) For the purposes of section 4(2) of the Act, and for the purposes of the application of subregulations (1) and (2) in relation to any subsequent financial year, the maximum amount that may be remitted, for the 2009-2010 financial year, in relation to an area of land, the owner or occupier of which is a customer within the meaning of the *Water and Sewerage Industry Act 2008*, is \$262.

*S.R. 2004, No. 141

*Water and Sewerage Industry (Community Service Obligation)
Act 2009
Act No. of*

Part 5 – Consequential Amendment of Local Government (Rates and Charges Remissions) Regulations 2004 **s. 22**

22. Amendment of regulation not to constrain future regulations

The amendment of regulation 5 of the Principal Regulations effected by section 21 does not prevent the amendment or rescission of that regulation by a subsequent regulation.