

# TASMANIA

---

## WATER AND SEWERAGE INDUSTRY BILL 2008

---

### CONTENTS

#### **PART 1 – PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation
4. Act binds Crown

#### **PART 2 – OBJECTIVE OF ACT**

5. Objective of Act

#### **PART 3 – ADMINISTRATION**

6. Functions of Minister
7. Powers of Minister
8. Minister may establish committees
9. Delegation of Minister's functions and powers
10. Exemption from Act

#### **PART 4 – REGULATION OF WATER AND SEWERAGE INDUSTRY**

##### ***Division 1 – Regulator***

##### ***Subdivision 1 – Functions and powers***

11. The Regulator
12. Functions of Regulator
13. Powers of Regulator

14. Delegation of Regulator's functions and powers
15. Matters to which Regulator is to have regard
16. Independence of Regulator
17. Regulator's power to require information
18. Power to direct regulated entities to keep records
19. Special reports to Minister

***Subdivision 2 – Codes***

20. General provisions relating to codes
21. Publication and availability of codes
22. Review, amendment and replacement of codes

***Subdivision 3 – Administration of office of Water and Sewerage Economic Regulator***

23. Guidelines for conduct of Regulator
24. Advisory committees
25. Staff of Regulator
26. Assistance and facilities
27. Funds
28. Annual report of Regulator
29. Tabling of annual report

***Division 2 – Licensing of regulated entities***

***Subdivision 1 – Licensing***

30. Requirement for licence
31. Declaration of regulated activities and non-regulated activities
32. Deemed licensee
33. Contravening person still subject to regulated entity obligations
34. Applications for licences
35. Determination of applications by Regulator
36. Duration of licences
37. Conditions of licences
38. Matters to be included in licence
39. Annual licence fees

- 40. Variation of licence conditions
- 41. Enforcement of licences
- 42. Regulator's power of direction
- 43. Suspension and cancellation of licences in public interest
- 44. Activities not authorised
- 45. Regulated entities to be notified of proposed action
- 46. Review of licences
- 47. Emergency directions
- 48. Register of licences

***Subdivision 2 – Reserve supplier***

- 49. Declaration of reserve supplier

***Subdivision 3 – Changes to operations of licence***

- 50. Licence cannot be transferred
- 51. Surrender of licence
- 52. Applying for cancellation of licence as regulated entity
- 53. No compensation is payable
- 54. Notice of proposed or anticipated stoppage of provision of regulated service

***Subdivision 4 – Step-in-operator***

- 55. Power to take over operations
- 56. Appointment of step-in-operator

***Division 3 – Customer service code***

- 57. Customer service code

***Division 4 – Customer contract***

- 58. Regulator may require customer contracts
- 59. Publication of customer contracts
- 60. Entering into customer contracts
- 61. Subdivision not to preclude certain contracts
- 62. Variation of customer contracts

***Division 5 – Price regulation***

- 63. Application of this Division

- 64. Price regulation of regulated services
- 65. Price and service plan
- 66. Price determinations
- 67. General provisions relating to determinations
- 68. Pricing principles

***Division 6 – Performance monitoring, reporting and audits***

- 69. Performance monitoring and reporting
- 70. State of the industry report
- 71. Auditing
- 72. Audits requested by Minister
- 73. Publication of audit results
- 74. Costs of audit

***Division 7 – Complaints and disputes***

- 75. Customer complaints process
- 76. Complaints to Ombudsman
- 77. Compliance with Ombudsman’s decision

**PART 5 – ADMINISTRATIVE REVIEW OF REGULATOR’S DECISIONS**

- 78. Definitions used in this Part
- 79. Applications for review
- 80. Grounds for review
- 81. Intervention by others in a review without leave
- 82. Leave for interveners
- 83. Parties to a review under this Part
- 84. Intervenors and the Regulator may raise new grounds for review
- 85. Court may terminate review
- 86. Effect of application on operation of reviewable decision
- 87. Court’s determination

**PART 6 – TRANSITION TO NEW REGULATORY ARRANGEMENTS**

- 88. Interim price order

- 89. Interim licences
- 90. Interim exemption from requirement to be licensed

## **PART 7 – MISCELLANEOUS**

### ***Division 1 – Authorised officers***

- 91. Appointment of authorised officers
- 92. Conditions of appointment
- 93. Authorised officer's identity card
- 94. Production of identity card
- 95. Power of entry
- 96. General investigative powers of authorised officers
- 97. Authorised officer's power to require information
- 98. Care to be taken
- 99. Compensation

### ***Division 2 – General***

- 100. Service of infringement notices
- 101. Confidentiality
- 102. False or misleading information
- 103. Exclusion of personal liability
- 104. Liability of regulated entity
- 105. Offences by corporations
- 106. Liability of employers and principals
- 107. Liability of officers of body corporate
- 108. Regulator's costs
- 109. Recovery of monetary penalties
- 110. Recovery of unpaid fees, charges, &c.
- 111. Payments into Consolidated Fund
- 112. Evidentiary certificates
- 113. Evidentiary provision for documents
- 114. Notices not statutory rules
- 115. Regulations

116. Administration of Act

117. Consequential Amendments

**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

# **WATER AND SEWERAGE INDUSTRY BILL 2008**

*(Brought in by the Treasurer, the Honourable Michael Anthony Aird)*

## **A BILL FOR**

**An Act to provide for the establishment of an economic regulatory framework for the water and sewerage industry, including the establishment of a licensing regime and providing for the regulation of prices, customer service standards and performance monitoring of that industry and for related matters**

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

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Water and Sewerage Industry Act 2008*.

### **2. Commencement**

The provisions of this Act commence on a day or days to be proclaimed.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

s. 3

Part 1 – Preliminary

---

### 3. Interpretation

In this Act, unless the contrary intention appears –

**“Agency”** has the same meaning as in the *State Service Act 2000*;

**“annual performance reporting requirements”** means the annual reporting requirements referred to in section 69;

**“area of operations”**, in relation to a regulated entity, means the area within which the regulated entity is authorised to exercise the powers conferred by a licence;

**“authorised officer”** means an authorised officer appointed under section 91;

**“business day”** means a day that is not –

(a) a Saturday or Sunday; or

(b) a statutory holiday within the meaning of the *Statutory Holidays Act 2000*;

**“code”** means a code issued by the Regulator under section 20;

**“Common Services Corporation”** has the same meaning as in the *Water and Sewerage Corporations Act 2008*;

**“customer”** means a person who is –



*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 1 – Preliminary

s. 3

- 
- (a) an owner and occupier of a property that is connected to a regulated entity's water infrastructure or sewerage infrastructure; or
  - (b) an owner (but not an occupier) of a property that is connected to a regulated entity's water infrastructure or sewerage infrastructure; or
  - (c) an occupier of a property that is connected to a regulated entity's water infrastructure or sewerage infrastructure and is liable for service charges; or
  - (d) an owner or occupier of a property that is not connected to a regulated entity's water infrastructure or sewerage infrastructure but to which a regulated service is available from a regulated entity and the regulated entity imposes a service charge;

**“customer complaints process”** means a process established pursuant to section 75 to deal with complaints by customers of a regulated entity relating to regulated services provided by that regulated entity;

*Water and Sewerage Industry Act 2008*  
*Act No. of*

s. 3

Part 1 – Preliminary

---

**“customer contract”** means a contract between a regulated entity and a customer for the provision of regulated services to the customer, which includes standard terms and conditions of service;

**“customer service code”** means a code issued under section 57;

**“deemed licensee”** means a person deemed to be licensed under section 32;

**“disqualified corporation”** means a corporation that, pursuant to a declaration under section 41, is a disqualified person for the purposes of this Act and includes a corporation that is a related entity (within the meaning of the *Corporations Act 2001* of the Commonwealth) in relation to the corporation;

**“disqualified individual”** means –

- (a) an individual who, pursuant to the *Corporations Act 2001* of the Commonwealth, is disqualified from managing a corporation; or
- (b) an individual who, pursuant to a declaration under section 41, is a disqualified person for the purposes of this Act;

**“disqualified person”** means a disqualified corporation or a disqualified individual;

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 1 – Preliminary

s. 3

---

**“environmental harm”** has the same meaning as in the *Environmental Management and Pollution Control Act 1994*;

**“first regulatory period”** means the period fixed under section 65(12)(a);

**“infrastructure”**, in relation to a regulated entity, means infrastructure owned by, or under the management and control of, the regulated entity;

**“interim licence”** means an interim licence granted under section 89;

**“licence”** means a licence granted under section 35(1) or a temporary licence granted under section 43(5);

**“occupier”** of land means a person who has, or is entitled to, possession or control of the land and includes –

- (a) a person who occupies the land or part of the land jointly or in common with any other person; and
- (b) a person who occupies part of the land;

**“officer”** has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

*Water and Sewerage Industry Act 2008*  
*Act No. of*

s. 3

Part 1 – Preliminary

---

**“Ombudsman”** means the Ombudsman appointed under the *Ombudsman Act 1978*;

**“person”** includes an Agency, a statutory authority and an emanation of the Crown;

**“price”** means the price or price range however designated –

(a) for the provision of a regulated service; or

(b) for developer charges for water infrastructure and sewerage infrastructure –

and includes a charge or tariff or particular factor, policy or a formula used in fixing the price;

**“price and service plan”** means a price and service plan approved under section 65;

**“price determination”** means a price determination by the Regulator under section 66;

**“record”** includes –

(a) a documentary record; and

(b) a record made by an electronic, electromagnetic, photographic or optical process;

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 1 – Preliminary

s. 3

---

**“Regional Corporation”** has the same meaning as in the *Water and Sewerage Corporations Act 2008*;

**“regulated activity”** means an activity for which a person is required to hold a licence or interim licence granted under this Act and includes the provision of a regulated service;

**“regulated entity”** means –

- (a) a person holding a licence or an interim licence granted under this Act; or
- (b) a person deemed to hold a licence under section 32; or
- (c) a person who has surrendered his or her licence under this Act; or
- (d) a person whose licence has been cancelled or suspended; or
- (e) a person who has obligations under section 33; or
- (f) a person who, but for an exemption under section 90, would be required to hold a licence under section 30;

**“regulated service”** means the provision of a water service or a sewerage service by a regulated entity;

*Water and Sewerage Industry Act 2008*  
*Act No. of*

s. 3

Part 1 – Preliminary

---

**“regulations”** means regulations made and in force under this Act;

**“Regulator”** means the Water and Sewerage Economic Regulator referred to in section 11;

**“regulatory period”** means the regulatory period fixed under section 65(12) or declared under section 65(13);

**“related person”**, in relation to –

(a) an individual, means some other individual who is the first-mentioned individual’s –

(i) employer, employee or partner; or

(ii) a partner, within the meaning of the *Relationships Act 2003*, parent, step-parent, grandparent, child, step-child, grandchild, sibling, step-sibling, nephew or niece; or

(b) a body corporate, means a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth;

**“reserve supplier”** means a person who is declared to be a reserve supplier under section 49;

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 1 – Preliminary

s. 3

---

**“sewage”** includes trade waste;

**“sewerage infrastructure”** means any infrastructure that is, or is to be, used for –

- (a) the collection or storage of sewage; or
- (b) the conveyance or reticulation of sewage; or
- (c) the treatment of sewage, including any outfall pipe or other work that stores or conveys water leaving the infrastructure used for the treatment of sewage; or
- (d) any other infrastructure used in connection with sewage and declared to be sewerage infrastructure by the Minister by order –

but does not include –

- (e) any pipe, fitting or apparatus that is situated upstream of a customer’s connection point to a sewer main; or
- (f) infrastructure situated entirely within the one land holding and not connected to any other infrastructure situated within another land holding; or

*Water and Sewerage Industry Act 2008*  
*Act No. of*

s. 3

Part 1 – Preliminary

---

- (g) any other infrastructure used in connection with sewage and declared not to be sewerage infrastructure by the Minister by order;

**“sewerage service”** means –

- (a) a service that is provided in connection with the collection, storage, treatment, conveyance or reticulation of sewage and includes a retail service for the collection of sewage; or
- (b) any other service declared to be a sewerage service by the Minister by order;

**“statutory authority”** means a body or authority, whether incorporated or not, that is established or constituted under a written law or under the royal prerogative, being a body or authority which, or of which, the governing authority wholly or partly comprises a person or persons appointed by the Governor, a Minister or another statutory authority, but does not include an Agency;

**“step-in-operator”** – see section 56(2);

**“step-in-order”** – see section 55(1);



*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 1 – Preliminary

s. 3

---

**“trade waste”** means the liquid waste generated by any industry, business, trade or manufacturing process;

**“water”** includes recycled water and re-use water, but does not include sewage;

**“water infrastructure”** means any infrastructure that is, or is to be, used for –

- (a) the collection or storage of water, including from a dam or reservoir or a water production plant; or
- (b) the treatment of water; or
- (c) the conveyance or reticulation of water; or
- (d) any other infrastructure used in connection with water and declared to be water infrastructure by the Minister by order –

but does not include –

- (e) any pipe, fitting or apparatus that is situated downstream of a customer’s connection point to a water main; or
- (f) any pipe, fitting or apparatus that is situated upstream of a customer’s connection point to a stormwater drain; or

*Water and Sewerage Industry Act 2008*  
*Act No. of*

s. 4

Part 1 – Preliminary

---

- (g) infrastructure situated entirely within the one landholding and not connected to any other infrastructure situated within another landholding; or
- (h) any other infrastructure used in connection with water that is declared not to be water infrastructure by the Minister by order;

**“water service”** means a service that is provided in connection with the collection, storage, treatment, conveyance, reticulation or supply of water and includes a retail service for the supply of water, but does not include –

- (a) supply or use of water for irrigation purposes; or
- (b) supply or use of water in connection with the generation of electricity.

**4. Act binds Crown**

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 2 – Objective of Act

s. 5

---

**PART 2 – OBJECTIVE OF ACT**

**5. Objective of Act**

The objective of this Act is to protect the long-term interests of customers and to provide for the safe, environmentally responsible, efficient and sustainable provision of reliable and secure water services and sewerage services to the Tasmanian community.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 6**

Part 3 – Administration

---

**PART 3 – ADMINISTRATION**

**6. Functions of Minister**

The Minister has the following functions under this Act:

- (a) to develop and co-ordinate policies relating to the regulation of the water and sewerage industry;
- (b) such other functions as are imposed on the Minister under this Act.

**7. Powers of Minister**

- (1) The Minister has power to do all things necessary or convenient to be done in connection with, incidental to or related to the performance of the Minister's functions under this Act.
- (2) Without limiting subsection (1), the Minister, by notice in writing given to the Regulator, may require the Regulator to conduct an inquiry into any matter relating or incidental to the regulation of the water and sewerage industry that the Minister considers necessary or desirable.

**8. Minister may establish committees**

- (1) The Minister may establish committees to provide information and advice to the Minister

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 3 – Administration

**s. 9**

---

on matters related to the administration of this Act.

- (2) The Minister may appoint any person who has expertise, knowledge or skills relevant to the functions of a committee as a member of that committee on such terms and conditions as the Minister determines.

**9. Delegation of Minister’s functions and powers**

The Minister may delegate any of his or her functions or powers under this Act other than this power of delegation.

**10. Exemption from Act**

- (1) Subject to subsections (2) and (3), the Minister may, by order, exempt a person, an activity or a class of activities from any provision of this Act subject to any conditions that the Minister determines.
- (2) The Minister may not make an order granting an exemption if it would be inconsistent with the objective of this Act to do so.
- (3) The Minister must not make an order granting an exemption unless the Minister has consulted with –
- (a) the Minister administering the *Environmental Management and Pollution Control Act 1994* and that

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 10**

Part 3 – Administration

---

Minister has advised that the exemption would not be inconsistent with that Act; and

- (b) the Minister administering the *Public Health Act 1997* and that Minister has advised that the exemption would not be inconsistent with that Act or any guidelines in force under that Act; and
- (c) the Minister administering the *Water Management Act 1999* and that Minister has advised that the exemption would not be inconsistent with that Act.

(4) An order remains in force until –

- (a) it is revoked; or
- (b) the date specified in the order as the date on which the order ceases to be in force –

whichever first occurs.

(5) The Minister may make an order renewing an exemption granted under this section.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

s. 11

---

**PART 4 – REGULATION OF WATER AND  
SEWERAGE INDUSTRY**

*Division 1 – Regulator*

*Subdivision 1 – Functions and powers*

**11. The Regulator**

- (1) The office of the Water and Sewerage Economic Regulator is established.
- (2) The Commissioner, within the meaning of the *Government Prices Oversight Act 1995*, is the Regulator.

**12. Functions of Regulator**

The Regulator's functions are –

- (a) to administer the licensing system established under Division 2; and
- (b) to advise the Minister that a licence has been granted under Division 2 and to advise the Minister of any conditions that apply to that licence; and
- (c) to advise the Minister of any variation or amendments to the conditions of a licence; and
- (d) to monitor and report to the Minister on the compliance of a regulated entity with its licence conditions and obligations,

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 12**

Part 4 – Regulation of Water and Sewerage Industry

---

- including compliance with the customer service code; and
- (e) to establish and administer the customer service code; and
  - (f) to regulate prices, terms and conditions for regulated services; and
  - (g) to make price determinations and determinations generally; and
  - (h) to monitor the performance of the water and sewerage industry and report on the performance of regulated entities; and
  - (i) to provide advice to the Minister on matters on which the Minister requires advice in connection with the regulation of the water and sewerage industry; and
  - (j) to undertake inquiries, including such inquiries as may be required by the Minister, in relation to the regulation of the water and sewerage industry; and
  - (k) to publish guidelines issued by the Regulator under this Act on the Regulator's internet website; and
  - (l) to perform such other functions as may be imposed on the Regulator under this Act.



*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 13**

---

**13. Powers of Regulator**

- (1) The Regulator has power to do all things necessary or convenient to be done in connection with, incidental to or related to the performance of the Regulator's functions under this Act.
- (2) Without limiting subsection (1), the Regulator may –
  - (a) develop and issue guidelines for the regulation of the water and sewerage industry –
    - (i) for price regulation; and
    - (ii) for pricing principles; and
    - (iii) for price and service plans; and
    - (iv) for licence administration; and
    - (v) for annual performance reporting; and
    - (vi) in relation to compliance by a regulated entity with the provisions of this Act and the conditions of the licence granted to the regulated entity; and
  - (b) enforce the compliance of regulated entities with their licence conditions and obligations, including the customer service code; and
  - (c) develop and issue codes; and

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 14**

Part 4 – Regulation of Water and Sewerage Industry

---

- (d) enter into contracts.

**14. Delegation of Regulator’s functions and powers**

The Regulator may delegate any of his or her functions or powers under this Act, other than this power of delegation.

**15. Matters to which Regulator is to have regard**

In performing his or her functions and exercising his or her powers under this Act, the Regulator must seek to achieve the objective of this Act and must have regard to the following matters:

- (a) relevant health, public safety and environmental obligations;
- (b) the promotion of efficient long-term investment in water infrastructure and sewerage infrastructure, so as to achieve the lowest sustainable costs of the provision of water services and sewerage services;
- (c) the promotion of efficient pricing for regulated services;
- (d) the impact of the rate of change of prices for customers;
- (e) the maintenance of appropriate service standards for the provision of water services and sewerage services;

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 16**

- (f) the avoidance of regulatory duplication, so far as is practicable, through appropriate consultation with, and data collection from, other relevant persons;
- (g) any matters relating to the water and sewerage industry prescribed in the regulations;
- (h) any other matters that the Regulator considers relevant.

**16. Independence of Regulator**

In performing his or her functions and exercising his or her powers under this Act, the Regulator is not subject to the direction of the Minister or any other person unless expressly provided for under this Act.

**17. Regulator's power to require information**

- (1) The Regulator may, by written notice given to a person, require that person to give the Regulator, within a time stated in the notice, information or documents in the person's possession that the Regulator reasonably requires for the administration of this Act.
- (2) A person required to give information or documents under this section must provide the information or documents within the time stated in the notice given under subsection (1).

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 18**

Part 4 – Regulation of Water and Sewerage Industry

---

Penalty: Fine not exceeding 100 penalty units.

- (3) A person may not be compelled to give information under this section if the information might tend to incriminate the person of an offence.

**18. Power to direct regulated entities to keep records**

- (1) The Regulator may, by notice in writing given to a regulated entity, require the regulated entity to maintain and keep specified records, including any documents specified in the notice.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a notice given under subsection (1).

Penalty: Fine not exceeding 100 penalty units.

**19. Special reports to Minister**

The Regulator must report to the Minister on matters on which the Minister requires a report as and when required by the Minister.

***Subdivision 2 – Codes***

**20. General provisions relating to codes**

- (1) The Regulator may issue codes for any matter relating or incidental to any regulated activity.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

s. 20

- (2) A person subject to a code must comply with that code.

Penalty: Fine not exceeding 100 penalty units.

- (3) The Regulator may not issue a code unless the Regulator has consulted with –

- (a) the Minister administering the *Environmental Management and Pollution Control Act 1994* and that Minister has advised that the code would not be inconsistent with that Act; and
- (b) the Minister administering the *Public Health Act 1997* and that Minister has advised that the code would not be inconsistent with that Act or any guidelines in force under that Act; and
- (c) the Minister administering the *Water Management Act 1999* and that Minister has advised that the code would not be inconsistent with that Act.

- (4) If there is an inconsistency between a code issued under subsection (1) and this Act or regulations made under this Act, this Act or the regulations prevail to the extent of the inconsistency.

- (5) A code may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the code.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 21**

Part 4 – Regulation of Water and Sewerage Industry

---

- (6) A code may authorise any matter to be from time to time determined, approved or applied by the Regulator.
- (7) The Regulator is to notify the Minister whenever the Regulator issues a code and provide the Minister with a copy of the code.

**21. Publication and availability of codes**

- (1) As soon as practicable after the Regulator issues a code, the Regulator is to –
  - (a) cause notice of the issuing of the code to be published in the *Gazette*; and
  - (b) cause the code to be published on the Regulator’s internet website.
- (2) The Regulator must keep a code available for inspection by any person, free of charge, at the office of the Regulator during normal office hours.
- (3) The Regulator is to ensure that copies of a code are available to any person for purchase, at cost, during normal office hours.

**22. Review, amendment and replacement of codes**

- (1) The Regulator may, on his or her own initiative or at the request of any person or the Minister, review a code.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 22**

- 
- (2) The Regulator must review a code when required to do so by the Minister.
  - (3) The Regulator may amend, rescind or substitute a code.
  - (4) As soon as practicable after the Regulator –
    - (a) amends or substitutes a code under subsection (3), the Regulator is to cause –
      - (i) notice of the making of the amendment or substitution to be published in the *Gazette*; and
      - (ii) the code, as amended or substituted, to be published on the Regulator’s internet website; or
    - (b) rescinds a code, the Regulator is to cause notice of the rescission to be published in the *Gazette* and on the Regulator’s internet website.
  - (5) The Regulator is to notify the Minister whenever the Regulator amends, rescinds or substitutes a code and provide the Minister with a copy of the amended or substituted code, as the case may be.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

s. 23

Part 4 – Regulation of Water and Sewerage Industry

---

***Subdivision 3 – Administration of office of Water and  
Sewerage Economic Regulator***

**23. Guidelines for conduct of Regulator**

- (1) The Regulator may issue guidelines concerning the manner in which the Regulator performs his or her functions or exercises his or her powers under this Act.
- (2) Before the Regulator issues any guidelines under this section, the Regulator must submit the guidelines to the Treasurer for approval.
- (3) The Regulator must keep the guidelines available for inspection by any person, free of charge, during normal office hours.
- (4) The Regulator is to ensure that copies of the guidelines are available to any person to purchase, at cost, during normal office hours.

**24. Advisory committees**

- (1) The Regulator may establish advisory committees to advise the Regulator on specified aspects of the administration of this Act.
- (2) The members of advisory committees are appointed and hold office on terms and conditions approved by the Treasurer.



*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 25**

---

**25. Staff of Regulator**

The Regulator may arrange with the Secretary of the responsible Department in relation to the *Public Account Act 1986* for such State Service officers and State Service employees as the Regulator considers necessary employed in that Department to be made available to enable the Regulator to perform his or her functions and exercise his or her powers under this Act and those officers and employees may, in conjunction with State Service employment, serve the Regulator in any capacity.

**26. Assistance and facilities**

The Regulator may arrange with any person to provide assistance or facilities to enable the Regulator to perform his or her functions and exercise his or her powers under this Act.

**27. Funds**

- (1) The funds of the Regulator consist of –
- (a) all money received by the Regulator in the course of performing his or her functions and exercising his or her powers under this Act; and
  - (b) money appropriated by Parliament for the purpose of the Regulator; and

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 28**

Part 4 – Regulation of Water and Sewerage Industry

---

- (c) all other money received by the Regulator from any other source.

(2) The funds of the Regulator are to be applied –

- (a) in the payment or discharge of the expenses, charges and obligations incurred or undertaken by the Regulator in the performance of his or her functions and the exercise of his or her powers; and
- (b) in the payment of the remuneration and allowances of the Regulator; and
- (c) in meeting the expenses incurred by the Regulator in respect of –
  - (i) the use of the services of persons referred to in section 25; and
  - (ii) the assistance or facilities provided under section 26; and
- (d) in any other manner authorised or required under this or any other Act.

**28. Annual report of Regulator**

- (1) In respect of each financial year, the Regulator must prepare a report which includes –
  - (a) a report on the performance of the Regulator's functions and the exercise of the Regulator's powers; and

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

s. 28

- 
- (b) the financial statements of the Regulator;  
and
    - (c) the Auditor-General's report on those  
financial statements; and
    - (d) any information required by the  
Treasurer by written notice given to the  
Regulator; and
    - (e) any other information the Regulator  
considers appropriate.
  - (2) The financial statements referred to in  
subsection (1)(b) must –
    - (a) be prepared and certified as specified in a  
direction given under subsection (3); and
    - (b) present fairly –
      - (i) the financial transactions of the  
Regulator during the financial  
year to which the report relates;  
and
      - (ii) the state of affairs of the  
Regulator at the end of that  
financial year; and
    - (c) comply with any other written direction  
given under subsection (3).
  - (3) The Treasurer may give written directions to the  
Regulator in respect of the form, content,  
preparation, certification and provision of the  
financial statements referred to in  
subsection (1)(b).

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 29**

Part 4 – Regulation of Water and Sewerage Industry

---

- (4) Directions under subsection (3) may adopt, wholly or partly, with or without modification and either specifically or by reference, any of the Treasurer's Instructions made under the *Financial Management and Audit Act 1990*.
- (5) The Regulator must provide a copy of the annual report to the Treasurer so as to enable it to be tabled in accordance with section 29.

**29. Tabling of annual report**

- (1) By 31 October in each year, the Treasurer must cause a copy of the annual report referred to in section 28 for the previous financial year to be laid before each House of Parliament.
- (2) If the Treasurer is unable to comply with subsection (1) because a House of Parliament is not sitting on 31 October in any year, the Treasurer must –
  - (a) on or before that day, provide copies of the annual report to the clerk of that House; and
  - (b) within the first 7 sitting-days after that day, cause copies of the annual report to be laid before that House.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 30**

---

***Division 2 – Licensing of regulated entities***

***Subdivision 1 – Licensing***

**30. Requirement for licence**

A person must not –

- (a) own or operate water infrastructure or sewerage infrastructure used for the provision of water services or sewerage services to another person; or
- (b) provide water services or sewerage services to another person, by means of, or in connection with the use of, water infrastructure or sewerage infrastructure; or
- (c) undertake any other activity that is declared by the Minister under section 31 to be a regulated activity –

unless the person holds a licence under this Act authorising the relevant activity or is otherwise permitted under this Act to not hold a licence.

Penalty: Fine not exceeding 10 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 100 penalty units for each day during which the offence continues.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 31**

Part 4 – Regulation of Water and Sewerage Industry

---

**31. Declaration of regulated activities and non-regulated activities**

- (1) The Minister may, by order, declare –
  - (a) an activity to be a regulated activity; or
  - (b) an activity to not be a regulated activity –if the Minister is satisfied that it is in the public interest to do so.
- (2) Before making an order under subsection (1), the Minister must obtain the advice of the Regulator as to whether an activity should be declared to be a regulated activity or to not be a regulated activity.
- (3) The Regulator may at any time recommend to the Minister that an activity be declared to be a regulated activity or to not be a regulated activity.

**32. Deemed licensee**

- (1) Where more than one person is required to be licensed under section 30(a) in connection with a particular piece of water infrastructure or sewerage infrastructure, only one of those persons is required to be granted a licence under section 35(1).
- (2) Where subsection (1) applies and a person is granted a licence under section 35(1) in respect of a piece of water infrastructure or sewerage infrastructure –

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

s. 33

---

- (a) the unlicensed person is deemed to be licensed in relation to that infrastructure on the same terms and conditions as the person granted a licence under section 35(1); and
- (b) compliance by the person granted a licence under section 35(1) or the deemed licensee with this Act and any relevant licence conditions in relation to the infrastructure constitutes compliance by the deemed licensee or the person granted a licence under section 35(1), as the case may be.

**33. Contravening person still subject to regulated entity obligations**

- (1) Where a person is undertaking an activity for which that person is required to be licensed pursuant to section 30 and that person does not hold a licence to undertake that activity, this Act and any standard licence obligations declared by the Regulator under subsection (2), including any penalties for non-compliance, apply as if that person held a licence in relation to that activity.
- (2) The Regulator, by notice published in the *Gazette*, may declare standard licence obligations for the purposes of this section.
- (3) Subsection (1) does not apply to a person who is deemed to be licensed under section 32.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 34**

Part 4 – Regulation of Water and Sewerage Industry

---

**34. Applications for licences**

- (1) An application for a licence must –
  - (a) be in such form as the Regulator may approve; and
  - (b) contain such information as the Regulator may require; and
  - (c) be accompanied by such fee as may be prescribed in the regulations; and
  - (d) be lodged at the office of the Regulator.
- (2) The Regulator may issue guidelines relating to licence application forms, application fees and the application process.
- (3) An applicant is to comply with any guidelines issued under subsection (2).

**35. Determination of applications by Regulator**

- (1) The Regulator may determine an application for a licence by granting a licence or by refusing the application.
- (2) Before making a determination on an application under subsection (1), the Regulator must, within 10 business days after the receipt of the application, invite submissions on the application from –
  - (a) the Minister; and



*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

s. 35

- 
- (b) the Minister administering the *Public Health Act 1997*; and
  - (c) the Minister administering the *Water Management Act 1999*; and
  - (d) the Minister administering the *Environmental Management and Pollution Control Act 1994*; and
  - (e) such other persons as are prescribed by the regulations.
- (3) On receipt of an application for a licence, the Regulator is to publish, in daily newspapers published and circulating in Tasmania, a notice of the application that invites submissions on the application from the public.
- (4) A notice published under subsection (3) is to include information on how a submission can be made and the timeframes for providing a submission.
- (5) The Regulator must determine the application within 60 business days after receiving the application.
- (6) A licence may not be granted to a disqualified person.
- (7) A licence must not be granted unless the Regulator is satisfied as to each of the following:
- (a) that the applicant has shown honesty and integrity in previous commercial and other dealings;

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 36**

Part 4 – Regulation of Water and Sewerage Industry

---

- (b) that the applicant has, and will continue to have, the capacity (including technical, financial and organisational capacity) to carry out the activities that the licence (if granted) would authorise;
  - (c) that the applicant has the capacity to carry out those activities in a manner that appropriately manages the risk to public and environmental health;
  - (d) that the applicant has made, and will maintain, appropriate arrangements in respect of insurance;
  - (e) such matters as the Regulator considers relevant, having regard to the public interest;
  - (f) such other matters as are prescribed by the regulations.
- (8) On making a determination under this section, the Regulator must cause notice of the determination, and of the reasons for the determination, to be given to the applicant and the Minister.
- (9) The Regulator must cause the information contained in the notice under subsection (8) to be made available to the public on the Regulator's internet website.

**36. Duration of licences**

A licence remains in force until it is cancelled.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**37. Conditions of licences**

- (1) A licence is subject to such conditions as are imposed on it by this Act or by the Regulator or by both this Act and the Regulator.
- (2) Without limiting subsection (1), the Regulator may impose conditions requiring the regulated entity to –
  - (a) have and maintain, the capacity (including technical, financial and organisational capacity) to carry out the activities authorised by the licence; and
  - (b) give and maintain appropriate security (in such amount and form as the Regulator may determine) for the fulfilment of its obligations under the licence; and
  - (c) maintain appropriate arrangements in respect of insurance; and
  - (d) comply with a price determination made under section 66; and
  - (e) submit to the Regulator a proposed price and service plan; and
  - (f) develop an asset management plan; and
  - (g) comply with guidelines and codes, including the customer service code; and
  - (h) prepare and publish a customer contract; and

*Water and Sewerage Industry Act 2008*  
*Act No. of*

s. 38

Part 4 – Regulation of Water and Sewerage Industry

---

- (i) develop a plan for the provision of regulated services as a reserve supplier; and
- (j) prepare a contingency plan to facilitate the transition of the operation of water infrastructure or sewerage infrastructure to a step-in-operator in the event of a step-in-order; and
- (k) meet all relevant legislative obligations, in particular the *Public Health Act 1997*, the *Fluoridation Act 1968*, the *Environmental Management and Pollution Control Act 1994* and the *Water Management Act 1999* in so far as those Acts relate to the provision of regulated activities; and
- (l) comply with reporting obligations under this Act; and
- (m) undertake any other obligations determined by the Regulator that are consistent with the objective of this Act.

**38. Matters to be included in licence**

- (1) A licence must –
  - (a) state the name of the regulated entity that holds the licence; and
  - (b) state the regulated activities that are authorised by the licence (including, where relevant, the geographic location

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 39**

in which those activities may be conducted); and

(c) contain the licence conditions and such other conditions as may be prescribed by the regulations.

- (2) A licence may specify an area in which the regulated entity is to be the reserve supplier if the regulated entity is declared to be a reserve supplier under section 49.
- (3) The area specified in subsection (2) 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.

**39. Annual licence fees**

- (1) The Regulator must require a regulated entity to pay to the Minister such amount, by way of an annual licence fee, as the Minister may from time to time determine in respect of the following:
  - (a) a licence;
  - (b) an interim licence granted under section 89.
- (2) The Minister is to notify the Regulator of the amount of the annual licence fee determined under subsection (1).

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 39**

Part 4 – Regulation of Water and Sewerage Industry

---

- (3) The Regulator is to notify the regulated entity in writing of the amount of the annual licence fee as soon as practicable after the receipt of notification under subsection (2) from the Minister.
- (4) The amount so determined by the Minister is to be an amount that the Minister considers to be a reasonable contribution towards the cost of administering this Act, including any of the following:
  - (a) the costs to be incurred by the Regulator in performing his or her functions and exercising his or her powers, under this Act;
  - (b) the costs to be incurred by the Ombudsman in investigating complaints under section 76;
  - (c) the costs which will arise from the regulation, by prescribed persons, of activities specified in the licence –during the year to which the fee relates, in relation to a regulated entity.
- (5) It is a condition of a regulated entity's licence or interim licence, under which the regulated entity provides regulated services to customers, that the regulated entity must comply with any requirement under this section.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**40. Variation of licence conditions**

- (1) The Regulator may vary the conditions of a regulated entity's licence by written notice given to the entity.
- (2) A variation may only be made –
  - (a) on application by the regulated entity; or
  - (b) on recommendation by the Minister; or
  - (c) on the Regulator's own motion.
- (3) Before varying the conditions of a licence the Regulator must invite submissions on the proposed changes from –
  - (a) the Minister, unless the variation is made under subsection (2)(b); and
  - (b) the Minister administering the *Public Health Act 1997*; and
  - (c) the Minister administering the *Water Management Act 1999*; and
  - (d) the Minister administering the *Environmental Management and Pollution Control Act 1994*; and
  - (e) such other persons as are prescribed by the regulations.
- (4) Before varying the conditions of a licence under subsection (1) in a material way, the Regulator must publish a notice of the variation in daily newspapers published and circulating in

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 41**

Part 4 – Regulation of Water and Sewerage Industry

---

Tasmania that invites submissions on the proposed variation from the public.

- (5) A notice published under subsection (4) is to include information on how a submission can be made and the timeframes for inviting submissions.
- (6) The Regulator must publish any variation made to the conditions of a licence under subsection (1) on the Regulator's internet website.

**41. Enforcement of licences**

- (1) If the Regulator is satisfied that a regulated entity has contravened this Act or the conditions of the licence held by the regulated entity, the Regulator may impose on the regulated entity a monetary penalty not exceeding –
  - (a) 5 000 penalty units for the first day on which the contravention occurs; and
  - (b) a further fine not exceeding 200 penalty units for each subsequent day on which the contravention continues.
- (2) If more than one person is required to be licensed under section 30(a) in connection with a piece of water infrastructure or sewerage infrastructure, the Regulator may take any action under this section against either a person who has been granted a licence under section 35(1) or



*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 41**

---

a deemed licensee in relation to that water infrastructure or sewerage infrastructure.

- (3) In addition to subsection (1), if the Regulator is satisfied that a regulated entity has contravened this Act or the conditions of the licence held by the regulated entity, the Regulator may, by written notice given to the regulated entity do one or more of the following:
- (a) require the regulated entity to send specified information to customers;
  - (b) require the regulated entity to pay compensation to customers in such circumstances as the Regulator considers appropriate;
  - (c) require the regulated entity to publish notices containing specified information;
  - (d) require the regulated entity to take specified action, or to cease taking specified action, to rectify the contravention;
  - (e) require the regulated entity to take specified action, or to cease taking specified action, to prevent any future contravention;
  - (f) suspend the licence;
  - (g) cancel the licence;

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 41**

Part 4 – Regulation of Water and Sewerage Industry

---

- (h) declare that the regulated entity is a disqualified person for the purposes of this Act;
  - (i) declare that specified persons, being –
    - (i) persons who are directors of the regulated entity or are concerned in the management of the regulated entity; or
    - (ii) persons or classes of persons who are related persons in relation to a person referred to in subparagraph (i) –are disqualified persons for the purposes of this Act.
- (4) The Regulator may cancel or suspend a licence held by a regulated entity if the regulated entity becomes a disqualified person.
- (5) A notice under subsection (3) may be expressed to apply indefinitely, for a specified period of time or for a period of time ending on the occurrence of a specified event or state of affairs.
- (6) Nothing in this section prevents a licence from being cancelled or suspended at the request of the regulated entity.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 42**

---

**42. Regulator’s power of direction**

- (1) The Regulator may, for the purposes of this Act, give a direction to a regulated entity.
- (2) A direction under this section must be given in writing.
- (3) A regulated entity must comply with any direction given under subsection (1).

Penalty: Fine not exceeding 100 penalty units.

**43. Suspension and cancellation of licences in public interest**

- (1) The Regulator may, by written notice served on a regulated entity, suspend or cancel a licence held by the regulated entity if the Regulator is satisfied that the suspension or cancellation is in the public interest.
- (2) Suspension or cancellation of a licence may be –
  - (a) of the Regulator’s own motion; or
  - (b) on the written recommendation of the Minister.
- (3) Suspension or cancellation under this section may be in respect of the whole or any part of the provision of the regulated activities to which the licence relates.
- (4) Suspension or cancellation under this section takes effect on and from the day specified in the

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 44**

Part 4 – Regulation of Water and Sewerage Industry

---

notice of suspension or cancellation served under subsection (1) and, in the case of suspension, the suspension remains in force until the date specified in the notice.

- (5) Where a person is a deemed licensee in respect of a piece of water infrastructure or sewerage infrastructure, in respect of which another person has been granted a licence under section 35(1) and that other person has had its licence cancelled or suspended under this section, the Regulator may grant a temporary licence to the deemed licensee for a specified period and on specified conditions.

**44. Activities not authorised**

A regulated entity must not engage in regulated activities to which the licence relates which have been suspended in whole or in part.

Penalty: Fine not exceeding 5 000 penalty units.

**45. Regulated entities to be notified of proposed action**

- (1) The Regulator must not take action under section 40, 41 or 43 unless –
- (a) the Regulator has given notice of the proposed action to –
- (i) the regulated entity; and

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 46**

- 
- (ii) such other persons as may be prescribed by the regulations; and
  - (b) the regulated entity and each such person has been given a reasonable opportunity to make submissions to the Regulator in respect of the proposed action; and
  - (c) the Regulator has given consideration to any such submissions.
- (2) In a notice given under subsection (1)(a), the Regulator is to state the grounds on which the notice is given.
  - (3) Subsection (1)(a)(i) does not apply to action taken at the request of the regulated entity.

**46. Review of licences**

- (1) The Regulator is to review each licence at intervals of not more than 5 years, with the first review commencing not later than the fourth anniversary of the granting of the licence.
- (2) A report in respect of a review is to be given to the Minister and published on the Regulator's internet website.

**47. Emergency directions**

- (1) Subject to subsection (7), if the Minister is of the opinion that it is necessary to do so in order to deal with a serious risk to public health or public

*Water and Sewerage Industry Act 2008*  
*Act No. of*

s. 47

Part 4 – Regulation of Water and Sewerage Industry

---

safety or to deal with the likelihood of material or serious environmental harm arising from the provision of a regulated activity, the Minister may give a direction, in writing, to a regulated entity to take specified action to reduce or eliminate that risk.

- (2) Before the Minister gives a direction to a regulated entity under subsection (1), the Minister must consult with the Director of Environmental Management and the Director of Public Health.
- (3) The Minister is to advise the Regulator, the Director of Environmental Management and the Director of Public Health of any direction given to a regulated entity under subsection (1).
- (4) It is a condition of a regulated entity's licence under which a regulated entity provides regulated services to customers that the regulated entity must comply with any direction under this section.
- (5) If the regulated entity fails to take action specified in a direction given to it under subsection (1) or to undertake appropriate work in accordance with any such direction, the Minister may arrange for the action specified in the direction to be carried out by another person.
- (6) The cost incurred by the Minister of carrying out the action specified in the direction given under subsection (1) may be recovered by the Minister in a court of competent jurisdiction as a debt owed to the Crown by the regulated entity.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 48**

- 
- (7) Nothing in this Act affects the exercise of any power, or the obligation of a regulated entity to comply with any direction, order or requirement, under the *Emergency Management Act 2006* or any other law relating to emergencies.

**48. Register of licences**

- (1) The Regulator is to establish and maintain a register of licences.
- (2) The regulations may make provision with regard to the manner and form in which the register is to be kept and the nature of the information to be included in the register.
- (3) The Regulator must keep the register available for inspection by any persons, free of charge, during normal office hours.
- (4) It is sufficient compliance with subsection (3) if a copy of the register is made available on the Regulator's internet website.
- (5) Copies of entries in the register are to be made available to any persons, at cost, during normal office hours.

***Subdivision 2 – Reserve supplier***

**49. Declaration of reserve supplier**

- (1) For the purposes of this section, the water services or sewerage services specified in an

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 50**

Part 4 – Regulation of Water and Sewerage Industry

---

order made under subsection (2) are “**reserved services**”.

- (2) The Minister may, by order, declare that a regulated entity is the reserve supplier in relation to the provision of one or more water services or sewerage services within the whole or any specified part of its area of operations.
- (3) Before making an order under subsection (2), the Minister is to provide a copy of the proposed order to the Regulator.
- (4) A reserve supplier is required to offer to provide the reserved services to all customers within the area specified in an order made under subsection (2) and to provide those services where the offer is accepted by customers in accordance with the prices, terms and conditions determined by the Regulator in accordance with Divisions 4 and 5 of this Part.

***Subdivision 3 – Changes to operations of licence***

**50. Licence cannot be transferred**

A licence cannot be transferred.

**51. Surrender of licence**

- (1) A regulated entity may, by written notice given to the Regulator, surrender its licence.



*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 52**

- 
- (2) The notice given under subsection (1) must be given to the Regulator at least 6 months before the surrender is to take effect or, if the licence requires a longer period of notice, as required by the licence.
  - (3) The Regulator may, by agreement in writing with the regulated entity, shorten the required period of notice.

**52. Applying for cancellation of licence as regulated entity**

A regulated entity may apply to the Regulator to have the regulated entity's licence cancelled if the regulated entity has not provided, and does not intend to start providing, the regulated activity for which the regulated entity is licensed.

**53. No compensation is payable**

No compensation is payable to a regulated entity if the Regulator cancels, suspends or varies a licence held by the regulated entity under this Act.

**54. Notice of proposed or anticipated stoppage of provision of regulated service**

- (1) If a regulated entity proposes to stop, or anticipates stopping, all or part of the provision

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 54**

Part 4 – Regulation of Water and Sewerage Industry

---

of a regulated service, the regulated entity must not stop providing the regulated service unless the regulated entity has given at least 60 business days' notice in writing to the Regulator of the proposed or anticipated stoppage.

Penalty: Fine not exceeding 100 penalty units.

- (2) The notice given under subsection (1) must specify the day on which the regulated entity proposes to stop or anticipates stopping the provision of all or part of a regulated service.
- (3) If the regulated entity continues providing all or part of a regulated service after the day specified in the notice, the notice ceases to have effect as a notice under subsection (1).
- (4) If the regulated entity again proposes to stop, or anticipates stopping, the provision of all or part of a regulated service, the regulated entity must give a further notice under subsection (1).

Penalty: Fine not exceeding 100 penalty units.

- (5) If the regulated entity stops providing all or part of a regulated service, whether or not a notice has been provided under subsection (1), the regulated entity must give the Regulator notice immediately or as soon as practicable after stopping the provision of all or part of that regulated service.

Penalty: Fine not exceeding 100 penalty units.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 55**

---

***Subdivision 4 – Step-in-operator***

**55. Power to take over operations**

(1) If –

- (a) a regulated entity contravenes this Act or a code, or a regulated entity’s licence is suspended, cancelled or surrendered; and
- (b) it is necessary, in the Regulator’s opinion, to take over some or all of the regulated entity’s operations to ensure that the regulated entity’s customers receive an adequate provision of regulated services –

the Minister, on receipt of the written advice of the Regulator, may make an order under this section (referred to as a “**step-in-order**”).

(2) Before a step-in-order is made under this section, the Minister must give the regulated entity a reasonable opportunity to make submissions in respect of the proposed order.

(3) A step-in-order –

- (a) authorises the Regulator to appoint a step-in-operator to take over the regulated entity’s operations or a specified part of the regulated entity’s operations; and
- (b) may specify that –

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 55**

Part 4 – Regulation of Water and Sewerage Industry

---

- (i) the step-in-operator has such functions and powers in relation to the regulated entity's operations as are specified in the order; and
- (ii) the regulated entity is to stop providing regulated services to specified customers on and from a specified date; and
- (iii) upon commencement of provision of water services and sewerage services by the step-in-operator, the specified customers become, in relation to the provision of any regulated services that are the subject of the step-in-order, the customers of the step-in-operator; and
- (iv) each customer referred to in subparagraph (iii) and the step-in-operator are taken to have entered into a special circumstances contract under such terms as are determined under subsection (4) for the purposes of this section or as otherwise specified in the order; and
- (v) the step-in-operator must have access to, and take control of, the water infrastructure and sewerage infrastructure and other property, including intellectual property,

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 56**

licences and employees, of the regulated entity as is necessary for the purposes of carrying on the operations specified in the order; and

- (c) may contain ancillary directions which may –
  - (i) contain directions about how the costs of carrying on the operations, and revenue generated from the operations, are to be dealt with; and
  - (ii) specify the period for which the order under subsection (1) applies; and
  - (iii) specify any conditions that may apply.
- (4) The Regulator may, by notice in writing given to a step-in-operator, determine the terms of a special circumstances contract between the step-in-operator and the customer.
- (5) A step-in-order operates to the exclusion of rights that are inconsistent with the step-in-order.

**56. Appointment of step-in-operator**

- (1) When a step-in-order is made, the Regulator must appoint a suitable person (who may, but need not, be a regulated entity) to take over the operations specified in that order.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

s. 57

Part 4 – Regulation of Water and Sewerage Industry

---

- (2) A person appointed to take over a regulated entity's operations specified in the step-in-order is referred to as the “**step-in-operator**”.

- (3) The regulated entity must facilitate the handover of the operations to the step-in-operator as specified in the order.

Penalty: Fine not exceeding 1 000 penalty units.

- (4) A person must not obstruct the step-in-operator's access to property or the exercise by the step-in-operator of the step-in-operator's responsibilities under this section.

Penalty: Fine not exceeding 1 000 penalty units.

- (5) A person must comply with reasonable directions given by the step-in-operator in the exercise of the step-in-operator's responsibilities under this section.

Penalty: Fine not exceeding 1 000 penalty units.

*Division 3 – Customer service code*

**57. Customer service code**

- (1) Subject to this Division, the Regulator must issue a customer service code for regulated services.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 57**

- 
- (2) The customer service code may specify minimum service standards and conditions for regulated services with which a regulated entity is to comply.
- (3) In developing a customer service code, the Regulator –
- (a) must consult with regulated entities; and
  - (b) may consult with any person or group of persons the Regulator considers relevant; and
  - (c) must ensure that the customer service code –
    - (i) is not inconsistent with a regulated entity's obligations relating to water quantity and quality and the provision of sewerage services as referred to in the *Public Health Act 1997*, the *Environmental Management and Pollution Control Act 1994* and the *Water Management Act 1999*; and
    - (ii) includes any other matters prescribed in the regulations; and
  - (d) may provide for different service standards to be applied to different classes of customers or that may apply to different locations in Tasmania.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 58**

Part 4 – Regulation of Water and Sewerage Industry

---

- (4) The regulations may specify minimum standards and conditions of service and supply that are to be included in the customer service code.

***Division 4 – Customer contract***

**58. Regulator may require customer contracts**

- (1) A regulated entity must develop a customer contract for regulated services that it provides to the regulated entity's customers by a date determined by the Regulator by notice in writing given to the regulated entity.

Penalty: Fine not exceeding 500 penalty units.

- (2) A regulated entity must submit a proposed customer contract that is in accordance with the customer service code to the Regulator for approval by a date determined by the Regulator by notice in writing given to the regulated entity.

Penalty: Fine not exceeding 100 penalty units.

- (3) The Regulator may –
- (a) require amendments to be made to a proposed customer contract before approving the proposed customer contract; and
  - (b) draft and approve a customer contract to apply in relation to a regulated entity if a regulated entity fails to submit a proposed customer contract as required by this section or fails to amend a



*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 59**

---

proposed customer contract as required  
by the Regulator.

- (4) This section does not apply in relation to proposed customer contracts which are submitted to the Regulator and approved as part of a price and service plan approved under section 65.

**59. Publication of customer contracts**

- (1) A regulated entity that provides regulated services must –
- (a) publish all customer contracts on the regulated entity's internet website and notify all customers of the website address and that the customer contract is located on that website; or
  - (b) in the event that the regulated entity does not maintain an internet website, provide a copy of the customer contract to all customers free of charge.

Penalty: Fine not exceeding 50 penalty units.

- (2) The regulated entity must provide a copy of the customer contract to a customer, at cost, on request.

Penalty: Fine not exceeding 50 penalty units.

- (3) The regulated entity must ensure that the customer contract includes particulars of the contract prices, or of the manner in which the

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 60**

Part 4 – Regulation of Water and Sewerage Industry

---

contract prices are to be calculated or determined, in relation to the provision of water services or sewerage services to customers by the regulated entity.

Penalty: Fine not exceeding 50 penalty units.

**60. Entering into customer contracts**

- (1) Subject to section 61, a regulated entity must enter into a customer contract.

Penalty: Fine not exceeding 500 penalty units.

- (2) A customer of a regulated entity is taken to have entered into a customer contract with the regulated entity, for the provision of water services and sewerage services, or either of those services as provided for under the customer contract.

**61. Subdivision not to preclude certain contracts**

- (1) This Subdivision does not preclude a regulated entity from entering into a contract, that is not a customer contract, with a customer for the provision of water services or sewerage services.
- (2) If a regulated entity enters into a contract with a customer under subsection (1), the regulated entity must provide a copy of that contract to the Regulator.

Penalty: Fine not exceeding 50 penalty units.

---

**62. Variation of customer contracts**

- (1) A regulated entity may vary a customer contract.
- (2) Where a regulated entity proposes to vary a customer contract that has been approved by the Regulator under section 58, the regulated entity is to submit the proposed variation to the Regulator for approval.
- (3) If a customer contract is varied under subsection (1), the regulated entity must, at least 6 months before the variation becomes effective or within a shorter period approved by the Regulator –
  - (a) publish the variation to the customer contract on the regulated entity's internet website and notify all customers of the website address and that the customer contract is located on that website; or
  - (b) if the regulated entity does not maintain an internet website, provide a copy of the variation to the customer contract to all customers free of charge.

Penalty: Fine not exceeding 50 penalty units.

- (4) If a customer contract is varied under subsection (1), the regulated entity must provide a copy of the customer contract to a customer on request free of charge.

Penalty: Fine not exceeding 50 penalty units.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 62**

Part 4 – Regulation of Water and Sewerage Industry

---

- (5) The regulated entity must give a copy of the variation published under subsection (3) with the next account issued after the date of publication of the notice to the customer who is taken to have entered into the customer contract under section 60.
- (6) Failure to comply with the requirements of subsection (5) does not affect the validity of the variation or any contract price made in accordance with the variation.
- (7) A variation published under subsection (3) is evidence that the Regulator has approved the variation of the customer contract unless the contrary is proved.
- (8) Subsections (1), (3), (4), (5) and (6) do not apply to the variation of the customer contract to the extent that the variation relates to alteration of the price and the alteration is in accordance with a determination of the Regulator.
- (9) Following variation of a customer contract, copies of the contract and explanatory material concerning the contract are to be made available to the public in such manner as may be determined by the Regulator.

---

***Division 5 – Price regulation***

**63. Application of this Division**

- (1) Subject to subsection (2), this Division applies to the prices, terms and conditions for the provision of regulated services.
- (2) The Treasurer may determine that this Division does not apply if, in the Treasurer's opinion –
  - (a) in relation to the provision of regulated services, there is effective competition; or
  - (b) it is not in the public interest that this Division apply.
- (3) The Treasurer is to seek the advice of the Regulator before making a determination under subsection (2).
- (4) Before providing advice to the Treasurer under subsection (3), the Regulator is to seek submissions on the proposed determination by publishing a notice of the proposed determination, in daily newspapers published and circulating in Tasmania, that invites submissions from the public.
- (5) A notice published under subsection (4) is to include information on how a submission can be made and the timeframes for providing a submission.
- (6) The Regulator is to consider any submission received under subsection (5) before advising the

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 64**

Part 4 – Regulation of Water and Sewerage Industry

---

Treasurer with respect to the proposed determination.

**64. Price regulation of regulated services**

- (1) The Regulator may regulate the prices, terms and conditions for the provision of a regulated service by a regulated entity.
- (2) In regulating prices, terms and conditions for regulated services under subsection (1), the Regulator may issue guidelines for the separation of accounts, information and functions within regulated entities.

**65. Price and service plan**

- (1) The Regulator must, by notice given to a regulated entity, require the regulated entity to submit a proposed price and service plan for regulated services to the Regulator for approval by not later than the date specified in the notice.
- (2) A regulated entity must submit a proposed price and service plan to the Regulator by the date specified in the notice given to the regulated entity under subsection (1).

Penalty: Fine not exceeding 1 000 penalty units.

- (3) The proposed price and service plan submitted under subsection (1) must include –

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 65**

- 
- (a) proposed regulated services to be provided to customers; and
    - (b) any customer contract; and
    - (c) standards and conditions of service which are in compliance with the customer service code; and
    - (d) proposed prices for each regulated service.
  - (4) The proposed price and service plan submitted under subsection (1) may include –
    - (a) proposed annual revenue requirements; and
    - (b) projected capital and operational expenses; and
    - (c) supply and demand forecasts; and
    - (d) such other matters as required by the Regulator in guidelines issued under subsection (7).
  - (5) The Regulator must approve a proposed price and service plan for a regulated entity if the Regulator is satisfied that the proposed price and service plan fulfils the requirements for a price and service plan as set out in guidelines issued under subsection (7) and any relevant price determination under section 66.
  - (6) The Regulator may require amendments to be made to the proposed price and service plan, including amendments to ensure that the price

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 65**

Part 4 – Regulation of Water and Sewerage Industry

---

and service plan complies with a price determination, before approving it.

- (7) The Regulator must issue guidelines to a regulated entity for the preparation of a proposed price and service plan.
- (8) The guidelines referred to in subsection (7) may –
  - (a) specify the requirements for a regulated entity to comply with when submitting a proposed price and service plan to the Regulator for approval; and
  - (b) specify the process for the preparation and approval of a proposed price and service plan, including the extent of public consultation and timelines and the subsequent publication of prices for each regulated service.
- (9) A price and service plan approved under subsection (5) is to relate to a regulatory period.
- (10) The Regulator may, by notice in writing given to a regulated entity, direct the regulated entity to publish a price and service plan approved under subsection (5).
- (11) A regulated entity must comply with a direction given to it under subsection (10).

Penalty: Fine not exceeding 50 penalty units.
- (12) The Treasurer may, by notice published in the *Gazette*, fix –



*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 66**

- 
- (a) the duration of the first regulatory period, which period is to commence on the first day after approval by the Regulator of a price and service plan; and
    - (b) the minimum duration of each subsequent regulatory period.
  - (13) The Regulator is to declare, by notice published in the *Gazette*, the duration of each subsequent regulatory period, being a period which is not less than a minimum period specified by the Treasurer under this section.
  - (14) A declaration made by the Regulator under subsection (13) must be made not less than 2 years before the end of each subsequent regulatory period.

**66. Price determinations**

- (1) The Regulator is to make price determinations that apply to a regulated entity in respect of a regulated service.
- (2) In making a price determination under subsection (1), the Regulator must –
  - (a) adopt an approach and methodology which the Regulator considers will best meet the objective of this Act; and
  - (b) determine prices, terms and conditions, including developer charges, for water services and sewerage services in accordance with the pricing principles

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 66**

Part 4 – Regulation of Water and Sewerage Industry

---

- referred to in section 68 or any principles prescribed by regulations under that section; and
- (c) consider any proposed price and service plan submitted under section 65; and
  - (d) consider any customer contract; and
  - (e) ensure that the price determination takes into account and clearly articulates any trade-offs between costs and service standards; and
  - (f) have regard to any matters contained in the regulations.
- (3) Without limiting the generality of subsection (1), a price determination made under this section may provide for one or more of the following:
- (a) fixing the price or the rate of increase or decrease in the price for a regulated service or other price control formula;
  - (b) fixing a maximum and minimum price or maximum rate of increase or decrease or minimum rate of increase or decrease in the maximum and minimum price for a regulated service;
  - (c) fixing an average price for a regulated service specified in the determination or an average rate of increase or decrease in the average price;

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 66**

- 
- (d) specifying pricing policies or principles that are to be applied in relation to a regulated service;
  - (e) specifying a price determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other factor specified in the determination;
  - (f) specifying a price determined by reference to quantity, location, period or other factor specified in the determination relevant to the rate or provision of a regulated service;
  - (g) fixing a maximum and minimum revenue or maximum rate of increase or decrease or minimum rate of increase or decrease in the maximum and minimum revenue in relation to a regulated service;
  - (h) specifying a factor or factors to be applied, and the manner in which such a factor is or factors are to be applied, in setting prices, terms and conditions for a regulated service.
- (4) Before the Regulator makes a price determination under subsection (1), the Regulator is to publish, in daily newspapers published and circulating in Tasmania, a notice of the Regulator's intention to make a price determination.
- (5) The notice under subsection (4) is to include information as to where a copy of the proposed

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 67**

Part 4 – Regulation of Water and Sewerage Industry

---

price determination, and the proposed price and service plan on which the proposed price determination is based, can be obtained or viewed.

- (6) The Regulator is to publish the proposed price determination, and the proposed price and service plan on which the proposed price determination is based, on the Regulator's internet website.
- (7) The Regulator is to make a price determination in accordance with section 67.
- (8) The regulations may provide for –
  - (a) the conduct of investigations by the Regulator into the price and pricing policies of regulated entities; and
  - (b) the appointment of assistants to the Regulator for the purposes of carrying out investigations referred to in paragraph (a); and
  - (c) the liability of regulated entities for the costs by the Regulator incurred in undertaking such investigations; and
  - (d) any related matter.

**67. General provisions relating to determinations**

- (1) A determination under this Act must include a statement of the purpose of, and reasons for, the making of the determination.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 67**

- 
- (2) The Regulator must publish notice of the making of a determination under this Act –
- (a) in the *Gazette*; and
  - (b) in daily newspapers published and circulating in Tasmania; and
  - (c) on the Regulator’s internet website.
- (3) The notice under subsection (2) must include –
- (a) a brief description of the nature and effect of the determination; and
  - (b) details of when the determination takes effect and how a copy of the determination may be obtained from the Regulator.
- (4) The Regulator must send a copy of a determination to each regulated entity to which the determination applies.
- (5) A determination takes effect on and from –
- (a) the date on which notice of its making is published in the *Gazette*; or
  - (b) any later date of commencement as may be specified in the determination.
- (6) A determination has effect until –
- (a) it is amended or revoked by a later determination; or

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 68**

Part 4 – Regulation of Water and Sewerage Industry

---

- (b) such other date as is specified in the determination, being a date that is not later than the date of the end of the regulatory period to which the determination applies.
- (7) A determination is binding on a regulated entity to which the determination applies.
- (8) Following the making of a determination under this Act, the Regulator may require the regulated entity to amend any document of the regulated entity that relates to the provision of a regulated service that is publicly available so that it is consistent with the Regulator's determination.
- (9) It is a condition of a regulated entity's licence that the regulated entity must comply with a determination under this Act and any requirement under this section.

**68. Pricing principles**

- (1) For the purposes of this Division, the following pricing principles apply in relation to the price for the provision of a regulated service:
  - (a) a regulated entity is to be provided with a reasonable opportunity to recover the efficient costs which the regulated entity incurs in –
    - (i) providing a regulated service; and
    - (ii) complying with a regulatory obligation or requirement or

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 68**

---

making a regulatory payment  
under this Act, except where this  
Act otherwise provides;

- (b) the price is to provide for efficient pricing through –
  - (i) two-part pricing for water services based on the recovery of fixed costs and variable costs by way of separate charges through voluntary metering, mandatory metering or in such other manner as determined by the Regulator; and
  - (ii) variation between locations, regions or schemes to reflect the costs of servicing particular customers or classes of customers;
- (c) the price is to provide effective incentives to promote economic efficiency, reduce costs or otherwise improve productivity with respect to a regulated service;
- (d) the price is to allow for a return to the regulated entity commensurate with the regulatory and commercial risks involved in providing the regulated service to which that price relates;
- (e) to the extent that it is commercially and technically reasonable, the price charged to a particular customer or class of

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 69**

Part 4 – Regulation of Water and Sewerage Industry

---

customers is to reflect at least the costs that are directly attributable to the provision of the regulated service to that customer or class of customers.

- (2) The regulations may prescribe additional pricing principles in relation to the provision of a regulated service.

***Division 6 – Performance monitoring, reporting and audits***

**69. Performance monitoring and reporting**

- (1) The Regulator is to develop annual performance reporting requirements against which regulated entities are to report.
- (2) In developing the annual performance reporting requirements, the Regulator must take into account the objective of this Act and any other matter prescribed by the regulations.
- (3) The Regulator is to issue guidelines to regulated entities in relation to the regulated entities' annual performance reporting requirements.
- (4) It is a condition of a regulated entity's licence that the regulated entity must comply with any guidelines issued under subsection (3).

**70. State of the industry report**

- (1) The Regulator on or before 1 April in each year is to prepare a report on the state of the water



*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 4 – Regulation of Water and Sewerage Industry

**s. 71**

---

and sewerage industry in the previous financial year (the “**state of the industry report**”).

- (2) The state of the industry report is to include an overview of the performance of the water and sewerage industry and identify key priorities for improved performance of the industry.
- (3) The state of the industry report is to include summaries of any relevant information reported by a regulated entity to the Regulator under section 69.
- (4) In the preparation of the state of the industry report, the Regulator must consult 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 person that the Regulator considers appropriate.
- (5) The Regulator is to cause a copy of the state of the industry report to be –
  - (a) laid before each House of Parliament within 7 sitting-days after preparing it; and
  - (b) published on the Regulator’s internet website within 7 days after preparing it.

**71. Auditing**

- (1) The Regulator may carry out such audits in relation to the regulated activities of a regulated entity as the Regulator reasonably requires to

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 72**

Part 4 – Regulation of Water and Sewerage Industry

---

enable the Regulator to perform his or her functions or exercise his or her powers under this Act.

- (2) In any audit that is conducted under subsection (1), the Regulator may, subject to subsection (3), decide the scope and frequency of such audits.
- (3) An audit conducted under subsection (1) is not to be conducted more frequently than once in any financial year.

**72. Audits requested by Minister**

The Minister may request the Regulator to audit the compliance of a regulated entity in respect of a regulated entity's licence obligations and the Regulator must carry out that audit in accordance with that request.

**73. Publication of audit results**

The Regulator must publicly report on the results of all audits conducted under section 71 or 72.

**74. Costs of audit**

The costs of an audit carried out by the Regulator are to be paid to the Regulator by the regulated entity to which the audit relates.

---

***Division 7 – Complaints and disputes***

**75. Customer complaints process**

- (1) A customer who is not satisfied with the provision of a regulated service may lodge a complaint with the regulated entity which provides that regulated service.
- (2) The Regulator may, by notice given to the regulated entity, require the regulated entity to submit, by not later than the date specified in the notice, a proposed customer complaints process to the Regulator for approval.
- (3) A regulated entity must submit a proposed customer complaints process to the Regulator by the date specified in a notice given to the regulated entity under subsection (2).

Penalty: Fine not exceeding 100 penalty units.

- (4) On receipt of a proposed customer complaints process, the Regulator may –
  - (a) require amendments to be made to the proposed customer complaints process before approving the customer complaints process; or
  - (b) draft and approve a customer complaints process to apply in relation to a regulated entity if a regulated entity fails to submit a proposed customer complaints process as required by subsection (3) or fails to

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 76**

Part 4 – Regulation of Water and Sewerage Industry

---

amend its proposed customer complaints  
process as required by the Regulator.

- (5) A regulated entity must cause the customer complaints process to be made available to the public in a manner approved by the Regulator.

Penalty: Fine not exceeding 50 penalty units.

**76. Complaints to Ombudsman**

A customer who is not satisfied with the outcome of his or her complaint under the customer complaints process may make a complaint about that outcome to the Ombudsman under the *Ombudsman Act 1978*.

**77. Compliance with Ombudsman's decision**

It is a condition of a regulated entity's licence under which a regulated entity provides regulated services to customers that the regulated entity is bound by, and must comply with, any recommendations made by the Ombudsman relating to a complaint involving the regulated entity and a customer.

---

**PART 5 – ADMINISTRATIVE REVIEW OF  
REGULATOR’S DECISIONS**

**78. Definitions used in this Part**

In this Part –

**“Court”** means the Magistrates Court  
(Administrative Appeals Division);

**“intervener”** means a person who has applied  
under section 82 to intervene in a review  
of a reviewable decision;

**“reviewable decision”** means –

- (a) a decision made by the Regulator  
in respect of a determination  
under section 66; or
- (b) a decision made by the Regulator  
to approve, cancel, vary or  
suspend a licence.

**79. Applications for review**

(1) The following persons may apply to the Court  
for a review of a reviewable decision –

- (a) the regulated entity whose business is the  
subject of the reviewable decision; or
- (b) a person or body, who the Court is  
satisfied is an affected or interested  
person.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 80**

Part 5 – Administrative Review of Regulator’s Decisions

---

(2) An application must –

- (a) be made in the form and manner determined by the Court; and
- (b) specify the grounds for review being relied on; and
- (c) be made no later than 45 business days, or such other period as may be determined by the Court, after the reviewable decision is published in accordance with this Act.

**80. Grounds for review**

An application under section 79(1) may be made only on one or more of the following grounds:

- (a) the Regulator made an error of fact in his or her findings of facts, and that error of fact was material to the making of the decision;
- (b) the Regulator made more than one error of fact in his or her findings of facts, and those errors of fact, in combination, were material to the making of the decision;
- (c) the exercise of the Regulator’s discretion was incorrect, having regard to all the circumstances;
- (d) the Regulator’s decision was unreasonable, having regard to all the circumstances.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 5 – Administrative Review of Regulator’s Decisions

**s. 81**

---

**81. Intervention by others in a review without leave**

Only the following persons may intervene in a review under this Part without leave of the Court:

- (a) the regulated entity to whom the reviewable decision being reviewed applies (if that entity is not the applicant);
- (b) the Minister;
- (c) the Treasurer;
- (d) the Ministers administering –
  - (i) the *Environmental Management and Pollution Control Act 1994*; and
  - (ii) the *Public Health Act 1997*; and
  - (iii) the *Water Management Act 1999*.

**82. Leave for interveners**

- (1) A person may apply to the Court for leave to intervene in a review of a reviewable decision under this Part.
- (2) A person may only apply for leave to intervene under subsection (1) if the Court is satisfied that the person is an affected or interested person.
- (3) An application to intervene under subsection (1) must be made no later than 15 business days

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 83**

Part 5 – Administrative Review of Regulator’s Decisions

---

after the application for review of a reviewable decision under section 79 has been lodged with the Court in accordance with this Act.

**83. Parties to a review under this Part**

The parties to a review under this Part are –

- (a) the applicant; and
- (b) the Regulator; and
- (c) an intervener.

**84. Interveners and the Regulator may raise new grounds for review**

- (1) An intervener or the Regulator may raise in a review under this Part any of the grounds specified in section 80 even if the ground that is raised by the intervener or the Regulator is not raised by the applicant.
- (2) To avoid doubt, it is for the intervener or the Regulator to establish the grounds referred to in subsection (1).

**85. Court may terminate review**

An application under section 79 may be terminated by the Court if it decides that the party seeking review has not acted responsibly



*Water and Sewerage Industry Act 2008*  
*Act No. of*

during the Regulator’s decision-making process or the Court’s review process.

**86. Effect of application on operation of reviewable decision**

An application under section 79 –

- (a) does not stay the operation of the reviewable decision to which the application applies; and
- (b) stays the operation of any other reviewable decision on the granting of leave to apply by the Court, unless the Court otherwise orders.

**87. Court’s determination**

- (1) The Court may make a determination in respect of the application to –
  - (a) affirm, set aside or vary the reviewable decision; or
  - (b) substitute a new decision for the reviewable decision; or
  - (c) remit the matter back to the Regulator to make the decision again, in accordance with any direction or recommendation of the Court.
- (2) For the purposes of making a determination of the kind in paragraph (a) or (b), the Court may

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 87**

Part 5 – Administrative Review of Regulator’s Decisions

---

perform all the functions and exercise all the powers of the Regulator under this Act.

- (3) A determination by the Court affirming, setting aside or varying the reviewable decision is, for the purposes of this Act (other than this Part), to be taken to be a decision of the Regulator.

---

**PART 6 – TRANSITION TO NEW REGULATORY  
ARRANGEMENTS**

**88. Interim price order**

- (1) The Treasurer may, by notice published in the *Gazette* and in daily newspapers published and circulating in Tasmania, make an interim order in relation to the prices, terms and conditions for the provision of a regulated service.
- (2) Before an interim order may be made under subsection (1), the Treasurer must obtain advice from the Regulator in relation to the matters contained in the order.
- (3) An order made under this section remains in force until the commencement of the first regulatory period fixed under section 65(12).
- (4) A regulated entity must comply with an order made under this section.

Penalty: Fine not exceeding 500 penalty units.

- (5) Without limiting the generality of subsection (1), an order made under this section may provide for one or more of the following:
  - (a) fixing the price or the rate of increase or decrease in the price for a regulated service;
  - (b) fixing a maximum and minimum price or maximum rate of increase or decrease or minimum rate of increase or decrease in

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 88**

Part 6 – Transition to New Regulatory Arrangements

---

- the maximum and minimum price for a regulated service;
- (c) fixing an average price for a regulated service or an average rate of increase or decrease in the average price;
  - (d) specifying pricing policies or principles that are to be applied in relation to a regulated service;
  - (e) specifying a price determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor;
  - (f) specifying a price determined by reference to quantity, location, period or other specified factor relevant to the rate or provision of a regulated service;
  - (g) fixing a maximum and minimum revenue or maximum rate of increase or decrease or minimum rate of increase or decrease in the maximum and minimum revenue in relation to regulated services;
  - (h) specifying a factor or factors to be applied, and the manner in which such a factor is or factors are to be applied, in setting prices, terms and conditions for a regulated service.
- (6) An order made under this section may impose functions and confer powers on the Regulator relating to the prices, terms and conditions for

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 6 – Transition to New Regulatory Arrangements

**s. 89**

the provision of a regulated service specified in such an order.

- (7) The Treasurer is to give a copy of an order made under this section to each regulated entity that provides a regulated service to which the order applies.
- (8) If there is an inconsistency between this Act and regulations made under this Act and any order made under this section, this Act or the regulations prevail to the extent of the inconsistency.

**89. Interim licences**

- (1) The Minister may grant an interim licence to a person to authorise an activity specified in section 30 on such terms and conditions that the Minister considers appropriate and as are specified in the interim licence.
- (2) An interim licence granted to a person under subsection (1) remains in force –
  - (a) for a period not exceeding 2 years from the day on which it is granted; or
  - (b) until a licence is granted to that person under section 35(1) in relation to an activity for which that interim licence is granted –

whichever is the earlier.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 90**

Part 6 – Transition to New Regulatory Arrangements

---

- (3) The Minister may, by written notice given to a person to which an interim licence is granted under subsection (1), impose such interim licence conditions as the Minister considers appropriate to be complied with by that person.
- (4) Before granting an interim licence under subsection (2) or imposing interim licence conditions, the Minister must obtain advice from the Regulator in relation to the granting of the interim licence or imposition of the interim licence conditions.

**90. Interim exemption from requirement to be licensed**

- (1) The Minister may, by order, exempt a person who provides a regulated service specified in the order, other than a Regional Corporation or the Common Services Corporation, from the requirement to hold a licence under section 30 or comply with any other provision of this Act until a date specified in the order.
- (2) The date specified in an order made under subsection (1) is to be not later than the commencement of the first regulatory period.

**PART 7 – MISCELLANEOUS**

***Division 1 – Authorised officers***

**91. Appointment of authorised officers**

- (1) The Regulator may appoint suitable persons as authorised officers.
- (2) An authorised officer may, but need not, be a State Service officer or State Service employee.
- (3) In the exercise of the authorised officer's powers, the authorised officer is subject to control and direction by the Regulator.

**92. Conditions of appointment**

- (1) An authorised officer holds office for such period and, on such conditions, as are specified in the authorised officer's instrument of appointment.
- (2) An authorised officer may resign by written notice given to the Regulator.
- (3) An authorised officer may be removed from office by the Regulator for any reason that the Regulator considers sufficient.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

s. 93

Part 7 – Miscellaneous

---

**93. Authorised officer's identity card**

- (1) The Regulator must provide each authorised officer with an identity card.
- (2) The identity card must –
  - (a) contain a photograph of the authorised officer taken for the purpose; and
  - (b) be signed by the authorised officer.

**94. Production of identity card**

An authorised officer must, before exercising a power that may affect a person, produce the officer's identity card for inspection on demand by that person.

Penalty: Fine not exceeding 10 penalty units.

**95. Power of entry**

- (1) An authorised officer may, as may be reasonably required for the purposes of the enforcement of this Act, carry out an audit under this Act or inspect any document relating to a price and service plan, or enter and remain in any place.
- (2) When an authorised officer enters a place under this section, the authorised officer –
  - (a) may be accompanied by such assistants as the authorised officer considers necessary or appropriate; and



*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 7 – Miscellaneous

**s. 96**

- 
- (b) may take any equipment the authorised officer considers necessary or appropriate for the functions that the authorised officer is to carry out in the place.
  - (3) An authorised officer may use reasonable force to enter and remain in a place under this Part.
  - (4) A person must not obstruct, hinder, delay, threaten or assault a person who is –
    - (a) authorised to enter a place under this section; and
    - (b) acting in accordance with this section.

Penalty: Fine not exceeding 100 penalty units.

**96. General investigative powers of authorised officers**

- (1) An authorised officer who enters a place under this Division may exercise any one or more of the following powers:
  - (a) investigate whether the provisions of this Act are being, or have been, complied with;
  - (b) search for, examine and copy, or take an extract from a document or record of any kind as reasonably required for the purposes of the enforcement of this Act;
  - (c) take photographs or make films or other records of activities in the place;

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 96**

Part 7 – Miscellaneous

---

- (d) take samples of water or sewage in the place;
  - (e) take possession of any thing that may be evidence of an offence against this Act.
- (2) If an authorised officer takes possession of any thing that may be evidence of an offence –
  - (a) the authorised officer must give the occupier of the place a receipt for the thing; and
  - (b) the thing must be returned to its owner –
    - (i) if proceedings for an offence are not commenced within 6 months after the authorised officer takes possession of the thing, at the end of that period; or
    - (ii) if such proceedings are commenced within that period, on completion of the proceedings, unless the court, on application by the Regulator, orders confiscation of the thing.
- (3) A court may order the confiscation of a thing of which an authorised officer has taken possession under subsection (1) if the court is of the opinion that the thing has been used for the purpose of committing an offence or that there is some other proper reason for ordering its confiscation.
- (4) If the court orders the confiscation of a thing –

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 7 – Miscellaneous

**s. 97**

---

- (a) the Regulator may dispose of the thing;  
and
- (b) the person from whom the thing is  
confiscated is not entitled to be  
compensated for loss of the thing.

**97. Authorised officer's power to require information**

- (1) An authorised officer may require a person to  
provide information in the person's possession  
relevant to the enforcement of this Act.
- (2) An authorised officer may require a person to  
produce documents in the person's possession  
that may be relevant to the enforcement of this  
Act for inspection by the authorised officer.
- (3) A person must not, without reasonable excuse,  
contravene a requirement under this section.

Penalty: Fine not exceeding 100 penalty units.

- (4) A person is not required to give information  
under this section if the giving of that  
information would tend to incriminate the person  
of an offence.

**98. Care to be taken**

In the exercise of a power under this Act, an  
authorised officer must do as little damage as  
possible.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

s. 99

Part 7 – Miscellaneous

---

**99. Compensation**

An authorised officer is to pay compensation to the owner of any land in respect of which a power has been exercised under this Act for any direct loss or damage to property arising from the exercise of the power, but is not so liable to the extent to which the loss or damage arises from work done for the purposes of an inspection that reveals that the owner has contravened this Act.

*Division 2 – General*

**100. Service of infringement notices**

- (1) An authorised officer may serve an infringement notice on a person if the authorised officer is of the opinion that the person has committed an offence under this Act.
- (2) An infringement notice is not to be served on a person who has not attained the age of 18 years.
- (3) An infringement notice is to be in accordance with the *Monetary Penalties Enforcement Act 2005*.

**101. Confidentiality**

- (1) A person who is, or has been, employed in carrying out duties related to the administration of this Act must not disclose information acquired in the course, or as a result, of carrying

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 7 – Miscellaneous

**s. 101**

---

out those duties if that information is confidential and, at the time it is provided to the person, the person providing it states that it is of a confidential nature except –

- (a) as may be required for the purposes of this Act; or
- (b) as authorised by the person to whom the duty of confidentiality is owed; or
- (c) as authorised or required by the regulations; or
- (d) as authorised or required by a court or other lawfully constituted authority; or
- (e) as authorised or required by the Minister or the Treasurer, as applicable, after consultation with the person to whom the duty of confidentiality is owed.

Penalty: Fine not exceeding 500 penalty units.

- (2) No civil liability attaches to any person for a disclosure of confidential information made as authorised or required under subsection (1).
- (3) The Regulator may, in connection with the performance of his or her functions or the exercise of his or her powers under this Act, disclose confidential information to any person if the Regulator is of the opinion –
  - (a) that the disclosure of the information would not cause detriment to the person

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 102**

Part 7 – Miscellaneous

---

supplying it or to the person from whom that person received it; or

- (b) that, although the disclosure of the information would cause detriment to such a person, the public benefit in disclosing it outweighs that detriment.
- (4) Where subsection (3) applies, the person to whom the duty of confidentiality is owed must be afforded an opportunity prior to disclosure to withdraw the relevant confidential information from the Regulator.
- (5) If the person to whom the duty of confidentiality is owed has withdrawn confidential information under subsection (4), the Regulator may have no regard to the confidential information in performing his or her functions or exercising his or her powers under this Act.
- (6) For the purposes of this section –
  - “confidential information”** includes a confidential document.

**102. False or misleading information**

A person must not furnish information to the Minister, the Treasurer, the Regulator, a regulated entity or an authorised officer that is false or misleading in a material particular.

Penalty: Fine not exceeding 100 penalty units.

**103. Exclusion of personal liability**

Any matter or thing done or omitted to be done by the Minister, the Treasurer, the Regulator or an authorised officer, or by any person acting under the direction of the Minister, Treasurer or Regulator, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Act, subject that person personally to any action, liability, claim or demand.

**104. Liability of regulated entity**

- (1) If an agent of a regulated entity commits an offence under this Act –
  - (a) the regulated entity is taken to have committed the offence; and
  - (b) proceedings for the offence may be brought against the regulated entity whether or not proceedings are brought against the agent.
- (2) It is a defence in proceedings for an offence under subsection (1) if the regulated entity can show that it –
  - (a) issued written instructions and took reasonable precautions to ensure compliance with this Act; and
  - (b) did not know the offence had been committed; and

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 105**

Part 7 – Miscellaneous

---

- (c) could not reasonably have prevented the commission of the offence.

**105. Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that –
  - (a) the corporation contravened the provision without the person's actual, imputed or constructive knowledge; or
  - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
  - (c) the person, if in such a position, used reasonable due diligence to prevent the corporation's contravention of the provision.
- (2) A person may be proceeded against and convicted in respect of such a contravention pursuant to this section whether or not the corporation has been proceeded against or convicted in respect of that contravention.
- (3) Nothing in this section affects a corporation's liability for an offence committed by the corporation against this Act.



*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 7 – Miscellaneous

**s. 106**

---

- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention.

**106. Liability of employers and principals**

- (1) If an employee or agent commits an offence under this Act –
  - (a) the employer or the principal is taken to have committed that offence; and
  - (b) proceedings for that offence may be brought against the principal or employer whether or not proceedings are brought against the employee or agent.
- (2) It is a defence in proceedings for an offence under subsection (1) if the employer or principal can show that he or she –
  - (a) did not know the offence had been committed; and
  - (b) could not reasonably have prevented the commission of the offence.

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 107**

Part 7 – Miscellaneous

---

**107. Liability of officers of body corporate**

- (1) An officer of a body corporate which commits an offence is taken to have committed that offence if it is proved that –
  - (a) the offence was committed with the consent or connivance of the officer; or
  - (b) the officer failed to exercise reasonable care to prevent the commission of the offence having regard to the nature of the officer's functions and the circumstances of the offence.
- (2) This section does not apply to an employee of a body corporate who is not concerned in the management of the body corporate.

**108. Regulator's costs**

- (1) Each regulated entity is required to pay to the Regulator the Regulator's costs incurred in connection with carrying out the Regulator's functions and exercising the Regulator's powers under this Act in relation to the regulated entity, including the costs of –
  - (a) making a determination in connection with the provision of regulated services; and
  - (b) approving a price and service plan submitted by the regulated entity for approval by the Regulator; and

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 7 – Miscellaneous

**s. 109**

- 
- (c) approving a customer contract submitted by the regulated entity; and
  - (d) carrying out audits under sections 71 and 72; and
  - (e) any other matter related to the regulated entity –

except as otherwise required under this Act.

- (2) If a regulated entity fails to pay the Regulator's costs referred to in subsection (1), the Regulator may recover those costs from the regulated entity in a court of competent jurisdiction as a debt due to the Regulator.
- (3) Without limitation, a licence may include conditions relating to the determination of the cost of performing the Regulator's functions and exercising the Regulator's powers.

**109. Recovery of monetary penalties**

Any unpaid monetary penalty imposed on a regulated entity under this Act may be recovered in any court of competent jurisdiction as a debt due to the Crown.

**110. Recovery of unpaid fees, charges, &c.**

If a fee, charge or other amount owed to the Minister, the Treasurer or the Regulator under this Act is not paid by the due date as required

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 111**

Part 7 – Miscellaneous

---

under this Act, the fee, charge or amount together with interest on that fee, charge or amount calculated at the prescribed rate is recoverable in a court of competent jurisdiction as a debt due to the Crown from the person liable to pay the fee, charge or amount.

**111. Payments into Consolidated Fund**

Unless the Treasurer determines otherwise, the following amounts are to be paid into the Consolidated Fund:

- (a) any fees or charges paid under this Act;
- (b) any penalties paid under this Act;
- (c) any other money received under this Act.

**112. Evidentiary certificates**

A certificate that is issued by the Regulator and that states that, on a specified date or during a specified period –

- (a) a specified person was or was not a regulated entity under a specified licence or under a licence of a specified kind; or
- (b) a specified person's licence was or was not in specified terms; or
- (c) a specified person's licence was or was not subject to specified conditions; or

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 7 – Miscellaneous

**s. 113**

---

- (d) a specified person's licence was or was  
not suspended or cancelled –

is admissible in legal proceedings as evidence of  
the matters so stated.

**113. Evidentiary provision for documents**

A document that purports to have been certified  
by the Minister or the Regulator to be an  
accurate copy of a licence or an interim licence  
is, in the absence of proof to the contrary, to be  
accepted in any proceedings under this Act as an  
accurate copy of that licence.

**114. Notices not statutory rules**

- (1) A notice specified in this Act is not a statutory  
rule within the meaning of the *Rules Publication*  
*Act 1953*.
- (2) The *Subordinate Legislation Act 1992* does not  
apply to a notice specified in this Act.

**115. Regulations**

- (1) The Governor may make regulations for the  
purposes of this Act.
- (2) Without limiting subsection (1), the regulations  
may –

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 115**

Part 7 – Miscellaneous

---

- (a) provide for fees and charges payable in respect of any matter under this Act; or
  - (b) provide for the extension of time for payment of any fee or charge; or
  - (c) provide for the waiving of any fee or charge; or
  - (d) provide for the refunding of any fee or charge.
- (3) Without limiting subsection (1), the regulations may require any document or information that is required to be provided or given to any person to be verified by statutory declaration.
- (4) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (5) The regulations may –
  - (a) provide that a contravention of any of the regulations is an offence; and
  - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 100 penalty units.
- (6) The regulations may authorise any matter to be from time to time determined, applied, approved or regulated by the Minister, the Treasurer or the Regulator.
- (7) The regulations may adopt, either wholly or in part and with or without modification, and either

*Water and Sewerage Industry Act 2008*  
*Act No. of*

Part 7 – Miscellaneous

**s. 116**

---

specifically or by reference, to any of the standards, rules, codes or specifications of any prescribed authority, whether the standards, rules, codes or specifications are published or issued before or after the commencement of this section.

- (8) A reference in subsection (7) to standards, rules, codes or specifications includes a reference to an amendment of those standards, rules, codes or specifications, whether the amendment is published or issued before or after the commencement of this section.
- (9) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the relevant provision or provisions of this Act.
- (10) Regulations made under subsection (9) may take effect on the day on which the relevant provision or provisions of this Act commences or commence or a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

**116. Administration of Act**

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

- (a) the administration of this Act, except Subdivision 3 of Division 1, and

*Water and Sewerage Industry Act 2008*  
*Act No. of*

**s. 117**

Part 7 – Miscellaneous

---

Division 5 of Part 4 and sections 88 and 111 is assigned to the Minister for Primary Industries and Water and the department responsible to that Minister in relation to the administration of this Act, except Subdivision 3 of Division 1, and Division 5 of Part 4 and sections 88 and 111, is the Department of Primary Industries and Water; and

- (b) the administration of Subdivision 3 of Division 1, and Division 5 of Part 4 and sections 88 and 111 is assigned to the Treasurer and the department responsible to the Treasurer in relation to the administration of Subdivision 3 of Division 1, and Division 5 of Part 4 and sections 88 and 111 is the Department of Treasury and Finance.

**117. Consequential Amendments**

The legislation specified in Schedule 1 is amended as specified in that Schedule.



**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

Section 117

***Ombudsman Act 1978***

- 1.** Section 4(1) is amended by inserting after paragraph (i) the following paragraph:
  - (ia) a regulated entity within the meaning of the *Water and Sewerage Industry Act 2008*;