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Dated 6 August 2019



TASMANIA

WATER AND SEWERAGE INDUSTRY ACT 2008

No. 13 of 2008

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
- 3A. Application in relation to strata title units of certain expressions in this Act
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 or Regulator 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 2A – Powers and obligations of regulated entities

Subdivision 1 – Water and sewerage officers

- 56A. Appointment of water and sewerage officers
- 56B. Conditions of appointment
- 56C. Water and sewerage officer's identity card
- 56D. Production of identity card

Subdivision 2 – Functions and powers relating to water infrastructure and sewerage infrastructure

- 56E. Power to carry out work on public land
- 56F. Power to enter land for purposes related to water infrastructure and sewerage infrastructure
- 56G. Acquisition of land, &c.
- 56H. Acquisition and use of land for water infrastructure and sewerage infrastructure
- 56I. Work on water infrastructure and sewerage infrastructure
- 56J. Extensions to water infrastructure and sewerage infrastructure
- 56K. Right to cut off supply where repairs are necessary
- 56L. Regulated entity may reduce or restrict water supply
- 56M. Regulated entity may cut off supply of regulated services to avert danger

Subdivision 3 – Planning referrals

- 56N. Interpretation
- 56O. Application to go to relevant regulated entity
- 56P. Action by relevant regulated entity
- 56Q. Planning authority's decision
- 56R. Notification of decision and appeal
- 56S. Referral to regulated entities of draft amendments to planning schemes
- 56T. Additional information

Subdivision 3A – Building and Plumbing Works Certificates

- 56TA. Interpretation
- 56TB. Regulated entity's consent required before grant of certain permits under *Building Act 2016*

- 56TC. Certificates for certifiable work
- 56TD. Certification of water and sewerage compliance
- 56TE. Appeals to Appeal Tribunal
- 56TF. Regulated entity may make policy for excluded works

Subdivision 4 – Connections and serviced properties

- 56U. Connections
- 56V. Requirement to connect or disconnect
- 56W. Structures over works
- 56X. Removal of trees
- 56Y. Notice to repair
- 56Z. Notice of contravention

Subdivision 5 – Installation, reading and testing of meters

- 56ZAA. Meter readers
- 56ZAB. Meter reader's identity card
- 56ZA. Entry to install and read meters
- 56ZB. Installation and replacement of meters
- 56ZC. Ownership of meter
- 56ZD. Damage, destruction or removal of meter

Subdivision 6 – Functions and powers of regulated entities relating to fire protection

- 56ZE. Installation of fire hydrants
- 56ZF. Maintenance and marking of fire hydrants
- 56ZG. Supply of water to fire hydrant
- 56ZH. Use of fire hydrant by authorised persons

Subdivision 7 – General

- 56ZI. Interference with water infrastructure or sewerage infrastructure
- 56ZJ. Diversion of water or sewage
- 56ZK. Obstruction
- 56ZL. Order for costs
- 56ZM. Recovery for loss or damage
- 56ZN. Application and issue of warrant

- 56ZO. Urgent situations
- 56ZP. Recreational use of public water supplies
- 56ZQ. Land information request
- 56ZR. Distillery Creek discharge

Subdivision 8 – Transitional matters – trade waste

- 56ZS. Interpretation
- 56ZT. Application of Subdivision
- 56ZU. Variation of certain instruments relating to trade waste
- 56ZV. Determination by Regulator of applications

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. Division 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
- 67A. Preservation of price determinations and price and service plans
- 68. Pricing principles
- 68AA. Transition towards full application of pricing principles
- 68A. Service charges

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 – Repealed

- 88 - 90. *Repealed*]

PART 7 – AUTHORISED OFFICERS

- 91. Appointment of authorised officers
- 92. Conditions of appointment
- 93. Authorised officer’s identity card
- 94. Production of identity card

PART 8 – ENFORCEMENT

- 95. Power of entry
- 96. General investigative powers of officers

- 97. Authorised officer's or water and sewerage officer's power to require information
- 98. Care to be taken
- 99. Compensation
- 100. Service of infringement notices

PART 9 – MISCELLANEOUS

- 101. Confidentiality
- 102. False or misleading information
- 103. Exclusion of personal liability
- 104. Liability of regulated entity
- 105. Offences by the corporation
- 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 Public Account
- 112. Evidentiary certificates
- 113. Evidentiary provision for documents
- 114. Notices not statutory rules
- 115. Regulations
- 116. Administration of Act
- 117.

SCHEDULE 1 –



WATER AND SEWERAGE INDUSTRY ACT 2008

No. 13 of 2008

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

[Royal Assent 13 June 2008]

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*.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 2

Part 1 – Preliminary

2. Commencement

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

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;

Appeal Tribunal means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*;

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;

Australian Standard means a standard issued by the Standards Association of Australia, being the body known as Standards Australia;

authorised officer means an authorised officer appointed under section 91;

business day means a day that is not –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 1 – Preliminary

s. 3

-
- (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;

combined system means a system that is, or is to be, one for both sewage and stormwater;

connection point means –

- (a) the point at which the customer’s pipes connect with the water infrastructure or sewerage infrastructure; or
- (b) such other point as may be prescribed in the regulations;

Corporation has the same meaning as in the *Water and Sewerage Corporation Act 2012*;

customer means a person who is –

- (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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 3

Part 1 – Preliminary

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;

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;

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 1 – Preliminary

s. 3

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;

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

fire hydrant means an assembly installed on a water pipe which provides a valved outlet to permit a controlled supply of water to be taken from a pipeline for fire fighting purposes;

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;

land includes –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 3

Part 1 – Preliminary

- (a) buildings and other structures erected on the land; and
- (b) land covered with water; and
- (c) water covering land;

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

meter means a device used for the measurement of the flow of water or sewage –

- (a) through water infrastructure or sewerage infrastructure; or
- (b) such other infrastructure or system as may be prescribed in the regulations;

meter reader means a person authorised to be a meter reader under section 56ZAA;

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;

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 1 – Preliminary

s. 3

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

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

operational work, in relation to water infrastructure and sewerage infrastructure, means –

- (a) locating, inspecting, testing, operating, maintaining, repairing, altering, adding to, installing, upgrading, replacing or removing the water infrastructure or sewerage infrastructure; or
- (b) excavating land in order to carry out work of a kind referred to in paragraph (a);

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

planning authority means a planning authority within the meaning of the *Land Use Planning and Approvals Act 1993*;

price means the price or price range however designated –

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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 3

Part 1 – Preliminary

- (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;

protective work, in relation to water infrastructure and sewerage infrastructure, means –

- (a) work that is necessary or expedient for the protection of infrastructure or public safety; or
- (b) excavating land in order to carry out work of a kind referred to in paragraph (a);

public land means –

- (a) land owned by the Crown; or
- (b) land owned by an instrumentality or agent of the Crown; or
- (c) land owned by a council that is public land under section 177A of the *Local Government Act 1993*;

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 1 – Preliminary

s. 3

record includes –

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

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;

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 3

Part 1 – Preliminary

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

regulations means regulations made and in force under this Act;

Regulator means the 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;

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 1 – Preliminary

s. 3

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

serviced land means land referred to in section 56U(1)(b);

sewage includes trade waste;

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

- (a) the collection or storage of sewage and includes the connection point; 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 –

and includes a combined system but does not include –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 3

Part 1 – Preliminary

- (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
- (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;

sewerage system means the pipes, fittings, meters and other connected accessories required for or incidental to the discharge or conveyance of sewage to a regulated entity's sewerage infrastructure, but does not include the regulated entity's sewerage infrastructure;

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 1 – Preliminary

s. 3

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);

trade waste means liquid waste generated other than in the course of domestic activities and includes liquid waste generated by any trade, industrial, commercial, educational, medical, dental, veterinary, agricultural, horticultural, scientific research or experimental activities;

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

water and sewerage officer means an officer appointed under section 56A;

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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 3

Part 1 – Preliminary

- (b) the treatment of water; or
- (c) the conveyance or reticulation of water and includes the connection point; 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
- (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 and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 1 – Preliminary

s. 3A

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;

water system means the pipes, fittings, meters and other connected accessories required for or incidental to the supply and measurement of water provided by a regulated entity, but does not include a regulated entity’s water infrastructure.

3A. Application in relation to strata title units of certain expressions in this Act

- (1) In this section –

common property has the same meaning as it has in the *Strata Titles Act 1998*;

lot has the same meaning as it has in the *Strata Titles Act 1998*.

- (2) For the purposes of the definitions in section 3 of “customer” and “connection point”, a property consisting of a lot that, but for the interposing of pipes situated in whole or in part on common

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 4

Part 1 – Preliminary

property, would be connected to a regulated entity's water infrastructure is to be taken to be a property that is connected to the regulated entity's water infrastructure or sewerage infrastructure.

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. 13 of 2008

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.

PART 3 – ADMINISTRATION

6. Functions of Minister

The Minister has the following functions under this Act:

- (a) to develop and coordinate 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 or Regulator may establish committees

- (1) The Minister or the Regulator may establish committees to provide information and advice to the Minister or the Regulator on matters related to the administration of this Act.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 3 – Administration

s. 9

- (2) The members of a committee established under this section by the Minister are appointed and hold office on such terms and conditions as the Minister determines.
- (3) The members of a committee established under this section by the Regulator are appointed and hold office on such terms and conditions as the Regulator 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 Minister has advised that the exemption

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 10

Part 3 – Administration

- 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.

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

Division 1 – Regulator

Subdivision 1 – Functions and powers

11. The Regulator

- (1) The office of the Regulator is established.
- (2) The Regulator, within the meaning of the *Economic Regulator Act 2009*, 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, including compliance with the customer service code; and

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 13

Part 4 – Regulation of Water and Sewerage Industry

- (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.

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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (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
 - (d) enter into contracts.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 14

Part 4 – Regulation of Water and Sewerage Industry

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 functions and exercising 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;
- (f) the avoidance of regulatory duplication, so far as is practicable, through appropriate consultation with, and data collection from, other relevant persons;

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (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 functions and exercising 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).

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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 18

Part 4 – Regulation of Water and Sewerage Industry

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) Subject to subsection (1A), the Regulator may issue codes for any matter relating or incidental to any regulated activity.
- (1A) The Regulator must issue a code for any matter prescribed in the regulations relating to or incidental to meters.
- (2) A person subject to a code must comply with that code.

Penalty: Fine not exceeding 100 penalty units.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (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.
- (6) A code may authorise any matter to be from time to time determined, approved or applied by the Regulator.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 21

Part 4 – Regulation of Water and Sewerage Industry

- (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.
- (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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (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.

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 functions and exercises 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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 24

Part 4 – Regulation of Water and Sewerage Industry

- (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.

25. Staff of Regulator

The Regulator may arrange with the Secretary of the responsible Department in relation to the *Financial Management Act 2016* 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 functions and exercise powers under this Act and those officers and employees may, in conjunction with State Service employment, serve the Regulator in any capacity.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

26. Assistance and facilities

The Regulator may arrange with any person to provide assistance or facilities to enable the Regulator to perform functions and exercise 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 functions and exercising powers under this Act; and
- (b) money appropriated by Parliament for the purpose of the Regulator; and
- (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 functions and the exercise of 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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 28

Part 4 – Regulation of Water and Sewerage Industry

- (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

The annual report made by the Regulator, within the meaning of the *Economic Regulator Act 2009*, under that Act is to include a report on the performance and exercise of the Regulator’s functions and powers under this Act.

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.

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. 13 of 2008

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. 13 of 2008

- (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. 13 of 2008

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. 13 of 2008

- (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. 13 of 2008

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. 13 of 2008

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. 13 of 2008

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. 13 of 2008

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).
- (3) The Regulator is to notify the regulated entity in writing of the amount of the annual licence fee

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 40

Part 4 – Regulation of Water and Sewerage Industry

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 functions and exercising 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.

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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (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 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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 41

Part 4 – Regulation of Water and Sewerage Industry

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 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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

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;
- (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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 42

Part 4 – Regulation of Water and Sewerage Industry

- (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.

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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

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 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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 44

Part 4 – Regulation of Water and Sewerage Industry

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
 - (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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

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 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, Environment Protection Authority and the Director of Public Health.
- (3) The Minister is to advise the Regulator, the Director, Environment Protection Authority 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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 48

Part 4 – Regulation of Water and Sewerage Industry

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.
- (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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (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 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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 50

Part 4 – Regulation of Water and Sewerage Industry

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.
- (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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

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 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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 55

Part 4 – Regulation of Water and Sewerage Industry

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.

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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

regulated entity's operations or a specified part of the regulated entity's operations; and

(b) may specify that –

- (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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 55

Part 4 – Regulation of Water and Sewerage Industry

- (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, 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.
- (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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56A

Part 4 – Regulation of Water and Sewerage Industry

Division 2A – Powers and obligations of regulated entities

Subdivision 1 – Water and sewerage officers

56A. Appointment of water and sewerage officers

- (1) A regulated entity may appoint persons employed by that regulated entity as water and sewerage officers.
- (2) In the exercise of a water and sewerage officer's powers under this Act, the water and sewerage officer is subject to control and direction by the relevant regulated entity.

56B. Conditions of appointment

- (1) A water and sewerage officer holds office for such period, and on such conditions, as are stated in the water and sewerage officer's instrument of appointment.
- (2) A water and sewerage officer may resign by written notice given to the relevant regulated entity.
- (3) A water and sewerage officer may be removed from office by the relevant regulated entity for any reason that the regulated entity considers sufficient.

56C. Water and sewerage officer's identity card

- (1) A regulated entity must provide each water and sewerage officer with an identity card.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56D

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- (2) The identity card is in force for the period specified in the card.
- (3) The identity card must –
- (a) contain a photograph of the water and sewerage officer taken for the purpose; and
 - (b) be signed by the water and sewerage officer; and
 - (c) identify the person as a water and sewerage officer for the relevant regulated entity; and
 - (d) be signed by the chief executive officer of the relevant regulated entity.

56D. Production of identity card

A water and sewerage officer must, before exercising a power that may affect a person, produce the officer's identity card for inspection on demand by the person.

Penalty: Fine not exceeding 10 penalty units.

Subdivision 2 – Functions and powers relating to water infrastructure and sewerage infrastructure

56E. Power to carry out work on public land

- (1) Subject to this section, a regulated entity may –
- (a) install water infrastructure or sewerage infrastructure on public land; and

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56E

Part 4 – Regulation of Water and Sewerage Industry

- (b) carry out operational work or protective work on water infrastructure or sewerage infrastructure on public land; and
 - (c) carry out other work on public land for the provision of a water service or a sewerage service.
- (2) Subject to this section, a regulated entity must –
 - (a) unless otherwise agreed between the regulated entity and the authority responsible for the management of the public land (the “**responsible authority**”), or in the case of an emergency, give the responsible authority on whose land the regulated entity intends to carry out work not less than 7 days’ written notice of the regulated entity’s intention to carry out work on the land; and
 - (b) before commencing the work, secure the responsible authority’s agreement as to how the work is to be carried out.
- (3) Any agreement under subsection (2) may include conditions that the responsible authority considers appropriate in the public interest.
- (4) Prior notice is not required under subsection (2) for work of a kind prescribed by the regulations for the purposes of this section.
- (5) Agreement is not required under subsection (2) for work of a kind prescribed by the regulations for the purposes of this section.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (6) In an emergency, a regulated entity may carry out any work specified in subsection (1) at any time and –
- (a) may be accompanied by such other persons as the regulated entity considers necessary or appropriate; and
 - (b) may bring on to the land any vehicles and equipment that the regulated entity considers necessary or appropriate for the work which the regulated entity is to carry out on the land.
- (7) If the responsible authority, on being given notice under subsection (2), decides to –
- (a) include, in the agreement under that subsection, conditions that the regulated entity considers unreasonable; or
 - (b) dispute that the regulated entity is entitled to carry out the proposed work –
- the regulated entity may appeal to the Appeal Tribunal.
- (8) Subsection (7) does not apply if the responsible authority is a Minister or a person or body to whom directions may be given by a Minister in respect of the matter in dispute.
- (9) Except as provided by subsection (10), the Appeal Tribunal is to hear and determine the appeal in accordance with the *Resource Management and Planning Appeal Tribunal Act 1993*.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56F

Part 4 – Regulation of Water and Sewerage Industry

- (10) Notwithstanding section 14(2) of the *Resource Management and Planning Appeal Tribunal Act 1993*, the Appeal Tribunal must not, under that section, allow any person other than the regulated entity and the responsible authority to be a party to the appeal.
- (11) A regulated entity must make good, to the satisfaction of the responsible authority, any damage caused by the exercise of powers under this section as soon as practicable.
- (12) If a regulated entity fails to make good, to the satisfaction of the responsible authority, any damage caused by the exercise of powers under this section, the responsible authority may make good the damage itself.
- (13) The cost of making good the damage referred to in subsection (12) may be recovered by the responsible authority in a court of competent jurisdiction as a debt owed to it by the regulated entity.
- (14) This section does not derogate from an obligation to comply with any other Act.

56F. Power to enter land for purposes related to water infrastructure and sewerage infrastructure

- (1) A water and sewerage officer of a regulated entity may –
 - (a) enter and remain on land to carry out preliminary investigations in connection with the installation of water

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

-
- infrastructure and sewerage infrastructure; or
- (b) enter and remain on land where the water infrastructure or sewerage infrastructure of the regulated entity is situated to carry out operational work or protective work on the infrastructure; or
 - (c) enter and remain on any land for the purposes of carrying out operational or protective work on land on which water infrastructure or sewerage infrastructure is situated.
- (2) A water and sewerage officer of a regulated entity may only exercise a power of entry under this section between the hours of 7 a.m. and 7 p.m. on any day.
 - (3) Subject to this section, if a water and sewerage officer seeks to enter on land under this section, the officer must give the occupier of the land not less than 7 days' written notice stating the reason and the date and time of the proposed entry.
 - (4) If the proposed entry is refused or obstructed, a water and sewerage officer may obtain a warrant under section 56ZN to enter on the land.
 - (5) In an emergency, a water and sewerage officer may exercise a power of entry under this section –
 - (a) at any time and without prior notice if it is not practicable to give such notice; and

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56F

Part 4 – Regulation of Water and Sewerage Industry

- (b) if necessary in the circumstances, by the use of reasonable force.
- (6) When a water and sewerage officer enters on land under this section, the officer –
 - (a) may be accompanied by such other persons as the officer considers necessary or appropriate; and
 - (b) may bring on to the land any vehicles and equipment that the officer considers necessary or appropriate for the work which the water and sewerage officer is to carry out on the land.
- (7) A water and sewerage officer must be accompanied by a police officer –
 - (a) when entering on land with the authority of a warrant under section 56ZN; and
 - (b) if it is practicable to do so, when entering on land by force in an emergency.
- (8) Subject to this section, a regulated entity must make good any damage caused by the exercise of powers under this section as soon as practicable or pay reasonable compensation for the damage.
- (9) If the owner of the land and the regulated entity do not agree as to the extent of compensation, or the regulated entity refuses to pay compensation, the claim for compensation is to be determined –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (a) if it is a minor civil claim within the meaning of the *Magistrates Court (Civil Division) Act 1992*, by the minor civil claims division of the Magistrates Court; or
- (b) in any other case, as if it were a disputed claim for compensation under the *Land Acquisition Act 1993*.

56G. Acquisition of land, &c.

- (1) A regulated entity is an acquiring authority under the *Land Acquisition Act 1993* and may acquire land under that Act for the purposes of the operations that the regulated entity is authorised to carry on under its licence.
- (2) Without limiting subsection (1), a regulated entity –
 - (a) is taken to be a public authority for the purposes of section 90A(1) of the *Conveyancing and Law of Property Act 1884* and, accordingly, may acquire by compulsory process an easement referred to in that section; and
 - (b) may enter into, or acquire, the benefit of a covenant in gross, within the meaning of section 90AB of that Act.
- (3) Notwithstanding subsections (1) and (2), a regulated entity may acquire land by compulsory process only if the acquisition is authorised in writing by the Minister.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56H

Part 4 – Regulation of Water and Sewerage Industry

- (4) Regulations may be made under this Act modifying the *Land Acquisition Act 1993* in its application to the acquisition of land by regulated entities under that Act, but not so as to affect the monetary entitlements of persons from whom land is acquired.

56H. Acquisition and use of land for water infrastructure and sewerage infrastructure

(1) Where –

- (a) a regulated entity acquires land under this Act for the purposes of undertaking operational work or protective work on water infrastructure or sewerage infrastructure; and
- (b) the dimensions of the land are within limits fixed by the regulations; and
- (c) the proposed use of the land complies with requirements imposed by the regulations for the purposes of this section –

a subdivision of land necessary to give effect to the acquisition is not to be regarded as development for the purposes of the *Land Use Planning and Approvals Act 1993* and is not subject in any other way to that Act.

- (2) If the use of the land complies with requirements imposed by the regulations, the use is not affected by the *Land Use Planning and Approvals Act 1993*.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56I

56I. Work on water infrastructure and sewerage infrastructure

Where –

- (a) a regulated entity proposes to carry out work on the construction, installation, modification, maintenance, demolition or replacement of water infrastructure or sewerage infrastructure; and
- (b) the work is of a kind prescribed in the regulations and meets the criteria specified in the regulations –

the work is not to be regarded as development or use for the purposes of the *Land Use Planning and Approvals Act 1993* and is not subject in any other way to that Act.

56J. Extensions to water infrastructure and sewerage infrastructure

- (1) A person may, in writing, request a regulated entity to extend or expand its water infrastructure or sewerage infrastructure.
- (2) A price and service plan submitted by a regulated entity for approval by the Regulator under section 65 must include –
 - (a) a policy that sets out the circumstances in which it will extend and expand its water infrastructure and sewerage infrastructure, including the circumstances in which it will extend or

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56K

Part 4 – Regulation of Water and Sewerage Industry

expand its water infrastructure or sewerage infrastructure at the request of a person; and

- (b) the terms and conditions that will apply to such an extension or expansion.
- (3) A regulated entity must extend or expand its water infrastructure or sewerage infrastructure in accordance with its price and service plan approved by the Regulator under section 65.
- (4) Until a price and service plan is approved by the Regulator under section 65, the regulated entity must develop a policy that sets out the circumstances in which it will extend and expand its water infrastructure and sewerage infrastructure and include in that policy the terms and conditions that will apply to such an extension or expansion.
- (5) The regulated entity must publish on its website the policy and terms and conditions referred to in subsection (4).

56K. Right to cut off supply where repairs are necessary

- (1) A regulated entity may, for the purpose of carrying out operational work, protective work or any similar work, cut off the provision of a water service or a sewerage service for a reasonable period without any liability for failure to provide a water service or sewerage service.
- (2) If a regulated entity exercises its power under subsection (1), it must give reasonable notice, in

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

writing, to all persons whose water service or sewerage service is to be cut off, of the time when it is expected to be cut off and when it will be restored.

Penalty: Fine not exceeding 50 penalty units.

- (3) If the water service or sewerage service fails or is cut off in an emergency, the regulated entity is not required to give notice under subsection (2).

56L. Regulated entity may reduce or restrict water supply

- (1) A regulated entity may reduce or restrict the quantity of water supplied to any person if –
- (a) the regulated entity is, because of a shortage of water or for any other unavoidable cause, unable to supply the quantity of water which would otherwise be supplied to the person; or
 - (b) the regulated entity believes that the reduction or restriction is necessary to avoid future water shortages.
- (2) If a regulated entity exercises its power under subsection (1), it must publish in a newspaper circulating generally in the area in which the reduction or restriction is to apply, a notice of the proposed reduction or restriction.
- (2A) A regulated entity, on a day that has been declared under section 70 of the *Fire Service Act 1979* to be a day of total fire ban, may reduce or

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56M

Part 4 – Regulation of Water and Sewerage Industry

restrict the quantity of water supplied to any person.

(2B) As soon as practicable after –

- (a) a regulated entity becomes aware that a day of total fire ban has been declared under section 70 of the *Fire Service Act 1979*; and
- (b) the regulated entity forms the intention to reduce or restrict the quantity of water that may be supplied to any person on that day –

the regulated entity must take reasonable steps to inform persons, situated in the area in which the reduction or restriction applies or is to apply, of the reduction or restriction.

- (3) A regulated entity that reduces or restricts the supply of water to a person in accordance with this section is not liable to any claim or demand in respect of the reduction or restriction.
- (4) A regulated entity that reduces or restricts the supply of water to a person must do so in accordance with this Act or regulations made under this Act in relation to water restrictions.

56M. Regulated entity may cut off supply of regulated services to avert danger

A regulated entity may, without incurring any liability for failure to provide a water service or sewerage service, cut off the supply of a water

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56N

service or sewerage service to any relevant region, area or land if it is, in the regulated entity's opinion, necessary to do so to avert danger to any person or property.

Subdivision 3 – Planning referrals

56N. Interpretation

In this Subdivision –

application means an application to a planning authority –

- (a) for a discretionary development permit or permitted development permit; or
- (b) for a combined permit;

combined permit means a permit for a development or use that is combined with the planning scheme amendment process to which –

- (a) Division 2A of Part 3 of the *Land Use Planning and Approvals Act 1993*, as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*, applies; or
- (b) Division 4 of Part 3B of the *Land Use Planning and Approvals Act 1993*, as in force after the

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 560

Part 4 – Regulation of Water and Sewerage Industry

commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*, applies;

condition includes restriction;

discretionary development permit means a permit for a development or use to which section 57 of the *Land Use Planning and Approvals Act 1993* applies;

notice means written notification including a copy of the application, and of all plans and other documents submitted with the application;

permitted development permit means a permit for a development or use to which section 58 of the *Land Use Planning and Approvals Act 1993* applies;

relevant regulated entity, in relation to an application, means the regulated entity in relation to which an occupier or owner of the building or land to which the application relates is, or is likely to become, a customer.

560. Application to go to relevant regulated entity

- (1) If a planning authority receives an application in relation to any matter that would –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (a) increase the demand for water supplied by the relevant regulated entity; or
- (b) increase the amount of sewage or toxins that is to be removed by, or discharged into, the relevant regulated entity's sewerage infrastructure; or
- (c) damage or interfere with the relevant regulated entity's works; or
- (d) adversely affect the relevant regulated entity's operations –

the planning authority must, without delay, give the relevant regulated entity notice of the application, unless it is relieved from doing so under subsection (2).

- (2) The planning authority is not required to give notice of the application –
 - (a) if it decides to refuse to grant the application under section 57(2) of the *Land Use Planning and Approvals Act 1993*; or
 - (b) if the application is one which is exempted by the regulations from the requirement for notice to be given of it to a regulated entity.
- (3) The planning authority must, without delay, provide the relevant regulated entity –
 - (a) with any additional information provided, in relation to an application

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56P

Part 4 – Regulation of Water and Sewerage Industry

that is the subject of a notice under subsection (1), under –

- (i) section 43E of the *Land Use Planning and Approvals Act 1993*, as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*; or
 - (ii) section 40U of the *Land Use Planning and Approvals Act 1993*, as in force after the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*; or
 - (iii) section 54 of the *Land Use Planning and Approvals Act 1993*; and
- (b) with details of any amendments to an application that is the subject of a notice under subsection (1) unless the planning authority considers that the amendment to the application would not adversely affect the interests of the regulated entity.

56P. Action by relevant regulated entity

- (1) The relevant regulated entity may make submissions to the planning authority on an

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

application that is the subject of a notice under section 56O(1) and the relevant regulated entity is taken to be a person who has made relevant representations if it has made any such submissions.

- (1A) For the purposes of subsection (1), a relevant representation is a representation made under –
- (a) section 43F(3) of the *Land Use Planning and Approvals Act 1993*, as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*; or
 - (b) section 41 of the *Land Use Planning and Approvals Act 1993*, as in force after the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*; or
 - (c) section 57(5) of the *Land Use Planning and Approvals Act 1993*.
- (2) A submission made under subsection (1) by a regulated entity to a planning authority may include a submission that –
- (a) the regulated entity does not object to the granting of the permit; or
 - (b) the regulated entity does not object if the permit is subject to conditions specified by the regulated entity; or

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56Q

Part 4 – Regulation of Water and Sewerage Industry

- (c) in the case of a discretionary development permit or combined permit, the regulated entity objects to the granting of the permit on any specified ground.
- (3) The planning authority may assume that the relevant regulated entity has no submissions to make in relation to an application of which notice has been given under section 56O(1) if no such submissions are received by the planning authority within 14 days after the notice was given to the relevant regulated entity or within such further period the planning authority may allow.
- (4) Notwithstanding subsection (3), the planning authority must allow a reasonable further period if it receives notice under section 56T(1) that the regulated entity requires additional information.

56Q. Planning authority’s decision

- (1) The planning authority must take into account any submissions made by the relevant regulated entity under section 56P(1) in relation to an application that is the subject of a notice under section 56O(1), in determining whether to grant the permit, to attach conditions to it or to refuse to grant a discretionary development permit or a combined permit.
- (2) In deciding to grant the permit, the planning authority must –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56R

- (a) include any condition that a relevant regulated entity requires; and
 - (b) not attach a condition to a permit which conflicts with any condition included under paragraph (a).
- (3) If a regulated entity makes a submission under section 56P(1) objecting to the grant of a discretionary development permit or combined permit, the planning authority must refuse to grant the permit.
- (4) For the purposes of this Subdivision, the planning authority is taken to have power under the *Land Use Planning and Approvals Act 1993* to –
 - (a) impose any conditions that the regulated entity requires under section 56P(2)(b); or
 - (b) refuse to grant a permit that the regulated entity has objected to the granting of under section 56P(2)(c).

56R. Notification of decision and appeal

- (1) The planning authority must, in relation to an application of which notice has been given under section 56O(1) whether or not the relevant regulated entity has provided any submission in relation to such an application, provide the relevant regulated entity with –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56R

Part 4 – Regulation of Water and Sewerage Industry

- (a) a copy of any permit which it decides to grant; and
- (b) a copy of any permit corrected or amended in accordance with –
 - (i) section 43J or 43K of the *Land Use Planning and Approvals Act 1993*, as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*; or
 - (ii) section 42D or 43 of the *Land Use Planning and Approvals Act 1993*, as in force after the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*; or
 - (iii) section 55 or 56 of the *Land Use Planning and Approvals Act 1993*; and
- (c) a notice of its decision to refuse a permit under –
 - (i) section 43F(1)(b)(ii) of the *Land Use Planning and Approvals Act 1993*, as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment*

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

(Tasmanian Planning Scheme)
Act 2015; or

(ii) section 40Y of the *Land Use Planning and Approvals Act 1993*, as in force after the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*; or

(iii) section 57(2) of the *Land Use Planning and Approvals Act 1993*.

- (2) The planning authority must give the relevant regulated entity notice of an appeal under section 61 of the *Land Use Planning and Approvals Act 1993* in relation to an application in respect of which notice has been given under section 56O(1).
- (3) If an appeal under section 61 of the *Land Use Planning and Approvals Act 1993* relates wholly or partly to –
- (a) the refusal of an application by a planning authority as a result of any submissions made by the relevant regulated entity under section 56P(1); or
 - (b) the imposition of conditions on a permit by a planning authority, as required by a relevant regulated entity, under section 56Q(2) –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56S

Part 4 – Regulation of Water and Sewerage Industry

the relevant regulated entity is taken to be a party to that appeal.

56S. Referral to regulated entities of draft amendments to planning schemes

- (1) A planning authority must refer to the relevant regulated entity –
 - (a) a draft amendment, of a planning scheme administered by the planning authority, that the planning authority has prepared under section 34 of the *Land Use Planning and Approvals Act 1993* as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*; or
 - (b) a draft amendment of an LPS, administered by the planning authority, that the authority has prepared under section 38 of the *Land Use Planning and Approvals Act 1993* as in force after the commencement of section 10 of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015*.
- (2) The relevant regulated entity may –
 - (a) submit to the planning authority, within the exhibition period referred to in section 39 of the *Land Use Planning and Approvals Act 1993* as in force before the commencement of section 10 of the *Land Use Planning and Approvals Amendment*

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (Tasmanian Planning Scheme) Act 2015*,
representations in relation to a draft
amendment referred to in
subsection (1)(a); or
- (b) submit to the planning authority, within
the exhibition period referred to in
section 41 of the *Land Use Planning and
Approvals Act 1993* as in force after the
commencement of section 10 of the *Land
Use Planning and Approvals Amendment
(Tasmanian Planning Scheme) Act 2015*,
representations in relation to a draft
amendment referred to in
subsection (1)(b).
- (3) Any representations submitted by a relevant
regulated entity –
- (a) in relation to an amendment referred to in
subsection (1)(a) – are taken to be
representations submitted in accordance
with section 39 of the *Land Use
Planning and Approvals Act 1993* as in
force before the commencement of
section 10 of the *Land Use Planning and
Approvals Amendment (Tasmanian
Planning Scheme) Act 2015*; or
- (b) in relation to an amendment referred to in
subsection (1)(b) – are taken to be
representations submitted in accordance
with section 41 of the *Land Use
Planning and Approvals Act 1993* as in
force after the commencement of section
10 of the *Land Use Planning and*

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56T

Part 4 – Regulation of Water and Sewerage Industry

*Approvals Amendment (Tasmanian
Planning Scheme) Act 2015.*

56T. Additional information

- (1) A regulated entity may, by notice in writing served on the planning authority within the period of 7 days from the day on which it receives a notice under section 56O(1), require the planning authority to provide it with additional information before it considers the application.
- (2) If the period specified in subsection (1) includes any days on which the office of the planning authority is closed during normal business hours in that part of the State where the land subject to the application is situated, that period is to be extended by the number of those days.
- (3) If the regulated entity requires the planning authority to provide it with additional information under subsection (1), the period referred to in section 57(6)(b) or 58(2) of the *Land Use Planning and Approvals Act 1993*, whichever is applicable, does not run while the request for information has not been answered to the satisfaction of the regulated entity.
- (4) The regulated entity must, within 7 days from the date it receives the additional information under subsection (1), notify the planning authority if the request for information has not been answered to its satisfaction, and in that notification require the planning authority to provide it with the additional information.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56TA

Subdivision 3A – Building and Plumbing Works Certificates

56TA. Interpretation

In this Subdivision –

building includes a proposed building, part of a building, a structure and part of a structure;

building work has the same meaning as in the *Building Act 2016* and includes a stage of building work;

certifiable work, for building work or plumbing work, means so much of the work as is water- or sewerage-related work;

certificate for certifiable work (building) means a certificate, referred to in section 56TC(3), that is issued under section 56TC;

certificate for certifiable work (plumbing) means a certificate, referred to in section 56TC(4), that is issued under section 56TC;

excluded works, in relation to a regulated entity, means –

- (a) building work that is specified, in a policy made under section 56TF by the entity, to be a type of building work in relation to

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56TA

Part 4 – Regulation of Water and Sewerage Industry

which the entity does not require that its consent be given; or

- (b) plumbing work that is specified, in a policy made under section 56TF by the entity, to be a type of plumbing work in relation to which the entity does not require that its consent be given;

owner includes an agent of an owner;

permit authority has the same meaning as in the *Building Act 2016*;

plumbing work has the same meaning as in the *Building Act 2016* and includes a stage of plumbing work;

relevant permit authority, in relation to water- or sewerage-related work that forms all or part of –

- (a) building works, means the permit authority to which an application has been made under the *Building Act 2016* for a building permit in respect of the building works; and
- (b) plumbing works, means the permit authority to which an application has been made under the *Building Act 2016* for a plumbing permit, or a special plumbing permit, in respect of the plumbing works;

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

relevant regulated entity, in relation to a building or land, means the regulated entity in relation to which an occupier or owner of the building or land is, or is likely to become, a customer;

water- or sewerage-related work, in relation to a building or land, means building work, or plumbing work, that, if carried out on the building or the land, is likely to –

- (a) increase the demand for water supplied by a regulated entity; or
- (b) increase or decrease the amount of sewage or toxins that is to be removed by, or discharged into, a regulated entity's sewerage infrastructure; or
- (c) require a new connection, or a modification to an existing connection, to be made to a regulated entity's infrastructure; or
- (d) damage or interfere with a regulated entity's works; or
- (e) adversely affect a regulated entity's operations –

but does not include the regulated entity's excluded works.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56TB

Part 4 – Regulation of Water and Sewerage Industry

56TB. Regulated entity’s consent required before grant of certain permits under *Building Act 2016*

- (1) A permit authority may not grant an application for a building permit under the *Building Act 2016* for building work that consists in whole or in part of certifiable work, unless the relevant regulated entity has issued a certificate for certifiable work (building) in respect of the certifiable work.
- (2) A permit authority may not grant an application for a plumbing permit under the *Building Act 2016* for plumbing work that consists in whole or in part of certifiable work, unless the relevant regulated entity has issued a certificate for certifiable work (plumbing) in respect of the certifiable work.
- (3) An owner of a building or land may apply to the relevant regulated entity for –
 - (a) a certificate for certifiable work (building) in respect of certifiable work; or
 - (b) a certificate for certifiable work (plumbing) in respect of certifiable work.
- (4) An application to a regulated entity under subsection (3) is to be –
 - (a) in a form approved by the regulated entity; and

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (b) accompanied by all documents or information required by the regulated entity.
- (5) A regulated entity must determine an application under subsection (3) –
 - (a) for a certificate for certifiable work (building) within 14 days after receiving it; or
 - (b) for a certificate for certifiable work (plumbing) within 10 days after receiving it –

or within a longer period to which the applicant agrees.

- (6) A regulated entity may, within 7 days after receiving an application under subsection (3), by notice in writing served on the applicant, request the applicant to provide the entity with further information in relation to the application.
- (7) If a regulated entity requests an applicant to provide the entity with further information under subsection (6) in relation to an application, the period specified in subsection (5) is to be taken not to continue to run, for the purposes of this section in relation to the application, from the date of the request until the information is provided to the entity.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56TC

Part 4 – Regulation of Water and Sewerage Industry

56TC. Certificates for certifiable work

- (1) A regulated entity may determine an application made to it under section 56TB in relation to certifiable work by –
 - (a) issuing to the applicant a certificate in respect of the work; or
 - (b) refusing, by notice in writing to the applicant, to issue to the applicant a certificate in respect of the work.
- (2) A regulated entity may specify conditions on a certificate.
- (3) If the application was made in relation to certifiable work forming all or part of building work, the certificate issued is to be a certificate for certifiable work (building).
- (4) If the application was made in relation to certifiable work forming all or part of plumbing work, the certificate issued is to be a certificate for certifiable work (plumbing).
- (5) A regulated entity may only refuse to issue a certificate in respect of certifiable work if the entity is reasonably of the opinion that the work –
 - (a) will have deleterious consequences for the entity; or
 - (b) is not within the scope of the entity's connections policy under section 56U.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56TD

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- (6) For the purposes of subsection (5)(a), certifiable work is only to be taken to have deleterious consequences for an entity if the entity is reasonably of the opinion that the certifiable work –
- (a) will have an unduly onerous effect on the entity’s infrastructure or methods of operation or the cost of providing services; or
 - (b) may put at unacceptable risk the health or safety of persons performing work on behalf of the entity –
- and no condition of the certificate could adequately reduce the onerous effect or the risk.
- (7) A notice of refusal under subsection (1)(b) is to set out –
- (a) the reasons for the refusal; and
 - (b) the applicant’s right to appeal to the Appeal Tribunal under section 56TE.

56TD. Certification of water and sewerage compliance

- (1) A permit authority may not issue a certificate of completion under the *Building Act 2016* in relation to building works consisting in whole or in part of certifiable work, unless a certificate of water and sewerage compliance (building) has been issued under subsection (4) in respect of the certifiable work.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56TD

Part 4 – Regulation of Water and Sewerage Industry

- (2) A permit authority may not issue a certificate of completion under the *Building Act 2016* in relation to plumbing works consisting in whole or in part of certifiable work, unless a certificate of water and sewerage compliance (plumbing) has been issued under subsection (4) in respect of the certifiable work.
- (3) An owner of a building or land may, after the completion of certifiable work in relation to the building or the land, apply to the relevant regulated entity for the issue of a certificate in respect of the certifiable work.
- (4) A regulated entity may determine an application made to it under subsection (3) in relation to certifiable work by –
 - (a) issuing to the applicant a certificate in respect of the certifiable work; or
 - (b) refusing, by notice in writing to the applicant, to issue a certificate in respect of the certifiable work.
- (5) If the application under subsection (3) relates to building work, the certificate issued under subsection (4) is to be a certificate of water and sewerage compliance (building).
- (6) If the application under subsection (3) relates to plumbing work, the certificate issued under subsection (4) is to be a certificate of water and sewerage compliance (plumbing).
- (7) A regulated entity may only issue a certificate of water and sewerage compliance (building) in

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

respect of certifiable work if the entity is satisfied that –

- (a) the work has been completed substantially in accordance with the information or documents that accompanied the application under section 56TB for a certificate for certifiable work (building) in respect of the certifiable work; and
 - (b) the conditions, if any, of the certificate for certifiable work (building) in respect of the certifiable work have been complied with.
- (8) A regulated entity may only issue a certificate of water and sewerage compliance (plumbing) in respect of certifiable work if the entity is satisfied that –
- (a) the work has been completed substantially in accordance with the information or documents that accompanied the application under section 56TB for a certificate for certifiable work (plumbing) in respect of the certifiable work; and
 - (b) the conditions, if any, of the certificate for certifiable work (plumbing) in respect of the certifiable work have been complied with.
- (9) A notice of refusal under subsection (4)(b) is to set out –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56TE

Part 4 – Regulation of Water and Sewerage Industry

- (a) the reasons for the refusal; and
- (b) the applicant’s right to appeal to the Appeal Tribunal under section 56TE.

56TE. Appeals to Appeal Tribunal

- (1) If a regulated entity –
 - (a) does not determine under section 56TC or 56TD an application within the period for doing so specified in the section under which the application is made; or
 - (b) refuses to issue the certificate sought in the application; or
 - (c) issues the certificate sought in the application on conditions –

the applicant may appeal to the Appeal Tribunal within 14 days after the end of the period referred to in paragraph (a), or after receiving the notice of refusal or the certificate, as the case may be.

- (2) A regulated entity against which, on the ground specified in subsection (1)(a), an appeal is made in respect of an application may determine the application at any time before the appeal is heard.

(3 - 4)

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56TF

56TF. Regulated entity may make policy for excluded works

- (1) A regulated entity may prepare a policy that specifies the types of building work and plumbing work in relation to which the entity does not require that its consent be given.
- (2) In preparing a policy for the purposes of subsection (1), a regulated entity must reasonably consult with –
 - (a) councils in the area in which the regulated entity supplies a regulated service; and
 - (b) any other person the entity thinks fit.
- (3) A regulated entity must publish on the entity’s website a copy of any policy prepared under subsection (1).
- (4) A policy prepared under subsection (1) comes into force on the date on which it is first published on the entity’s website.

Subdivision 4 – Connections and serviced properties

56U. Connections

- (1) A price and service plan submitted by a regulated entity for approval by the Regulator under section 65 must include –
 - (a) a policy that sets out the circumstances in which the regulated entity will permit an owner of land to connect, or relocate or

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56U

Part 4 – Regulation of Water and Sewerage Industry

adjust a connection, to the regulated entity's water infrastructure or sewerage infrastructure; and

- (b) a description of the land, whether identified by individual title or by locality, it will permit to be connected to the regulated entity's water infrastructure or sewerage infrastructure.
- (2) A regulated entity must permit an owner of land to connect, relocate or adjust a connection to its water infrastructure or sewerage infrastructure in accordance with its price and service plan approved by the Regulator under section 65.
- (3) The terms and conditions of connection, relocation or adjustment to a regulated entity's water infrastructure or sewerage infrastructure specified in a price and service plan approved by the Regulator under section 65 are binding on the successors in title of the owner or assigns in respect of that land.
- (4) Until a price and service plan is approved by the Regulator under section 65, the regulated entity must develop a policy that sets out the circumstances in which the regulated entity will permit a connection or relocation or adjustment of a connection to its water infrastructure or sewerage infrastructure and a description of the land that it will permit to be connected to its water infrastructure or sewerage infrastructure.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56V

- (5) The regulated entity must publish on its website the policy and a description of the land referred to in subsection (4).

56V. Requirement to connect or disconnect

- (1) A regulated entity may, by notice served on the owner or occupier of serviced land, require the owner or occupier –
- (a) to connect the land to the regulated entity’s water infrastructure or sewerage infrastructure for the purpose of providing that land with water services or sewerage services if, after consulting with the Director of Public Health, within the meaning of the *Public Health Act 1997*, the Director is of the opinion that the connection is to be made in the interests of health or safety; or
 - (b) to remove any existing connection between that land and the regulated entity’s water infrastructure or sewerage infrastructure if –
 - (i) that connection has been made in contravention of section 56U or it contravenes any regulation made under this Act; or
 - (ii) in the opinion of the regulated entity, it is necessary to do so –
 - (A) to protect water purity; or

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56V

Part 4 – Regulation of Water and Sewerage Industry

- (B) in the interests of health, safety or the environment;
or
 - (C) to prevent damage to the regulated entity's water infrastructure or sewerage infrastructure; or
- (c) to carry out any work that the regulated entity considers necessary for the provision of a service that is required to be provided to that land –
- within the time specified in the notice, or any longer time allowed by the regulated entity.
- (2) Before a regulated entity serves a notice on the owner or occupier of serviced land requiring the owner or occupier to remove any existing connection between the serviced land and the regulated entity's water infrastructure or sewerage infrastructure, the regulated entity must consult with the Director of Public Health, within the meaning of the *Public Health Act 1997*, to ensure that the removal of the connection is in accordance with that Act.
 - (3) The owner or occupier of land who has been served with a notice under subsection (1) must comply with the notice within the time specified, or any longer time allowed by the regulated entity.

Penalty: Fine not exceeding 50 penalty units.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56W

- (4) If an owner or occupier of land who has been served with a notice under subsection (1) does not comply with the notice within the time specified, or any longer time allowed by the regulated entity, the regulated entity may –
- (a) do the things that the owner or occupier was required by the notice to do; and
 - (b) recover from the owner or occupier its reasonable costs of doing so, other than costs that are prescribed in the regulations to be the responsibility of the regulated entity.
- (5) The owner or occupier of land who has been issued with a notice under subsection (1) may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision by the regulated entity to serve the notice.

56W. Structures over works

- (1) Unless subsection (6) applies, a person must not, without a regulated entity's consent, cause or permit –
- (a) any prescribed structure to be built, or any filling to be placed, on land over which –
 - (i) an easement exists in favour of the regulated entity; or

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56W

Part 4 – Regulation of Water and Sewerage Industry

- (ii) an easement exists for water infrastructure or sewerage infrastructure; or
- (b) any prescribed structure to be built, or any filling to be placed, within 2 metres laterally of any water infrastructure or sewerage infrastructure of the regulated entity or such other distance as is prescribed in the regulations; or
- (c) any prescribed structure to be built above or below any area prohibited by paragraph (b); or
- (d) to be removed any soil, rock or other matter that supports, protects or covers any works of the regulated entity.

Penalty: Fine not exceeding 100 penalty units.

- (2) An application for the regulated entity's consent under subsection (1) must be made in the manner determined by the regulated entity, and must be accompanied by any plans and other information that the regulated entity requires.
- (3) The regulated entity may –
 - (a) refuse its consent; or
 - (b) consent; or
 - (c) consent subject to any terms and conditions that it thinks fit.
- (4) A person who, with the consent of a regulated entity, causes or permits anything referred to in

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

subsection (1) to be done must make sure that it is done in accordance with any terms and conditions subject to which the regulated entity gave its consent.

Penalty: Fine not exceeding 100 penalty units.

- (5) Terms and conditions subject to which the regulated entity consents are binding on the successors in title or assigns of the person who applied for that consent.
- (6) Subsection (1) does not apply in respect of the authority responsible for the management of a road if it is necessary for the authority to do anything referred to in that subsection for the purpose of constructing a road or conducting maintenance works on a road.

56X. Removal of trees

- (1) A regulated entity may, by notice in writing, require the owner of any land to remove any tree on that land if the regulated entity reasonably decides that the tree is obstructing or damaging the regulated entity's works or that it is likely to obstruct or damage them.
- (2) If the tree required to be removed is not on land over which –
 - (a) an easement exists in favour of the regulated entity; or

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56X

Part 4 – Regulation of Water and Sewerage Industry

(b) an easement exists for water infrastructure or sewerage infrastructure –

the regulated entity must, subject to subsection (7), pay compensation to the owner of the land under the *Land Acquisition Act 1993*.

- (3) The owner may, within 7 days after receiving a notice under subsection (1) to remove a tree, object to the regulated entity.
- (4) A regulated entity must take into account any objection made to it under subsection (3) and must advise the owner, in writing, of its decision in relation to the objection and the reasons for its decision.
- (5) If the owner refuses or fails to comply with the notice under subsection (1) –
- (a) within the time specified in the notice; or
 - (b) if the owner has objected, within 7 days after the owner receives notice from the regulated entity that the objection is not upheld; or
 - (c) within any longer time allowed by the regulated entity –

the regulated entity may, after giving 21 days' notice of its intention to do so, remove the tree and recover from the owner the reasonable costs of the removal.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (6) The regulated entity may recover from the owner the reasonable cost of any repairs to the regulated entity's works that are necessary to repair the damage caused by a tree that is removed by the owner or the regulated entity after service of a notice under subsection (1).
- (7) A regulated entity is not liable to pay compensation for the removal of a tree that is planted after the completion of the works of the regulated entity that are obstructed, damaged or at risk.
- (8) The owner of land who is aggrieved by the decision of the regulated entity under subsection (4) may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision.

56Y. Notice to repair

- (1) A regulated entity may, by notice served on the owner of land, require the owner to repair or carry out maintenance on, within the time specified in the notice or any longer time allowed by the regulated entity, any water or sewerage works on that land or that connect the land to the water infrastructure or sewerage infrastructure of the regulated entity or that are necessary for any service provided to the land by the regulated entity.
- (2) Any notice received under subsection (1) may not require any repairs or maintenance on any works referred to in subsection (1) to be carried

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56Z

Part 4 – Regulation of Water and Sewerage Industry

out otherwise than in accordance with the *Building Act 2016*.

- (3) If a notice to repair is not complied with within the time specified in it, or any longer time allowed by the regulated entity, the regulated entity may carry out the required repairs and recover its reasonable costs from each owner on whom the notice was served, other than costs that are prescribed to be the responsibility of the regulated entity.

56Z. Notice of contravention

- (1) A regulated entity may, by notice served on a person who is in contravention of –
- (a) a provision of this Division or the regulations; or
 - (b) a requirement made by the regulated entity under this Division or the regulations; or
 - (c) a condition of a permit imposed by a planning authority as required by a relevant regulated entity under section 56Q(2) –

require that person, or the owner of any land in relation to which the contravention occurs, to take any action specified in the notice, within the time (being not less than 2 days) that is specified in the notice or any longer time allowed by the regulated entity, to remedy the contravention.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56Z

- (2) A person on whom a notice of contravention is served must cause the notice to be complied with within the time specified, or any longer time allowed by the regulated entity.

Penalty: Fine not exceeding 100 penalty units.

- (3) If a notice of contravention is not complied with within the time specified or any longer time allowed by the regulated entity, the regulated entity may –
- (a) carry out any works and take any other action that it decides is necessary to remedy the contravention, and recover its reasonable costs from the person on whom the notice was served; and
 - (b) remove or disconnect any service to the land in relation to which the contravention occurs, and recover its reasonable costs from the person on whom the notice was served; and
 - (c) apply to a court for an injunction restraining the person on whom the notice was served from contravening the notice.
- (4) If a regulated entity removes or disconnects any service to land under subsection (3)(b), the removal or disconnection is to be in accordance with any code or licence issued under this Act with which a regulated entity must comply.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56ZAA

Part 4 – Regulation of Water and Sewerage Industry

Subdivision 5 – Installation, reading and testing of meters

56ZAA. Meter readers

- (1) A regulated entity, by instrument in writing, may authorise a person to be a meter reader.
- (2) A person may be authorised by a regulated entity to be a meter reader, whether or not the person is employed by the regulated entity.
- (3) In the exercise of a meter reader's powers under this Act, the meter reader is subject to control and direction by the relevant regulated entity.
- (4) A meter reader is authorised for the period stated in the meter reader's instrument of authorisation.
- (5) A meter reader is authorised on the conditions specified in the meter reader's instrument of authorisation.
- (6) An authorisation of a person as a meter reader may be revoked by the regulated entity.
- (7) In the exercise of a power under this Act, a meter reader must do as little damage as possible.

56ZAB. Meter reader's identity card

- (1) A regulated entity must provide an identity card to each meter reader who is authorised by the entity.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56ZA

- (2) The identity card is in force for the period specified on the card.
- (3) The identity card must –
 - (a) contain a photograph of the meter reader taken for the purpose; and
 - (b) be signed by the meter reader; and
 - (c) identify the person as a meter reader for the relevant regulated entity; and
 - (d) be signed by the chief executive officer of the relevant regulated entity.
- (4) A meter reader must, before exercising a power under section 56ZA that may affect a person, produce the meter reader's identity card for inspection on demand by the person.

Penalty: Fine not exceeding 10 penalty units.

56ZA. Entry to install and read meters

- (1) A water and sewerage officer or a meter reader may enter on land to –
 - (a) read, or check the accuracy of, a meter; and
 - (b) install, repair, modify or replace a meter or adjoining pipe work; and
 - (c) examine any water system or sewerage system.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56ZA

Part 4 – Regulation of Water and Sewerage Industry

- (2) A water and sewerage officer, or a meter reader, of a regulated entity may only exercise the power of entry between the hours of 7 a.m. and 7 p.m. on any day, unless the regulated entity determines that an emergency exists.
- (3) If entry is refused or obstructed, the regulated entity, by notice in writing to the owner or occupier of the land, may request entry, stating the reason, date and time of proposed entry.
- (4) If entry is refused again, the regulated entity may –
 - (a) restrict the supply of water if it is possible to do so without entering on the land; or
 - (b) if it is not possible to restrict the supply of water without entering on the land, obtain a warrant under section 56ZO to enter on land to restrict the water supply.
- (5) The regulated entity must remove the restriction to the supply of water if –
 - (a) the owner or occupier consents to the entry and pays an appropriate fee; and
 - (b) it is safe to enter on the land.
- (6) The appropriate fee referred to in subsection (5)(a) may include the reasonable costs incurred in the installation or removal of a device used to restrict the supply of water.

56ZB. Installation and replacement of meters

- (1) A regulated entity may install a meter at any time or at the request of a person.
- (2) A regulated entity may replace an existing meter.
- (3) A regulated entity is not to install a meter contrary to any requirements of the *National Measurement Act 1960* of the Commonwealth or any Australian Standard prescribed in the regulations.
- (4) A regulated entity may charge a person for the reasonable cost of –
 - (a) a meter; and
 - (b) installing a meter.
- (5) A person is not entitled to charge the regulated entity any rent or charge in relation to a meter installed by the regulated entity.
- (6) If a regulated entity intends to install a meter on any land or intends to replace an existing meter on any land, it may, after consultation with the owner of the land, determine the location of the meter on that land.

56ZC. Ownership of meter

- (1) A regulated entity is the owner of a meter connected directly or indirectly to its water infrastructure or sewerage infrastructure whether installed before or after the commencement of

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56ZD

Part 4 – Regulation of Water and Sewerage Industry

this Division for the purpose of providing water services or sewerage services to a person.

- (2) A person does not acquire any interest in a meter –
- (a) on the sale of land on which the meter is installed; or
 - (b) as a result of bankruptcy or other legal proceedings against the owner of the land on which the meter is installed.

56ZD. Damage, destruction or removal of meter

A person, without lawful authority, must not –

- (a) modify, cause damage to, or destroy, a meter; or
- (b) remove a meter.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

Subdivision 6 – Functions and powers of regulated entities relating to fire protection

56ZE. Installation of fire hydrants

- (1) A regulated entity must install fire hydrants at such convenient distances, and at such places, as

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56ZF

are necessary for the ready supply of water to control and extinguish fires.

- (2) Subsection (1) does not apply –
 - (a) so as to require fire hydrants to be installed on any water pipe that is less than 100 millimetres in diameter; or
 - (b) so as to require fire hydrants to be installed if the supply of water through the regulated entity's water infrastructure system is not sufficient for the operation of fire hydrants.
- (3) A regulated entity may remove any fire hydrant referred to in subsection (1) if, after consultation with the Chief Officer, within the meaning of the *Fire Service Act 1979*, it is satisfied on reasonable grounds that the fire hydrant is no longer needed.

56ZF. Maintenance and marking of fire hydrants

- (1) A regulated entity must ensure that all fire hydrants owned or controlled by it are maintained in effective working order.

Penalty: Fine not exceeding 100 penalty units.

- (2) A regulated entity must provide conspicuous markers for fire hydrants owned or controlled by it.

Penalty: Fine not exceeding 100 penalty units.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56ZG

Part 4 – Regulation of Water and Sewerage Industry

56ZG. Supply of water to fire hydrant

A regulated entity must at all times keep charged with water any water infrastructure supplying water to a fire hydrant owned or controlled by it, unless prevented from doing so –

- (a) by drought or other emergency; or
- (b) while the regulated entity is carrying out operational works, protective works or any similar works to water infrastructure or sewerage infrastructure that prevents the continuous supply.

Penalty: Fine not exceeding 100 penalty units.

56ZH. Use of fire hydrant by authorised persons

- (1) A person authorised by the Chief Officer, within the meaning of the *Fire Service Act 1979*, or any person authorised to do so by a regulated entity may take water from a fire hydrant, without payment, for the purpose of controlling or extinguishing fires.
- (2) Subject to subsection (1), a person must not take water from a fire hydrant unless the Chief Officer or regulated entity has authorised the person to do so.

Penalty: Fine not exceeding 100 penalty units.

- (3) A person must not use a fire hydrant otherwise than for the following purposes:

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56ZI

- (a) the purpose of controlling or extinguishing a fire;
- (b) another purpose approved by the Chief Officer or relevant regulated entity.

Penalty: Fine not exceeding 100 penalty units.

Subdivision 7 – General

56ZI. Interference with water infrastructure or sewerage infrastructure

- (1) A person must not cause or permit –
 - (a) any works to be connected to the water infrastructure or sewerage infrastructure of a regulated entity except in accordance with this Division; or
 - (b) the alteration or removal of, or interference with, the water infrastructure or sewerage infrastructure of a regulated entity without the regulated entity's consent; or
 - (c) anything to be discharged into the water infrastructure or sewerage infrastructure of a regulated entity without the regulated entity's consent.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56ZJ

Part 4 – Regulation of Water and Sewerage Industry

- (b) an individual, a fine not exceeding 200 penalty units.
- (2) Subsection (1)(c) does not apply to the use of water infrastructure or sewerage infrastructure by a person in accordance with a customer contract or other contract or arrangement entered into by the regulated entity and that person.

56ZJ. Diversion of water or sewage

- (1) A person, without lawful authority, must not –
 - (a) take or divert water or sewage from water infrastructure or sewerage infrastructure; or
 - (b) install a device to bypass a meter.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 200 penalty units.
- (2) In any proceedings under this section, the following is evidence of the unlawful taking or diversion of water or sewage:
 - (a) the finding of a device or connection that would have enabled the unlawful taking or diversion of water or sewage;

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56ZK

- (b) the tampering with the meter by the defendant or someone acting with the authority of the defendant.

56ZK. Obstruction

A person –

- (a) without reasonable excuse, must not obstruct a water and sewerage officer or his or her agent or a meter reader; or
- (b) must not intimidate or threaten a water and sewerage officer or his or her agent or a meter reader –

in performing any function or exercising any power under this Division.

Penalty: Fine not exceeding 100 penalty units.

56ZL. Order for costs

A court, in addition to imposing a penalty for an offence under section 56ZD, 56ZI, 56ZJ or 56ZK, may make an order for costs in respect of any damage caused as a result of that offence.

56ZM. Recovery for loss or damage

If a person is convicted of an offence under this Division, the relevant regulated entity may recover from the person, as a debt due to the regulated entity, the amount of the loss, or the

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56ZN

Part 4 – Regulation of Water and Sewerage Industry

reasonable cost of repairing any damage, caused by the commission of the offence.

56ZN. Application and issue of warrant

- (1) A water and sewerage officer may apply to a justice of the peace for a warrant to enter a place specified in the application for the purposes of performing his or her functions, or exercising his or her powers, under this Act.
- (2) A justice of the peace may issue a warrant to assist the water and sewerage officer in the exercise of his or her powers under this Act.
- (3) A warrant authorises the water and sewerage officer, with any assistants and by any force reasonably necessary –
 - (a) to enter the place specified in the warrant; and
 - (b) to do anything authorised by this Act, at any time, or within any period, specified in the warrant.
- (4) A warrant is to specify the date on which, and the time at which, the warrant ceases to have effect.

56ZO. Urgent situations

- (1) A water and sewerage officer may apply to a justice of the peace for a warrant by telephone, facsimile, electronic mail or other prescribed

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

means if the officer considers the urgency of the situation requires it.

- (2) The justice of the peace may complete and sign the warrant in the same way as for a warrant applied for in person if satisfied that there are reasonable grounds for issuing the warrant urgently.
- (3) The justice of the peace must –
 - (a) inform the relevant water and sewerage officer of –
 - (i) the terms of the warrant; and
 - (ii) the date on which, and the time at which, the warrant was signed; and
 - (iii) the date on which, and the time at which, the warrant ceases to have effect; and
 - (b) record on the warrant the reasons for granting it.
- (4) The relevant water and sewerage officer must –
 - (a) complete a form of warrant in the same terms as the warrant signed by the justice of the peace; and
 - (b) write on the form –
 - (i) the name of the justice of the peace; and

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56ZP

Part 4 – Regulation of Water and Sewerage Industry

- (ii) the date on which, and the time at which, the warrant was signed; and
 - (c) send the completed form of warrant to the justice of the peace not later than the day after the warrant is executed or ceases to have effect.
- (5) On receipt of the form of warrant, the justice of the peace must attach it to the warrant that the justice of the peace signed.
 - (6) A form of warrant completed by a water and sewerage officer under subsection (4) has the same force as a warrant signed by the justice of the peace under subsection (2).

56ZP. Recreational use of public water supplies

For the purposes of Part IIIA of the *Waterworks Clauses Act 1952*, the Corporation is taken to be an undertaker within the meaning of that Act and, in the application of that Part to the Corporation, any reference in that Part to a water storage area is taken to be a reference to land that is used for the storage of water for supply to the public for domestic purposes and any land appurtenant to any such storage area.

56ZQ. Land information request

- (1) A person may apply in writing to a regulated entity for a certificate in respect of information concerning water and sewerage relating to land

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

specified and clearly identified in the application.

- (2) The regulated entity, on receipt of an application made in accordance with subsection (1), is to issue a certificate in the prescribed form with answers to prescribed questions that are attached to the certificate.
- (3) A certificate under subsection (2) relates only to information that the regulated entity has on record as at the date of issue of the certificate.
- (4) The person referred to in subsection (1) is to pay to the regulated entity the prescribed fee on or before the issue of the certificate.
- (5) A regulated entity, on request, may provide in or with the certificate any other information or document relating to the land that the regulated entity considers relevant.
- (6) A regulated entity does not incur any liability in respect of any information provided in good faith from sources external to the regulated entity.
- (7) A person, with the consent of the occupier or owner of specified land, may request in writing to a regulated entity that an inspection be carried out of that land to obtain supplementary water infrastructure or sewerage infrastructure information relevant to that land.
- (8) If a regulated entity agrees to a request under subsection (5) or (7), the regulated entity may

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56ZR

Part 4 – Regulation of Water and Sewerage Industry

impose any reasonable charges for costs incurred.

(9) In this section –

land includes –

- (a) any buildings and other structures erected on the land; and
- (b) land covered with water; and
- (c) water covering land; and
- (d) any estate, interest, easement, privilege or right in or over land.

56ZR. Distillery Creek discharge

The relevant regulated entity may discharge the water for the cleaning out of the filtration plant at Distillery Creek into Distillery Creek below the Waverley Woollen Mills, or into the North Esk River, although that discharge may contain flock or other impurities that are the result of the filtration.

Subdivision 8 – Transitional matters – trade waste

56ZS. Interpretation

(1) In this Subdivision –

Miscellaneous Amendments Act means the
Water and Sewerage Legislation
(Miscellaneous Amendments) Act 2009;

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 56ZT

transitional consent means a relevant instrument to which this Subdivision applies.

- (2) In this Subdivision, a ***relevant instrument*** is –
- (a) a special plumbing permit, the terms and conditions of which are to be taken under section 20(2) of the Miscellaneous Amendments Act to be the terms and conditions of a consent granted under section 56ZI of this Act; or
 - (b) a trade waste agreement, the terms and conditions of which are to be taken under section 20(2) and (3) of the Miscellaneous Amendments Act to be the terms and conditions of a consent granted under section 56ZI of this Act; or
 - (c) a consent that is granted under section 56ZI of this Act pursuant to an application to which section 20(5) of the Miscellaneous Amendments Act applies.

56ZT. Application of Subdivision

This Subdivision applies to a relevant instrument –

- (a) that is in force immediately before the day on which this Subdivision commences; and

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56ZU

Part 4 – Regulation of Water and Sewerage Industry

- (b) that does not contain a term or provision specifying the date on which the relevant instrument is to cease to be in force.

56ZU. Variation of certain instruments relating to trade waste

- (1) The terms and conditions of a transitional consent may be varied as agreed between the regulated entity, and the person, to whom the consent relates.
- (2) A regulated entity may notify a person to whom a transitional consent relates that –
 - (a) the person is required to enter into negotiations in relation to the terms and conditions of the consent; and
 - (b) the person is, for that purpose, to contact a person specified in the notice.
- (3) A notice under subsection (2) is to include a summary of the process by which the terms and conditions of a transitional consent may be varied under this Subdivision and the consequences of the terms and conditions not being so varied.
- (4) If, before the end of the period of 3 years after the date on which a notice is issued under subsection (2) by a regulated entity to a person to whom a transitional consent relates, the regulated entity and the person have not agreed to vary the terms and conditions of the consent,

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

the regulated entity may issue a notice (a ***warning notice***) to the person.

- (5) A warning notice to a person is a notice stating that –
- (a) the consent to which the notice relates will cease to be in force at the end of the period of 3 months after the date on which the warning notice is issued, unless –
 - (i) an application is made to the Regulator under subsection (6); or
 - (ii) the person agrees to vary the terms and conditions of the consent so that they are the same as, or include, the terms and conditions set out in the notice; and
 - (b) the person may apply to the Regulator, before the end of the period of 14 days after the date on which the warning notice is issued, for the Regulator to determine the terms and conditions of the consent under subsection (1).
- (6) A person, before the end of the period of 14 days after a warning notice in relation to a transitional consent is issued to the person, may apply to the Regulator to determine the terms and conditions that are to be the terms and conditions of the transitional consent to which the notice applies.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56ZV

Part 4 – Regulation of Water and Sewerage Industry

- (7) If an application is not made under subsection (6) in relation to a transitional consent to which a warning notice relates and the terms and conditions of the consent are not varied under this Subdivision, then, despite any provision in the Miscellaneous Amendments Act, at the end of the period of 3 months after the date on which the warning notice is issued –
- (a) the transitional consent ceases to be in force; and
 - (b) a regulated entity ceases to be required to take all reasonable steps to provide or make arrangements for the provision, to the area of land to which the consent relates, of sewerage services consisting of the removal of trade waste; and
 - (c) if section 56ZS(2)(a) or section 56ZS(2)(b) applies in relation to the transitional consent, the transitional consent ceases to be a special plumbing permit or trade waste agreement.

56ZV. Determination by Regulator of applications

- (1) The Regulator, after receiving an application under section 56ZU(6) in relation to a transitional consent, is to determine the terms and conditions of the consent.
- (2) The Regulator is to –
 - (a) take all reasonable steps to make a determination under subsection (1) in

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- relation to a transitional consent within 12 months after having received an application in relation to the consent under section 56ZU(6); and
- (b) comply with the prescribed procedures, if any, in relation to the making of a determination under subsection (1); and
 - (c) have regard to the prescribed matters, if any, before making a determination under subsection (1).
- (3) Despite section 20 of the Miscellaneous Amendments Act, the terms and conditions determined under subsection (1) in relation to a transitional consent are to be taken to be the terms and conditions of –
- (a) the transitional consent; and
 - (b) the special plumbing permit or trade waste agreement, if any, that is the transitional consent –
- on and from the date specified in the determination as the date on and from which the terms and conditions are to be in force, until the consent ceases to be in force.
- (4) Nothing in subsection (3) affects the application of section 56ZU(1) to a transitional consent.
- (5) The Regulator may issue a notice (a *reimbursement notice*) to a regulated entity, or a person, to whom a transitional consent relates, if

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 56ZV

Part 4 – Regulation of Water and Sewerage Industry

the terms and conditions of the consent have been determined under subsection (1).

- (6) A reimbursement notice in relation to a transitional consent is to specify that the regulated entity, or the person, to whom the notice is issued is required to reimburse to the Regulator the amount specified in the notice.
- (7) The amount specified in a reimbursement notice in relation to a transitional consent is to be the amount that the Regulator thinks fit of the costs that have been reasonably incurred by the Regulator in making a determination under subsection (1) in relation to the transitional consent.
- (8) The Regulator may, under subsection (5), issue to a regulated entity and a person separate reimbursement notices in relation to a transitional consent, apportioning between the entity and the person all or part of the costs that have been reasonably incurred by the Regulator in making a determination under subsection (1) in relation to the transitional consent.
- (9) An amount specified in a reimbursement notice issued to a regulated entity or a person under subsection (5) is a debt due and payable to the Regulator by the entity or person, respectively, before the end of the period of 30 days after the notice is issued.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 57

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.
- (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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 58

Part 4 – Regulation of Water and Sewerage Industry

- (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.
- (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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

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 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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 60

Part 4 – Regulation of Water and Sewerage Industry

- (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 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. Division not to preclude certain contracts

- (1) This Division 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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 62

Part 4 – Regulation of Water and Sewerage Industry

- (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.

- (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. 13 of 2008

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 –
 - (a) proposed regulated services to be provided to customers; and

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (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; and
 - (e) any other matter required under this Act.
- (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. 13 of 2008

s. 65

Part 4 – Regulation of Water and Sewerage Industry

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

- (6A) A regulated entity may, without the approval of the Regulator, amend a proposed price, in relation to a service, that is set out, in relation to a year, in the entity's price and service plan, if the price as so amended does not exceed the maximum price, in relation to the service, that is specified, in relation to the year, in a price determination in relation to the entity.
- (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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

subsection (5), including such a plan as amended under this section.

- (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 –

(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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 66

Part 4 – Regulation of Water and Sewerage Industry

- (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 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
 - (ea) not take into account a change in a rate, prescribed in a regulation for the purposes of section 68(1A)(c)(iv), that comes into force at any time –
 - (i) after a regulated entity is required to submit to the Regulator a proposed price and service plan that may be approved by the Regulator after the price determination is made; and

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (ii) before the price determination to which the proposed price and service plan relates is made; 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)
 - (b) fixing a maximum price, or maximum rate of increase of price, for a regulated service;
 - (c)
 - (d) specifying pricing policies or principles that are to be applied in relation to a regulated service;
 - (e) specifying a maximum price, or maximum rate of increase of 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 maximum price, or maximum rate of increase of 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;

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 66

Part 4 – Regulation of Water and Sewerage Industry

- (g) fixing a maximum 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.
- (3A) Nothing in this section is to be taken to permit a price determination made under this section to set –
- (a) a price, other than a maximum price or maximum rate of increase of price; or
 - (b) an amount of revenue other than a maximum amount of revenue.
- (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 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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

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.
- (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 or in such other

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 67

Part 4 – Regulation of Water and Sewerage Industry

manner as the Regulator considers appropriate; 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

(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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (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.

67A. Preservation of price determinations and price and service plans

- (1) The price determination made by the Regulator under section 66 that applied to a regulated entity immediately before the transfer day applies, on and after that day, to the Corporation in respect of the regulated services specified in the determination as if it had been made under section 66 in relation to the Corporation.
- (2) A price and service plan approved by the Regulator under section 65(5) in relation to a regulated entity and in force immediately before the transfer day applies, on and after that day, to the Corporation as if it had been approved under section 65(5) in relation to the Corporation.
- (3) In this section –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 68

Part 4 – Regulation of Water and Sewerage Industry

transfer day has the same meaning as in the
Water and Sewerage Corporation Act
2012.

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 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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (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, on assets that are required in the provision of the regulated service to which that price relates, in accordance with subsection (1A);
 - (e) to the extent that it is commercially and technically reasonable, the price charged to a particular customer or class of 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.
- (1A) For the purposes of subsection (1)(d), the determination of the return to a regulated entity on assets is to take into account the following assumptions:
- (a) that the regulated entity has, in relation to assets, required in the provision of a regulated service, that are transferred to the regulated entity under Part 3 of the *Water and Sewerage Corporations Act*

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 68

Part 4 – Regulation of Water and Sewerage Industry

2008 before 1 July 2011, the ratio of debt to equity that would be expected of a prudent business of a similar kind and scale to that of the regulated entity;

- (b) that the return to the regulated entity on those assets of the entity –
 - (i) that are referred to in paragraph (a); and
 - (ii) in relation to which the entity is to be taken under paragraph (a) to have incurred debt –

is to take into account the prevailing rate of interest for commercial loans that a business of a similar kind and scale to that of the regulated entity would be required to pay to service that debt;

- (c) that the return to the regulated entity on those assets of the entity –
 - (i) that are referred to in paragraph (a); and
 - (ii) in relation to which the entity is to be taken under paragraph (a) to have equity –

is to be taken to be a pre-tax rate, not taking into account inflation, of –

- (iii) 3%; or
- (iv) if another percentage rate is determined in regulations for the

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

purposes of this paragraph, that
percentage rate;

- (d) that the return on those assets of the regulated entity, required in the provision of a regulated service, that are not referred to in paragraph (a) is to be not more than a rate that reflects the regulatory and commercial risks involved in providing the regulated service.

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

68AA. Transition towards full application of pricing principles

- (1) In this section –

pricing principles means the pricing principles specified in section 68(1) and any pricing principles prescribed in accordance with section 68(2);

transition period means the period specified in the regulations to be the transition period for the purposes of this section.

- (2) The pricing principles are not required to be applied, during the transition period, in –
 - (a) the making of a price determination; and
 - (b) the formulation or approval of a price and service plan that is required under

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 68A

Part 4 – Regulation of Water and Sewerage Industry

this Act to be in accordance with the price determination –

to the extent that the application of those principles would, during the transition period –

- (c) result in a significant impact, because of the rate of change of prices, on customers or particular classes of customers; or
 - (d) adversely affect –
 - (i) the sustainability of a regulated entity in so far as it provides regulated services; or
 - (ii) the ability of a regulated entity to deliver regulated services.
- (3) If the Regulator decides not to apply a pricing principle to an extent during the transition period in accordance with subsection (2), the Regulator must publish the Regulator’s reasons for not applying the principle to that extent.

68A. Service charges

- (1) A price and service plan submitted by a regulated entity for approval under section 65 must include –
 - (a) a policy that sets out the circumstances in which the regulated entity will impose a service charge in relation to serviced land; and

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 4 – Regulation of Water and Sewerage Industry

s. 68A

- (b) the amount of, or method of determining the amount of, the service charge, in relation to water infrastructure or sewerage infrastructure or water services or sewerage services.
- (2) A regulated entity may determine that a service charge applies in relation to water services or sewerage services to land referred to in subsection (1) if –
 - (a) a water service or sewerage service is provided through a connection to a pipe or sewer that is not owned by the regulated entity; or
 - (b) a water service or sewerage service is available through a regulated entity's water infrastructure or sewerage infrastructure but is not connected to a water system or sewerage system; or
 - (c) a water service or sewerage service is provided other than through a connection point.
- (3) The owner of any land to which –
 - (a) a service charge applies under a price and service plan approved by the Regulator under section 65; and
 - (b) a service rate or service charge applies under section 95 of the *Local Government Act 1993*, immediately before the commencement of this Division –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 68A

Part 4 – Regulation of Water and Sewerage Industry

is liable for the payment of the service charge.

- (4) Subject to subsection (7), a regulated entity may not charge a service charge under this section, unless notice is –
- (a) served on the owner of the land; and
 - (b) published in a newspaper circulating generally in the area in which the land is situated.
- (5) A regulated entity must cause a copy of the notice under subsection (4) to be available for inspection at its offices and on its website.
- (6) A notice under subsection (4) must –
- (a) define the locality to which it applies; and
 - (b) specify the services available; and
 - (c) generally identify the land to which the services are available; and
 - (d) fix a date on and from which the service charge will be payable, being a date not less than 3 months from the date of the notice.
- (7) A regulated entity may, without written notice, charge a service charge in respect of land that was the subject of a service rate or service charge under section 95 of the *Local Government Act 1993*, immediately before the commencement of this Division, in the same amount and on the same terms and conditions

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

that applied immediately before the commencement of this Division or as otherwise adjusted by an interim price order made under section 88.

- (8) A service charge specified in subsection (7) applies until a price and service plan is approved by the Regulator under section 65.

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 is to prepare a report on the state of the water and sewerage industry (the ***state of the industry report***).

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 70

Part 4 – Regulation of Water and Sewerage Industry

- (1A) The state of the industry report –
- (a) is to be prepared –
 - (i) not more than 3 months before a regulated entity is required under section 65 to submit a proposed price and service plan for regulated services provided by the regulated entity; and
 - (ii) at any other time if required to do so by the Minister and the Minister assigned the administration of the *Economic Regulator Act 2009*; and
 - (b) is to report on the state of the water and sewerage industry since the last state of the industry report was prepared.
- (1B) A requirement under subsection (1A)(a)(ii) to prepare a state of the industry report may include the terms of reference for that 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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (4) In the preparation of the state of the industry report, the Regulator must consult the Director of Public Health and the Director, Environment Protection Authority 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 enable the Regulator to perform functions or exercise 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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 72

Part 4 – Regulation of Water and Sewerage Industry

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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

- (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 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*.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 77

Part 4 – Regulation of Water and Sewerage Industry

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.
- (2) An application must –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 80

Part 5 – Administrative Review of Regulator’s Decisions

- (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.

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. 13 of 2008

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. Intervenors 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 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 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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 87

Part 5 – Administrative Review of Regulator’s Decisions

the purposes of this Act (other than this Part), to
be taken to be a decision of the Regulator.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 6 –

s. 88

PART 6 –

88 - 90.

PART 7 – 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.

93. Authorised officer's identity card

- (1) The Regulator must provide each authorised officer with an identity card.
- (2) The identity card must –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 7 – Authorised Officers

s. 94

- (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.

PART 8 – ENFORCEMENT

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.
- (1A) A water and sewerage officer may, as may be reasonably required for the purposes of the enforcement of an infringement offence within the meaning of section 100(1B), enter and remain in any place.
- (1B) A water and sewerage officer may only exercise a power of entry under this section between the hours of 7 a.m. and 7 p.m. on any day.
- (1C) A water and sewerage officer who enters a place under this section may, in that place, only exercise a power under this Part for the purposes of enforcing an infringement offence within the meaning of section 100(1B).
- (2) When an authorised officer or water and sewerage officer enters a place under this section, the officer –
 - (a) may be accompanied by such assistants as the officer considers necessary or appropriate; and
 - (b) may take any equipment the officer considers necessary or appropriate for the

functions that the officer is to carry out in the place.

- (3) An authorised officer or water and sewerage 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 officers

- (1) An authorised officer or water and sewerage officer who enters a place under this Part 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. 13 of 2008

s. 96

Part 8 – Enforcement

- (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 or water and sewerage officer takes possession of any thing that may be evidence of an offence –
- (a) the 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 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 or water and sewerage 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. 13 of 2008

Part 8 – Enforcement

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 or water and sewerage officer's
power to require information**

- (1) An authorised officer or water and sewerage
officer may require a person to provide
information in the person's possession relevant
to the enforcement of this Act.
- (2) An authorised officer or water and sewerage
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 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 or water and sewerage officer
must do as little damage as possible.

99. Compensation

An authorised officer, water and sewerage officer or meter reader 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.

100. Service of infringement notices

- (1) An authorised officer may issue and 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.
- (1A) A water and sewerage officer may issue and serve an infringement notice on a person if the water and sewerage officer is of the opinion that the person has committed an infringement offence.
- (1B) For the purposes of subsection (1A), an infringement offence means an offence against –
 - (a) section 56V(3), section 56W(1) or (4), section 56Z(2), section 56ZD, section 56ZH(2) or (3), section 56ZI(1) or section 56ZJ(1); or
 - (b) a provision of regulations made under this Act that is prescribed in regulations

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 8 – Enforcement

s. 100

to be an infringement offence in relation to which a water and sewerage officer may issue and serve an infringement notice.

- (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 section 14 of the *Monetary Penalties Enforcement Act 2005*.

PART 9 – MISCELLANEOUS

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 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).

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 9 – Miscellaneous

s. 101

- (3) The Regulator may, in connection with the performance of functions or the exercise of 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 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 functions or exercising 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, a water and sewerage officer, a meter reader 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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 9 – Miscellaneous

s. 105

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

105. Offences by the corporation

- (1) If the 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.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 106

Part 9 – Miscellaneous

- (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 the Corporation's liability for an offence committed by the Corporation against this Act.
- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of the 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 employer or principal 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.

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 –

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 109

Part 9 – Miscellaneous

- (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
- (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 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 Public Account

Unless the Treasurer determines otherwise, the following amounts are to be paid into the Public Account:

- (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

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

s. 113

Part 9 – Miscellaneous

(c) a specified person's licence was or was not subject to specified conditions; or

(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. 13 of 2008

Part 9 – Miscellaneous

s. 115

- (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. 13 of 2008

s. 116

Part 9 – Miscellaneous

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 Division 5 of Part 4 and sections 88 and

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

Part 9 – Miscellaneous

s. 117

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. *See Schedule 1.*

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

sch. 1

SCHEDULE 1

The amendments effected by Section 117 and this Schedule have been incorporated into the authorised version of the Ombudsman Act 1978.

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

sch. 1

NOTES

The foregoing text of the *Water and Sewerage Industry Act 2008* comprises those instruments as indicated in the following 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 1 July 2019 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Water and Sewerage Industry Act 2008</i>	No. 13 of 2008	9.7.2008 (rest of Act) 1.7.2009 (s. 30)
<i>Water and Sewerage Industry Amendment Act 2008</i>	No. 51 of 2008	1.7.2009
<i>Economic Regulator (Consequential Amendments) Act 2009</i>	No. 59 of 2009	1.6.2010
<i>Water and Sewerage Industry Amendment Act 2011</i>	No. 22 of 2011	22.7.2011
<i>Building Amendment Act 2012</i>	No. 20 of 2012	28.11.2012
<i>Water and Sewerage Industry Amendment Act 2012</i>	No. 32 of 2012	25.2.2013
<i>Water and Sewerage Corporation Act 2012</i>	No. 51 of 2012	1.7.2013
<i>Economic Regulator Amendment Act 2015</i>	No. 13 of 2015	1.7.2015
<i>Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme) Act 2015</i>	No. 47 of 2015	17.12.2015
<i>Building (Consequential Amendments) Act 2016</i>	No. 12 of 2016	1.1.2017
<i>Water and Sewerage Legislation (Corporate Governance and Pricing) Amendment Act 2018</i>	No. 23 of 2018	10.12.2018
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

sch. 1

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 51 of 2008, s. 4, No. 59 of 2009, s. 172, No. 32 of 2012, s. 4 and No. 51 of 2012, Sched. 2
Section 3A	Inserted by No. 22 of 2011, s. 4
Section 8	Amended by No. 13 of 2015, s. 89
Section 11	Amended by No. 59 of 2009, s. 173
Section 14	Amended by No. 59 of 2009, s. 174 and No. 13 of 2015, s. 90
Section 15	Amended by No. 59 of 2009, s. 175
Section 16	Amended by No. 59 of 2009, s. 176
Section 20	Amended by No. 51 of 2008, s. 5
Section 22	Amended by No. 59 of 2009, s. 177 and No. 13 of 2015, s. 91
Section 23	Amended by No. 59 of 2009, s. 178
Section 25	Amended by No. 59 of 2009, s. 179 and No. 4 of 2017, Sched. 1
Section 26	Amended by No. 59 of 2009, s. 180
Section 27	Amended by No. 59 of 2009, s. 181
Section 28	Substituted by No. 59 of 2009, s. 182
Section 39	Amended by No. 59 of 2009, s. 183
Section 47	Amended by No. 51 of 2008, s. 6
Subdivision 1 of Part 4	Amended by No. 51 of 2008, s. 7
Subdivision 2 of Part 4	Amended by No. 51 of 2008, s. 7
Section 56L	Amended by No. 32 of 2012, s. 5
Subdivision 3 of Part 4	Amended by No. 51 of 2008, s. 7
Section 56N	Amended by No. 47 of 2015, s. 62
Section 56O	Amended by No. 47 of 2015, s. 63
Section 56P	Amended by No. 47 of 2015, s. 64
Section 56R	Amended by No. 47 of 2015, s. 65
Section 56S	Substituted by No. 47 of 2015, s. 66
Subdivision 3A of Part 4	Amended by No. 51 of 2008, s. 7
Section 56TA	Amended by No. 12 of 2016, Sched. 1
Section 56TB	Amended by No. 12 of 2016, Sched. 1
Section 56TC	Amended by No. 20 of 2012, s. 131
Section 56TD	Amended by No. 20 of 2012, s. 132 and No. 12 of 2016, Sched. 1
Section 56TE	Amended by No. 20 of 2012, s. 133
Subdivision 4 of Part 4	Amended by No. 51 of 2008, s. 7
Section 56Y	Amended by No. 12 of 2016, Sched. 1
Subdivision 5 of Part 4	Amended by No. 51 of 2008, s. 7

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

sch. 1

Provision affected	How affected
Section 56ZAA	Inserted by No. 32 of 2012, s. 6
Section 56ZAB	Inserted by No. 32 of 2012, s. 6
Section 56ZA	Amended by No. 32 of 2012, s. 7
Subdivision 6 of Part 4	Amended by No. 51 of 2008, s. 7
Subdivision 7 of Part 4	Amended by No. 51 of 2008, s. 7
Section 56ZK	Amended by No. 32 of 2012, s. 8
Section 56ZP	Amended by No. 51 of 2012, Sched. 2
Section 56ZS of Division 2A of Part 4	Inserted by No. 32 of 2012, s. 9
Section 56ZT of Division 2A of Part 4	Inserted by No. 32 of 2012, s. 9
Section 56ZU of Division 2A of Part 4	Inserted by No. 32 of 2012, s. 9
Section 56ZV of Division 2A of Part 4	Inserted by No. 32 of 2012, s. 9
Section 65	Amended by No. 51 of 2008, s. 8 and No. 23 of 2018, s. 12
Section 66	Amended by No. 22 of 2011, s. 5 and No. 23 of 2018, s. 13
Section 67	Amended by No. 13 of 2015, s. 92
Section 67A	Inserted by No. 51 of 2012, Sched. 2
Section 68	Amended by No. 22 of 2011, s. 6
Section 68AA	Inserted by No. 22 of 2011, s. 7
Section 68A	Inserted by No. 51 of 2008, s. 9
Section 70	Amended by No. 51 of 2008, s. 10 and No. 13 of 2015, s. 93
Section 71	Amended by No. 59 of 2009, s. 184
Section 80	Amended by No. 59 of 2009, s. 185 and No. 13 of 2015, s. 94
Part 6	Repealed by No. 23 of 2018, s. 14
Section 88	Subsection (1) substituted by No. 51 of 2008, s. 11 Repealed by No. 23 of 2018, s. 14
Section 89	Repealed by No. 23 of 2018, s. 14
Section 90	Amended by No. 51 of 2012, Sched. 2 Repealed by No. 23 of 2018, s. 14
Part 8	Heading inserted by No. 22 of 2011, s. 10
Section 95	Amended by No. 22 of 2011, s. 11
Section 96	Amended by No. 22 of 2011, s. 12 and No. 32 of 2012, s. 10
Section 97	Amended by No. 22 of 2011, s. 13
Section 98	Amended by No. 22 of 2011, s. 14
Section 99	Amended by No. 22 of 2011, s. 15 and No. 32 of 2012, s. 11
Section 100	Amended by No. 22 of 2011, s. 17

Water and Sewerage Industry Act 2008
Act No. 13 of 2008

sch. 1

Provision affected	How affected
Part 9	Heading inserted by No. 22 of 2011, s. 18
Section 101	Amended by No. 59 of 2009, s. 186
Section 102	Amended by No. 32 of 2012, s. 12
Section 105	Amended by No. 51 of 2012, Sched. 2
Section 111	Amended by No. 4 of 2017, Sched. 1