

CLAUSE NOTES

Water and Sewerage Tasmania Bill 2017

PART 1 - PRELIMINARY

- Clause 1** Short title.
- Clause 2** This clause provides for the Bill to commence on a day or days to be proclaimed. It is intended that all of the provisions of the Bill will commence following the Bill receiving Royal Assent, with the exception of clause 34, once the council-owned TasWater has completed its final tasks.
- Clause 3** Contains the interpretation provisions.
- Clause 4** This clause provides that this Act overrides the *Government Business Enterprises Act 1995* to the extent of any inconsistency.

PART 2 - ESTABLISHMENT OF WATER AND SEWERAGE TASMANIA

- Clause 5** This clause establishes Water and Sewerage Tasmania (the Corporation).
- Clause 6** Sets out the objectives of the Corporation, which include the efficient and effective provision of water and sewerage services and to ensure sustainable investment in water and sewerage infrastructure.
- This clause also provides that the requirements in section 7(1) of the *Government Business Enterprises Act 1995*, namely that Government Business Enterprises must operate in accordance with sound commercial practice and achieve a commercial rate of return, do not apply to the Corporation.
- Clause 7** This clause sets out the functions of the Corporation.
- Clause 8** This clause allows the Treasurer and the Minister to jointly issue directions to the Corporation in respect of any matter related to the performance of the Corporation's functions or powers under the Act. The Corporation must comply with a direction issued under this section. Any direction issued under this section is required to be published on the website of the Corporation until such time as the next annual report of the Corporation is published in accordance with the *Government Business Enterprises Act 1995*.
- Subclause (7) provides an indemnity by the Crown to any person acting on behalf of the Corporation against any liability incurred as a result of acting on a direction given by the Treasurer and Minister, provided that the action was taken in good faith and was necessary to implement the direction.

Clause 9 This clause prevents the privatisation of the Corporation.

The clause also prevents the Corporation from selling, leasing or otherwise disposing of its water and sewerage infrastructure or land, except, in the case of its infrastructure, if the sale, lease or disposal relates to or arises from the maintenance, repair, replacement or upgrade of water or sewerage infrastructure.

Subsection (4) ensures that the provisions in the *Government Business Enterprises Act 1995* that relate to the transfer of property, rights, liabilities and assets do not operate to override the operation of this section.

PART 3 - PAYMENTS TO COUNCILS

Division 1 - Transition period payments

Clause 10 This clause requires the Treasurer to pay, to each council specified in Schedule 1, the amount specified for that council in the Schedule in each year for seven years from 2018-19. These payments, totalling \$20 million, are to be paid from the Consolidated Fund by 30 April.

The payments to councils are to be reduced in 2018-19 if a council liability or cost is declared by the Treasurer and Minister under section 25(3). Section 25 allows such a declaration to be made if TasWater, which is defined in the Bill as the council-owned company, has incurred a liability that is not in the ordinary course of business before the day its assets are transferred to the Corporation or if, after that transfer, it incurs a cost or expense that is not considered to be reasonable.

Division 2 - Payments after transition period

Clauses 10 to 14 set out the arrangements for payments to the councils from the Corporation for every year after the period when the councils receive payments from the Consolidated Fund as set out in Clause 10.

Clause 11 This clause requires the Corporation, for each year from 2024-25, to specify in its annual report an amount equal to half its profit for the year to which the annual report applies, defined as the standard total payment to councils. This amount is to be zero if the Corporation does not make a profit for that year.

The Board of the Corporation may also include a different amount to half its profit, defined as an adjusted total payment to councils, if the Board is of the opinion that to make the standard payment to councils would prevent the Corporation from meeting its objectives, requirements and statutory obligations, or if payment of the standard payment to councils would result in the liabilities of the Corporation exceeding its assets or materially prejudice its ability to pay its creditors.

If the Board designates an adjusted total payment in its annual report, it must include a statement of reasons for including that amount.

Clause 12 If an adjusted total payments amount is included in the Corporation's annual report, the Treasurer must, within three sitting days following the tabling of that annual report, make an adjusted payments order and lay the order before each House of Parliament. The order is to specify the amount of the adjusted total payment and include the statement of reasons.

Clause 13 This clause provides that an adjusted payments order is disallowable by either House of Parliament. The clause allows the adjusted payments order to be considered for disallowance in the calendar year after the order is tabled. This is to allow members of Parliament to have the opportunity to examine the order and raise any issues with the Corporation during Government Business Scrutiny Committee hearings.

Clause 14 This clause provides that the payment to each council from the Corporation must be in accordance with the proportions specified for each council in Schedule 1.

The amount to be paid to councils is the standard total payment amount or, if an adjusted payments order has been made by the Treasurer and has not been disallowed by either House of Parliament, the amount specified in the adjusted payments order. If either House of Parliament disallows the adjusted payments order, the Corporation must pay councils the standard total payment.

Payments made in accordance with this section must be made out of the Corporation's retained earnings and must be made between 1 April and 30 April in each year, except when there are insufficient sitting days in March for either House to consider the order, in which case the payment is to be made within 10 business days after the first five sitting-days of the year.

PART 4 - INFRASTRUCTURE INVESTMENT

Clause 15 This clause requires the Corporation to prepare a 10 year infrastructure investment plan at the same time as it prepares its corporate plan in accordance with the *Government Business Enterprises Act 1995*. The objective of the infrastructure investment plan is to promote efficient long term investment in water and sewerage infrastructure. The infrastructure investment plan is to be in a form specified in Treasurer's Instructions and must be consistent with the Corporation's ministerial charter.

The plan is required to be approved by both the Treasurer and the Minister and, following its approval, the Corporation must publish the plan on its website.

Clause 16 This clause sets out the process whereby an infrastructure investment plan can be amended.

Clause 17 This clause requires the Corporation's corporate plan to be consistent with its infrastructure investment plan.

Clause 18 This clause provides that any references to the long term objectives of the Corporation in the *Government Business Enterprises Act 1995* are to be modified to take into account the infrastructure investment plan of the Corporation, as well as any directions issued by the Treasurer and Minister under the Act.

PART 5 - TRANSITION FROM COUNCIL-OWNED COMPANY TO CORPORATION

Clause 19 This clause provides for the transfer of the assets, rights and liabilities of the council-owned company to the Corporation on the transfer day, which is a day to be declared by the Treasurer.

The Corporation, from the transfer day, becomes the legal custodian of all of the assets, rights and liabilities that vest with the Corporation as a result of the transfer. Any reference in any Act, in any instrument made under any Act, in any contract, agreement, arrangement or undertaking, or in any document that refers to the council-owned company or any predecessor of the council-owned company, is taken to be a reference to the Corporation.

Any legal or other proceedings that relate to the council-owned company and which have commenced, or could have commenced, before the transfer day are taken to be proceedings against the Corporation.

The Corporation is not liable for any tax under any State law that arises from the transfer of an asset, right or liability under this section.

Clause 20

This clause provides that the Treasurer, by notice to an employee, may transfer an employee of the council-owned company to the Corporation. Prior to transferring the employment of an employee of the council-owned corporation, the Treasurer is to give notice to the affected employee.

This clause allows employees to be transferred to the Corporation before the day that all assets, rights and liabilities of the council-owned company are transferred.

On the day an employee is transferred, that employee ceases to be an employee of the council-owned company and to be employed by the Corporation on the same terms and conditions as he or she had with the council-owned company prior to the transfer. The transferred employee is not entitled to any further compensation by virtue of any transfer under this section. In addition, any employment award or agreement for a transferred employee continues and an employee's period of service with the council-owned company, prior to the transfer, is taken to be the equivalent period of service with the Corporation following the transfer.

Subclause (8) clarifies that a transfer under this section does not prevent employment terms or conditions from being altered by future awards, agreements or law.

A transferred employee is taken to be an employee for the purposes of the *Public Sector Superannuation Reform Act 2016*. This ensures that any employees of the council-owned company that are members of the State Government's defined benefit scheme will continue to be members of the scheme following the transfer.

Clause 21

This clause clarifies that an environment protection notice that was in force prior to the transfer day continues to have effect. A permit granted under clause 3 of the *Environmental Management and Pollution Control Act 1994* is also taken to be in force in relation to the Corporation.

Clause 22

This clause provides that the Treasurer may request a person to provide information, advice or assistance to the Treasurer for the purposes of this Act. The persons to whom this clause applies are directors, employees, officers and agents of the council-owned company, and the company itself.

A person to whom a request is made under this section is indemnified by the Crown against any liability incurred by the person as a result of acting upon a request by the Treasurer under this section, provided that the action was taken in good faith.

Clause 23

This clause clarifies that, on and from the transfer day, the council-owned company ceases to have the functions of providing water and sewerage services, and any associated obligations.

Clause 24 This clause provides that, for a period of three months after the transfer day, or longer if specified by the Treasurer, the Corporation will pay all of the costs of the council-owned company. The Corporation, in its first financial statements, must specify the costs incurred by the Corporation under this section.

Subclause (5) requires the council-owned company to make its annual report for the 2017-18 financial year available to the public within three months after the end of that financial year.

Clause 25 This clause provides that any unreasonable liabilities that the council-owned company has incurred between the day prior to the Bill being introduced into Parliament and the transfer day may be declared by the Treasurer and Minister to be a council liability. This clause also provides that if an unreasonable cost or expense is incurred by the council-owned company after the transfer day and within the period when the Corporation is liable for all the costs of the council-owned company, the Treasurer and Minister may declare those costs to be a council cost.

The clause provides that any council liability or cost, as declared, is to be deducted from the total amount payable to the councils by the Corporation under section 10 of the Act. An amount equivalent to the reduction in the total amount payable to councils under section 10 may be transferred by the Treasurer to the Corporation.

PART 6 - MISCELLANEOUS

Clause 26 This clause declares that any provision of the Water and Sewerage Tasmania Act that is inconsistent with the *Corporations Act 2001* is a Corporations legislation displacement provision for the purposes of the Corporations Act. The effect of this provision is that the relevant Corporations Act provision will not operate to the extent of any inconsistency with the provisions in the Water and Sewerage Tasmania Act.

Clause 27 Provides that the Corporation can only borrow from the Tasmanian Public Finance Corporation.

Clause 28 This clause provides that the provisions in Parts 10 and 11 of the *Government Business Enterprises Act 1995* that relate to the payment of income tax equivalents, guarantee fees and dividends do not apply to the Corporation. The effect of this clause is that there is no requirement on the Corporation to pay any returns to the State Government.

Clause 29 This clause provides that where, in the *Government Business Enterprises Act 1995*, there is a reference to both the Portfolio Minister and the Treasurer and this is the same person for the Corporation, the Portfolio Minister is to be the Minister responsible for the administration of the *Water Management Act 1999*. This clause ensures that there will always be two Ministers with responsibilities for the Corporation in respect of powers and functions under the *Government Business Enterprises Act 1995*.

Clause 30 This clause ensures that any action undertaken in accordance with this Act, or undertaken under any direction or request under the Act, does not terminate or modify any existing contractual arrangements.

Clause 31 Sets out the regulation-making powers.

Clause 32 States that the Treasurer is responsible for administration of the Act and that the department responsible to the Treasurer in relation to the administration of the Act is the Department of Treasury and Finance.

Clause 33 Provides that the legislation in Schedule 2 is amended as specified in that Schedule. The effect of this clause is that the Corporation is a Government Business Enterprise.

Clause 34 Provides that the legislation in Schedule 3 is repealed.

SCHEDULE 1 PAYMENTS TO COUNCILS

This Schedule prescribes the amount of transitional payments to each council and the proportion of payment amounts to councils from 2025-26.

SCHEDULE 2 CONSEQUENTIAL AMENDMENTS

Amends Schedule 1 of the *Government Business Enterprises Act 1995* to insert Water and Sewerage Tasmania.

SCHEDULE 3 LEGISLATION REPEALED

Provides for the repeal of the *Water and Sewerage Corporation Act 2012*.