
WATER INDUSTRY ACT 1994
WATER INDUSTRY REGULATORY ORDER 2003

The Governor in Council makes the following Order:

GENERAL

1. Title

This **Order** is called the Water Industry Regulatory Order 2003.

2. Commencement

This **Order** comes into operation on 1 January 2004 and remains in force until it is revoked.

3. Authorising Provision

This **Order** is made under section 4D(1)(a) of the **Act**.

4. Purpose

The purpose of this **Order** is to provide a framework for economic regulation by the **Commission** for services provided by the **regulated water industry** by:

- (a) specifying which goods and services are to be prescribed goods and services in respect of which the **Commission** has the power to regulate prices;
- (b) declaring which goods and services are to be declared goods and services in respect of which the **Commission** has the power to regulate standards and conditions of service and supply;
- (c) specifying the approach to be adopted by the **Commission** in regulating the price of prescribed goods and services;
- (d) specifying particular matters to which the **Commission** must have regard in exercising its powers and functions under this **Order**;
- (e) conferring on the **Commission** certain functions in relation to monitoring, performance reporting and auditing; and
- (f) conferring on the **Commission** certain functions in relation to dispute resolution.

5. Definitions

In this **Order**, unless the contrary intention appears the words and phrases have the meanings given to them in Schedule 1.

COVERAGE

6. Prescribed Services and Declared Services

The following services supplied by or within the **regulated water industry** are specified as prescribed services in respect of which the **Commission** has the power to regulate price and are declared services in respect of which the **Commission** has the power to regulate standards and conditions of service and supply:

- (a) **retail water services;**
- (b) **retail recycled water services;**
- (c) **retail sewerage services;**
- (d) **storage operator and bulk water services;**
- (e) **bulk sewerage services;**
- (f) **bulk recycled water services;**
- (g) **metropolitan drainage services;**
- (h) **irrigation drainage services;**
- (i) **connection services;**
- (j) services to which **developer charges** apply; and
- (k) **diversion services.**

Nothing in this **Order** is to be taken as precluding services that come within one of the categories of service identified above being regulated, whether as to price, standards and conditions of service and supply, in a different manner from either other services that come within that same category or other services that come within a different category.

REGULATORY PERIOD

7. Regulatory Period

Except in the case of the first **regulatory period**, which shall be the 3 year period commencing on 1 July 2005, the **Commission** must set the term of each **regulatory period**.

REGULATORY APPROACH

8. Decision in relation to prices

Before the commencement of a **regulatory period**, the **Commission** must:

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- (a) approve all of the prices which a **regulated entity** may charge for **prescribed services**, or the manner in which such prices are to be calculated or otherwise determined, as set out in the **regulated entity's Water Plan**, until the commencement of the next **regulatory period**; or
 - (b) specify the prices which a **regulated entity** may charge for **prescribed services**, or the manner in which such prices are to be calculated or otherwise determined, until the commencement of the next **regulatory period**.

For the avoidance of doubt:

- (c) a decision of the **Commission** under paragraph (a) or (b) is a determination for the purposes of the **ESC Act**.

9. Approval of prices

The **Commission** must give the approval referred to in clause 8(a) if it is satisfied that the prices which the **regulated entity** may charge for **prescribed services** or the manner in which they are to be calculated or otherwise determined (as set out in the **Water Plan**):

- (a) were developed in accordance with the **Procedural Requirements**; and
- (b) comply with the **Regulatory Principles**.

10. Specifying prices

The **Commission** may only specify prices, or the manner in which such prices are to be calculated or otherwise determined, under clause 8(b) if a **regulated entity**:

- (a) fails to deliver to the **Commission** a **Water Plan** within the time specified for such delivery in the **Statements of Obligations** that has been issued to that **regulated entity**; or
 - (b) after considering the **Water Plan** and any variations to it made after the issue of the Commission's draft decision in relation to the **Water Plan**, the Commission is not satisfied that the prices which the regulated entity may charge for prescribed services or the manner in which they are to be calculated or otherwise determined:
 - (i) were developed in accordance with the **Procedural Requirements**; and
 - (ii) comply with the **Regulatory Principles**.
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11. Draft decision

Before making a decision under clause 8, the **Commission** must issue a draft decision which either:

- (a) proposes to give the approval referred to in clause 8(a); or
- (b) proposes to refuse to give the approval referred to in clause 8(a) and specifies the reasons for the **Commission's** proposed refusal (which may include suggested amendments to, or action to be taken in respect of, the **Water Plan** that, if adopted or taken, may result in the **Commission** giving that approval) and the date by which a **regulated entity** must resubmit a revised **Water Plan** or undertake such action as to ensure compliance.

12. Information

In order to be satisfied that prices, or the manner in which such prices are to be calculated or otherwise determined:

- (a) were developed in accordance with the **Procedural Requirements**; and
- (b) comply with the **Regulatory Principles**,

the **Commission** may require the regulated entity to provide additional information in support of its **Water Plan**.

PROCEDURAL REQUIREMENTS AND REGULATORY PRINCIPLES

13. Procedural Requirements

In order to be satisfied that prices, or the manner in which such prices are to be calculated or otherwise determined, have been developed in accordance with the **Procedural Requirements**, as required by this **Order**, the Commission must be satisfied that the regulated entity has observed the procedural requirements as set out in the **Statement of Obligations**.

14. Regulatory Principles

In order to be satisfied that prices, or the manner in which such prices are to be calculated or otherwise determined, comply with the **Regulatory Principles**, as required by this **Order**, the Commission must be satisfied that:

- (a) the prices contained in the **Water Plan** as those which the **regulated entity** proposes it be permitted to charge for **prescribed services** over the term of the **Water Plan**, or the manner in which the **Water Plan** proposes that such prices are to be calculated or otherwise determined, must be such as to:
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- (i) provide for a sustainable revenue stream to the **regulated entity** that nonetheless does not reflect monopoly rents and or inefficient expenditure by the **regulated entity**;
 - (ii) allow the **regulated entity** to recover its operational, maintenance and administrative costs;
 - (iii) allow the **regulated entity** to recover its expenditure on renewing and rehabilitating existing assets;
 - (iv) allow the **regulated entity** to recover a rate of return on assets as at 1 July 2004 that are valued in a manner determined by, or at an amount otherwise specified by, the **Minister** at any time before 1 July 2004;
 - (v) allow the **regulated entity** to recover a rate of return on investments made after 1 July 2004 to augment existing assets or construct new assets;
 - (vi) provide incentives for the sustainable use of Victoria's water resources by providing appropriate signals to water users about:
 - (A) the costs of providing services, including costs associated with future supplies and periods of peak demands and or restricted supply; and
 - (B) choices regarding alternative supplies for different purposes;
 - (vii) take into account the interests of customers of the **regulated entity**, including low income and vulnerable customers;
 - (viii) provide the **regulated entity** with incentives to pursue efficiency improvements and to promote the sustainable use of Victoria's water resources; and
 - (ix) enable customers or potential customers of the **regulated entity** to readily understand the prices charged by the **regulated entity** for **prescribed services**, or the manner in which such prices are to be calculated or otherwise determined;
- (b) the expenditure forecasts contained in the **Water Plan** must reflect the efficient delivery of the proposed outcomes contained in the **Water Plan** and take into account a planning horizon that extends beyond the term of the **Water Plan**.
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REGULATION OF SERVICE QUALITY

15. Specifying standards and conditions

The **Commission** may specify standards and conditions of services and supply with which a **regulated entity** is obliged to comply in connection with the provision by it of **declared services**:

- (a) by approving standards and conditions of services and supply which a **regulated entity** has included in its **Water Plan**; or
- (b) by specifying standards and conditions of services and supply in a **Code** issued under section 4F of the Act; or
- (c) by any combination of the means specified in paragraphs (a) and (b).

MONITORING, PERFORMANCE REPORTING AND AUDITING

16. Performance Monitoring and Reporting

The **Commission** has the function of monitoring and reporting publicly on the performance of the **regulated water industry**.

17. Auditing

The **Commission** has the function of carrying out audits in relation to:

- (a) the compliance of **regulated entities** with the standards and conditions of service and supply specified by the **Commission** in any Code or set out in their **Water Plans**, and the systems and processes established by the **regulated entity** to ensure such compliance;
- (b) the reliability and quality of information reported by **regulated entities** to the **Commission** and the conformity of that information with any specification issued by the **Commission**; and
- (c) the compliance of **regulated entities** with obligations imposed in any **Statement of Obligations** issued to them in respect of the management of their assets.

In the case of any such audits:

- (d) the **Commission** may decide the scope and frequency of such audits provided that such audits are not conducted more frequently than once in any given **financial year**;
 - (e) conducted pursuant to paragraph (c), the **Commission** must include in that audit any matters requested by the **Minister**.
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18. Audits requested by Minister

The **Minister** may request the **Commission** to audit the compliance of a **regulated entity** with such obligations as are identified by the **Minister** and as are imposed on that **regulated entity** under the **Statement of Obligations** that is issued to it, in which case the **Commission** must carry out that audit in accordance with that request.

19. Publication of audit results

The **Commission** must publicly report on the results of all audits conducted under clause 17 or 18.

DISPUTE RESOLUTION

20. Disputes between regulated entities

In such circumstances as the **Commission** determines, the **Commission** has the function of facilitating the resolution of a dispute in relation to prices and standards and conditions of service and supply provided for in an agreement between two **regulated entities** to supply **storage operator and bulk water services, bulk sewerage services and bulk recycled water services**. The **Commission** may carry out this function by requiring mediation or arbitration or by any other means the **Commission** considers appropriate.

Dated: 16 December 2003

Responsible Minister:

John Thwaites
Minister for Water

Clerk of the Executive Council

SCHEDULE 1

DEFINITIONS

In this **Order**:

"**Act**" means the Water Industry Act 1994;

"**business day**" means a day on which banks are open for general banking business in Melbourne, not being a Saturday or a Sunday;

"**bulk recycled water service**" means a service provided by **Melbourne Water** in connection with the provision of a supply of recycled water;

"**bulk sewerage service**" means a service provided by **Melbourne Water** in connection with the conveyance, treatment and disposal of wastewater for a **regulated entity**;

"**Code**" means a code under section 4F of the **Act**;

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

"**connection service**" means the connection of a serviced property to a water supply system or sewerage system;

"**declared services**" means the services described in clause 6 of this **Order**;

"**developer charges**" means:

- (a) contributions to the cost of works imposed under sections 28 and 29 of the **Act**;
- (b) contributions to the costs of works imposed under Division 6 of Part 13 of the **Water Act 1989**; and
- (c) contributions to the cost of drainage works imposed under section 280 of the **Melbourne and Metropolitan Board of Works Act 1958**;

"**diversion service**" means a service provided by a **regulated entity** in connection with the management, extraction or use of groundwater or surface water;

"**ESC Act**" means the Essential Services Commission Act 2001;

"**financial year**" means a year ending 30 June;

"**irrigation drainage services**" means a service provided by a **Rural Water Authority** in connection with the removal and disposal of run-off from irrigation;

"**Melbourne Water**" means the Corporation as that term is defined in Melbourne Water Corporation Act 1992;

"**metropolitan drainage service**" means a service provided by **Melbourne Water** in connection with the performance of its functions under Part X of the Melbourne and Metropolitan Board of Works Act 1958;

"**metropolitan retail water company**" means:

- (a) City West Water Limited (ACN 066 902 467);
- (b) South East Water Limited (ACN 066 902 547); or
- (c) Yarra Valley Water Limited (ACN 066 902 501);

"**Minister**" means the Minister administering the **Act**;

"**Order**" means this Water Industry Regulatory Order 2003;

"**prescribed services**" means the services described in clause 6 of this **Order**;

"**Procedural Requirements**" means the procedures referred to in clause 13 of this **Order**;

"**Regional Urban Water Authority**" has the meaning given in section 4A of the **Act**;

"**regulated entity**" has the meaning given in section 4A of the **Act**;

"**regulatory period**" means a period over which a decision of the **Commission** under clause 8 of this **Order** is to apply;

"**Regulatory Principles**" means the principles set out in clause 14 of this **Order**;

"**regulated water industry**" has the meaning given in section 4A of the **Act**;

"**retail recycled water service**" means a service provided by a **regulated entity** in connection with the provision of a supply of recycled water;

"**retail sewerage service**" means a service provided by a **metropolitan retail water company** or by a **Regional Urban Water Authority** in connection with the removal, treatment and disposal of sewage and **trade waste**;

"**retail water service**" means a service provided by a **regulated entity** in connection with the provision of a supply of water to a person other than a **regulated entity**;

"**Rural Water Authority**" has the meaning given in section 4A of the **Act**;

"**Statement of Obligations**" means a Statement of Obligations issued by the **Minister** under section 4I(2) or section 8(1) of the **Act**;

"**storage operator and bulk water service**" means a service provided by a **regulated entity** in connection with the provision of a supply of water to a **regulated entity**;

"**trade waste**" means any waterborne waste (other than sewage) which is suitable, according to the criteria of a **regulated entity**, for discharge into the **regulated entity's** sewerage system;

"**Water Plan**" means a water plan that is required to be delivered to the **Commission** by a **regulated entity** under a **Statement of Obligations**.
