

## Authorised Version

# Water Legislation Amendment (Water Infrastructure Charges) Act 2011

No. 63 of 2011

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**Authorised Version**



**Victoria**

# **Water Legislation Amendment (Water Infrastructure Charges) Act 2011<sup>†</sup>**

**No. 63 of 2011**

[Assented to 15 November 2011]

**The Parliament of Victoria enacts:**

## **PART 1—PRELIMINARY**

### **1 Purposes**

The main purposes of this Act are—

- (a) to amend the **Water Industry Act 1994**—
  - (i) to apply certain provisions of the Water Charge (Infrastructure) Rules 2010 of the Commonwealth as a law of the State to enable the Essential Services Commission, established under the

**Essential Services Commission Act 2001**, to approve or determine charges for the provision of certain water services in the State; and

- (ii) to enable the Essential Services Commission to apply for accreditation of those arrangements by the Australian Competition and Consumer Commission; and
- (b) to make related and consequential amendments to that Act and other Acts.

## **2 Commencement**

This Act comes into operation on the day after the day on which this Act receives the Royal Assent.

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**PART 2—AMENDMENT OF THE WATER INDUSTRY ACT  
1994**

**3 New section inserted after section 4**

After section 4 of the **Water Industry Act 1994**  
**insert—**

**"4AA Parts 1A and 1B to prevail**

If there is any inconsistency between a  
provision of Part 1A or Part 1B and a  
provision of the **Essential Services  
Commission Act 2001** or the **Water Act  
1989**, the provision of Part 1A or Part 1B  
prevails to the extent of that inconsistency."

See:  
Act No.  
121/1994.  
Reprint No. 6  
as at  
29 February  
2008  
and  
amending  
Act Nos  
15/2008,  
68/2009,  
69/2009,  
6/2010 and  
29/2010.  
LawToday:  
www.  
legislation.  
vic.gov.au

**4 New section inserted after section 4A**

After section 4A of the **Water Industry Act 1994**  
**insert—**

**"4AB Non application to Basin water charges**

- (1) This Part does not apply to any approving or  
determining of a Basin water charge.
- (2) In this section *Basin water charge* has the  
same meaning as in Part 1B."

**5 Application of Essential Services Commission Act  
2001**

- (1) In section 4B(1)(a) of the **Water Industry Act  
1994**, for "this Act" **substitute** "Part 1A of this  
Act".
- (2) Section 4B(3) of the **Water Industry Act 1994** is  
**repealed**.

## 6 Insertion of new Part after Part 1A

After Part 1A of the **Water Industry Act 1994**  
**insert—**

### "PART 1B—APPROVAL OR DETERMINATION OF BASIN WATER CHARGES

#### 4J Interpretation

(1) In this Act—

*accredited arrangements* has the same  
meaning as in the Commonwealth  
Water Charge Rules;

*applied Victorian provisions* means the  
Commonwealth provisions as applied  
under section 4K;

*Basin water charge* means a regulated  
charge for a service in relation to Basin  
water resources provided by a Part 6  
operator or Part 7 operator;

*Basin water resources* has the same meaning  
as *State water resources* has in the  
Commonwealth Water Charge Rules in  
relation to Victoria;

*Commonwealth provisions* has the same  
meaning as *applied provisions* has in  
rule 59(2) of the Commonwealth Water  
Charge Rules;

*Commonwealth Water Charge Rules* means  
the Water Charge (Infrastructure) Rules  
2010 of the Commonwealth;

*Part 6 operator* has the same meaning as in  
the Commonwealth Water Charge  
Rules;

**Part 7 operator** has the same meaning as in the Commonwealth Water Charge Rules;

**regulated charge** has the same meaning as in the Commonwealth Water Charge Rules;

**State Agency** has the same meaning as in the Commonwealth Water Charge Rules.

- (2) Section 3(2) and (3) does not apply to this Part.
- (3) The **Interpretation of Legislation Act 1984** does not apply to the applied Victorian provisions.
- (4) The Acts Interpretation Act 1901 of the Commonwealth applies to the applied Victorian provisions to the same extent that that Act applies to the Commonwealth Water Charge Rules, and as if—
  - (a) that Act, as so applied, were enacted as a law of Victoria; and
  - (b) the applied Victorian provisions were an Act and each rule of the applied Victorian provisions were a section of an Act.

**Note**

See section 5 of the Water Act 2007 of the Commonwealth as to the application of the Acts Interpretation Act 1901 of the Commonwealth.

- (5) The following provisions apply to the applied Victorian provisions—
  - (a) any expressions used in the applied Victorian provisions have the same meaning as in the Water Act 2007 of the Commonwealth and the Water

Regulations 2008 of the  
Commonwealth; and

- (b) the applied Victorian provisions must be read consistently with the Water Act 2007 of the Commonwealth and must be read so as not to exceed the rule making power in section 92 of that Act and any other ancillary rule making powers in that Act.
- (6) If a provision of the applied Victorian provisions would, but for subsection (4) or (5), be construed as exceeding the rule making powers referred to in subsection (5)(b), the provision is taken to have effect to the extent that it does not exceed that rule making power.

**4K Application of Commonwealth provisions**

In respect of Basin water charges, the Commonwealth provisions apply as a law of the State.

**4L Commission is State Agency**

For the purposes of rule 59(1)(b) of the Commonwealth Water Charge Rules and the applied Victorian provisions, the Commission is specified as the State Agency.

**4M Powers of Commission**

The Commission has all the powers that are necessary to perform its functions as a State Agency under the applied Victorian provisions.

**4N Cessation of effect of provisions**

Sections 4K, 4L and 4M do not have effect if this Part is not accredited arrangements.



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**4O Power of Commission to apply for accreditation**

- (1) The Commission may apply to the Australian Competition and Consumer Commission for this Part to be accredited as accredited arrangements.
- (2) In addition to subsection (1), the Commission has the power to do anything necessary for this Part to be accredited as accredited arrangements.

**4P Notification of accreditation etc.**

- (1) If the Australian Competition and Consumer Commission approves this Part as accredited arrangements, within 7 days after that approval, the Commission must publish notice of that approval in the Government Gazette.
- (2) A notice under subsection (1) must include—
  - (a) publication of the Australian Competition and Consumer Commission's decision to approve the arrangements; and
  - (b) the date on which the decision of the Australian Competition and Consumer Commission came into effect.
- (3) If the Australian Competition and Consumer Commission revokes accreditation of this Part as accredited arrangements, within 7 days after that revocation, the Commission must publish notice of that revocation in the Government Gazette.

- (4) A notice under subsection (3) must include—
  - (a) publication of the Australian Competition and Consumer Commission's decision to revoke accreditation of this Part as accredited arrangements; and
  - (b) the date on which the decision of the Australian Competition and Consumer Commission came into effect.
- (5) If accreditation of this Part as accredited arrangements ceases to have effect under the Commonwealth Water Charge Rules, within 7 days after that ceasing to have effect, the Commission must publish notice of that ceasing to have effect in the Government Gazette.
- (6) A notice under subsection (5) must include the date on which the accredited arrangements cease to have effect.

#### **4Q Recovery of Commission's costs**

- (1) The Minister administering the **Essential Services Commission Act 2001** must determine the amount to be contributed by each Part 6 operator or Part 7 operator towards the costs that are incurred or are likely to be incurred by the Commission in the exercise of its powers and the performance of its functions and duties under the applied Victorian provisions.
- (2) The amount that a Part 6 operator or Part 7 operator is to contribute under subsection (1) is payable at the intervals and in the amounts determined by the Minister administering the **Essential Services Commission Act 2001**.

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- (3) The Minister administering the **Essential Services Commission Act 2001** must give notice in writing of any determination made by the Minister under subsection (1) or (2) to a Part 6 operator or Part 7 operator to whom the determination applies.
- (4) The Minister administering the **Essential Services Commission Act 2001** must not make a determination under subsection (1) or (2) unless the Minister has first consulted with the Minister administering this section.

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**PART 3—AMENDMENT OF THE ESSENTIAL SERVICES  
COMMISSION ACT 2001 AND THE WATER ACT 1989**

**7 Functions of the Commission—Essential Services  
Commission Act 2001**

In section 10 of the **Essential Services  
Commission Act 2001**—

(a) in paragraph (l), for "**2007.**" substitute  
"**2007;**";

(b) after paragraph (l) insert—

"(m) if, under Part 1B of the **Water  
Industry Act 1994**, the  
Commonwealth provisions (within the  
meaning of that Part) are applied as a  
law of the State, to perform the  
functions conferred on the Commission  
as the State Agency under those  
provisions."

**8 Insertion of new section after section 10—Essential  
Services Commission Act 2001**

After section 10 of the **Essential Services  
Commission Act 2001** insert—

**"10A Commission's functions in relation to  
particular Basin water charges**

The following provisions do not apply to the  
functions of the Commission referred to in  
section 10(m)—

(a) sections 8, 8A and 26; and

(b) Part 4 (other than sections 37 and 38 to  
the extent necessary for the operation of  
Part 5); and

See:  
Act No.  
62/2001.  
Reprint No. 3  
as at  
1 July 2008  
and  
amending  
Act Nos  
70/2007,  
6/2010 and  
40/2011.  
LawToday:  
www.  
legislation.  
vic.gov.au

(c) Part 7 (other than sections 61 and 64).

**Note**

Parts 3, 3A and 6 do not apply to the Commission's function under section 10(m) because that function does not relate to a regulated industry."

**9 Insertion of definition in Water Act 1989**

**Insert** the following definition in section 3(1) of the **Water Act 1989**—

**"*Essential Services Commission*** means the Essential Services Commission established under the **Essential Services Commission Act 2001**;"

See:  
Act No.  
80/1989.  
Reprint No. 10  
as at  
1 January  
2011  
and  
amending  
Act Nos  
50/2010 and  
29/2011.  
LawToday:  
www.  
legislation.  
vic.gov.au

**10 Objections to tariffs or fees—Water Act 1989**

After section 266(7) of the **Water Act 1989**  
**insert**—

"(8) A person is not entitled to object under subsection (1) to a tariff or the imposing of a fee under a tariff set by an Authority, if the tariff or the fee is a Basin water charge.

(9) In this section—

***Basin water charge*** means a regulated charge for a service in relation to Basin water resources provided by an Authority;

***Basin water resources*** has the same meaning as ***State water resources*** has in the Water Charge (Infrastructure) Rules 2010 of the Commonwealth in relation to Victoria;

*regulated charge* has the same meaning as in the Water Charge (Infrastructure) Rules 2010 of the Commonwealth."

## **11 Objections to required payments—Water Act 1989**

After section 271(4) of the **Water Act 1989**  
**insert—**

"(5) A person is not entitled to object under subsection (1) to a payment the person is required to make under section 268, 269 or 270, if the payment is a Basin water charge.

(6) In this section—

*Basin water charge* means a regulated charge for a service in relation to Basin water resources provided by an Authority;

*Basin water resources* has the same meaning as *State water resources* has in the Water Charge (Infrastructure) Rules 2010 of the Commonwealth in relation to Victoria;

*regulated charge* has the same meaning as in the Water Charge (Infrastructure) Rules 2010 of the Commonwealth."

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**PART 4—REPEAL OF AMENDING ACT**

**12 Repeal of amending Act**

This Act is **repealed** on the first anniversary of its commencement.

**Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## ENDNOTES

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 12 October 2011*

*Legislative Council: 27 October 2011*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Water Industry Act 1994** to apply certain provisions of the Water Charge (Infrastructure) Rules 2010 of the Commonwealth as a law of Victoria to enable the Essential Services Commission to approve or determine charges for the provision of certain water services in the State and to make related and consequential amendments to that Act and other Acts and for other purposes."