

WATER AND SEWERAGE (MISCELLANEOUS AMENDMENTS) BILL 2009

NOTES ON CLAUSES

PART 1 - PRELIMINARY

- Clause 1 Short title.
- Clause 2 Provides for the commencement of different parts of the Bill variously on 30 June 2009 and 1 July 2009.

PART 2 – WATER AND SEWERAGE INDUSTRY AMENDMENT ACT 2008 AMENDED

- Clause 3 Establishes the *Water and Sewerage Industry Amendment Act 2008* as the Principal Act.
- Clause 4 Amends section 7 of the Principal Act by adding a new definition and inserting a new subdivision 2A, which deals with consent by the regulated entities to building and plumbing works affecting their infrastructure.

Subdivision 3 – Planning Referrals (Amended)

Clause 4 inserts the definition of “relevant regulated entity” at clause 56N for the purpose of planning referrals, which specifies the regulated entity that provides the service(s) to the area.

Subdivision 3A – Building and plumbing works certificates

This subdivision ensures that where a person is seeking to undertake building or plumbing works that may affect the interests of a regulated entity, they must gain the consent of the relevant regulated entity. Specifically, section 3A prescribes:

- that a permit authority cannot determine a permit for building or plumbing work without, where required, the regulated entity’s consent to the works;
- the process for obtaining the regulated entity’s consent for relevant building or plumbing works;
- that a certificate of compliance is required from the regulated entity for completed building or plumbing works it has given its initial consent;
- the appeal process through which clients, dissatisfied with a regulated entity’s decision, may seek recourse through the Appeal Board; and

- that the regulated entity may develop a policy to exclude applications for types of building or plumbing work from requiring the entity's consent.

- Clause 56TA** Defines various terms in Subdivision 3A.
- Clause 56TB** Sets out the requirements of the regulated entity in regard to water and sewerage-related building and plumbing work (certifiable work) and the need to gain consent from the regulated entity to do such work.
- Clause 56TB(1) Provides that a permit authority must not grant a building permit, unless, where required, a certificate of certifiable work (building) has been granted by a relevant regulated entity.
- Clause 56TB(2) States that a permit authority must not grant a plumbing permit, unless, where required, a certificate of certifiable work (plumbing) has been granted by a relevant regulated entity.
- Clause 56TB(3) Allows an owner or agent to apply for a certificate of certifiable work (building) or certificate of certifiable work (plumbing), in respect of the owner's building or land.
- Clause 56TB(4) Establishes that an application under subsection (3) must be submitted in the form, and with all accompanying documentation and information, as specified by the regulated entity.
- Clause 56TB(5) Provides a regulated entity must make a decision concerning an application for a certificate for certifiable plumbing or building work within 10 and 14 days respectively, of receiving the application.
- Clause 56TB(6) Provides that, if further information is required from an applicant concerning their application, the regulated entity is to make a request in writing for this information and is to do so with within seven days of receiving the application.
- Clause 56TB(7) If a regulated entity requires further information from an applicant concerning their application, the period that an entity has to determine an application under subsection (5), will not continue to run.
- Clause 56TC** Establishes the regulated entity's powers in regard to the granting or refusal of a certificate for certifiable building or plumbing work.
- Clause 56TC(1) Allows a regulated entity to accept or refuse an application made to it in regard of certifiable work and establishes the methods by which the entity can make its decision known to the applicant.
- Clause 56TC(2) Provides that a regulated entity may specify conditions on a certificate.

- Clause 56TC(3) Establishes that if the application was made in regard to building work then only a certificate for certifiable work (building) can be issued.
- Clause 56TC(4) Establishes that if the application was made in regard to plumbing work then only a certificate for certifiable work (plumbing) can be issued.
- Clause 56TC(5) Sets out that a regulated entity may only refuse to grant a certificate of certifiable work, if the work would have a negative impact on the entity or does not comply with the entity's connections policy.
- Clause 56TC(6) Clarifies the circumstances in which a regulated entity could assess that certifiable work would impact negatively.
- Clause 56TC(7) Sets out the information to be included in a notice of refusal to an applicant and the applicant's right to appeal the decision through the Appeal Board.
- Clause 56TD** Provides that a certificate of water and sewerage compliance is required before a certificate of completion for building work or plumbing work may be issued by the permit authority.
- Clause 56TD(1) Prohibits a permit authority from granting a certificate of completion for building work unless, where required, the regulated entity has first issued a certificate of water and sewerage compliance (building).
- Clause 56TD(2) Prohibits a permit authority from granting a certificate of completion work (plumbing) unless, where required, the regulated entity has first issued a certificate of compliance (plumbing).
- Clause 56TD(3) Allows an owner or agent to apply to a regulated entity for a certificate of compliance, in respect of the owner's building or land after the completion of certifiable work.
- Clause 56TD(4) Allows an entity to accept or refuse an application made to it in regard of a certificate for certifiable work and establishes the methods by which the entity can make its decision known to the applicant.
- Clause 56TD(5) If the application was made in regard to building work, then only a certificate of water and sewerage compliance (building) is to be issued.
- Clause 56TD(6) Establishes that if the application was made in regard to plumbing work, then only a certificate for water and sewerage compliance (plumbing) must be issued.

- Clause 56TD(7) Provides that a regulated entity may only grant a certificate of water and sewerage compliance (building) if the entity is satisfied the work has been completed in accordance with the consent issued.
- Clause 56TD(8) Provides that a regulated entity may grant a certificate of water and sewerage plumbing compliance, only if the entity is satisfied the work has been completed in accordance with the consent issued.
- Clause 56TD(9) Outlines the information to be included in a notice of refusal to an applicant and the applicant's right to appeal the decision to the Appeal Board.
- Clause 56TE** Sets out the appeal process to the Appeal Board for appeals against a regulated entity's decision under this subdivision.
- Clause 56TE(1) Allows an applicant to appeal a regulated entity's decision within 14 days of receiving notice, if the entity does not make a decision in the time period given, or if the entity refuses an application, or grants a certificate subject to conditions.
- Clause 56TE(2) Provides that a regulated entity may make a determination at any time prior to an appeal being heard in respect of an application, which it did not determine in the time allowed.
- Clause 56TE(3) Specifies that Part 12 of the *Building Act 2000* applies to an appeal under this section.
- Clause 56TE(4) Provides a person aggrieved with a decision made by the Appeal Board may seek recourse by making an appeal to the Magistrates Court (Administrative Appeals Division).
- Clause 56TF** Provides that a regulated entity may develop a policy to exclude types of building or plumbing work that affect the regulated entity's interests from requiring the entity's consent.
- Clause 56TF(1) Allows the regulated entity to develop a policy that specifies types of building or plumbing work where consent of the entity is not required.
- Clause 56TF(2) Establishes that the entity must consult with the relevant councils and other relevant persons when preparing a policy under subsection (1).
- Clause 56TF(3) Requires the entity to publish a copy of any policy developed under subsection (1) on its website.
- Clause 56TF(4) Establishes that any policy developed under subsection (1) will come into force on the day that it is published on the regulated entity's website.

PART 3 – BUILDING ACT 2000 AMENDED

- Clause 5 Establishes the *Building Act 2000* as the Principal Act in respect of the amendments in this Part.
- Clause 6 Amends section 3 (1) of the Principal Act to define “sewerage system” and “approved disposal system”.
- Clause 7 Amends section 77 (a)(i) of the Principal Act by providing that a special plumbing permit is required for the installation of a fixture or appliance that has been approved for the disposal of trade waste into an approved disposal system.
- The clause also removes the requirement for a special plumbing permit for trade waste discharge to the sewers of a regulated entity as this is provided for under the *Water and Sewerage Industry Amendment Act 2008*.
- Clause 8 Amends section 112 (3)(c) of the Principal Act to specify that a permit authority may issue a certificate of completion for building work, only if, amongst other requirements, a certificate of water and sewerage compliance (building) has been granted by a regulated entity.
- Clause 9 Amends section 113(3) of the Principal Act to specify that a permit authority may issue a certificate of completion for plumbing work, only if, amongst other requirements, a certificate of water and sewerage compliance (plumbing) has been issued by a regulated entity.
- Amends section 113(4) of the Principal Act to establish that a permit authority may refuse to grant a certificate of completion for plumbing work if, a certificate of water and sewerage compliance work (plumbing) has been refused under 56TD of the *Water and Sewerage Industry Act 2008*.
- Clause 10 Amends section 204(a) of the Principal Act to provide that the Building Appeal Board can hear appeals in relation to subdivision 3A of the *Water and Sewerage Industry Act*.

PART 4 – LOCAL GOVERNMENT (BUILDING AND MISCELLANEOUS PROVISIONS) ACT 1993 AMENDED

Clause 11 Establishes the *Local Government (Building and Miscellaneous Provisions) Act 1993* as the Principal Act.

Clause 12 Amends section 83 of the Principal Act to include a new subsection (7) and (8).

The inserted subsection (7) provides that a council may require a final plan of a subdivision to note that a regulated entity, either cannot, or will not, supply water services or sewerage services to the block.

The inserted subsection (8) specifies that a notification on a plan of subdivision made under subsection (7) is to be treated as if it were an easement granted for the benefit of the regulated entity until such time as it is removed upon the direction of the entity.

PART 5 – WATER AND SEWERAGE CORPORATIONS ACT 2008 AMENDED

Clause 13 This clause refers to the *Water and Sewerage Corporations Act 2008* as the Principal Act for this Part.

Clause 14 This clause amends section 41 by substituting subsections (3) and (4) to specify the effective date of a transfer order and to require the transferor to take all reasonable steps to enable the terms of the order to be met on the day it takes effect.

Clause 15 This clause inserts section 44A which provides for the transfer of interests in part, or parts, of land under the provisions of Part III of the Act.

This amendment will enable the transfer of appropriately sized individual land holdings to the new water and sewerage corporations that reflect the agreed position between councils and the new water and sewerage corporations. Without this amendment, Councils will only be able to transfer entire land holdings and not just the parts specifically involved in water and sewerage activities.

PART 6 - VALIDATION

Clause 16 This clause provides that a licence, when referred to in Column 2 of Schedule 1, is considered to have been validly granted under the *Water Management Act 1999* when granted to the corresponding local authority, identified in Column 1.

This clause also provides that, if a licence was granted for less than a period of 50 years, it is to be taken to have been granted for a period of 50 years from the day on which it was granted.

PART 7 – TRANSITIONAL PROVISIONS

Clause 17 Defines “commencement day” as the day that this Act comes into force.

Clause 18 This clause provides that where an application for a permit under the *Land Use Planning Approvals Act 1993* has been submitted but not determined by 1 July 2009, the planning authority must consult with the regulated entity, where appropriate, before determining the application.

Clause 19 This clause provides that where an application for a permit under the *Building Act 2000* has been submitted but not determined by 1 July 2009, the permit authority must consult with the regulated entity, where appropriate, before determining the application.

Clause 20 This clause provides that where a special plumbing permit for trade waste discharge was issued prior to 1 July 2009, the permit is taken to be a consent granted by the relevant regulated entity.

The clause also provides that special plumbing permit applications for trade waste discharge that were submitted to a permit authority prior to 1 July 2009, but which were not determined by 1 July 2009 are to be referred to the relevant regulated entity to determine.

Clause 21 This clause ensures that a regulated entity will honour any water or sewerage related obligations in relation to any building, plumbing or special plumbing permit in force prior to 1 July 2009 or issued after 1 July 2009 to which clause 19 applies.

This clause also ensures that a regulated entity will honour any water or sewerage related provisions in relation to any planning permit or agreement in force prior to 1 July 2009 or issued after 1 July 2009 to which clause 18 applies.

- Clause 22 This clause provides that where permits or agreements are in force prior to 1 July 2009 and which have terms and conditions relevant to the provision of water and sewerage services, the person to whom the permit was granted is taken to have entered into a customer contract in relation to those terms and conditions with the relevant regulated entity. This also applies to permits or agreements issued after 1 July 2009 to which clauses 18 and 19 apply.
- Clause 23 This clause provides that the Minister for Primary Industries and Water may, by notice, extend any timeline in the *Water and Sewerage Industry Act 2008*, for up to 30 days. A notice issued under this section has no effect after 12 months after the day on which this section comes into force.