

WATER AND SEWERAGE INDUSTRY BILL 2008

NOTES ON CLAUSES

PART 1 – PRELIMINARY

- Clause 1 Sets out the name of the Act as the Water and Sewerage Industry Act 2008.
- Clause 2 Provides for the commencement of provisions of the Act on a day or days to be proclaimed, which allows different sections of the Act to commence on different days.
- Clause 3 Sets out the defined terms in the Act.
- Clause 4 Provides that the Act binds the Crown.

PART 2 – OBJECTIVE OF ACT

- Clause 5 Outlines the objective of the Act.

PART 3 – ADMINISTRATION

- Clause 6 Provides that the role of the Minister is to develop and coordinate policies relating to the regulation of the water and sewerage industry, and other functions as set out in the Act.
- Clause 7 Subclause (1) provides for the Minister to do all things necessary to enable the Minister to perform his or her functions under the Act.
- Subclause (2) provides the Minister with the power to require the Regulator to conduct an inquiry into any matter relating to the regulation of the water and sewerage industry that the Minister considers necessary or desirable.
- Clause 8 Subclause (1) allows the Minister to establish advisory committees for the administration of the Act.
- Subclause (2) allows the Minister to appoint persons as members of an advisory committee and to determine their terms and conditions of appointment.
- Clause 9 Allows the Minister to delegate any of his or her functions or powers under the Act, excluding this power to delegate.

Clause 10 Subclause (1) permits the Minister to grant an exemption from any requirement under the Act by publishing an order in the Gazette. The Minister may exempt a person, an activity or a class of activities from the requirements of the Act. The subclause also provides that an exemption is subject to any conditions determined by the Minister.

Subclause (2) prevents the Minister from granting an exemption if it would be inconsistent with the objective of the Act.

Subclause (3) provides that the Minister is required to consult with the Ministers that administer the Environmental Management and Pollution Control Act 1994, the Public Health Act 1997 and the Water Management Act 1999 and if any of these Ministers advise that an exemption would be inconsistent with the Act that they administer, the Minister cannot grant this exemption.

This is to ensure that the environmental and public health requirements in these Acts would not be undermined by granting an exemption under this Act.

Subclause (4) provides that an exemption remains in force until either it is revoked or until the date set out in the order as the date when the exemption ceases.

Subclause (5) allows the Minister to make an order renewing an exemption granted under this clause.

PART 4 – REGULATION OF WATER AND SEWERAGE INDUSTRY

Division 1 – Regulator

Subdivision 1 – Functions and powers

Clause 11 Subclause (1) establishes the office of the Water and Sewerage Economic Regulator.

Subclause (2) specifies that the Water and Sewerage Economic Regulator (the Regulator) is the Commissioner of the Government Prices Oversight Commission, under the Government Prices Oversight Act 1995.

An identical provision exists in the Electricity Supply Industry Act 1995, which provides that the Commissioner is the Regulator of the electricity supply industry. In addition, the current Commissioner is also the Director of Gas, under the Gas Act 2000.

Clause 12 Sets out the functions of the Regulator. In the Act, almost all regulatory functions are the responsibility of the Water and Sewerage Economic Regulator, rather than the Minister.

In particular, the Regulator administers the licensing system for regulated entities that provide water and sewerage services (defined as 'regulated services') and other related activities. The Regulator also regulates the prices of these services by making price determinations and, by issuing codes and approving entities' price and service plans, can impose minimum standards and determine the terms and conditions of these services.

Clause 13 Subclause (1) provides the Regulator with the power to do all things necessary to perform his or her functions under the Act.

Subclause (2) sets out certain powers the Regulator may exercise under the Act including;

- developing and issuing guidelines on pricing, price and service plans, and matters relating to administering the licence system and annual performance reporting;
- developing and issuing codes; and
- enforcing compliance of regulated entities with their obligations and licence conditions and with the customer service code.

Clause 14 Allows the Regulator to delegate any of his or her functions or powers under the Act, except this power to delegate.

Clause 15 Sets out the matters to which the Regulator is to have regard in exercising his or her powers and performing his or her functions and in seeking to achieve the objective of the Act.

Clause 16 Provides for the independence of the Regulator. The clause provides that the Regulator is not subject to the direction of the Minister or any other person unless expressly provided for under the Act.

Clause 17 Subclause (1) allows the Regulator to require, by written notice, a person or business to give the Regulator information that the Regulator requires to perform his or her functions.

Subclause (2) imposes an obligation on any person or business who receives a notice under subclause (1) to give the information within a timeframe specified in the notice.

The subclause specifies a maximum penalty of 100 penalty units for failure to comply with this obligation. The value of a penalty unit under the Penalty Units and Other Penalties Act 1987 is currently \$120 and is indexed to changes in the Consumer Price Index. A penalty of 100 penalty units therefore currently has a value of \$12 000.

Subclause (3) exempts a person from having to give information if to do so might tend to incriminate that person of an offence.

Clause 18 Subclause (1) allows the Regulator to, by written notice, require regulated entities to keep and maintain certain records. This is to inform and assist the Regulator in performing his or her functions under the Act, including undertaking inquiries, assessing proposed price and services plans, making price determinations and preparing a state of the industry report.

Subclause (2) imposes a maximum penalty of 100 penalty units (currently \$12 000) if an entity refuses or fails to comply with a notice under subclause (1) without reasonable excuse.

Clause 19 Requires the Regulator to report to the Minister on matters on which the Minister requires a report as and when required by the Minister.

Subdivision 2 – Codes

Clause 20 Subclause (1) allows the Regulator to issue codes that may cover any matter relating to any regulated activity. Codes may cover such matters as customer service, metering and billing arrangements.

Subclause (2) requires a person who is subject to a code to comply with that code.

Subclause (3) sets out limitations on the power of the Regulator to issue codes. Prior to a code being issued, the Regulator is required to consult with the Ministers administering the Environmental Management and Pollution Control Act 1994, the Public Health Act 1997 and the Water Management Act 1999 and be advised by each Minister that the code would not be inconsistent with each of these Acts. This is to ensure that the codes are fully consistent with these Acts.

Subclause (4) provides that if there is an inconsistency between a code and the Act or regulations, the code is invalid to the extent of the inconsistency.

Subclause (5) permits a code to apply differently according to different matters, limitations or restrictions, for example as according to time or circumstances.

Subclause (6) permits a code to authorise any matter which may be determined, approved or applied by the Regulator or the Minister.

Subclause (7) requires the Regulator to notify the Minister whenever the Regulator issues a code and to provide the Minister with a copy of that code.

Clause 21 Subclause (1) sets out requirements on the Regulator for the publication and availability of codes. As soon as practicable after issuing a code, the Regulator is required to publish its availability in the Gazette and on the Regulator's website.

Subclause (2) requires the Regulator to keep a code available for inspection by any person during normal hours of business at no charge.

Subclause (3) requires the Regulator to make copies of a code available to any person during normal business hours at the cost of production.

Clause 22 Subclause (1) allows the Regulator to review a code on his or her own initiative, or at the request of any person.

Subclause (2) requires the Regulator to review a code when required by the Minister.

Subclause (3) allows the Regulator to amend, rescind or substitute a code with another code.

Subclause (4) requires the Regulator to publish a notice of the rescission of, or amendments or substitutions to, a code in the Gazette as soon as possible. The Regulator is also required to publish a copy of any code that has been amended or substituted on the Regulator's website.

Subclause (5) requires the Regulator to notify the Minister whenever the Regulator amends, rescinds or substitutes a code and provide the Minister with a copy of an amended or substituted code.

Subdivision 3 - Administration of the office of the Water and Sewerage Economic Regulator

Clause 23 Subclause (1) allows the Regulator to issue guidelines on the way in which the Regulator performs and exercises his or her functions and powers. An example may be a guideline that sets out the Regulator's consultation processes with regulated entities, or the public, for certain activities.

Subclause (2) provides that any Regulator's guidelines cannot be issued by the Regulator before being approved by the Treasurer. This is to ensure that the Treasurer is satisfied that the Regulator's own

guidelines are fair and reasonable and are consistent with the objective of the Act.

Subclause (3) requires the Regulator to make guidelines available for inspection by the public during normal hours of business at no charge.

Subclause (4) requires the Regulator to ensure that copies of these guidelines are available to the public during normal business hours for purchase at the cost of production.

Clause 24 Subclause (1) allows the Regulator to establish advisory committees to provide advice to the Regulator.

Subclause (2) provides that the Treasurer appoints persons as members of advisory committees and can set their terms and conditions of appointment.

Clause 25 Reference to the Public Account Act enables the Regulator to arrange with the Secretary of the Department of Treasury and Finance for persons employed in that Department to be available for the office of the Regulator. A similar provision exists in the *Government Prices Oversight Act 1995*.

The costs of most of the Regulator's activities are recovered from the regulated entities through licence fees and other charges.

Clause 26 Allows the Regulator to arrange with any person to obtain assistance or facilities. This can include engaging consultants and obtaining accommodation, including for any public consultation.

Clause 27 Subclause (1) sets out the sources of funds of the Regulator.

Subclause (2) sets out how the funds of the Regulator are to be applied, including paying general expenses, staff and facilities expenses and the Regulator's remuneration.

Clause 28 Subclause (1) requires the Regulator to prepare an annual report on the performance of the Regulator's functions and the exercise of the Regulator's powers. The report is to include audited financial statements and any information required by the Treasurer and information considered relevant by the Regulator.

Subclause (2) sets out the requirements for the financial statements to be included in the Regulator's annual report.

Subclause (3) allows the Minister to give written directions to the Regulator in relation to the form and content and other matters relating to the financial statements required in the annual report.

Subclause (4) provides that any directions made under subclause (3) may adopt, in part or in whole, any of the Treasurer's Instructions made under the Financial Management and Audit Act 1990.

Subclause (5) requires the Regulator to submit an annual report to the Treasurer for tabling in Parliament in accordance with clause 29.

- Clause 29 Requires the Treasurer to arrange for the tabling of the Regulator's annual report for the previous financial year in both Houses of Parliament by 31 October of each year.

Division 2 – Licensing of Regulated Entities

Subdivision 1 – Licensing

This subdivision provides for a licensing system for entities that provide water and sewerage services.

It is primarily through the licensing system that the Regulator has the powers to require these entities to provide these services to the standard and under the terms and conditions that achieve the objective of the Act.

- Clause 30 Prohibits any person from owning or operating infrastructure used for providing water and sewerage services to another person or undertaking any other activity declared by the Minister to be a regulated activity, unless that person either has a licence or is otherwise permitted under this Act.

A licence is therefore not needed for a person or business whose water and sewerage infrastructure and services are solely for that person or business, such as a farm.

A maximum penalty of 10 000 penalty units applies for failure to comply with this requirement (currently \$1 200 000), together with a daily penalty of 100 penalty units (currently \$12 000).

- Clause 31 Subclause (1) allows the Minister to declare, by order, any activity to be a regulated activity or not a regulated activity.

This provision allows for the scope of regulated activities to be expanded or contracted if required. A regulated activity is one for which a licence is required.

Subclause (2) requires the Minister to obtain the advice of the Regulator before making an order under this clause.

Subclause (3) allows the Regulator to recommend to the Minister that an activity be declared a regulated activity or to not be a regulated activity.

Clause 32 Subclause (1) provides that where more than one person is required to be involved in connection with a particular piece of water or sewerage infrastructure, only one of those persons is required to be licensed.

An example of this is where there is an owner and, separately, an operator of water infrastructure that provides water services. In this case only one of the parties is required to be licensed.

Subclause (2) provides that the unlicensed person is deemed to be licensed on the same terms and conditions of the licensed person and that compliance by either person with the Act or with the relevant licence conditions is taken to be compliance by the other person.

Both persons are regulated entities for the purposes of this Act, as the definition of regulated entities in clause 3 includes any person with a deemed licence.

The intent of this clause is to prevent unnecessary duplication of regulatory costs. The intent is to promote efficiency in the water and sewerage sector by preventing, where possible, regulatory costs from distorting the structure of entities and the services they provide.

Clause 33 Provides that obligations and conditions can be imposed on a person (or entity) that undertakes regulated activities even if that person or entity does not hold a licence for that activity.

Subclause (1) provides that where a person undertakes an activity for which a licensed is required but does not hold a licence, the provisions in the Act and any standard licence obligations declared by the Regulator apply to that person as if that person were licensed.

Subclause (2) allows the Regulator to declare, by notice in the *Gazette*, standard licence conditions that apply under this clause.

Subclause (3) provides that this clause does not apply to a person who is deemed to be licensed under clause 32.

This has the effect that the standard licence obligations declared by the Regulator under subclause (2) do not apply to a deemed licensee under clause 32, as that person is bound by the same licence conditions that apply to the person that is licensed with respect to the relevant water or sewerage infrastructure. In the case of an exempted person or activity under clause 10, that exemption can apply to the entire Act, if the Minister so determines, including this clause 33.

Clause 34 Subclause (1) provides that the Regulator is to approve the form of the licence application and determine the information required to satisfy it. This subclause also requires a licence application to include any application fee as is prescribed in the regulations and the application to be lodged at the Regulator's office.

Subclause (2) allows the Regulator to issue guidelines in relation to the licence application forms and application process.

Subclause (3) requires an applicant to comply with any licence application guidelines issued by the Regulator.

Clause 35 Subclause (1) allows the Regulator to determine an application for a licence by granting a licence or by refusing the application.

Subclause (2) requires the Regulator to invite submissions, within 10 business days of receiving an application for a licence, from specified Ministers and such persons as prescribed in the regulations before making a determination under clause 35(1).

This requires and enables consultation to occur with relevant parties in relation to the Regulator's consideration of the licence application.

Subclause (3) requires the Regulator to publish a notice of the application in daily newspapers in Tasmania and invite submissions from the public.

Subclause (4) requires the Regulator to include information in the notice on how a submission can be made and the specified timeframes.

Subclause (5) requires the Regulator to determine an application for a licence within 60 business days of receiving the application.

Subclause (6) prohibits a licence from being granted to a disqualified person. Section 41(3) provides for the declaration of disqualified persons.

Subclause (7) prohibits a licence from being granted unless the Regulator is satisfied the applicant satisfies the criteria specified in this subclause, which includes the honesty and integrity of the applicant and the applicant's capacity to carry out the activities that the licence would authorise.

Subclause (8) requires the Regulator to give notice to the applicant and the Minister of the decision on a licence application and the reasons for the decision.

Subclause (9) requires the Regulator to make available to the public on the Regulator's website the information in subclause 8.

Clause 36 Provides that a licence remains in force until it is cancelled.

Clause 37 Subclause (1) specifies that a licence is subject to such conditions as are imposed under the Act or by the Regulator, or both.

Subclause (2) allows the Regulator to impose licence conditions on a regulated entity, which include having the capacity to carry out the activities authorised in the licence and appropriate insurance and security arrangements.

The licence conditions can also include the requirement to submit a proposed price and services plan to the Regulator.

In addition, the licence may require the regulated entity to comply with any relevant price determinations under clause 66, and to develop an asset management plan.

The subclause also provides that the licence may require compliance with guidelines and codes, and to develop a plan to operate as a reserve supplier under clause 49. The regulated entity may also be required to prepare a plan to enable the transition of operations to a step-in-operator as set out in subdivision 4.

The regulated entity is also required to comply with all relevant environmental, public safety and public health requirements that apply to the regulated activities.

The regulated entity is also required to meet the reporting requirements under the Act and any other obligations imposed by the Regulator consistent with the objective of the Act.

Clause 38 Subclause (1) sets out the matters that must be included in a licence, namely the name of the entity that holds the licence, the activities authorised by the licence and the licence conditions.

Subclause (2) allows the licence to specify the area in which the entity is to be a reserve supplier, if that regulated entity is declared a reserve supplier under clause 49.

Subclause (3) provides that the same land may be within the area of operations of more than one regulated entity, whether the respective licences relate to the same or different regulated activities.

This allows for more than one regulated entity to provide regulated services in the same area. It, therefore, clarifies that regulated entities are not entitled to area franchises, or to any exclusivity rights within

each area and makes clear that the licensing regime can accommodate the future evolution of competition, where it is commercially feasible.

Accommodating the possibility for future competition in the industry is consistent with Tasmania's obligations under the National Water Initiative and National Competition Policy.

Clause 39 Subclause (1) provides for the Minister to determine a regulated entity's annual licence fee, including an interim licence fee.

The subclause also requires the Regulator to require a regulated entity to pay a licence fee to the Minister.

Subclause (2) provides that the Minister is to notify the Regulator of the annual licence fee determined under subclause (1).

Subclause (3) requires the Regulator to notify the regulated entity of the amount of the licence fee as soon as practicable after the Regulator is notified by the Minister.

Subclause (4) sets out how the annual licence fee of a regulated entity is to be determined. The fee is to make a significant contribution towards the costs of administering the Act, as the Minister determines and as they relate to that entity, including the costs incurred by the Ombudsman under clause 76.

This subclause also allows for the licence fee to recover costs incurred by regulatory bodies responsible for environmental, public safety and public health outcomes, as they apply to the regulated activities for which the licence is required.

Subclause (5) provides that it is a condition of a regulated entity's licence, including a temporary and interim licence, that the entity pays the licence fee.

Clause 40 Subclause (1) allows the Regulator to vary the conditions of a licence, including a temporary and interim licence, by written notice.

Subclause (2) provides that a variation may be made only on application by a regulated entity, on recommendation by the Minister or if proposed by the Regulator.

Subclause (3) provides that if changes to the licence conditions are proposed under subclause (2), the Regulator is to invite submissions on the proposed changes from specified Ministers, and such persons as prescribed in the regulations, before varying the terms and conditions of the licence.

Subclause (4) requires the Regulator to publish a notice of proposed changes to the licence conditions in daily newspapers in Tasmania and invite submissions from the public on the proposed variation.

Subclause (5) requires that the notice published under subclause (4) must include information on applicable timeframes and how a submission can be made.

Subclause (6) requires the Regulator to publish any variation made to the terms or conditions of a licence.

Clause 41 Subclause (1) allows the Regulator, by written notice, to impose penalties and require a regulated entity to take certain actions, if the Regulator is satisfied that the regulated entity has contravened the Act or a condition of any licence issued under this Act. The subclause also allows the Regulator to take certain actions.

A maximum penalty of 5 000 penalty units applies for such contravention (currently \$600 000), together with a daily penalty not exceeding 200 penalty units (currently \$24 000).

This clause therefore contains a set of measures designed to ensure that the behaviour of regulated entities achieves the objective of the Act.

Section 33 provides that regulated entities that are not licensed are subject to this Act and to penalties for non-compliance. Subclauses (1) and (3) therefore apply to regulated entities that are not licensed.

Subclause (2) provides that, if more than one person is required to be licensed, the Regulator may take any action under this clause against either the person licensed under clause 35(1) or a person deemed to be licensed under clause 32(2).

Subclause (3) sets out the actions that the Regulator can take, or require the regulated entity to take, in case of contravention of the Act or a condition of any licence issued under this Act.

These actions include requiring the entity to publish information to customers, or notices to the public, to compensate customers and to take specified action to rectify the contravention or prevent any future contravention.

This subclause also allows the Regulator to cancel or suspend a licence and declare that an entity, or specified persons, are disqualified from holding a licence.

Subclause (4) allows the Regulator to suspend or cancel any licence issued under this Act if a regulated entity becomes a disqualified person.

Subclause (5) provides that a notice in subclause (3) may be expressed to apply indefinitely or for a specified period of time.

Subclause (6) provides that any licence issued under this Act may be cancelled or suspended at the request of the regulated entity.

Clause 42 Subclause (1) allows the Regulator to give directions to a regulated entity for the purpose of the Act.

Subclause (2) requires that a direction by the Regulator under this clause must be in writing.

Subclause (3) requires a regulated entity to comply with any direction under this clause.

A maximum penalty of 100 penalty units applies for failure to comply with this requirement (currently \$12 000).

Clause 43 Subclause (1) allows the Regulator to suspend or cancel any licence issued under this Act by written notice, if the Regulator is satisfied that it is in the public interest to do so.

Subclause (2) allows for any licence issued under this Act to be suspended or cancelled on the written recommendation of the Minister or as determined alone by the Regulator.

Subclause (3) allows for the suspension or cancellation to apply to part or all of a regulated activity to which the licence relates.

Subclause (4) provides that a suspension or cancellation takes effect from the day specified in the notice and, for a suspension, remains in force until the date specified in the notice.

Subclause (5) allows the Regulator to grant a temporary licence to a deemed licensee, if the licence of the regulated entity to which the relevant piece of water or sewerage infrastructure relates has been cancelled or suspended.

Clause 44 Prohibits a regulated entity from engaging in activities authorised by any licence issued under this Act, if the licence with respect to those activities has been suspended.

Clause 45 Subclause (1) prohibits the Regulator from taking any action with respect to any licence issued under this Act (clauses 40, 41 and 43

respectively) unless the regulated entity and any persons prescribed by regulation have been given notice by the Regulator.

This subclause requires that the regulated entity and any persons prescribed by regulation must be given reasonable opportunity to make a submission in relation to any action.

Subclause (2) requires the Regulator to state the grounds on which a notice is given under this clause.

Subclause (3) specifies that if an action under clauses (40), (41) or (43) is at the request of the regulated entity, notice of the proposed action does not have to be given to that entity.

Clause 46 Subclause (1) requires the Regulator to review each licence at least once every 5 years and specifies that the first review must commence not later than the fourth anniversary of the licence being issued.

Subclause (2) requires the Regulator to prepare a report on a review of each licence and to provide the report to the Minister and publish the report on the Regulator's website.

Clause 47 Subclause (1) allows the Minister to deal with a risk to public health or public safety, or with likely environmental harm, arising from a regulated activity, by directing a regulated entity to take specified action to reduce or eliminate that risk.

Subclause (1) is subject to subclause (7), which provides that nothing in this Act overrides any existing legislation that relates to emergencies, such as the Emergency Management Act 2006 and the Water Management Act 1999.

Subclause (2) requires the Minister to consult with the Director of Environmental Management and the Director of Public Health and the Regulator before any direction is given under subclause (1).

Subclause (3) requires the Minister to advise the Director of Environment Management and the Director of Public Health and the Regulator of any direction under subclause (1).

Subclause (4) requires a regulated entity to comply with any emergency direction given under subclause (1) as a condition of any licence issued under this Act.

Subclause (5) allows the Minister to arrange for any specified action in a direction to be taken if the regulated entity fails to take that specified action.

Subclause (6) provides for the Minister to recover the cost of taking any specified action in a direction from the regulated entity as a debt owed to the Crown.

Subclause (7) specifies that no provisions in this Act override any existing emergency laws or remove any obligation on a regulated entity to comply with these laws.

Clause 48 Subclause (1) requires the Regulator to keep and maintain a register of all licences issued.

Subclause (2) specifies that the manner, form and content of the register may be provided for by regulation.

Subclause (3) requires the Regulator to make the register available for public inspection at no charge.

Subclause (4) provides that the Regulator complies with

subclause (3) by making the register available on the Regulator's website.

Subclause (5) requires the Regulator to make copies of entries in the register available to the public, for a charge, that reflects only such cost, during normal office hours.

Subdivision 2 – Reserve supplier

The purpose of this clause is to establish reserve suppliers, which are regulated entities that have an obligation to offer to provide water and sewerage services to customers in their area of operation, on specified terms and conditions.

Clause 49 Subclause (1) defines water and sewerage services as reserved services for the purposes of this clause.

Subclause (2) allows the Minister to declare, by order published in the Gazette, a regulated entity to be a reserve supplier in relation to specified water or sewerage services in a specified area.

Subclause (3) requires the Minister to provide the Regulator with a copy of a proposed order before the order is made.

Subclause (4) requires a reserve supplier to offer to provide reserved services to all customers within the specified area of operations under terms and conditions set by the Regulator. Reserved services must meet the customer contract and price determination requirements in Divisions 4 and 5 of Part 4 of the Act.

Subdivision 3 – Changes to operations of licence

- Clause 50 Prohibits the transfer of a licence.
- Clause 51 Subclause (1) allows a regulated entity to surrender its licence by written notice to the Regulator.
- Subclause (2) requires a regulated entity to notify the Regulator of its intention to surrender its licence at least 6 months before the surrender is to take effect, or longer if required in the licence.
- Subclause (3) allows the Regulator to shorten the required period of notice, as required by subclause (2) by agreement with the regulated entity.
- Clause 52 Allows a regulated entity to apply to have its licence cancelled if it has not provided, and does not intend to start providing, the regulated activities for which the entity is licensed.
- Clause 53 Provides that no compensation is payable if the Regulator cancels, suspends or varies the conditions of any licence issued under this Act.
- Clause 54 This clause requires the Regulator to be informed of any proposed or anticipated stoppage of a water service or a sewerage service by a regulated entity so that the Regulator can take any action as appropriate.
- Subclause (1) provides that if a regulated entity proposes to stop or anticipates stopping all or part of a regulated service, that entity must not stop providing that service unless it has given at least 60 business days' notice in writing to Regulator of that proposed or anticipated stoppage.
- A maximum penalty of 100 penalty units applies for failure to give notice as required under this clause (currently \$12 000).
- Subclause (2) requires the notice to state the day on which the regulated entity proposes to stop or anticipates stopping that regulated service.
- Subclause (3) provides that a notice ceases to have effect if the regulated entity continues supplying the regulated service after the date stated in the notice.
- Subclause (4) requires the regulated entity to provide a further notice as required under subclause (1) if the regulated entity again proposes to stop, or anticipates it will stop providing, all or part of a regulated service.

A maximum penalty of 100 penalty units applies for failure to give notice as required under subclause (1) (currently \$12 000).

Subclause (5) requires the regulated entity to notify the Regulator immediately, or as soon as practicable after, that entity stops providing a regulated service, whether or not a notice has been given under subclause (1).

A maximum penalty of 100 penalty units applies for failure to give notice as required under this subclause (currently \$12 000).

Subdivision 4 – Step-in-operator

Clause 55 Subclause (1) allows the Minister to make a step-in-order, by notice published in the Gazette, if a regulated entity contravenes the Act, a code or if a regulated entity's licence is suspended, cancelled or surrendered, and the Regulator has advised the Minister, in writing, that in the Regulator's opinion it is necessary to take over that entity's operations to ensure customers receive an adequate provision of services.

Subclause (2) requires the Minister to give the regulated entity a reasonable opportunity to make submissions with regard to the proposed order.

Subclause (3) provides that a step-in-order authorises the Regulator to appoint a step-in-operator to take over a regulated entity's operations or a specified part of its operations.

This subclause allows the order to specify the functions and powers of the step-in-operator and require the regulated entity to cease providing certain services. The order may also provide that specified customers become customers of the step-in-operator and that the customers and the step-in-operator are taken to have entered into a special circumstances contract as determined under subclause (4).

The order may allow the step-in-operator to have access to and take control of water and sewerage infrastructure and property as is necessary to undertake the operations in the order.

The subclause also allows a step-in-order to contain additional directions as to how costs and revenue will be dealt with. The order can also apply for a particular time and be subject to conditions.

Subclause (4) allows the Regulator to determine the terms and conditions of a special circumstances contract between the step-inoperator and customers.

Subclause (5) provides that that a step-in-order operates to the exclusion of rights that are inconsistent with it.

Clause 56 Subclause (1) requires the Regulator to appoint a step-in-operator who is suitable when a step-in-order is made under clause 55.

Subclause (2) defines the person appointed in a step-in-order as the step-in operator.

Subclause (3) requires the regulated entity to facilitate the step-inoperator taking over operations specified in an order, immediately or as soon as practicable.

A maximum penalty of 1 000 penalty units applies for failure to comply with this subclause (currently \$120 000).

Subclause (4) imposes an obligation on any person to not obstruct a step-in operator's access to property or the exercise of the step-inoperator's responsibilities.

A maximum penalty of 1 000 penalty units applies for failure to comply with this subclause.

Subclause (5) requires a person to comply with reasonable directions given by a step-in operator.

A maximum penalty of 1 000 penalty units applies for failure to comply with this subclause.

Division 3 –Customer service code

Clause 57 This clause requires the Regulator to develop and issue a customer service code, which sets out the standards and conditions of water and sewerage services that regulated entities must comply with. The objective is to ensure that consumers receive services that meet the required standards and that also satisfy public health and environmental objectives.

Subclause (1) imposes an obligation on the Regulator to issue a customer service code for water and sewerage services.

Subclause (2) allows the customer service code to specify minimum standards and conditions of service that regulated entities must comply with.

Subclause (3) requires the Regulator, in developing a customer service code, to consult with regulated entities and ensure that the code is not inconsistent with the obligations of regulated entities in the

Public Health Act 1997, the Environmental Management and Pollution Control Act 1994 and the Water Management Act 1999.

Subclause (4) also requires the Regulator to ensure that the code complies with any requirements prescribed in the regulations. The subclause also allows the Regulator to consult with any other relevant persons in developing the code and allow the code to provide for different service standards for different customer classes, or, in different areas of Tasmania.

Subclause (5) provides that regulations may specify minimum standards and conditions of service and supply to be included in the customer service code.

Division 4 – Customer contract

The purpose of this Division is to establish a contractual relationship between regulated entities and customers to enable obligations and conditions to be imposed on these parties and also to provide protection to both parties, particularly concerning their respective rights.

Clause 58 Subclause (1) requires a regulated entity to develop a customer contract for regulated services it provides to its customers and provide a copy of the customer contract to the Regulator by the date determined by the Regulator in a written notice.

The subclause specifies a maximum penalty of 500 penalty units for failure to comply with this obligation (currently \$60 000).

Subclause (2) requires a regulated entity to submit a proposed customer contract that is consistent with the customer service code for approval by the Regulator, if required by the Regulator, and by the date determined by the Regulator in a written notice.

The subclause specifies a maximum penalty of 100 penalty units for failure to comply with this obligation (currently \$12 000).

Subclause (3) allows to Regulator to require the regulated entity to amend the proposed customer contract before approval.

This subclause also allows the Regulator to draft and approve a customer contract that applies to a regulated entity if that entity fails to submit a proposed customer contract as required under subclause (2), or if the proposed contract is not amended as the Regulator requires.

Subclause (4) provides that this clause does not apply to customer contracts that are submitted to the Regulator and approved as part of a price and service plan approved by the Regulator under clause 65.

Clause 59 Subclause (1)(a) requires a regulated entity that provides regulated services to publish a current version of its customer contract on its website and to notify customers of its website address and that the customer contract is available on the website.

Subclause 1 (b) requires a regulated entity that does not have an internet website to provide a copy of the customer contract to its customers at no cost to the customers.

A maximum penalty of 50 penalty units applies for non-compliance with this subclause (currently \$6 000).

Subclause (2) requires a regulated entity to provide a copy of the customer contract to a customer, at a charge reflecting such cost, when requested.

A maximum penalty of 50 penalty units applies for non-compliance with this subclause (currently \$6 000).

Subclause (3) requires the regulated entity to include details relating to contract prices for regulated services in the customer contract.

A maximum penalty of 50 penalty units applies for non-compliance with this clause (currently \$6 000).

Clause 60 This clause requires a regulated entity to enter into a customer contract unless otherwise agreed between the customer and the regulated entity. It further provides that a customer of a regulated entity is taken to have entered into a customer contract with that regulated entity with respect to regulated services as provided for under that contract.

Clause 61 Subclause (1) provides that this subdivision does not prevent a regulated entity and a customer from entering into a contract for the provision of water or sewerage services that is not a customer contract for the purpose of this subdivision.

Subclause (2) requires the regulated entity to provide the Regulator with a copy of a contract under subclause (1).

A maximum penalty of 50 penalty units applies for non-compliance with this clause (currently \$6 000).

Clause 62 Subclause (1) allows a regulated entity to vary a customer contract.

Subclause (2) requires a regulated entity that proposes to vary a customer contract that has been approved under section 58 to submit the proposed variation to the Regulator for approval.

Subclause (3) provides that if a customer contract is varied under subsection (1), the regulated entity must, at least six months before the variation is due to have effect (or less if approved by the Regulator) publish the variation on its website, and notify customers of its website address and that the varied customer contract is available on the website.

If a regulated entity does not have a website, this subclause requires the entity to provide to customers a copy of the varied customer contract to the regulated entity's customers at a charge that reflects such cost.

A maximum penalty of 50 penalty units applies for non-compliance with this clause (currently \$6 000).

Subclause (4) requires a regulated entity to provide a copy of any varied customer contract to a customer, made under subclause (1), to a customer when requested free of charge.

A maximum penalty of 50 penalty units applies for non-compliance with this clause (currently \$6 000).

Subclause (5) provides that a regulated entity that has varied its customer contract and published a notice under subclause (2)(a) must include in the next account it sends to its customers, a copy of that notice.

This subclause only applies to customers that are taken to have entered into the customer contract under section 60.

Subclause (6) provides that failure to comply with the requirements of subclause (5) does not affect the validity of the variation or any contract price made in accordance with the variation.

Subclause (7) provides that a statement in a notice under subclause (3) is evidence that the Regulator has approved a variation to the effect required under subclause 62(2) unless the contrary is proved.

Subclause (8) specifies that subclauses (1) through (6) do not apply to any variation that relates to a change in price if that variation is due to a determination made by the Regulator.

Subclause (9) requires copies of a varied contract and any explanatory material to be made available to the public as determined by the Regulator.

Division 5 – Price Regulation

Clause 63 Subclause (1) provides that, subject to subclause (2), this Division applies to the prices for regulated services.

Subclause (2) provides that the Treasurer may determine that the Division does not apply if, in the Treasurer's opinion, there is effective competition for a regulated service, or if it is in the public interest that the Division not apply.

Subclause (3) requires the Treasurer to seek the advice of the Regulator before making a determination under subclause (2).

Subclause (4) requires the Regulator to invite public submissions on a proposed determination under subclause (2) by notice published in daily newspapers, before providing advice to the Treasurer.

Subclause (5) specifies that a notice published under subclause (4) must include information on how a submission can be made and the timeframe for providing a submission.

Subclause (6) requires the Regulator to consider any submission received under subclause (5) before providing advice to the Treasurer.

Clause 64 Subclause (1) allows the Regulator to regulate the prices, terms and conditions of a regulated entity's regulated services.

Subclause (2) allows the Regulator to issue guidelines for the separation of accounts, of information and of functions within regulated entities.

Clause 65 This clause establishes the requirement for price and service plans for regulated entities, which set out the prices and standards and conditions of service for regulated services that the entities will provide over the relevant regulatory period.

The price and service plans are to be approved by the Regulator if they meet the service and quality standards, pricing requirements and public health and environmental standards and provide for the sustainable supply of regulated services in the long term through prudent management of assets.

Subclause (1) requires the Regulator to require, by notice, a regulated entity to submit a proposed price and service plan to the Regulator by the date in the notice, for approval.

Subclause (2) requires a regulated entity to submit a price and service plan to the Regulator for approval by the date specified in the notice.

A maximum penalty of 1 000 penalty units applies for failure to comply with this subclause (currently \$120 000).

Subclause (3) specifies that a price and service plan submitted by a regulated entity must include:

- the proposed regulated services to be provided to customers;
- any customer contracts;
- standards and conditions of service that comply with the customer code; and
- proposed prices for each regulated service.

Subclause (4) allows the price and service plan to include the regulated entity's proposed annual revenue requirements, projected expenses, supply and demand forecasts and other matters as required by the guidelines issued under subclause (7).

Subclause (5) requires the Regulator to approve a price and service plan if the Regulator is satisfied that the plan fulfils the requirements for a price and service plan and applicable guidelines and any relevant price determination under clause 66.

Subclause (6) allows the Regulator to require amendments to be made to a proposed price and service plan, which may include amendments to ensure that the price and service complies with a price determination, before approving the plan.

Subclause (7) requires the Regulator to make guidelines for the preparation of a proposed price and service plan.

Subclause (8) provides that the guidelines under subclause (7) may specify the requirements of the price and service plan and the process for preparing and approving the plan, including the extent of public consultation and publication of prices for each regulated service.

Subclause (9) provides that an approved price and service plan is to relate to a regulatory period.

Subclause (10) allows the Regulator to direct, by written notice, a regulated entity to publish an approved price and service plan in a manner as specified in the notice.

Subclause (11) requires a regulated entity to comply with a direction under subclause (10).

A maximum penalty of 50 penalty units applies for failure to comply with this subclause (currently \$6 000).

Subclause (12) allows the Treasurer to set, by notice published in the Gazette, the duration of the first regulatory period, which is to commence after approval of a price and service plan, and the minimum duration of each subsequent regulatory period.

Subclause (13) requires the Regulator to declare, by notice published in the Gazette, the duration of each subsequent regulatory period, which is to be not less than the minimum period fixed in subclause (12).

Subclause (14) requires the Regulator to declare the duration of subsequent regulatory periods under subclause 13, no less than 2 years prior to the expiration of the current regulatory period.

Clause 66 Subclause (1) requires the Regulator to make price determinations in respect of regulated services and a regulated entity.

Subclause (2) requires the Regulator to adopt an approach and methodology that the Regulator considers will best meet the objective of the Act.

The Regulator is also required to determine prices and terms and conditions, including developer charges for water and sewerage services consistent with the pricing principles in clause 68, or as prescribed in regulations.

This subclause requires the Regulator to consider the content of the proposed price and service plan submitted by the regulated entity and the entity's customer contracts and ensure that any tradeoffs between costs and service standards are clearly articulated and taken into account in the determination.

Subclause (3) sets out a range of matters a price determination may provide for. These include fixing the price, fixing changes in price of a regulated service provided by that regulated entity, the pricing principles to be applied, and how the price is to be referenced.

This subclause also enables the determination to include a revenue level or rate of increase or decrease in revenue, or a maximum and minimum revenue level and maximum and minimum changes to those levels with respect to one or more regulated services provided by that regulated entity.

Subclause (4) requires the Regulator to publish a notice in daily newspapers of the intention to make a price determination, before making a price determination.

Subclause (5) requires that a notice under subclause (4) is to detail where a copy of the proposed determination and proposed price and service plan on which the determination is based can be obtained or viewed.

Subclause (6) requires the Regulator to publish the proposed price determination and the proposed price and service plan, on which the price determination is based, on the Regulator's website.

Subclause (7) requires the Regulator to make a price determination under clause 66 in accordance with clause 67.

Subclause (8) provides that regulations may provide for the conduct of investigations by the Regulator into the pricing policies of regulated entities, the appointment of assistants to the Regulator to assist with investigations, and the liability of regulated entities for costs incurred by the Regulator in undertaking an investigation.

For example, the regulations may provide for investigations by the Regulator into a regulated entity's pricing policy regarding headworks and trade waste.

Clause 67 Subclause (1) requires the Regulator include in a determination a statement of the purpose of, and reasons for, the making of the determination.

Subclause (2) requires that a notice of publication of making a determination must be published by the Regulator in the Gazette, in daily newspapers and on the Regulator's internet website.

Subclause (3) requires that a notice must include a brief description of the nature and the effect of the determination, when the determination takes effect and how a copy of the determination can be obtained.

Subclause (4) requires the Regulator to send a copy of a determination to the regulated entity to which the determination relates.

Subclause (5) specifies that a determination takes effect on and from the date on which the notice of the determination is published in the Gazette or any later date as may be specified in the determination.

Subclause (6) specifies that a determination has effect until it is amended or revoked by a later determination or the date specified in

the determination, which cannot be later than the regulatory period to which the determination relates.

Subclause (7) provides that a determination is binding on the regulated entity specified in the determination.

Subclause (8) allows the Regulator, after making a determination under the Act, to require a regulated entity to amend the regulated entity's publicly available documents that relate to the provision of a regulated service, so that the document is consistent with the determination.

Subclause (9) imposes as a licence condition, that a regulated entity must comply with a determination under the Act and any requirements under this clause.

Clause 68 Subclause (1) specifies that the pricing principles to be applied in making a price determination must allow a regulated entity to be able to recover costs for a regulated service, namely the costs of providing the service efficiently, and other costs imposed under the Act.

The pricing principles require two-part pricing for water supply, with the volume of supply determined by voluntary or mandatory metering or as the Regulator determines. The principles include price variations between schemes and areas, and different prices to different classes of customers, to reflect the different costs of providing the services.

The subclause also requires the prices to promote productivity and efficiency in production and consumption and allow a rate of return to the regulated entity that reflects the risks in providing the service.

The subclause also requires, to the extent technically and commercially reasonable, prices to particular customers or classes of customers to reflect the costs of providing the service to that customer or class of customer.

Subclause (2) provides for the regulations to prescribe additional pricing principles in relation to regulated services.

Division 6 – Performance Monitoring, Reporting and Audits

Clause 69 Subclause (1) requires the Regulator to develop annual performance reporting requirements for regulated entities.

Subclause (2) requires the Regulator to take into account the objective of the Act and any matters in regulations when developing annual reporting requirements.

Subclause (3) requires the Regulator to issue guidelines to regulated entities in relation to the entities' annual reporting requirements.

Subclause (4) provides that it is a condition of all licences issued under this Act that a regulated entity must comply with any guidelines issued under subclause (3).

Clause 70 Subclause (1) requires the Regulator to prepare a report each year on the state of the water and sewerage industry in the previous financial year.

Subclause (2) requires the state of the industry report to include an overview of the performance of the water and sewerage industry, and to identify key priorities for improved performance.

Subclause (3) requires that the state of the industry report to include summaries of any relevant information reported by regulated entities to the Regulator under clause 69.

Subclause (4) requires the Regulator, in preparing the state of the industry report, to consult with the Director of Public Health and the Director of Environmental Management and the Secretary of the responsible department in relation to the Water Management Act 1999, and any other persons the Regulator considers appropriate.

Subclause (5) requires the Regulator to submit a copy of the state of the industry report to both Houses of Parliament within 7 sitting days of preparing it and to concurrently publish the report on the Regulator's website.

Clause 71 Subclause (1) allows the Regulator to carry out audits in relation to the regulated activities of a regulated entity, as required, to perform the Regulator's functions, or exercise his or her powers, under the Act.

Subclause (2) permits the Regulator to decide the scope and frequency of audits, subject to subclause (3).

Subclause (3) limits the frequency of an audit conducted under subclause (1) to no more than once a year.

Clause 72 Allows the Minister to request the Regulator to audit the compliance of a regulated entity with its licence obligations. The subclause also imposes an obligation on the Regulator to carry out any audit requested by the Minister in accordance with the request.

Clause 73 Requires the Regulator to publicly report on the results of audits conducted under clause 71 or 72.

- Clause 74 Requires a regulated entity to which an audit carried out by the Regulator relates to pay the costs of that audit to the Regulator.

Division 7 – Complaints and Disputes

- Clause 75 Subclause (1) allows a customer who is not satisfied with a regulated service provided by a regulated entity to lodge a complaint with that entity.

Subclause (2) allows the Regulator to require, by notice, a regulated entity to submit a proposed customer complaints process to the Regulator for approval by the date specified in the notice.

Subclause (3) requires a regulated entity to submit a proposed customer complaints process to the Regulator, by the date specified in the notice.

A maximum penalty of 100 penalty units applies for non-compliance with this clause (currently \$12 000).

Subclause (4) allows the Regulator to require amendments to be made to a proposed customer complaints process before approving it.

The subclause also allows the Regulator to draft and approve a customer complaints process in relation to a regulated entity which has failed to submit a process under subclause (1), or has failed to amend the proposed process as required by the Regulator.

Subclause (5) requires a regulated entity to make the customer complaints process under subclause (2) publicly available in a manner approved by the Regulator.

A maximum penalty of 50 penalty units applies for non-compliance with this clause (currently \$6 000).

- Clause 76 Provides that a customer who is not satisfied with the outcome of a complaint under the customer complaints process may make a complaint to the Ombudsman under the Ombudsman Act 1978.

This provides a process for addressing a complaint or dispute between a regulated entity and a customer that is not resolved through the entity's complaints process.

- Clause 77 Provides that it is a condition of a regulated entity's licence that it must comply with any recommendation of the Ombudsman relating to a complaint or dispute to which this Division applies.

PART 5 – ADMINISTRATIVE REVIEW OF REGULATOR'S DECISIONS

- Clause 78 Defines terms used in this Part.
- Clause 79 Subclause (1) provides for applications to be made to the Court for the review of a reviewable decision. Applications can be received from a regulated entity whose business is the subject of a reviewable decision, or a person or body that the Court is satisfied is an affected or interested person.
- Subclause (2) requires an application under subclause (1) to be in a form and manner determined by the Court, to specify the grounds for the review and to be made no later than 45 days after a reviewable decision is published.
- Clause 80 Provides that an application can be made only on the grounds that the Regulator made a material error of fact, or made several errors, that had a material effect on a decision of the Regulator; or the exercise of the Regulator's discretion was incorrect; or the Regulator's decision was unreasonable having regard to all circumstances; or more than one of the above grounds.
- Clause 81 Provides that the persons who may intervene in a review under this Part without leave of the Court are the regulated entity to whom a reviewable decision applies (if that entity is not the applicant under this clause), and certain Ministers.
- Clause 82 Subclause (1) provides for a person to apply to the Court for leave to intervene in a review of a reviewable decision.
- Subclause (2) allows a person to apply for leave to intervene only if the Court is satisfied that the person is an affected or interested person.
- Subclause (3) requires an application under subclause (1) to be made no later than 15 business days after the application for a review has been lodged with the Court.
- Clause 83 Specifies that the parties to a review under this subdivision are the applicant, the regulator and an intervener.
- Clause 84 Subclause (1) allows an intervener or the Regulator to raise any grounds specified in clause 80 in a review.
- Subclause (2) provides that it is the responsibility of the intervener or the Regulator to establish the grounds referred to in subclause (1).
- Clause 85 Allows the Court to terminate an application under clause 79 if the Court decides that the party seeking the review has not acted

responsibly in either the Regulator's decision-making process or the Court's review process.

Clause 86 Provides that an application under clause 79 does not stay the operation of the decision to which the application applies, but it does stay the operation of any other reviewable decision on the granting of leave to apply by the Court, unless the Court otherwise orders.

Clause 87 Subclause (1) allows the Court to make a determination in respect of an application to affirm, set aside or vary the reviewable decision, substitute a new decision, or remit the matter back to the Regulator to make the decision again in accordance with any direction or recommendation of the Court.

Subclause (2) allows the Court to perform all the functions and exercise all the powers of the Regulator to make a determination under subclause (1).

Subclause (3) provides that a determination by a Court is, for the purpose of this Act, excluding this Part, to be taken to be a decision of the Regulator.

PART 6 – TRANSITION TO NEW REGULATORY ARRANGEMENTS

Clause 88 Subclause (1) allows the Treasurer to make an interim order in relation to the prices, terms and conditions for the provision of a regulated service by notice in the Gazette and in daily newspapers in Tasmania.

Subclause (2) requires the Treasurer to obtain advice from the Regulator before making an interim order.

Subclause (3) provides that the interim order remains in force until the commencement of the first regulatory period under clause 65(12).

Subclause (4) requires a regulated entity to comply with an order made under this clause.

A maximum penalty of 500 penalty units applies for non-compliance with this clause (currently \$60 000).

Subclause (5) sets out the matters that can be included in an interim order, which is identical to the list in clause 66 that applies to a Regulator's price determination.

The matters an interim order may provide for include the price, and changes in price of a regulated service, the pricing principles to be applied, and how the price is to be referenced.

Subclause (6) allows an interim order to confer functions and powers on the Regulator in relation to prices, terms and conditions for the provision of a regulated service specified in the interim order.

Subclause (7) requires the Treasurer to provide a copy of an interim order made under this clause to each regulated entity that provides a regulated service to which the interim order relates.

Subclause (8) provides that the Act and regulations prevail over any interim order, in the event of an inconsistency.

Clause 89 Subclause (1) allows the Minister to grant interim licences for regulated activities on the terms and conditions the Minister considers appropriate.

Subclause (2) specifies that an interim licence remains in force for a period of up to 2 years, or until a licence under clause 35(1) is granted, whichever is the earlier.

Subclause (3) allows the Minister to impose interim licence conditions as the Minister considers appropriate, by written notice to a person.

Subclause (4) requires the Minister to seek advice from the Regulator on the granting of an interim licence or on any interim licence conditions before granting of an interim licence.

Clause 90 Subclause (1) provides for the Minister to issue an interim exemption, by order, to any person who provides a regulated service specified in the order from the requirement to hold any licence under the Act or comply with any other provision of the Act, until the date specified in the order.

This subclause does not apply to a Regional Corporation or the Common Services Corporation, to be established under the Water and Sewerage Corporations Bill 2008 currently before Parliament.

Subclause (2) limits the duration of an interim order granted under subclause (1) to a date not later than the commencement of the first regulatory period to be set under clause 65(12).

Sections 88, 89 and 90 therefore allow the Treasurer to issue an interim price order, and the Minister to issue interim licences and determine licence conditions and grant exemptions from the requirement to be licensed, until the start of the first regulatory period only.

PART 7 – MISCELLANEOUS

Division 1 – Authorised officers

Clause 91 Subclause (1) allows the Regulator to appoint suitable persons as authorised officers.

The task of the authorised officers is to assist the Regulator in the enforcement of obligations of regulated entities and other persons under the Act.

Subsection (2) provides that an authorised officer may be a State Service officer or a State Service employee.

Subclause (3) provides that all authorised officers are subject to the control and direction of the Regulator.

Clause 92 Subclause (1) provides that an authorised officer holds office for the term and on the conditions as are specified in the instrument of appointment.

Subclause (2) permits an authorised officer to resign by providing written notice to the Regulator.

Subclause (3) allows the Regulator to terminate an appointment of an authorised officer for any reason the Regulator considers sufficient.

Clause 93 Subclause (1) requires the Regulator to provide each authorised officer with an identity card.

Subclause (2) specifies that the identity card must contain a photograph of the authorised officer and be signed by that officer.

Clause 94 Requires an authorised officer to produce the officer's identity card, if demanded by a person, prior to the authorised officer exercising any powers that may affect that person.

The subclause specifies a maximum penalty of 10 penalty units for failure to comply with this obligation (currently \$1 200).

Clause 95 Subclause (1) allows an authorised officer, for the purposes of enforcement of the Act, to carry out an audit under the Act, inspect any document related to a price and service plan, or enter and remain in any place.

Subclause (2) permits an authorised officer to be accompanied by appropriate assistants and take with them any equipment the authorised officer considers is necessary when entering a place.

Subclause (3) permits an authorised officer to use reasonable force to enter a place, or remain in any place, for the purposes of the Part.

Subclause (4) specifies that a person must not obstruct, hinder, delay, threaten or assault a person who is authorised to enter a place and is acting in accordance with this clause.

The subclause specifies a maximum penalty of 100 penalty units for failure to comply with this obligation (currently \$12 000).

Clause 96 Subsection (1) sets the powers of an authorised officer who enters a place including the power to: investigate compliance with the Act; search for, examine and copy a document or record; take photographs or make films, and take samples of water and sewage and possession of an object as evidence.

Subclause (2) requires the authorised officer to provide a receipt to the occupier of a place if he or she takes possession of an object.

The subclause requires that the object must be returned after six months if proceedings for an offence are not commenced, or otherwise on completion of proceedings unless the Court, on application of the Regulator, orders confiscation.

Subclause (3) allows a Court to order the confiscation of an object that has been seized by an authorised officer if the Court is of the opinion that the object has been used to commit an offence or there is some other proper reason.

Subclause (4) provides that if the Court orders the confiscation of an object, the Regulator is permitted to dispose of it, and no compensation is payable for the loss of the object to the person from whom the object was confiscated.

Clause 97 Subclause (1) permits an authorised officer to require a person to provide information in the person's possession relevant to enforcing this Act.

Subclause (2) permits an authorised officer to require a person to produce any documents in a person's possession that may be relevant to enforcing this Act.

Subclause (3) specifies that a person must not contravene this clause without a reasonable excuse.

The subclause specifies a maximum penalty of 100 penalty units for failure to comply with this obligation (currently \$12 000).

Subclause (4) exempts a person from having to give information if to do so might tend to incriminate that person of an offence.

Clause 98 Imposes an obligation on an authorised officer to minimise any damage in exercising any power under the Act.

Clause 99 This clause provides that an authorised officer must pay compensation to a landowner when exercising powers under the Act for any direct loss or damage except in cases where the exercise of these powers reveals a contravention of the Act.

Division 2 – General

Clause 100 Subclause (1) allows an authorised officer to serve an infringement notice on a person if the authorised officer considers that the person has committed an offence under the Act.

Subclause (2) prohibits a person under the age of 18 being served an infringement notice.

Subclause (3) requires infringement notices to be in accordance with the Monetary Penalties Enforcement Act 2005.

Clause 101 Subclause (1) provides the conditions under which confidential information can be disclosed by those persons with duties related to the administration of the Act.

The subclause specifies a maximum penalty of 500 penalty units for failure to comply with this obligation (currently \$60 000).

Subclause (2) provides that no civil liability applies when confidential information is disclosed in accordance with subclause (1).

Subclause (3) provides that the Regulator may disclose confidential information to any person, in performing his or her functions or exercising his or her powers, if the Regulator is of the opinion that such disclosure will not cause detriment to the person supplying the information, or if the Regulator is of the opinion that the public benefit of the information's disclosure outweighs the detriment caused by its disclosure.

Subclause (4) provides that, where subclause (3) applies, the person to whom the duty of confidentiality is owed must have the opportunity to withdraw the information prior to its disclosure.

Subclause (5) provides that the Regulator, in performing his or her functions, or exercising of his or her powers under the Act, may disregard any confidential information that has been withdrawn under subclause (4).

Subclause (6) defines confidential information to include confidential document.

Clause 102 This clause specifies that a person must not provide materially false or misleading information to the Minister, the Treasurer, the Regulator, a regulated entity or an authorised officer.

The subclause specifies a maximum penalty of 100 penalty units for failure to comply with this obligation (currently \$12 000).

Clause 103 This clause provides that no personal liability attaches to a person engaged in administration of the Act in discharging his or her duties if the person is acting in good faith.

Clause 104 Subclause (1) provides that if an agent of a regulated entity commits an offence under this Act, the regulated entity is taken to have committed that offence and proceedings may be brought against the regulated entity for acts done by its agents, whether or not proceedings are brought against the agent.

Subclause (2) provides for certain defences in proceedings for offences under subclause (1), namely if the regulated entity issued instructions or took precautions to ensure compliance with the Act or did not know or could not reasonably prevent the commission of the offence.

Clause 105 Subclause (1) provides that each of the directors and managers of a corporation will be taken to have contravened this Act if the corporation contravenes the Act, unless the Court is satisfied that: the person was unaware of the contravention; or the person could not influence the conduct that resulted in the contravention; or the person used reasonable due diligence to prevent the contravention.

Subclause (2) provides that a person may be proceeded against and convicted under this clause regardless of whether the corporation has been proceeded against or convicted.

Subclause (3) provides that nothing in this clause affects a corporation's liability for an offence it commits against the Act.

Subclause (4) provides that evidence that an officer, employee or agent of a corporation (while acting in such a capacity) had a particular intention, is evidence that the corporation had that intention.

Clause 106 Subclause (1) provides that employers or principals are liable for an offence under the Act committed by an employee or agent, and the employer or principal may have proceedings brought against them regardless of whether or not proceedings are brought against the employee or agent.

Subclause (2) provides that it is a defence for an offence under subclause (1) if the employer or principal can show that he or she did not know of the offence and could not have reasonably prevented its commission.

Clause 107 Subclause (1) provides that an officer of a body corporate which commits an offence is taken to have committed that offence if it is proved that the offence was committed with the consent or connivance of the officer, or if the officer failed to exercise reasonable care to prevent the commission of the offence.

Subclause (2) provides that this clause does not apply to an employee of a body corporate who is not involved in the management of that body corporate.

Clause 108 Subclause (1) requires a regulated entity to pay the Regulator the costs incurred by the Regulator in administering the Act in respect of that regulated entity, including the costs of a determination, approving a price and service plan, approving a customer contract and carrying out audits.

Subclause (2) provides that the costs incurred by the Regulator may be recovered from the regulated entity in a court as a debt due to the Regulator.

Subclause (3) allows a regulated entity's licence to include conditions relating to the determination of the cost of carrying out the Regulator's functions and exercising the Regulator's powers.

Clause 109 Provides that any unpaid penalties imposed under this Act on a person, including a regulated entity, become debts due to the Crown and recoverable in a Court.

Clause 110 Provides that any fee, charge or other amount owed to the Minister, the Treasurer or the Regulator not paid by the due date, together with any interest, become debts due to the Crown and recoverable in a court from the person liable to pay that fee, charge or other amount.

Clause 111 Provides that any fees, charges, penalties and any other monies paid or received under the Act are to be paid into the Consolidated Fund, unless the Treasurer determines otherwise.

Clause 112 Provides that certain evidentiary certificates issued by the Regulator are admissible in legal proceedings as evidence of the matter so stated.

Clause 113 Provides that copies of licences granted under the Act that have been certified by the Minister or the Regulator to be an accurate copy will be

accepted as accurate in any proceedings under this Act, in the absence of proof to the contrary.

Clause 114 Subclause (1) provides that a notice under this Act is not a statutory rule as defined by the Rules Publication Act 1953.

Subclause (2) provides that the Subordinate Legislation Act 1992 does not apply to a notice under this Act.

Clause 115 Subclause (1) provides for regulations to be made under the Act by the Governor.

Subclause (2) specifies that regulations may provide for certain matters relating to fees and charges.

Subclause (3) allows the regulations to require any document or information that is required to be provided or given to any person to be verified by statutory declaration.

Subclause (4) allows the regulations to apply differently according to matters, limitations or restrictions.

Subclause (5) allows the regulations to provide that a contravention of any of the regulations is an offence and provide for the imposition of a fine not exceeding 100 penalty units (currently \$12 000).

Subclause (6) permits the regulations to authorise the Minister, the Treasurer or the Regulator to determine, apply or approve any matter from time to time.

Subclause (7) allows the regulations to adopt standards, rules, codes or specifications, published or issued by any prescribed authority in whole or in part before or after the commencement of this clause.

Subclause (8) specifies that a reference to standards, rules, codes or specifications under subclause (7) includes a reference to an amendment of those standards, rules, codes or specifications published or issued by any prescribed authority before or after the commencement of this clause.

Subclause (9) permits the regulations to include savings or transitional provisions consequent on the enactment of the relevant provision or provisions of this Act.

Subclause (10) allows a provision referred to in subclause (9) to take effect on the day on which the relevant provision or provisions of this Act commences, or on a later date as specified in the regulations, whether before, after or on the day the regulations are made.

Clause 116 Assigns the administration of the Act to the Minister for Primary Industries and Water and specifies that the responsible Department to that Minister in relation the administration of the Act is the Department of Primary Industries and Water, with the exception of:

- Subdivision 3 of Division 1 of Part 4 (Administration of office of Water and Sewerage Economic Regulator);
- Division 5 of Part 4 (Price Regulation);
- clause 88 (Interim price order); and
- clause 111 (Payments into Consolidated Fund).

The clause assigns the administration of Subdivision 3 of Division 1 and Division 5 of Part 4, and clauses 88 and 111, to the Treasurer and specifies that the responsible Department to the Treasurer is the Department of Treasury and Finance.

Clause 117 Provides for the legislation specified in Schedule 1 to be amended as specified in Schedule 1

SCHEDULE 1 – Consequential Amendments

Clause 1 Amends the Ombudsman Act 1978 with the effect that a regulated entity under this Act, falls under the Ombudsman's jurisdiction.