

TASMANIA

WATER AND SEWERAGE INDUSTRY AMENDMENT BILL 2011

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WATER AND SEWERAGE INDUSTRY AMENDMENT BILL 2011

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*
23 June 2011

*(Brought in by the Treasurer, the Honourable Larissa Tahireh
Giddings)*

A BILL FOR

An Act to amend the *Water and Sewerage Industry Act 2008*

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:

1. Short title

This Act may be cited as the *Water and Sewerage Industry Amendment Act 2011*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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3. Principal Act

In this Act, the *Water and Sewerage Industry Act 2008** is referred to as the Principal Act.

4. Section 3A inserted

After section 3 of the Principal Act, the following section is inserted in Part 1:

3A. Application in relation to strata title units of certain expressions in this Act

(1) In this section –

“common property” has the same meaning as it has in the *Strata Titles Act 1998*;

“lot” has the same meaning as it has in the *Strata Titles Act 1998*.

(2) For the purposes of the definitions in section 3 of “customer” and “connection point”, a property consisting of a lot that, but for the interposing of pipes situated in whole or in part on common property, would be connected to a regulated entity’s water infrastructure is to be taken to be a property that is connected to the regulated entity’s water infrastructure or sewerage infrastructure.

*No. 13 of 2008

5. Section 66 amended (Price determinations)

Section 66(2) of the Principal Act is amended by inserting after paragraph (e) the following paragraph:

- (ea) not take into account a change in a rate, prescribed in a regulation for the purposes of section 68(1A)(c)(iv), that comes into force at any time –
 - (i) after a regulated entity is required to submit to the Regulator a proposed price and service plan that may be approved by the Regulator after the price determination is made; and
 - (ii) before the price determination to which the proposed price and service plan relates is made; and

6. Section 68 amended (Pricing principles)

Section 68 of the Principal Act is amended as follows:

- (a) by omitting paragraph (d) from subsection (1) and substituting the following paragraph:
 - (d) the price is to allow for a return to the regulated entity, on assets that are required in the provision of the regulated service to which

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that price relates, in accordance with subsection (1A);

(b) by inserting the following subsection after subsection (1):

(1A) For the purposes of subsection (1)(d), the determination of the return to a regulated entity on assets is to take into account the following assumptions:

(a) that the regulated entity has, in relation to assets, required in the provision of a regulated service, that are transferred to the regulated entity under Part 3 of the *Water and Sewerage Corporations Act 2008* before 1 July 2011, the ratio of debt to equity that would be expected of a prudent business of a similar kind and scale to that of the regulated entity;

(b) that the return to the regulated entity on those assets of the entity –

(i) that are referred to in paragraph (a);
and

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- (ii) in relation to which the entity is to be taken under paragraph (a) to have incurred debt –

is to take into account the prevailing rate of interest for commercial loans that a business of a similar kind and scale to that of the regulated entity would be required to pay to service that debt;

- (c) that the return to the regulated entity on those assets of the entity –

- (i) that are referred to in paragraph (a); and

- (ii) in relation to which the entity is to be taken under paragraph (a) to have equity –

is to be taken to be a pre-tax rate, not taking into account inflation, of –

- (iii) 3%; or

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- (iv) if another percentage rate is determined in regulations for the purposes of this paragraph, that percentage rate;
- (d) that the return on those assets of the regulated entity, required in the provision of a regulated service, that are not referred to in paragraph (a) is to be not more than a rate that reflects the regulatory and commercial risks involved in providing the regulated service.

7. Section 68AA inserted

After section 68 of the Principal Act, the following section is inserted in Division 5:

68AA. Transition towards full application of pricing principles

(1) In this section –

“pricing principles” means the pricing principles specified in section 68(1) and any pricing

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principles prescribed in
accordance with section 68(2);

“transition period” means the period
specified in the regulations to be
the transition period for the
purposes of this section.

(2) The pricing principles are not required to
be applied, during the transition period,
in –

- (a) the making of a price
determination; and
- (b) the formulation or approval of a
price and service plan that is
required under this Act to be in
accordance with the price
determination –

to the extent that the application of those
principles would, during the transition
period –

- (c) result in a significant impact,
because of the rate of change of
prices, on customers or particular
classes of customers; or
- (d) adversely affect –
 - (i) the sustainability of a
regulated entity in so far
as it provides regulated
services; or

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- (ii) the ability of a regulated entity to deliver regulated services.
- (3) If the Regulator decides not to apply a pricing principle to an extent during the transition period in accordance with subsection (2), the Regulator must publish the Regulator's reasons for not applying the principle to that extent.

8. Part 7: Heading amended

Part 7 of the Principal Act is amended by omitting “**MISCELLANEOUS**” from the heading to that Part and substituting “**AUTHORISED OFFICERS**”.

9. Part 7, Division 1: Heading repealed

Part 7 is amended by omitting the heading “*Division 1 — Authorised officers*”.

10. Part 8: Heading inserted

The Principal Act is amended by inserting the following heading after section 94:

PART 8 – ENFORCEMENT

11. Section 95 amended (Power of entry)

Section 95 of the Principal Act is amended as follows:

- (a) by inserting the following subsections after subsection (1):
 - (1A) A water and sewerage officer may, as may be reasonably required for the purposes of the enforcement of an infringement offence within the meaning of section 100(1B), enter and remain in any place.
 - (1B) A water and sewerage officer may only exercise a power of entry under this section between the hours of 7 a.m and 7 p.m. on any day.
 - (1C) A water and sewerage officer who enters a place under this section may, in that place, only exercise a power under this Part for the purposes of enforcing an infringement offence within the meaning of section 100(1B).
- (b) by inserting in subsection (2) “or water and sewerage officer” after “authorised officer”;

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- (c) by omitting from subsection (2) “authorised” second occurring;
- (d) by omitting from subsection (2)(a) “authorised”;
- (e) by omitting from subsection (2)(b) “authorised” first occurring;
- (f) by omitting from subsection (2)(b) “authorised” second occurring;
- (g) by inserting in subsection (3) “or water and sewerage officer” after “officer”.

12. Section 96 amended (General investigative powers of officers)

Section 96 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or water and sewerage officer” after “officer”;
- (b) by inserting in subsection (2) “or water and sewerage officer” after “authorised officer”;
- (c) by omitting from subsection (2)(a) “authorised”;
- (d) by omitting from subsection (2)(b)(i) “authorised”;
- (e) by inserting in subsection (3) “or water and sewerage officer” after “officer”.

13. Section 97 amended (Authorised officer's or water and sewerage officer's power to require information)

Section 97 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) "or water and sewerage officer" after "officer";
- (b) by inserting in subsection (2) "or water and sewerage officer" after "officer";
- (c) by omitting from subsection (2) "authorised" second occurring.

14. Section 98 amended (Care to be taken)

Section 98 of the Principal Act is amended by inserting "or water and sewerage officer" after "officer".

15. Section 99 amended (Compensation)

Section 99 of the Principal Act is amended by inserting "or water and sewerage officer" after "officer".

16. Part 7, Division 2: Heading repealed

Part 7 is amended by omitting the heading "*Division 2 — General*".

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17. Section 100 amended (Service of infringement notices)

Section 100 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “serve” and substituting “issue and serve”;
- (b) by inserting the following subsections after subsection (1):

(1A) A water and sewerage officer may issue and serve an infringement notice on a person if the water and sewerage officer is of the opinion that the person has committed an infringement offence.

(1B) For the purposes of subsection (1A), an infringement offence means an offence against –

- (a) section 56V(3),
section 56W(1) or (4),
section 56Z(2),
section 56ZD,
section 56ZH(2) or (3),
section 56ZI(1) or
section 56ZJ(1); or
- (b) a provision of regulations made under this Act that is prescribed in regulations to be an

infringement offence in relation to which a water and sewerage officer may issue and serve an infringement notice.

- (c) by inserting in subsection (3) “section 14 of” after “with”.

18. Part 9: Heading inserted

The Principal Act is amended by inserting the following heading after section 100:

PART 9 – MISCELLANEOUS

19. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.