



12/06/2019

C/19/6783

Mr Rod Sims
Chairman
GPO BOX 520
MELBOURNE VIC 3001

Dear Mr Sims,

ESSENTIAL SERVICES COMMISSION (VIC) APPLICATION FOR ACCREDITATION

I am writing to apply for accreditation of arrangements for the Essential Services Commission (Victoria) to approve or determine regulated charges of Part 6 operators and Part 7 operators relating to State water resources. This letter covers attachments that contain information relevant to the application as set out in the *Water Charge (Infrastructure) Rules 2010*.

The arrangements to be accredited are set out in the *Water Legislation Amendment (Water Infrastructure Charges) Act 2011 (Vic)*, a copy of which is at Attachment A.

Attachment B addresses the criteria set out in Schedule 4 (Information to be included in an application under Part 9) of the *Water Charge (Infrastructure) Rules 2010*.

At Attachment C is evidence that the application has support of the Head of the Department with responsibility for the Essential Services Commission, the Department of Treasury and Finance. This is included to comply with rule 60 (2)(c) of the *Water Charge (Infrastructure) Rules 2010*. Also at Attachment C is a letter of support from the Head of the Department of Environment, Land, Water and Planning.

I trust this information is sufficient. Your staff can contact Angeline Bilas on angeline.bilas@esc.vic.gov.au or (03) 9032 1383 if they have any queries.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Kate Symons", is written over a large, light blue, wavy watermark that spans the lower right portion of the page.

Kate Symons
Acting Chairperson

ATTACHMENT A – LEGISLATION

**Water Legislation Amendment (Water
Infrastructure Charges) Act 2011
No. 63 of 2011**

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Purposes	1
2 Commencement	2
PART 2—AMENDMENT OF THE WATER INDUSTRY ACT 1994	3
3 New section inserted after section 4	3
4AA Parts 1A and 1B to prevail	3
4 New section inserted after section 4A	3
4AB Non application to Basin water charges	3
5 Application of Essential Services Commission Act 2001	3
6 Insertion of new Part after Part 1A	4
PART 1B—APPROVAL OR DETERMINATION OF BASIN WATER CHARGES	4
4J Interpretation	4
4K Application of Commonwealth provisions	6
4L Commission is State Agency	6
4M Powers of Commission	6
4N Cessation of effect of provisions	6
4O Power of Commission to apply for accreditation	7
4P Notification of accreditation etc.	7
4Q Recovery of Commission's costs	8
PART 3—AMENDMENT OF THE ESSENTIAL SERVICES COMMISSION ACT 2001 AND THE WATER ACT 1989	10
7 Functions of the Commission— Essential Services Commission Act 2001	10
8 Insertion of new section after section 10— Essential Services Commission Act 2001	10
10A Commission's functions in relation to particular Basin water charges	10
9 Insertion of definition in Water Act 1989	11
10 Objections to tariffs or fees— Water Act 1989	11
11 Objections to required payments— Water Act 1989	12

<i>Section</i>	<i>Page</i>
PART 4—REPEAL OF AMENDING ACT	13
12 Repeal of amending Act	13
ENDNOTES	14



Victoria

Water Legislation Amendment (Water Infrastructure Charges) Act 2011[†]

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**

Water Legislation Amendment (Water Infrastructure Charges) Act 2011
No. 63 of 2011

Part 1—Preliminary

s. 2

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.

**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.

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**.

-
- (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.

_____".

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

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

**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

(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."

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**).

Water Legislation Amendment (Water Infrastructure Charges) Act 2011
No. 63 of 2011

Endnotes

EndnoteS

ENDNOTES

ATTACHMENT B – SCHEDULE 4 CRITERIA

4(1) The name and address of the applicant.

Essential Services Commission

Level 37
2 Lonsdale Street
Melbourne Victoria 3000

4(2) The title of the State Act under which the applicant is established or appointed.

The Essential Services Commission Act 2001 (Vic).

4(3) The title of the State Act under which the applied provisions are applied as a law of the State.

Part 1B of the Water Industry Act 1994 (Vic) (WI Act)

4(4) The public purpose for which the applicant is established or appointed.

Whereas section 8 of the *Essential Services Commission Act 2001* (Vic) sets out the Commission's purpose for regulating Victoria's "regulated industries"¹, this purpose will not apply when the Essential Services Commission (ESC) is approving or determining Basin water charges under Part 1B of the *Water Industry Act 1994* in accordance with the Rules. Section 8 of the *Essential Services Commission Act 2001* is expressly disapplied in this circumstance so as to avoid any inconsistency with the ESC's obligation to apply the *Water Charging Objectives and Principles* in Schedule 2 of the *Water Act 2007* (Cth).

10 Functions of the Commission

The functions of the Commission are—

(a) to perform such functions as are conferred by this Act and the relevant legislation under which a regulated industry operates;

¹ Section 8 of the *Essential Services Commission Act 2001* provides as follows:

8 Objective of the Commission

(1) In performing its functions and exercising its powers, the objective of the Commission is to promote the long term interests of Victorian consumers.

(2) Without derogating from subsection (1), in performing its functions and exercising its powers in relation to essential services, the Commission must in seeking to achieve the objective specified in subsection (1) have regard to the price, quality and reliability of essential services.

- (b) to advise the Minister on matters relating to the economic regulation of regulated industries, including reliability issues;
- (c) when requested by the Minister to do so, to conduct an inquiry into any systemic reliability of supply issues related to a regulated industry or other essential service specified by the Minister in the request;
- (d) to conduct inquiries and report under Part 5 on matters relating to regulated industries;
- (e) to make recommendations to the Minister as to whether an industry which provides an essential service should become a regulated industry or whether a regulated industry should continue to be a regulated industry;
- (f) to conduct public education programs—
 - for the purpose of promoting its objectives under this Act and the relevant legislation; and
 - in relation to significant changes in the regulation of a regulated industry;
- (g) to advise the Minister in relation to any other matter referred to the Commission by the Minister;
- (h) to administer this Act;
- (i) to perform the functions conferred on the Commission by or under Part VI of the Transport Act 1983;
- (j) to perform the functions conferred on the Commission by the Victorian Renewable Energy Act 2006;
- (k) to perform the functions conferred on the Commission by the Victorian Energy Efficiency Target Act 2007;
- (l) to perform the functions conferred on the Commission by the Accident Towing Services Act 2007;
- (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".

4(5) A statement as to whether the criteria set out in Schedule 5 are satisfied.

The criteria and a statement setting out how they are satisfied are below.

Schedule 5 Criteria for accreditation of arrangements

5(1) There must be a law of the State:

- (a) under which the applied provisions are a law of the State; and**
- (b) that includes provision to the effect that the applied provisions operate in the State only during such period or periods as an accreditation of arrangements under Part 9 has effect.**

The "applied provisions" are a law of the State pursuant to section 4K of the *Water Industry Act 1994* (Vic).

Section 4K will not apply unless the ESC obtains accreditation for arrangements under Part 9 of the *Water Charge (Infrastructure) Rules 2010* (Cth) (refer to section 4N of the *Water Industry Act 1994* (Vic)). Therefore the applied provisions will operate in Victoria only during such period or periods as an accreditation of arrangements under Part 9 of the Rules has effect.

Further, Section 10(m) of the ESC Act provides that the Commission's functions under the applied provisions apply only where the accredited arrangements have effect.

5(2) The functions of the State Agency must include the functions conferred on a Regulator under the applied provisions.

The functions of the ESC include the functions conferred on a Regulator under the "applied provisions" as set out in the following sections.

- (a) Section 10 of the *Essential Services Commission Act 2001* (Vic): "the functions of the Commission are- ...
 - (a) ... (l)....
 - (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".
- (b) Section 4M of the *Water Industry Act 1994* (Vic): "the Commission has all the powers that are necessary to perform its functions as a State Agency under the applied Victorian provisions", where "applied Victorian provisions" means the applied provisions.

5(3) The State Agency must not be subject to the direction or control of a Minister of the State in carrying out its functions under the applied provisions.

Section 12 of the *Essential Services Commission Act 2001* (Vic) will apply when the ESC is carrying out its functions under the applied provisions. Section 12 provides that-

“Except as provided by or under this Act or any other Act, the Commission is not subject to the direction or control of the Minister”

There is not a provision under any of the Acts relevant to the ESC's powers and functions to approve or determine Basin water charges that would make the ESC subject to the direction or control of a Minister in carrying out its functions under the "applied provisions".

5(4) The State Agency must not be, or have a relevant interest in, a Part 6 operator or a Part 7 operator.

The ESC is not a Part 6 or Part 7 operator as it does not provide water infrastructure services. The ESC also does not have a "relevant interest" in such an operator.

4(6) The arrangements for which the applicant seeks accreditation, being arrangements for approving or determining regulated charges of Part 6 operators and Part 7 operators under the applied provisions.

The arrangements for which the Essential Services Commission is applying for accreditation are those prescribed in Part 1B of the *Water Industry Act 1994*, and in particular, section 4K of that Act.

[†] *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 purpose

ATTACHMENT C – LETTERS OF SUPPORT



Department of Treasury and Finance

1 Treasury Place
Melbourne Victoria 3002 Australia
Telephone: +61 3 9651 5111
dtf.vic.gov.au
DX210759

Mr Rod Sims
Chairman
Australian Competition and Consumer Commission
GPO BOX 520
MELBOURNE VIC 3001

Dear Mr Sims

ESSENTIAL SERVICES COMMISSION'S APPLICATION FOR ACCREDITATION FROM THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

The Department of Treasury and Finance supports the accreditation of Part 1B of the *Water Industry Act 1994 (Vic)* by the Australian Competition and Consumer Commission (ACCC), to enable the Essential Services Commission (ESC) to continue to undertake pricing determinations for rural water corporations in Northern Victoria in accordance with the *Water Charge (Infrastructure) Rules 2010 (Cth)*.

I am pleased that the ACCC and ESC are working cooperatively on this matter to ensure the continuation of consistent water regulation across all Victorian regions.

Yours sincerely

David Martine
Secretary

5/6/2019





Department of Environment,
Land, Water and Planning

PO Box 500, East Melbourne,
Victoria 8002 Australia
delwp.vic.gov.au

Mr Rod Sims
Chair
Australian Competition and Consumer Commission
GPO BOX 520
MELBOURNE VIC 3001

Ref: SBR010373



Dear Mr Sims *Rod*

**ESSENTIAL SERVICES COMMISSION'S APPLICATION FOR ACCREDITATION OF THE
VICTORIAN LEGISLATIVE FRAMEWORK**

The Department of Environment, Land, Water and Planning (DELWP) supports the accreditation of Part 1B of the *Water Industry Act 1994* by the Australian Competition and Consumer Commission (ACCC), to enable the Essential Services Commission (ESC) to continue to undertake pricing determinations for rural water corporations in Northern Victoria in accordance with the *Water Charge (Infrastructure) Rules 2010*.

DELWP endorse the ESC continuing to act as a single economic regulator of the water sector in Victoria. I understand that DELWP has been working cooperatively with officers of the ACCC, ESC and the Department of Agriculture and Water Resources on this matter.

I look forward to receiving notice from you that the ESC has been successful in its application for the accreditation of the Victorian legislative arrangements under the *Water Charge (Infrastructure) Rules 2010*.

Yours sincerely

John Bradley
Secretary

25/5/19