

# WATER AND SEWERAGE INDUSTRY AMENDMENT BILL 2011

## NOTES ON CLAUSES

- Clause 1            Short title.
- Clause 2            Fixes the date of commencement of the Act as being the day on which it receives Royal Assent.
- Clause 3            Refers to the *Water and Sewerage Industry Act 2008* as the Principal Act.
- Clause 4            Inserts a new section 3A in the Act to provide that the owner or occupier of a strata lot, for the purposes of the *Strata Titles Act 1998*, is taken to be a customer under the Act and satisfies the requirement to be connected to the water infrastructure or sewerage infrastructure of a regulated entity, notwithstanding that the connection point with the entity's infrastructure is on common property.
- This provides the option for strata property owners or occupiers to receive bills directly from a regulated entity and ensures that the customer protection measures and service standard requirements apply to strata property owners and occupiers.
- Clause 5            Inserts a new subsection in section 66(2) of the Act to state that the Regulator, in making a price determination under section 66 of the Act, is not to take into account a change in a rate of return on existing assets, that is prescribed in regulations, that occurs between the time a regulated entity submits a proposed price and service plan to the Regulator and the making of the price determination. This prevents the Government intervening in the price determination making process by adjusting the rate of return in response to a draft price and service plan or a draft determination.
- Clause 6            Amends the pricing principle in section 68(1)(d) of the Act to require prices to include a rate of return to the regulated entity on assets used to provide a regulated service on the basis outlined in new subsection 68(1A).
- New subsection (1A) distinguishes between the rate of return allowed on assets transferred to a regulated entity prior to 1 July 2011 by virtue of the transfer notice process in the *Water and Sewerage Corporations Act 2008* and the rate of return on investment by a regulated entity in new assets.

New section 68(1A)(a) distinguishes those assets transferred to a regulated entity by way of a transfer notice under the *Water and Sewerage Corporations Act 2008* and, consistent with current regulatory practice, requires an assumed level of gearing, based on industry benchmarks.

New section 68(1A)(b) requires that the rate of return on the level of debt assumed in paragraph (a) is based on the prevailing market rate of debt for a business of a similar kind to the regulated entity.

New section 68(1A)(c) requires that the pre-tax rate of return (not including inflation) on the assumed level of equity on the transferred assets referred to in paragraph (a) is 3 per cent, or another rate as set out in regulations.

The effect of requiring a lower return on existing assets will flow through to lower prices for customers than would otherwise occur if the return on equity of existing assets was set at a full commercial rate.

New section 68(1A)(d) makes the allowable return on equity for all other assets of the regulated entity the rate that reflects the regulatory and commercial risks involved in providing the regulated service. This will ensure that the regulated entities have sufficient incentive to invest and operate on a sustainable basis in the long term.

#### Clause 7

Inserts a new section 68AA in the Act to allow the pricing principles to not be applied during the transition period.

New section 68AA(1) defines “pricing principles” to include the pricing principles in section 68(1) and the pricing principles in regulations made under section 68(2). The “transition period” is defined as the period of time set out in regulations.

New section 68AA(2) sets out circumstances in which the pricing principles are not required to be applied during the transition period. Where the application of the pricing principles will result in a significant impact on customers, or a particular class of customers, or will adversely affect the sustainability of a regulated entity in relation to the provision of regulated services, or the ability of the regulated entity to deliver regulated services, the pricing principles do not need to be applied.

New section 68AA(3) requires the Regulator publish its reasons for not applying a pricing principle, or for not applying a pricing principle to an extent.

This will ensure that the Regulator's objectives and functions under the Act to ensure a smooth transition to full cost recovery and ensuring sustainability of the sector do not conflict with the requirement that the regulated entities comply with the pricing principles in the Act that require efficient, cost reflective pricing from the first price determination.

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| Clause 8  | Amends the heading of Part 7 of the Act.   |
| Clause 9  | Omits the division heading in Part 7.  |
| Clause 10 | Inserts a new heading in the Act.  |
| Clause 11 | Amends section 95 of the Act to permit a water and sewerage officer to enter and remain in any place for the purpose of the enforcement of an infringement offence. The clause restricts this power of entry to the hours of 7a.m. and 7 p.m. on any day.  |
| Clause 12 | Amends section 96 of the Act to provide water and sewerage officers the same general powers of investigation as authorised officers when investigating alleged breaches of the Act.  |
| Clause 13 | Amends section 97 of the Act to give water and sewerage officers the power to require information that is relevant to the enforcement of the Act.  |
| Clause 14 | Amends section 98 of the Act to state that a water and sewerage officer must act with care when exercising a power under the Act.  |
| Clause 15 | Amends section 99 of the Act to ensure that the requirement to pay compensation to the owner of land for any damage to property arising from the exercise of a power under the Act applies to both authorised officers and water and sewerage officers.  |
| Clause 16 | Omits the division heading.  |
| Clause 17 | <p>The new section 100(1A) provides a new power to allow a water and sewerage officer to issue and serve an infringement notice on a person if that officer is of the opinion that the person has committed an offence under the Act.</p> <p>The new section 100(1B) limits the offences to which a water and sewerage officer may issue and serve an infringement notice to those sections of the Act under which the relevant regulated entity is responsible for ensuring compliance. The clause also restricts a water and sewerage officer from issuing and serving an infringement notice in respect of an offence in the regulations unless that offence is prescribed to be an offence to which a water and sewerage officer may issue and serve an infringement notice.</p> |
| Clause 18 | Inserts a new heading.   |

Clause 19      States that the Act is repealed on the ninetieth day from the day on which it commences.