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Robyn Webb
Chief Parliamentary Counsel
Dated 24 October 2018



TASMANIA

WATER AND SEWERAGE CORPORATION ACT 2012

No. 51 of 2012

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**SCHEDULE 1 – PROVISIONS FOR INCLUSION IN CONSTITUTION
OF CORPORATION**

SCHEDULE 2 –



WATER AND SEWERAGE CORPORATION ACT 2012

No. 51 of 2012

An Act to provide for the establishment of the Tasmanian Water and Sewerage Corporation, for the transfer to that Corporation of the assets and liabilities of the four corporations established under the *Water and Sewerage Corporations Act 2008*, for the repeal of that Act and for related matters

[Royal Assent 11 December 2012]

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 Corporation Act 2012*.

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2. Commencement

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

3. Purposes of Act

The purposes of this Act are to –

- (a) provide for matters relating to the establishment and governance of a Corporation, having as its primary purpose the provision of water and sewerage services in Tasmania; and
- (b) vest the water and sewerage assets, rights and liabilities of the Regional Corporations and the Common Services Corporation in the Corporation; and
- (c) make provision for the transfer of water and sewerage employees of the Regional Corporations and the Common Services Corporation to the Corporation.

4. Interpretation

In this Act, unless the contrary intention appears –

Auditor-General has the same meaning as in the *Financial Management and Audit Act 1990*;

Board means the board of directors of the Corporation;

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borrowing means any borrowing, loan, temporary accommodation, advance or other form of raising funds in relation to which the principal is repayable;

chief executive officer means the person appointed under section 15;

Common Services Corporation means the Tasmanian Water and Sewerage Corporation (Common Services) Pty Ltd (ACN 133 654 912) registered under the Corporations Act;

Commonwealth Tax Act means the *Income Tax Assessment Act 1936* of the Commonwealth and any other enactments of the Commonwealth relating to income tax;

constitution means the constitution of the Corporation or any subsidiary of the Corporation;

Corporation means the corporation incorporated in accordance with section 5;

director means a director of the Corporation;

dispose means, in relation to any property, to sell, transfer, assign, create a security interest over, declare oneself a trustee of, or part with any benefit of, or otherwise dispose of, that property, or any interest in it, or any part of it;

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document includes part of a document;

elected government official means a person who is, or has been elected as, a Member of Parliament of Tasmania or a councillor within the meaning of the *Local Government Act 1993*;

GBE Treasurer's Instruction means a Treasurer's Instruction within the meaning of the *Government Business Enterprises Act 1995*;

guarantee means a guarantee, indemnity, letter of credit, letter of comfort or other assurance or assumption of responsibility given at any time for a debt or liability of another person or the solvency or financial condition of that person;

legal or other proceeding includes arbitration proceedings and mediation proceedings;

member, in relation to the Corporation, means a member of the Corporation within the meaning of the Corporations Act;

principal objectives, in relation to the Corporation, means the principal objectives of the Corporation specified in section 6;

Regional Corporation means any of the following companies registered under the Corporations Act:

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- (a) Tasmanian Water and Sewerage Corporation (Northern Region) Pty Ltd (ACN 133 655 062);
 - (b) Tasmanian Water and Sewerage Corporation (North-Western Region) Pty Ltd (ACN 133 655 008);
 - (c) Tasmanian Water and Sewerage Corporation (Southern Region) Pty Ltd (ACN 133 654 976);

regulations means regulations made and in force under this Act;

shareholders' letter of expectation means a letter issued by the members of the Corporation to the Board under section 12;

subsidiary has the same meaning as in the Corporations Act;

transfer day means a day specified by the Minister under section 28 to be the day on which a transfer order takes effect;

transfer order means an order contained in a notice published in the *Gazette* under section 28(1);

transferred employee means a person who becomes an employee of the Corporation on the transfer day by the operation of section 28(1);

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water and sewerage functions means –

- (a) in the case of water, any function associated with –
 - (i) the collection or storage of that water, including by way of bulk supply; and
 - (ii) the treatment of that water; and
 - (iii) the conveyance and reticulation of that water; and
 - (iv) the supply of that water; and
- (b) in the case of sewerage, any function associated with –
 - (i) the collection or storage of sewage; and
 - (ii) the conveyance and reticulation of sewage; and
 - (iii) the treatment of sewage; and
- (c) any other functions associated with the functions referred to in paragraph (a) or (b), which may include those associated with stormwater and the re-use of sewage; and

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- (d) any other functions as may be prescribed by the regulations.

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PART 2 – CORPORATION

Division 1 – Establishment and principal objectives of Corporation

5. Formation of Corporation

The councils are to form, or participate in the formation of, a proprietary company limited by shares that is to be incorporated under the Corporations Act.

6. Principal objectives of Corporation

- (1) The principal objectives of the Corporation are as follows:
 - (a) to efficiently provide water and sewerage functions in Tasmania;
 - (b) to encourage water conservation, the demand management of water and the re-use of water on an economic and commercial basis;
 - (c) to be a successful business and, to this end –
 - (i) to operate its activities in accordance with good commercial practice; and
 - (ii) to deliver sustainable returns to its members; and

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- (iii) to deliver water and sewerage services to customers in the most cost-efficient manner.
 - (2) Each of the principal objectives of the Corporation is of equal importance.

7. Status of Corporation

- (1) Unless this or any other Act expressly provides otherwise, the Corporation or any subsidiary of the Corporation –
 - (a) is not and does not represent the councils or the Crown; and
 - (b) is not exempt from any rate, tax, duty or other impost imposed by or under any law of the State or the Commonwealth merely because a council or the Corporation has beneficial ownership of shares in it.
- (2) The Crown is not liable for any debt, liability or obligation of the Corporation or any subsidiary of the Corporation.
- (3) A council is not liable for any debt, liability or obligation of the Corporation or any subsidiary of the Corporation unless –
 - (a) that council gives a guarantee or indemnity under section 26 in relation to that debt, liability or obligation; or
 - (b) the constitution of the Corporation expressly provides otherwise.

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8. Application of Corporations Act

- (1) The Corporation or any subsidiary of the Corporation and each director, secretary, other officer or employee of the Corporation or any subsidiary of the Corporation is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to –
 - (a) the following provisions of the Corporations Act:
 - (i) Part 2M.4;
 - (ii) Chapter 6;
 - (iii) Chapter 6A;
 - (iv) Chapter 6B;
 - (v) Chapter 6C;
 - (vi) Chapter 6CA;
 - (vii) Chapter 6D;
 - (viii) Chapter 7;
 - (ix) Chapter 8; and
 - (b) any other provisions of the Corporations legislation to the extent specified by the regulations for the purposes of this subsection.
- (2) The appointment and removal of directors of the Corporation (other than the disqualification of a person from managing a Corporation) are

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declared to be excluded matters for the purposes of section 5F of the Corporations Act in relation to Chapter 2D of that Act.

- (3) To the extent that any provision of this Act or the regulations is incapable of concurrent operation with the Corporations legislation, that provision is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act.
- (4) The regulations may declare the Corporation or any subsidiary of the Corporation and any matter relating to the Corporation or subsidiary to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to –
 - (a) the whole of the Corporations legislation; or
 - (b) an Act, regulations or other instrument forming part of the Corporations legislation; or
 - (c) a provision or provisions of the Corporations legislation or of an Act, regulations or other instrument forming part of the Corporations legislation.
- (5) A provision of the Corporations legislation that is the subject of any declaration in the regulations has effect, subject to the following modifications:
 - (a) the provision applies as if the Corporation or any subsidiary of the

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Corporation were a proprietary company and a company limited by shares;

- (b) the provision applies as if shares in the Corporation or any subsidiary of the Corporation held by the members were shares held in the Corporation or subsidiary as a proprietary company and a company limited by shares;
 - (c) such other modifications as may be prescribed by the regulations.
- (6) Without limiting subsections (4) and (5), any regulations referred to in subsection (4) –
- (a) may specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any provision of the Commonwealth legislation that is the subject of the declaration; and
 - (b) may provide for the Australian Securities and Investments Commission (ASIC) to exercise a function under any provision of the Corporations legislation that is the subject of the declaration, but only if –
 - (i) ASIC is to exercise that function pursuant to an agreement of the kind referred to in section 11(8) or (9A)(b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth; and

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- (ii) ASIC is authorised to exercise that function under section 11 of that Act; and
 - (c) may specify that a reference to ASIC in any provision of the Corporations legislation that is the subject of the declaration is to be read as a reference to another person; and
 - (d) may identify the provisions of the Corporations legislation to which the declaration relates by reference to that legislation as in force at a particular time; and
 - (e) may specify a court of this State (other than the Supreme Court) to exercise any function conferred on a court or the Supreme Court by any provision of the Corporations legislation to which the declaration relates.
- (7) Subsection (6) does not apply to any provision of the Corporations legislation that applies to the Corporation or any subsidiary of the Corporation as a law of the Commonwealth.
- (8) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.

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Division 2 – Share capital and ownership of Corporation

9. Share capital

The Corporation is to have share capital and one or more classes of shares as provided in its constitution.

10. Ownership and restrictions on sale and issue of securities

- (1) Only councils may hold one or more shares or other securities in the Corporation.
- (2) Each member of the Corporation is to at all times hold an equal number of shares, and an equal number of other securities in the Corporation, as each other member of the Corporation.
- (3) A member of the Corporation must not dispose of the shares or other securities in the Corporation held by that member.
- (4) The Corporation must not, and must ensure that any subsidiary of the Corporation does not –
 - (a) offer shares or other securities in the Corporation or any subsidiary of the Corporation for subscription, or invite any person to subscribe for any such shares or other securities; or
 - (b) grant options over unissued shares or other securities in the Corporation or any subsidiary of the Corporation; or

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- (c) allot or issue shares or other securities in the Corporation or any subsidiary of the Corporation –

other than to existing members pro rata to their existing shareholdings.

- (5) In this section –

- (a) a reference to securities includes a reference to securities of a kind specified in section 92(3) of the Corporations Act; and
- (b) a reference to shares includes a reference to shares of a kind specified in section 254A(1) of the Corporations Act.

Division 3 – Corporate governance of Corporation

11. Constitution of Corporation

- (1) The Corporation is to have a constitution.
- (2) The members of the Corporation are to ensure that the constitution of the Corporation at all times contains –
 - (a) provisions setting out the rights attaching to each class of shares; and
 - (b) provisions to the effect of the provisions set out in Schedule 1; and
 - (c) such other provisions as are prescribed by the regulations.

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- (3) The constitution of the Corporation –
 - (a) is not to be adopted, modified or repealed unless and until a resolution approving the adoption, modification or repeal has been passed by members in accordance with the requirements of the Corporations Act; and
 - (b) is not to be inconsistent with this Act or the regulations.
- (4) The Corporation is to make available to the public the constitution of the Corporation following its adoption or modification as soon as practicable following its approval under subsection (3)(a).
- (5) Each of the provisions that are to be included in the constitution of the Corporation under this section is also to be included in the constitution of any subsidiary of the Corporation.

12. Shareholders' letter of expectation

- (1) As soon as practicable after the day on which the Corporation is incorporated, the members of the Corporation are to provide the shareholders' letter of expectation to the Board.
- (2) The shareholders' letter of expectation is to specify –
 - (a) the strategic priorities of the Corporation; and

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- (b) the high-level expectations of members for the performance of the business of the Corporation and any subsidiary of the Corporation.
 - (3) The shareholders' letter of expectation of the Corporation is not to be inconsistent with this Act, the regulations or the constitution of the Corporation.
 - (4) The members of the Corporation may at their own discretion, or on the application of the Board, initiate the process contained within the constitution of the Corporation to –
 - (a) amend the shareholders' letter of expectation; or
 - (b) revoke the shareholders' letter of expectation and substitute another shareholders' letter of expectation.
 - (5) Before or while preparing a shareholders' letter of expectation or an amendment to a shareholders' letter of expectation, the members of the Corporation are to consult with the Board.

13. Corporate plan

- (1) For each financial year, the Corporation must have a corporate plan for the Corporation and any subsidiary of the Corporation.
- (2) The corporate plan is to –
 - (a) cover the period specified in the shareholders' letter of expectation; and

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- (b) be in a form and contain the information specified in the shareholders' letter of expectation; and
 - (c) use the matters specified in section 12(2) in its development; and
 - (d) be adopted or amended in accordance with the procedure set out in the shareholders' letter of expectation.
- (3) The Corporation is to comply with the corporate plan.

14. Board of Corporation

- (1) The Board is to ensure that its directors have the experience and skills necessary to enable the Corporation to achieve its principal objectives.
- (2) The appointment of the Board and removal of directors is to be in accordance with the constitution.
- (3) None of the following persons may be appointed as a director of the Corporation or any subsidiary of the Corporation:
 - (a) any person who has served as an elected government official at any time within the 3 years preceding the intended date of appointment;
 - (b) any person who holds office as an elected government official or who is currently an employee of any council.

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15. Chief executive officer

The chief executive officer of the Corporation is to be appointed by, and may be removed by, the Board.

Division 4 – Operations of Corporation

16. Operation and management

- (1) All decisions relating to the operation of the Corporation are to be made by or under the authority of the Board.
- (2) The Board may, by written notice, delegate to any person any of its functions or powers, other than this power of delegation.
- (3) The chief executive officer of the Corporation is, subject to subsection (1), responsible for the day-to-day management of the operation of the Corporation in accordance with the general policies and specific directions of the Board.

17. Staff

- (1) The Corporation may employ such staff as it requires to exercise its functions.
- (2) The Corporation may fix the salary, wages and conditions of its staff in so far as they are not fixed by or under any Act or law.

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18. Borrowings

- (1) Except where approved by the Minister, the Corporation or any subsidiary of the Corporation must not borrow from any person other than the Tasmanian Public Finance Corporation.
- (2) The terms and conditions of any borrowing undertaken under subsection (1) are to be in accordance with any guidelines issued by the Treasurer.
- (3) Subject to subsection (4), the Treasurer may issue guidelines relating to borrowing undertaken under subsection (1).
- (4) The Treasurer is to consult with councils and the Corporation before issuing any guidelines under subsection (3).

19. Acquisition and disposal of assets, investments and liabilities

- (1) Neither the Corporation nor any subsidiary of the Corporation may, without the prior written and unanimous approval of the members of the Corporation, acquire or dispose of any assets or investments, including shares in a company, other than in the ordinary course of the business of the Corporation or the subsidiary, as the case may be.
- (2) Neither the Corporation nor any subsidiary of the Corporation may acquire or dispose of any assets or liabilities in contravention of any requirements of the regulations.

20. Sale or disposal of main undertakings

- (1) The Corporation must not dispose of the main undertakings of the Corporation, or permit the disposal of the main undertakings of any subsidiary of the Corporation.
- (2) The main undertakings of the Corporation are as specified in the most recent corporate plan of the Corporation.

Division 5 – Distributions and payments to councils

21. Distribution of dividends

- (1) The Board or the board of directors of any subsidiary of the Corporation must determine a dividend policy for the Corporation or subsidiary.
- (2) The dividend policy of the Corporation or of any subsidiary of the Corporation is to –
 - (a) establish the aggregate amount, and the basis of determining the aggregate amount, of dividends payable to members in respect of any period; and
 - (b) be determined having due regard to the provisions of the shareholders' letter of expectation; and
 - (c) be consistent with good commercial practice; and
 - (d) require adequate provision to be made for expected future capital requirements

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and operational expenditure before the payment of any dividend to members.

- (3) In setting out the rights attaching to each class of shares for the purposes of section 11(2)(a), the constitution of the Corporation is to provide for the allocation of the aggregate amount of dividends amongst members.

22. Payment of guarantee fees

- (1) The Corporation or any subsidiary of the Corporation is liable to pay guarantee fees determined pursuant to subsection (2).
- (2) If the Corporation or any subsidiary of the Corporation borrows money in accordance with section 18 –
- (a) Division 1 of Part 11 of the *Government Business Enterprises Act 1995* (other than section 78(1)) and, unless the Corporation or subsidiary has received a notice from the Treasurer to the contrary, each GBE Treasurer's Instruction given in relation to any matter the subject of that Division applies by virtue of this Act in relation to the Corporation or subsidiary as if –
- (i) the Corporation or subsidiary were a Government Business Enterprise specified in Schedule 3 to the *Government Business Enterprises Act 1995*; and

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- (ii) each reference to financial accommodation in that Division of the *Government Business Enterprises Act 1995* were a reference to money borrowed from the Tasmanian Public Finance Corporation in accordance with section 18; and
 - (iii) each reference to the Consolidated Fund in the *Government Business Enterprises Act 1995* were a reference to a council; and
 - (b) the Corporation or subsidiary is to pay the aggregate guarantee fee, determined by the Treasurer pursuant to the application of paragraph (a), to councils in the amount and in the manner outlined in the constitution.

23. Payment of tax equivalents

- (1) The Corporation or any subsidiary of the Corporation is liable to pay an aggregate income tax equivalent in respect of each financial year, determined pursuant to the application of this section, to councils in the amount and in the manner outlined in the constitution.
- (2) Despite subsection (1), the Corporation or any subsidiary of the Corporation is not liable to pay an income tax equivalent to the extent to which it is liable to pay income tax under the Commonwealth Tax Act.

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- (3) Division 3 of Part 10 of the *Government Business Enterprises Act 1995* and, unless the Corporation or any subsidiary of the Corporation has received a notice from the Treasurer to the contrary, each GBE Treasurer's Instruction given in relation to any matter the subject of that Division applies by virtue of this Act to the liabilities and payments that arise under subsection (1) as if –
- (a) the Corporation or subsidiary were a prescribed Government Business Enterprise as defined in section 67 of the *Government Business Enterprises Act 1995*; and
 - (b) a reference to section 68 of the *Government Business Enterprises Act 1995* were a reference to subsection (1); and
 - (c) each reference to the Consolidated Fund were a reference to a council.

Division 6 – Other provisions

24. Accounts, records, financial statements and audits

- (1) The Corporation must maintain financial records that accurately reflect and record the transactions and financial position and performance of the business of the Corporation and any subsidiary of the Corporation.
- (2) Within 45 days after the end of a financial year, the Board is to –

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- (a) prepare the financial statements of the Corporation relating to that financial year; and
 - (b) if the Corporation has subsidiaries, prepare consolidated financial statements in respect of the Corporation and all its subsidiaries relating to that financial year; and
 - (c) in accordance with the *Audit Act 2008*, provide the Auditor-General with the Corporation's financial statements and the consolidated financial statements.
 - (3) Subject to subsection (1), the members of the Corporation may direct the Board to include in the financial statements any financial information that the members consider appropriate.
 - (4) The provisions of Chapter 2M of the Corporations Act apply to the Corporation as if it were a large proprietary company (within the meaning given to that term by that Act) for the purposes of that Chapter.
 - (5) The Auditor-General is to be the auditor of the Corporation for the purposes of the Corporations Act.
 - (6) The Auditor-General must provide the Board and a representative or representatives nominated by the members of the Corporation with a copy of his or her opinion in respect of the financial statements of the Corporation provided under section 19 of the *Audit Act 2008*.

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25. Provision of information

- (1) The Board is to provide to the members of the Corporation a copy of the annual report of the Corporation, by no later than 3 months after the end of the financial year to which the annual report relates.
- (2) The Board is to make the annual report of the Corporation available to the public no later than 5 months after the end of the financial year to which the annual report relates, or immediately after the annual general meeting held to adopt the annual report, whichever occurs first.

26. Guarantee or indemnity

- (1) On the written request of the Corporation or any subsidiary of the Corporation, any council, in writing, may guarantee, give an indemnity in relation to, or guarantee and give an indemnity in relation to –
 - (a) the repayment of any money lent or agreed to be lent to the Corporation or subsidiary; or
 - (b) the performance of an obligation undertaken by the Corporation or subsidiary or which the Corporation or subsidiary has agreed to undertake (whether that obligation is monetary or otherwise).
- (2) A guarantee or an indemnity –

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- (a) may include a guarantee of, or an indemnity relating to, any interest and other charges payable in respect of money lent or agreed to be lent or in respect of or arising from an obligation undertaken or agreed to be undertaken; and
 - (b) is subject to any conditions determined by the relevant council and specified in the guarantee or indemnity.
 - (3) This section has effect regardless of whether the loan or obligation was undertaken, agreed to be undertaken or required to be repaid or performed, in Tasmania or elsewhere.

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**PART 3 – TRANSFER OF WATER AND SEWERAGE
ASSETS, RIGHTS, LIABILITIES AND EMPLOYEES**

27. Interpretation and application

In this Part –

asset means, in relation to a transferor, property of any kind, whether tangible or intangible, real or personal, present or future, whether arising from, accruing under, created or evidenced by or the subject of, an instrument or otherwise and whether liquidated or unliquidated, actual, contingent or prospective, to the extent that it relates, directly or indirectly, to the water and sewerage functions of that transferor and includes, without limitation, any –

- (a) legal or equitable estate or interest in real or personal property; and
- (b) chose in action; and
- (c) money, documents or securities; and
- (d) infrastructure; and
- (e) plant and equipment; and
- (f) National Tax Equivalent Regime carry forward losses; and

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- (g) intellectual property; and
- (h) goodwill; and
- (i) records; and
- (j) any other right;

employee means, in relation to a transferor, an employee of that transferor engaged, directly or indirectly, in whole or in part, in performing the water and sewerage functions of that transferor;

liability means, in relation to a transferor, any liability, duty or obligation, whether actual, contingent or prospective, liquidated or unliquidated, and whether owed alone or jointly or jointly and severally with any other person, to the extent that it relates, directly or indirectly, to the water and sewerage functions of that transferor;

records means, in relation to a transferor, registers, papers, documents, minutes, receipts, books of account and other records, however compiled, recorded or stored, to the extent that they relate, directly or indirectly, to the water and sewerage functions of that transferor;

right means, in relation to a transferor, any right, power, privilege or immunity, whether actual, contingent or prospective, to the extent that it relates,

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directly or indirectly, to the water and sewerage functions of that transferor;

State tax means any of the following if imposed by any Act or law of Tasmania:

- (a) a fee, including an application fee and registration fee;
- (b) a tax, including a duty;
- (c) a charge;

transferee means a council, the Corporation or any subsidiary of the Corporation to which any employees, assets, rights or liabilities are transferred under section 28;

transferor means a council, the Corporation, or a Regional Corporation or Common Services Corporation, or any subsidiary of any of them, or the Crown, from which any employees, assets, rights or liabilities are transferred under section 28, or any person prescribed by the regulations.

28. Notice of transfer

- (1) The Minister may, by notice published in the *Gazette*, order the transfer to a specified transferee of such of a specified transferor's –
 - (a) assets, rights and liabilities; and

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(b) employees –

as are specified in the order.

- (2) The assets, rights and liabilities and the employees specified in the order referred to in subsection (1) need not constitute all of the assets, rights or liabilities or all of the employees of the transferor.
- (3) A transfer order takes effect on the day specified in the order and, accordingly, the assets, rights, liabilities or employees specified in the order are transferred in accordance with the order on that day.
- (4) A transferor that is the subject of a transfer order must take all reasonable steps to enable the transfer order to take effect according to its terms.
- (5) The Minister may publish more than one notice in respect of the transfer of assets, rights, liabilities and employees of a transferor and may specify different transfer days in respect of the transfer of those assets, rights, liabilities and employees.
- (6) The Minister may amend or revoke any notice published under this section.
- (7) A notice under this section is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (8) State tax is not payable in respect of –

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- (a) the transfer pursuant to this section of any contract, property, right or obligation; or
- (b) anything the Minister certifies as having been done as a consequence of that transfer.

29. Confirmation of transfer

(1) If any dispute arises –

- (a) as to whether an asset, right, liability or employee is transferred under a transfer order; or
- (b) as to whether any, or any part of any, contract or document relates to an asset, right, liability or employee transferred under a transfer order –

the Minister may determine the matter and is to provide the concerned parties with written notice of that determination.

(2) The determination of the Minister under subsection (1) is final and binding on the transferor and transferee concerned.

30. Vesting of assets, rights and liabilities in transferee

(1) When any assets, rights or liabilities are transferred under section 28, the following provisions have effect:

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- (a) the assets of the transferor that are the subject of the transfer order vest in the transferee by virtue of this section and without the need for any further conveyance, transfer, assignment or assurance;
- (b) the rights or liabilities of the transferor that are the subject of the transfer order become by virtue of this section the rights or liabilities of the transferee;
- (c) all legal or other proceedings, relating to the assets, rights or liabilities that are the subject of the transfer order, commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee;
- (d) any legal or other proceedings, relating to the assets, rights or liabilities that are the subject of the transfer order, which could have been commenced immediately before the transfer by or against the transferor or a predecessor of the transferor may be commenced by or against the transferee;
- (e) a judgment or order of a court or other tribunal obtained before the transfer by or against the transferor or a predecessor of the transferor, relating to the assets,

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rights or liabilities that are the subject of the transfer order, may be enforced by or against the transferee;

- (f) any document relating to legal or other proceedings, relating to the assets, rights or liabilities that are the subject of the transfer order, that has been served on or by a transferor or a predecessor of the transferor before the transfer is taken, when appropriate, to have been served on or by the transferee;
- (g) any act, matter or thing done or omitted to be done, in relation to the assets, rights or liabilities that are the subject of the transfer order, before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee;
- (h) a reference in any Act, in any instrument made under any Act, in any contract, agreement, arrangement or undertaking, or in any document of any kind, to –
 - (i) the transferor; or
 - (ii) any predecessor of the transferor –

to the extent to which the reference relates to the assets, rights or liabilities that are the subject of

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the transfer order, is taken to be, or include, a reference to the transferee.

- (2) The operation of this section is not to be regarded –
- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability that is the subject of the transfer order; or
 - (d) as an event of default under any contract or other instrument.
- (3) No assignment to the transferee by a lessee from the transferor is required.
- (4) A transfer is subject to the terms and conditions of the transfer order by which it is effected.

31. Transfer of interests in land

- (1) A transfer order may transfer an interest in respect of land vested in the transferor without

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transferring the whole of the interests of the transferor in that land.

- (2) If the interest transferred is not a separate interest, the order operates to create the interest transferred in such terms as are specified in the order.
- (3) This clause does not limit any other provision of this Act.

32. Transfer of interests in part of land

- (1) In this section –

non-transferred part of the land, in relation to an area of land, means a part of the land that is a part to which an interest transferred in accordance with subsection (2) does not relate;

Recorder means the Recorder of Titles appointed pursuant to section 4(1) of the *Land Titles Act 1980*;

transferred part of the land, in relation to an area of land, means a part of the land that is a part to which an interest transferred in accordance with subsection (2) relates.

- (2) A transfer order may transfer an interest, or all of the interests, of the transferor in respect of part of an area of land vested in the transferor.

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- (3) A transfer order that transfers an interest in part of an area of land in accordance with subsection (2) must –
- (a) contain a plan that –
 - (i) identifies the interest and the transferred part of the land to which the interest relates; and
 - (ii) describes the size and boundary of the transferred part of the land; and
 - (iii) describes the boundary of the non-transferred part of the land; or
 - (b) otherwise describe the interest.
- (4) Without limiting the interests that may be transferred by a transfer order, a transfer order that transfers an interest in part of an area of land in accordance with subsection (2) may, in the terms specified in the order, do either or both of the following:
- (a) create or amend an interest, in favour of the transferee, that burdens the non-transferred part of the land;
 - (b) create or amend an interest, in favour of the transferor, that burdens the transferred part of the land.

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- (5) A transferee to whom an interest in respect of a part of an area of land is transferred by a transfer order in accordance with subsection (2) must lodge a caveat under section 133 of the *Land Titles Act 1980* in relation to the interest.
- (6) A transferee to whom an interest in respect of a part of an area of land is transferred by a transfer order in accordance with subsection (2) must lodge with the Recorder, together with an application under section 138A of the *Land Titles Act 1980* in relation to the interest –
 - (a) a copy of the transfer order; and
 - (b) a plan, prepared by a registered surveyor in accordance with the requirements of the Recorder, that identifies the transferred part of the land and the non-transferred part of the land; and
 - (c) any other documents that the Recorder may require.
- (7) The Recorder must register the transfer of an interest referred to in an application under section 138A of the *Land Titles Act 1980* made in accordance with subsection (6), if the Recorder is satisfied that –
 - (a) the plan lodged in accordance with subsection (6)(b) conforms with the transfer order lodged with the Recorder under subsection (6)(a); and

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- (b) any documents required under subsection (6)(c) to be lodged have been lodged with the application; and
 - (c) the transferor has sufficient title to dispose of the interest; and
 - (d) the execution of the plan is consistent with the proper administration of the *Land Titles Act 1980* or this section; and
 - (e) there are no errors or inconsistencies in the plan or the transfer order, or between the plan and that order, that require amendment.
- (8) The Recorder may, if he or she is not satisfied as to the matters referred to in subsection (7) in relation to the transfer of an interest in accordance with subsection (2) –
 - (a) notify the transferee and the Minister of the grounds on which the Recorder is not so satisfied; and
 - (b) refuse to register under the *Land Titles Act 1980* the transfer of the interest in accordance with this section until the Recorder is satisfied as to those matters.
- (9) Despite sections 33(14)(a) and 143I of the *Land Titles Act 1980*, the Recorder may create a new folio or a new plan under that Act, even though to do so would be to permit the subdivision of land contrary to the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

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- (10) The transfer of an interest in a part of an area of land in accordance with subsection (2) is not to be taken to be a subdivision of the land for the purposes of the *Land Use Planning and Approvals Act 1993* and no permit is required under that Act to be granted in relation to the transfer of such an interest.
- (11) Part 3 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* does not apply in relation to the transfer of an interest in accordance with subsection (2).

33. No compensation payable

No compensation is payable to any person or body in connection with a transfer except to the extent (if any) to which the transfer order giving rise to the transfer so provides.

34. Consideration for vesting

- (1) The Minister may, by notice published in the *Gazette*, specify the consideration on which a transfer is made and the value or values at which the assets, rights or liabilities are transferred.
- (2) A notice under subsection (1) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

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35. Transfers of employees generally

- (1) As soon as practicable after receiving notice of the transfer day specified in a transfer order, the relevant transferor is to give to each of its employees specified in the transfer order written notice that his or her employment is to be transferred on that day, by the operation of this Part, to the transferee specified in the transfer order.
- (2) Transferred employees are regarded for all purposes as having become employees of the transferee, in accordance with the terms of the transfer order, on the transfer day specified in the order.
- (3) Before, or as soon as practicable after, the employment of a person is transferred to a transferee by the operation of this Part, the transferee, by written notice provided to the person, may determine the position description, title, role or duties for the position to be occupied by the person in the transferee that is different from his or her position description, title, role or duties in the transferor.
- (4) A chief executive officer of a transferor whose employment is transferred to a transferee by operation of this Part is not transferred to the position of chief executive officer of the transferee unless that transferee has appointed him or her to that position.

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36. General preservation of conditions of employment

- (1) A transferred employee –
 - (a) is to be paid by way of remuneration (excluding any bonus payments) by the transferee an amount per annum no less than the amount he or she received from the transferor per annum (excluding any bonus payments) immediately before becoming a transferred employee; and
 - (b) is, subject to any determination made under section 35(3), to be employed by the transferee from the transfer day in accordance with any awards, agreements and determinations which would have applied to him or her had he or she not been transferred but instead remained as an employee of the transferor; and
 - (c) retains any rights to annual leave, long-service leave, sick leave, and other forms of leave, accrued or accruing during his or her employment with the transferor, and may claim any such entitlements as against the transferee.
- (2) Nothing in this section prevents any of the terms of employment of a transferred employee being altered by an award, industrial agreement or law after he or she becomes a transferred employee.

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37. Superannuation

- (1) Employees transferred under a transfer order are employees for the purposes of the *Public Sector Superannuation Reform Act 2016*.
- (2) The Corporation must comply with any instruction in relation to superannuation given to it by the Minister administering the *Public Sector Superannuation Reform Act 2016*.
- (3 - 4)
- (5) The Corporation is to make adequate provision to meet any liability it may have under the *Public Sector Superannuation Reform Act 2016* to pay pension and other benefits in respect of all transferred employees.
- (6) Except where approved by the members of the Corporation, the Corporation or any subsidiary of the Corporation must not establish a superannuation scheme.

38. No dual benefits or payment-out on transfer

- (1) Transferred employees are not entitled to receive any payment or other benefit merely because they cease to be employees of the transferor.
- (2) Transferred employees are not entitled to claim, either under this Act or under any other Act, dual benefits of the same kind for the same period of service.

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PART 4 – MISCELLANEOUS

39. Delegation

The Minister may, by written notice, delegate to any person any of his or her functions or powers under this Act, other than this power of delegation.

40. Regulations

- (1) The Minister is to consult with councils and the Corporation on the content of any regulations proposed to be made under this section.
- (2) The Governor may make regulations for the purposes of this Act.
- (3) Without limiting subsection (2), the regulations may provide that any act or thing, or kind of act or thing, of or relating to the Corporation or any subsidiary of the Corporation is authorised for the purposes of Part IV of the *Competition and Consumer Act 2010* of the Commonwealth.
- (4) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (5) The regulations may authorise any matter to be from time to time determined, applied, approved or regulated by any person or body specified in the regulations.
- (6) The regulations may contain provisions of a savings or transitional nature consequent on the

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enactment of the relevant provision or provisions of this Act.

- (7) Regulations made under subsection (6) may take effect on the day on which the relevant provision or provisions of this Act commences or commence or a later day.

41. 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 is assigned to the Minister for Finance; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Treasury and Finance.

42. Staged repeal of *Water and Sewerage Corporations Act 2008*

- (1) A provision of the *Water and Sewerage Corporations Act 2008* is repealed to the extent, and from the day, fixed by proclamation in respect of that provision.
- (2) The *Water and Sewerage Corporations Act 2008* is repealed on a day fixed by proclamation, being a day after the last day fixed under subsection (1).

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43. Transitional provisions

- (1) If an environment protection notice, within the meaning of the *Environmental Management and Pollution Control Act 1994*, is the subject of a transfer order, the notice is taken to –
 - (a) be an environment protection notice served under the *Environmental Management and Pollution Control Act 1994* on the transferee referred to in the transfer order; and
 - (b) continue on the same terms and conditions as specified in the notice immediately before the day specified in the transfer order as the day on which the order takes effect, as if a reference, in the notice, to the transferor referred to in that order were a reference to the transferee referred to in that order.
- (2) If a permit is taken to have been granted under clause 3 of Schedule 6 to the *Environmental Management and Pollution Control Act 1994* in respect of scheduled premises which –
 - (a) are under the control of the transferor referred to in a transfer order; and
 - (b) are the subject of such an order –the permit is taken to –
 - (c) be a permit granted under the *Land Use Planning and Approvals Act 1993* in respect of scheduled premises which, by

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virtue of the transfer order, come under the control of the transferee; and

- (d) continue on the same terms and conditions as specified in the permit.

43A. Facilitation of alterations to governance of Corporation

- (1) In this section –

memorandum of understanding means the memorandum of understanding entered into on 1 May 2018 between the Crown, the Chief Owners’ Representative, within the meaning of the constitution, and the Corporation.

- (2) Despite any provision of this Act, any other law, or the constitution, the members of the Corporation may –

(a) make a relevant constitution resolution;
or

(b) make a relevant shareholders’ letter resolution; or

(c) make a relevant share issue resolution –

if the relevant requirements in relation to the resolution are met.

- (3) A resolution to which subsection (2) relates is, if the relevant requirements in relation to the resolution are met, not to be taken to be invalid or in breach of this Act by reason only that, but

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for that subsection, the resolution would not have been, at the time of the resolution, a resolution that the members of the Corporation could make under this Act, another law, or the constitution.

- (4) For the purposes of this section –
- (a) a relevant constitution resolution is a resolution to amend the constitution for the purposes of implementing, or enabling the implementation of, the memorandum of understanding; and
 - (b) a relevant shareholders' letter resolution is a resolution to amend the shareholders' letter of expectation for the purposes of implementing, or enabling the implementation of, the memorandum of understanding; and
 - (c) a relevant share issue resolution is a resolution to approve the issue, and the terms of issue, of shares in the Corporation for the purposes of implementing, or enabling the implementation of, the memorandum of understanding.
- (5) For the purposes of this section, the relevant requirements in relation to a resolution are that –
- (a) the resolution is made after the day on which this section commences and before the day on which a bill entitled the *Water and Sewerage Legislation (Corporate Governance and Pricing) Amendment*

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Bill 2018 is introduced into the House of Assembly; and

- (b) the amendment of the constitution or of the shareholders' letter of expectation, or the issue of shares, in accordance with the resolution is, in accordance with the resolution, only to occur after amendments to this Act, to enable shares in the Corporation to be issued to the Crown, have commenced.

44. *See Schedule 2.*

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**SCHEDULE 1 – PROVISIONS FOR INCLUSION IN
CONSTITUTION OF CORPORATION**

Section 11(2)

Provisions to the effect of the following provisions are to be included in the constitution of the Corporation. Words and expressions used in these provisions have the same meaning as in this Act or, if applicable, the Corporations Act.

1. Entrenchment

- (1) Any special resolution of the company that purports to modify or repeal the constitution or a provision of the constitution in breach of the requirements of subclause (2) does not have any effect.
- (2) The constitution or a provision of the constitution may not be modified or repealed –
 - (a) in a way that would result in the constitution being inconsistent with the provisions of the *Water and Sewerage Corporation Act 2012* or any regulations made under it; or
 - (b) unless the provisions of section 11 of the *Water and Sewerage Corporation Act 2012* have been complied with.

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2. Act to prevail

- (1) The provisions of the *Water and Sewerage Corporation Act 2012* prevail over any inconsistent provisions of the constitution of the company.
- (2) The company, its directors and members are expressly prohibited from exercising any of their powers in contravention of, or in a manner inconsistent with, any requirement of the *Water and Sewerage Corporation Act 2012*.

3. Subsidiaries

- (1) The company may not –
 - (a) form, or participate in the formation of, any company, trust, managed investment scheme, other body corporate, partnership or joint venture; or
 - (b) acquire –
 - (i) any shares or other securities in a company; or
 - (ii) any interest, including any units, in any trust; or
 - (iii) any interest in any managed investment scheme; or
 - (iv) any interest in any other body corporate; or

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- (v) any interest in any partnership or joint venture –

without the prior approval of the members of the first-mentioned company.

- (2) The company is, to the maximum extent practicable, to ensure that every subsidiary complies with its constitution (if any) and with the requirements of the *Water and Sewerage Corporation Act 2012*.

4. Replaceable rules not to apply

The replaceable rules applicable to a proprietary company contained in the Corporations Act from time to time do not apply to the company.

SCHEDULE 2

The amendments effected by Section 44 and this Schedule have been incorporated into the following Acts and Statutory Rules:

- (a) *Audit Act 2008;*
- (b) *Drains Act 1954;*
- (c) *Land Use Planning and Approvals Act 1993;*
- (d) *Tasmanian Planning Commission Act 1997;*
- (e) *Tasmanian Public Finance Corporation Act 1985;*
- (f) *Water Management Act 1999;*
- (g) *Water and Sewerage Industry (Community Service Obligation) Act 2009;*
- (h) *Water and Sewerage Industry Act 2008;*
- (i) *Water Management (Watercourse Authority Exemption) Order 2009;*
- (j) *Water Management Regulations 2009.*

NOTES

The foregoing text of the *Water and Sewerage Corporation Act 2012* comprises those instruments as indicated in the following

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table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 14 September 2018 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Water and Sewerage Corporation Act 2012</i>	No. 51 of 2012	1.3.2013
		1.7.2013 s.44 & Sched.2
<i>Public Sector Superannuation Reform (Consequential and Transitional Provisions) Act 2016</i>	No. 54 of 2016	31.3.2017
<i>Water and Sewerage Corporation Amendment (Crown Involvement Facilitation) Act 2018</i>	No. 12 of 2018	14.9.2018
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	not commenced

TABLE OF AMENDMENTS

Provision affected	How affected
Section 37	Amended by No. 54 of 2016, s. 127
Section 43A	Inserted by No. 12 of 2018, s. 4