

WATER INDUSTRY ACT 1994

WATER INDUSTRY REGULATORY ORDER 2014

ORDER IN COUNCIL

The Lieutenant-Governor, as the Governor's Deputy, with advice of the Executive Council, under section 4D(1) of the **Water Industry Act 1994** makes the following Order:

GENERAL

1. Title

This **Order** is called the Water Industry Regulatory Order 2014.

2. Commencement

(a) This **Order** comes into operation on the date on which it is published in the Government Gazette and remains in force until it is revoked.

(b) The Water Industry Regulatory Order 2012 is revoked.

3. Transitional

Notwithstanding clause 2(b), the provisions of the Water Industry Regulatory Order 2012 continue in effect in respect of any determination made by the **Commission** under clause 8 of that Order prior to the commencement date of this **Order**, until the expiry of the period to which that determination applies.

4. Authorising provision

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

5. Purpose of Order

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.

6. Definitions

In this **Order**, unless the contrary intention appears, the words and phrases appearing in bold type have the following meanings:

Act means the Water Industry Act 1994;

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**;

Charter of Consultation and Regulatory Practice means the Charter of Consultation and Regulatory Practice developed and published by the **Commission** under section 14 of the **ESC Act**;

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 services described in clause 7 of this **Order**;

developer charges means:

- (a) contributions to the costs of works imposed under Division 6 of Part 13 of the **Water Act 1989**;
- (b) contributions to the cost of works imposed under section 196 and 197 of the **Water Act 1989**;

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 Melbourne Water Corporation within the meaning of the **Water Act 1989**;

metropolitan waterways and drainage service means a service provided by **Melbourne Water** in connection with the performance of its functions under Part 10 of the **Water Act 1989**;

metropolitan water corporation means:

- (a) City West Water Corporation;
- (b) South East Water Corporation; or
- (c) Yarra Valley Water Corporation;

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

Order means this Water Industry Regulatory Order 2014;

prescribed services means the services described in clause 7 of this **Order**;

price determination means a determination made by the **Commission** in respect of a **regulated entity** under clause 10 of this **Order**;

price submission means a proposal that is delivered to the **Commission** by a **regulated entity** in accordance with guidance provided by the **Commission** to the **regulated entity** under 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 **price determination** made by the **Commission** under clause 10 of this **Order** is to apply;

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 water corporation** 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) 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.

COVERAGE

7. Prescribed services and declared services

- (a) The following services supplied by or within the **regulated water industry** are specified as **declared services** in respect of which the **Commission** has the power to regulate standards and conditions of service and supply:
- (i) **retail water services**;
 - (ii) **retail recycled water services**;
 - (iii) **retail sewerage services**;
 - (iv) **storage operator and bulk water services**;

- (v) **bulk sewerage services;**
 - (vi) **bulk recycled water services;**
 - (vii) **metropolitan waterways and drainage services;**
 - (viii) **irrigation drainage services;**
 - (ix) **connection services;**
 - (x) services to which **developer charges** apply; and
 - (xi) **diversion services.**
- (b) 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 prices:
- (i) **retail water services;**
 - (ii) **retail recycled water services;**
 - (iii) **retail sewerage services;**
 - (iv) **storage operator and bulk water services;**
 - (v) **bulk sewerage services;**
 - (vi) **bulk recycled water services;**
 - (vii) **metropolitan waterways and drainage services;**
 - (viii) **irrigation drainage services;**
 - (ix) **connection services;**
 - (x) services to which **developer charges** apply; and
 - (xi) **diversion services.**
- (c) Nothing in this **Order** is to be taken as precluding services that come within one of the categories of service identified in paragraphs (a) and (b) being regulated, whether as to price or standards and conditions of service and supply, in a different manner from any other service that comes within that same category or other services that come within a different category.

OBJECTIVE FOR REGULATION

8. Objectives

- (a) The objectives of the **Commission** when performing its functions and exercising its powers in relation to the **regulated water industry** are those set out in section 8 of the **ESC Act** and section 4C of the **Act**.
- (b) In seeking to achieve these objectives the **Commission** must have regard to the matters in section 8A of the **ESC Act** and must also have regard to, and place particular emphasis on, the following matters:
 - (i) the promotion of efficient use of **prescribed services** by customers;

- (ii) the promotion of efficiency in **regulated entities** as well as efficiency in, and the financial viability of, the **regulated water industry**; and
- (iii) the provision to **regulated entities** of incentives to pursue efficiency improvements.

REGULATION OF PRICES

9. Regulatory period

The **Commission** must set the term of each **regulatory period** that commences on or after the commencement date of this **Order**.

10. Price determinations

- (a) Before the commencement of a **regulatory period**, the **Commission** must make a **price determination** which determines the maximum prices that a **regulated entity** may charge for **prescribed services**, or the manner in which the **regulated entity's** prices are to be calculated, determined or otherwise regulated, during the **regulatory period**.
- (b) A **price determination** has effect as provided in section 35 of the **ESC Act**.
- (c) For the avoidance of doubt, a **price determination** made by the **Commission** under paragraph (a) is a determination for the purposes of the **ESC Act**.

11. Matters to have regard to when making a price determination

When making a **price determination**, the **Commission** must have regard to:

- (a) the objectives specified in clause 8;
- (b) the matters specified in section 33(3) of the **ESC Act**;
- (c) the matters specified in the **Commission's** guidance issued under clause 13; and
- (d) the following pricing principles, namely that the prices that a **regulated entity** may charge for **prescribed services**, or the manner in which the **regulated entity's** prices are to be calculated, determined or otherwise regulated, should:
 - (i) enable customers or potential customers of the **regulated entity** to easily understand the prices charged by the **regulated entity** for **prescribed services** or the manner in which such prices are calculated, determined or otherwise regulated;
 - (ii) provide signals about the efficient costs of providing **prescribed services** to customers (either collectively or to an individual customer or class of customers) while avoiding price shocks where possible; and
 - (iii) take into account the interests of customers of the **regulated entity**, including low income and vulnerable customers.

12. Approach, methodology and manner of regulation

- (a) In making a **price determination** the **Commission** must adopt an approach and methodology that is consistent with section 33(2) of the **ESC Act** and this **Order**.

- (b) A **price determination** may determine the maximum prices that a **regulated entity** may charge for **prescribed services**, or the manner in which the **regulated entity's** prices are to be calculated, determined or otherwise regulated, in a manner consistent with section 33(5) of the **ESC Act** and this **Order**.

13. Commission guidance and price submission

- (a) Before making a **price determination** and following consultation, including with the relevant **regulated entity**, the **Commission** must provide guidance to the **regulated entity** setting out:
 - (i) the manner in which the **Commission** proposes to regulate the prices which the **regulated entity** may charge for **prescribed services** for the **regulatory period** consistent with section 33(5) of the **ESC Act** and this **Order**;
 - (ii) the approach and methodology which the **Commission** proposes to adopt to assess a **price submission** and make a **price determination** for the **regulatory period** consistent with section 33(2) of the **ESC Act** and this **Order**;
 - (iii) the **Commission's** expectations of the nature and scope of matters to be addressed by the **regulated entity** in its **price submission**;
 - (iv) the **Commission's** expectations regarding customer consultation by the **regulated entity** in developing its **price submission**;
 - (v) the **Commission's** expectations of the information required to be provided by the **regulated entity** to enable the **Commission** to make a **price determination**;
 - (vi) the timing and processes the **Commission** proposes to follow in making a **price determination** consistent with section 35 of the **ESC Act** and the **Commission's Charter of Consultation and Regulatory Practice**;
 - (vii) the date by which the **regulated entity** is to deliver its **price submission** to the **Commission**; and
 - (viii) any other matter that the **Commission** considers should be included in the guidance provided to the **regulated entity** or in the **regulated entity's price submission**.
- (b) The **Commission** may at any time vary or add to the guidance provided to the relevant **regulated entity** following consultation, including with the **regulated entity**.

14. Approach for making a price determination

- (a) In making a **price determination** the **Commission** may either:
 - (i) approve the maximum prices the **regulated entity** may charge for **prescribed services**, or the manner in which the **regulated entity's** prices are to be calculated, determined or otherwise regulated, as proposed by the **regulated entity** in its **price submission**; or
 - (ii) specify the maximum prices the **regulated entity** may charge for **prescribed services**, or the manner in which the **regulated entity's** prices are to be calculated, determined or otherwise regulated.

- (b) The **Commission** may only specify the maximum prices, or the manner in which prices are to be calculated, determined or otherwise regulated, if:
 - (i) the **price submission** of the **regulated entity** does not, in the **Commission's** opinion, comply with the guidance provided by the **Commission** under clause 13 or have adequate regard for the matters specified in clause 11; or
 - (ii) the **regulated entity** failed to submit a **price submission** to the **Commission** within the time period specified for this by the **Commission**.

15. Information

- (a) The **Commission** may at any time require a **regulated entity** to provide information in relation to any matter relevant to the making of a **price determination**.
- (b) In making a **price determination**, the **Commission** may make reasonable assumptions, based on the best information available to the **Commission**, if in respect of any matter relevant to the **price determination**, the **regulated entity**:
 - (i) does not provide information to the **Commission** in accordance with an information request from the **Commission** or does not do so within the period specified by the **Commission**; or
 - (ii) provides information that the **Commission** considers is insufficient or inadequate when compared to the information requested by the **Commission**.

16. Draft decision

- (a) Subject to paragraph (c), before making a **price determination** the **Commission** must issue a draft decision and publish a notice on its Internet site which comprises:
 - (i) a copy of the draft decision;
 - (ii) the reasons for the draft decision; and
 - (iii) an invitation to interested parties to make submissions to the **Commission** in relation to the draft decision before a date specified in the notice,and must otherwise consult on the draft decision in accordance with its **Charter of Consultation and Regulatory Practice**.
- (b) The **Commission** must only make a **price determination** after considering submissions received in response to the draft decision.
- (c) The **Commission** may vary an existing **price determination** without following the process set out in paragraphs (a) and (b) if the **Commission**, after consulting with the relevant **regulated entity** on the proposed variation, considers that:
 - (i) the variation is not sufficiently material to warrant that process being followed; or
 - (ii) the need for the variation is sufficiently urgent to warrant that process not being followed.

If the **Commission** decides not to follow the process set out in paragraphs (a) and (b) it must provide reasons for this decision and must make this available to interested and affected parties.

REGULATION OF SERVICE QUALITY

17. Specifying standards and conditions

The **Commission** may specify standards and conditions of service and supply with which a **regulated entity** is obliged to comply in connection with the provision by it of **declared services** by specifying standards and conditions of service and supply in a **Code** issued under section 4F of the **Act**.

MONITORING, PERFORMANCE REPORTING AND AUDITING

18. Performance monitoring and reporting

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

19. 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 **price submission**, 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**.

20. Audits requested by the 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.

21. Publication of audit results

The **Commission** must publicly report on the results of all audits conducted under clause 19 or 20.

DISPUTE RESOLUTION

22. 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:

Responsible Minister:

PETER WALSH MLA

Minister for Water

Clerk of the Executive Council