

Authorised Version No. 012
Safe Drinking Water Act 2003

No. 46 of 2003

Authorised Version incorporating amendments as at
10 February 2013

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY MATTERS

1 Purpose and outline

- (1) The purpose of this Act is to make provision for the supply of safe drinking water.
- (2) In outline this Act—
 - (a) requires water suppliers and water storage managers to prepare and implement plans to manage risks in relation to drinking water and some types of non-potable water; and
 - (b) provides for the auditing of those plans by approved auditors; and
 - (c) requires water suppliers to ensure that the drinking water they supply meets quality standards specified by the regulations; and
 - (d) requires water suppliers to disclose to the public information concerning the quality of drinking water; and
 - (e) provides for the variation, after community consultation, of water quality standards that relate only to aesthetic factors; and

S. 1(2)(f)
amended by
No. 29/2010
s. 70(1).

- (f) requires the reporting of known or suspected contamination of drinking water to the Secretary to the Department of Health; and
- (g) empowers the Secretary to enforce this Act.
- (3) Subsection (2) is intended only as a guide to readers as to the general scheme and effect of this Act.

2 Commencement

This Act comes into operation on 1 July 2004.

3 Definitions

In this Act—

approved auditor means a person approved to conduct risk management plan audits under section 13;

authorised officer means a person who holds an appointment as an authorised officer under section 48;

council means a municipal council;

drinking water is water that is intended for human consumption or for purposes connected with human consumption, such as the preparation of food or the making of ice for consumption or for the preservation of unpackaged food, whether or not the water is used for other purposes;

regulated water is water that is the subject of a declaration made by the Minister under section 6;

retention period means a period of 60 days after the seizure of a thing under this Act;

risk management plan has the meaning set out in section 9;

risk management plan audit has the meaning set out in section 10;

Secretary means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department of Health;

S. 3 def. of *Secretary* substituted by No. 29/2010 s. 70(2).

water quality standard means a quality standard specified for drinking water by regulations made for the purposes of section 17;

water storage manager means—

- (a) the Melbourne Water Corporation constituted under the **Water Act 1989**;
- (b) a water corporation within the meaning of the **Water Act 1989** (other than the Melbourne Water Corporation constituted under that Act) that supplies water to a water supplier;
- (c) any other person or body declared by the regulations to be a storage manager for the purposes of this Act;

S. 3 def. of *water storage manager* amended by Nos 85/2006 s. 173(Sch. 1 item 11.1), 17/2012 s. 95(a).

water supplier means any of the following that supplies drinking water or regulated water to the public—

S. 3 def. of *water supplier* amended by No. 17/2012 s. 95(b).

* * * * *

- (b) an authority within the meaning of the **Water Act 1989**;
- (c) Parks Victoria established under the **Parks Victoria Act 1998**;
- (d) an Alpine Resort Management Board established under the **Alpine Resorts (Management) Act 1997**;
- (e) any other person or body declared by the regulations to be a water supplier for the purposes of this Act;

water supply premises means any premises that has been, is being, or is to be, used in connection with the supply, storage, treatment, transport, harvesting, sale or analysis of drinking water, other than a premises that only stores or treats drinking water for the purposes of those using the premises.

4 *Supply includes to release water*

- (1) For the purposes of this Act, a water storage manager also supplies water to a water supplier if the water storage manager—
 - (a) releases water to the water supplier; or
 - (b) permits the water supplier to take water from the water storage.
- (2) For the purposes of this Act, a water storage manager also supplies water to a water supplier if—
 - (a) the water supplier has a right to take water from the water storage or from any point downstream of the water storage; and
 - (b) the water storage manager is aware that the water supplier may exercise that right.

5 *Application*

Nothing in this Act applies—

- (a) to the supply of water for irrigation purposes; or
- (b) to the supply of water by a proprietor of prescribed accommodation within the meaning of Division 2 of Part 6 of the **Public Health and Wellbeing Act 2008** to such accommodation; or
- (c) to the supply of packaged drinking water.

S. 5(b)
amended by
No. 46/2008
s. 285(1).

6 Declaration concerning regulated water

- (1) The Minister may, by notice published in the Government Gazette, declare any water that is not drinking water to be regulated water for the purposes of this Act.
 - (2) The Minister may only make a declaration in relation to particular water if the Minister is satisfied that the water may be supplied to the public in circumstances in which it may be mistaken as being drinking water.
 - (3) In making a declaration, the Minister may identify the water that is the subject of the declaration by reference to its source, its method of supply, its composition or in any other way the Minister considers to be appropriate.
-

PART 2—RISK MANAGEMENT PLANS

Division 1—Requirement to have plan

7 Water suppliers must prepare, implement and review risk management plans

- (1) A water supplier must—
- (a) prepare a risk management plan in relation to its supply of drinking water and regulated water to the public; and
 - (b) implement the plan and comply with any requirements set out in the plan; and
 - (c) keep the plan under continuous review with a view to updating and improving it; and
 - (d) revise any aspect of the plan that is found, on review, to need revision.

Note

Section 9 sets out what a risk management plan is, and what it must contain.

- (2) A water supplier must comply with subsection (1)—
- (a) in the case of a person who was a water supplier immediately before 1 July 2004, on or before 1 July 2005; and
 - (b) in any other case, within 12 months after the date the person becomes a water supplier.

8 Water storage managers must prepare, implement and review risk management plans

- (1) A water storage manager must—
- (a) prepare a risk management plan in relation to its supply of water to a water supplier; and
 - (b) implement the plan and comply with any requirements set out in the plan; and

- (c) keep the plan under continuous review with a view to updating and improving it; and
- (d) revise any aspect of the plan that is found, on review, to need revision.

Note

Section 9 sets out what a risk management plan is, and what it must contain.

- (2) A water storage manager must comply with subsection (1)—
 - (a) in the case of a person who was a water storage manager immediately before 1 July 2004, on or before 1 July 2005; and
 - (b) in any other case, within 12 months after the date the person becomes a water storage manager.
- (3) The Secretary may, by notice in writing, exempt a water storage manager from having to comply with subsection (1) with respect to a particular water storage for a specified period.
- (4) The Secretary may, at any time, impose conditions in relation to an exemption.
- (5) If the Secretary imposes a condition in relation to an exemption, the exemption has no effect during any period in which the condition is not being complied with.
- (6) The Secretary may renew an exemption.

9 Risk management plan

- (1) A risk management plan in relation to the supply of water is a document—
 - (a) that contains a detailed description of the system of supply; and

-
- (b) that identifies the risks to the quality of the water and the risks that may be posed by the quality of the water; and
 - (c) that assesses those risks; and
 - (d) that sets out the steps to be taken to manage those risks (including the development and implementation of preventative strategies); and
 - (e) that contains any other matters required by the regulations.
- (2) A risk management plan must address any risks specified in the regulations.
 - (3) A risk management plan does not need to identify, or to make any provision in respect of, any risk in respect of which provision is required to be made in a risk management plan under section 31 of the **Terrorism (Community Protection) Act 2003**.

Division 2—Audits

10 Risk management plan audit

- (1) A risk management plan audit is an audit by an approved auditor in relation to the risk management plan to determine—
 - (a) whether, in the case of a water supplier, the water supplier has complied with the obligations imposed by section 7(1) during the audit period;
 - (b) whether, in the case of a water storage manager, the water storage manager has complied with the obligations imposed by section 8(1) during the audit period.

-
- (2) In conducting a risk management plan audit, the auditor must inspect all the documents that are specified by the regulations for the purposes of this section.

11 Secretary may require risk management plan audit

- (1) The Secretary may, by written notice given to a water supplier or water storage manager—
- (a) require the water supplier or water storage manager to have its risk management plan audited in respect of a specified audit period by an approved auditor by the date specified in the notice; or
 - (b) declare when, how often and in respect of what audit period the water supplier or water storage manager is to have its risk management plan audited by an approved auditor.
- (2) A water supplier or water storage manager must comply with any requirement made in the notice and must do so at its own expense.

12 Audit certificate to be given

- (1) After conducting a risk management plan audit, an approved auditor must give the person who commissioned the audit a certificate stating the auditor's opinion on—
- (a) whether, in the case of a water supplier, the water supplier has complied with the obligations imposed by section 7(1) during the audit period;
 - (b) whether, in the case of a water storage manager, the water storage manager has complied with the obligations imposed by section 8(1) during the audit period.
- (2) The certificate must be in the form, and contain the details, required by the regulations.

- (3) If the auditor is of the opinion that section 7(1) or 8(1) has not been complied with during the audit period, he or she must also give a copy of the certificate to the Secretary within 5 days after completing the audit.

Penalty: 60 penalty units.

- (4) If the auditor is of the opinion described in subsection (3), he or she must include in the certificate details of the reasons why he or she is of that opinion.

13 Approval of risk management plan auditors

- (1) On the application of a water supplier or water storage manager, the Secretary may approve a natural person to conduct risk management plan audits of the supplier's or manager's risk management plan.
- (2) The Secretary may only approve a person as an auditor if the Secretary is satisfied that the person meets the auditor approval criteria set out in the regulations for the purposes of this section.
- (3) If the Secretary approves a person as an auditor, the Secretary must give the person, and the water supplier or water storage manager who applied for the approval, written notice of the approval.
- (4) In approving a person as an auditor, the Secretary—
- (a) may impose any conditions on the approval that the Secretary considers to be appropriate; and
 - (b) may specify for how long the approval remains current.

14 Only approved auditors may conduct audits

A person must not conduct a risk management plan audit or issue a certificate in relation to such an audit unless he or she is an approved auditor.

Penalty: 60 penalty units.

15 Auditor must comply with conditions of approval

An approved auditor must comply with any condition imposed by the Secretary in approving him or her to be an auditor.

Penalty: 60 penalty units.

16 Conflict of interest to be avoided

A person must not conduct an audit of a risk management plan that he or she has written or assisted in preparing.

Penalty: 60 penalty units.

**PART 3—OTHER OBLIGATIONS ON WATER SUPPLIERS
AND WATER STORAGE MANAGERS**

Division 1—Drinking water quality standards

17 Drinking water must comply with quality standards

- (1) A water supplier must ensure that all drinking water supplied by it to another person complies with the quality standards specified for drinking water in any regulations made for the purposes of this section.
- (2) Before submitting a proposed regulation that is to be made for the purposes of this section to the Governor in Council for making, the Minister must consult with each of the following—
 - (a) any Minister administering the **Water Industry Act 1994** or the **Water Act 1989**; and
 - (b) the Minister administering the **Parks Victoria Act 1998**; and
 - (c) the Minister administering the **Alpine Resorts (Management) Act 1997**; and
 - (d) the Treasurer.

18 Notification required if non-complying water supplied

A water supplier must notify the Secretary in writing if it becomes aware that the drinking water it is supplying to another person does not comply, or is not likely to comply, with any relevant water quality standard and must do so within 10 days after it becomes aware of that fact.

Penalty: 120 penalty units.

19 Variations of aesthetic standards

- (1) In this section *aesthetic standard* means a water quality standard that the regulations state—
 - (a) is not primarily intended to protect public health; and
 - (b) may be varied under this section.
- (2) A water supplier may apply to the Minister to vary an aesthetic standard as it applies to drinking water supplied by the water supplier.
- (3) An application must set out—
 - (a) the standard that it is sought to vary, the variations that are sought in respect of the standard, the water supply in respect of which the variation is sought and the reasons why the variations are sought; and
 - (b) the period sought during which the variation is to apply and the reasons for seeking that period; and
 - (c) any benefits and adverse impacts that the approval of the variation is likely to have; and
 - (d) a description of the consultation that has taken place in relation to the proposal to vary the standard, together with a summary of the views of the people consulted.
- (4) The Minister may approve an application if the Minister is satisfied on reasonable grounds that—
 - (a) the approval of the application will not be likely to result in any increased risks to public health; and
 - (b) the relevant community to which the water supplier supplies drinking water has been adequately consulted about the application; and

- (c) the likely benefits of approving the application outweigh the likely impacts (including the likely costs).
- (5) The Minister must give the water supplier written notice of the approval or rejection of an application.
- (6) In approving an application, the Minister may specify the period of time during which the variation sought is to apply to the water supplier.
- (7) On the approval of an application, the relevant water quality standard, as varied in the notice of the approval, applies to the water supply that was the subject of the application for the period (if any) specified in the notice.

20 Exemption from water quality standards

- (1) A water supplier may apply to the Minister to be exempted from a water quality standard as it applies to drinking water supplied by the water supplier.
- (2) An application must set out—
 - (a) the standard that it is sought to be exempted from, the water supply in respect of which the exemption is sought and the reasons why the exemption is sought; and
 - (b) the period sought during which the exemption is to apply and the reasons for seeking that period; and
 - (c) any benefits and adverse impacts that the approval of the exemption is likely to have; and
 - (d) the measures that will be taken if the application is approved to eliminate or minimise any risks to public health that may occur; and

- (e) a description of the consultation that has taken place in relation to the proposal to seek the exemption, together with a summary of the views of the people consulted.
- (3) The Minister may approve an application if the Minister is satisfied on reasonable grounds that—
- (a) adequate measures are proposed to eliminate or minimise any risks to public health that may occur as a result of the approval of the application; and
 - (b) the relevant community to which the water supplier supplies drinking water has been adequately consulted about the application; and
 - (c) the likely benefits of approving the application outweigh the likely impacts (including the likely costs).
- (4) The Minister must give the water supplier written notice of the approval or rejection of an application.
- (5) In approving an application, the Minister may specify the period of time during which the exemption is to apply to the water supplier.
- (6) On the approval of an application, the relevant water quality standard ceases to apply to the water supply that was the subject of the application for the period (if any) specified in the notice.

21 Minister may impose conditions

- (1) The Minister may, at any time, impose conditions in relation to a variation granted under section 19 or an exemption granted under section 20.
- (2) A condition imposed at the time the variation or exemption was approved takes effect immediately, unless the Minister specifies a later date.

- (3) A condition imposed after the approval of a variation or exemption takes effect on the Minister giving the water supplier written notice of the condition, unless the Minister specifies a later date.
- (4) An exemption, or the approval of a variation, has no effect during any period in which a condition imposed under this section in relation to the exemption or variation is not being complied with.

Division 2—Disclosure and reporting requirements

22 Officer to report known or suspected contamination

- (1) This section applies if an officer of a water supplier, water storage manager or council believes or suspects, on reasonable grounds, that water supplied, or to be supplied, for drinking purposes—
 - (a) may be the cause of an illness; or
 - (b) may be the means by which an illness is being, has been or will be, transmitted; or
 - (c) may contain any pathogen, substance, chemical or blue-green algae toxin, whether alone or in combination, at levels that may pose a risk to human health; or
 - (d) may cause widespread public complaint.
- (2) On forming that belief or suspicion, the officer must immediately report his or her belief or suspicion to the Secretary, and must make the report in the form required by the Secretary.

Penalty: 120 penalty units.

S. 22(3)(4)
repealed by
No. 85/2012
s. 141.

* * * * *

23 Water quality monitoring information to be made publicly available

- (1) A water supplier must make available for inspection by the public the results of any water quality monitoring program that it conducts on any drinking water supplied by it.
- (2) The results must be made available within 7 days after they are compiled.
- (3) A water supplier must not publish any information in purported compliance with this section that it knows is false or misleading in a material detail without including with the information details of the defect in the information.

Penalty applying to this subsection: 240 penalty units.

24 Water storage manager to give information to water supplier

- (1) A water storage manager must give a water supplier to which it supplies drinking water any information in the possession of the water storage manager that the water supplier reasonably requires as soon as is practicable after being asked for the information.
- (2) The water storage manager must give the information to the water supplier in a form that is acceptable to the water supplier.
- (3) The water supplier may not ask for information to be given to it in a form that would impose an unreasonable burden on the water storage manager.
- (4) If a dispute arises between a water storage manager and a water supplier under this section, either party to the dispute may refer the dispute to the Secretary for adjudication.

- (5) If a dispute is referred to the Secretary for adjudication, both parties to the dispute must abide by any decision made by the Secretary in relation to the dispute.

25 Warnings to be given if regulated water supplied

A water supplier who supplies regulated water must take all reasonable steps to ensure that the intended recipients of the water are made aware of the nature of the water and of the health risks that may arise from the use of the water.

26 Water suppliers or water storage managers to provide annual report

- (1) A water supplier or water storage manager must give the Secretary a report, in respect of each financial year, on the issues relating to the quality of drinking water and regulated water that are specified by the regulations for the purposes of this section.
- (2) A water supplier or water storage manager must include in the report any other details that are required by the regulations or by the Secretary under subsection (3).
- (3) The Secretary may, by written notice published in the Government Gazette, require water suppliers or water storage managers to include specified details in any report required by this section.
- (4) The water supplier or water storage manager must give the report to the Secretary no later than 31 October.
- (5) The water supplier or water storage manager must ensure that copies of the report are made available to the public on or after the day the report is given to the Secretary.

Division 3—Protection of officers reporting known or suspected contamination

Pt 3 Div. 3
(Heading and
ss 26A–26K)
inserted by
No. 85/2012
s. 142.

26A Definition

In this Division—

officer means an officer of a water supplier, water storage manager or council.

S. 26A
inserted by
No. 85/2012
s. 142.

26B Application

(1) This Division applies to a report if—

- (a) an officer has made the report to the Secretary under section 22(2); and
- (b) the belief or suspicion referred to in section 22(1) in relation to the report is based on what the officer believes on reasonable grounds to be improper conduct on the part of a public officer or public body in their capacity as a public officer or public body.

(2) For the purposes of this section, *improper conduct*, *public officer* and *public body* have the same meaning as they have in the **Protected Disclosure Act 2012**.

S. 26B
inserted by
No. 85/2012
s. 142.

26C Certain further information also protected

If an officer who makes a report to which this Division applies provides to the Secretary further information relating to that report, that further information is to be treated as if it were a report to which this Division applies.

S. 26C
inserted by
No. 85/2012
s. 142.

s. 26D

S. 26D
inserted by
No. 85/2012
s. 142.

26D Immunity from liability

An officer who makes a report to which this Division applies is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for making the report.

S. 26E
inserted by
No. 85/2012
s. 142.

26E Confidentiality provisions do not apply

Without limiting section 26D, an officer who makes a report to which this Division applies does not by doing so—

- (a) commit an offence under section 95 of the **Constitution Act 1975** or a provision of any other Act that imposes a duty to maintain confidentiality with respect to a matter or any other restriction on the disclosure of information; or
- (b) breach an obligation by way of oath or rule of law or practice or under an agreement requiring the officer to maintain confidentiality or otherwise restricting the disclosure of information with respect to a matter.

S. 26F
inserted by
No. 85/2012
s. 142.

26F Protection from defamation action

Without limiting section 26D, in proceedings for defamation there is a defence of absolute privilege in respect of the making of a report to which this Division applies.

S. 26G
inserted by
No. 85/2012
s. 142.

26G Liability for own conduct

Despite anything to the contrary in this Division, an officer's liability for his or her own conduct is not affected by the officer's disclosure of that conduct in a report to which this Division applies.

26H Protection from reprisal

S. 26H
inserted by
No. 85/2012
s. 142.

- (1) A person must not take detrimental action against an officer in reprisal for a report to which this Division applies.

Penalty: 240 penalty units or 2 years imprisonment or both.

- (2) A person takes detrimental action in reprisal for a report to which this Division applies if—

- (a) the person takes or threatens to take the action because—

(i) an officer has made, or intends to make, a report to which this Division applies; or

(ii) the person believes that an officer has made or intends to make a report to which this Division applies; or

- (b) the person incites or permits another person to take or threaten to take the action for either of those reasons.

- (3) In determining whether a person takes detrimental action in reprisal it is irrelevant whether or not a reason referred to in subsection (2) is the only or dominant reason as long as it is a substantial reason.

26I Proceedings for damages for reprisal

S. 26I
inserted by
No. 85/2012
s. 142.

- (1) A person who takes detrimental action against an officer in reprisal for a report to which this Division applies is liable in damages to that officer.

- (2) The damages may be recovered in proceedings as for a tort in any court of competent jurisdiction.

s. 26J

- (3) Any remedy that may be granted by a court with respect to a tort, including exemplary damages, may be granted by a court in proceedings under this section.
- (4) The right of an officer to bring proceedings for damages does not affect any other right or remedy available to the officer arising from the detrimental action.

S. 26J
inserted by
No. 85/2012
s. 142.

26J Application for injunction or order

An officer who believes that detrimental action has been taken or may be taken against him or her in reprisal for a report to which this Division applies may apply to the Supreme Court for—

- (a) an order requiring the person who has taken the detrimental action to remedy that action; or
- (b) an injunction.

S. 26K
inserted by
No. 85/2012
s. 142.

26K Injunction or order

- (1) If, on receipt of an application under section 26J, the Supreme Court is satisfied that a person has taken or intends to take detrimental action against an officer in reprisal for a report to which this Division applies, the Court may—
 - (a) order the person who took the detrimental action to remedy that action; or
 - (b) grant an injunction in any terms the Court considers appropriate.
- (2) The Supreme Court, pending the final determination of an application under section 26J, may—
 - (a) make an interim order in the terms of subsection (1)(a); or
 - (b) grant an interim injunction.

**PART 4—ADMINISTRATIVE AND ENFORCEMENT
MATTERS**

Division 1—General functions and powers of the Secretary

27 Functions of Secretary

The functions of the Secretary under this Act are—

- (a) to protect public health in relation to the supply of drinking water; and
- (b) to monitor and enforce compliance with this Act and the regulations; and
- (c) to report on the performance of water suppliers and water storage managers in relation to the requirements imposed on them under this Act; and
- (d) to investigate and report on any aspect of drinking water quality in Victoria; and
- (e) to make recommendations to the Minister for Health on any matter relating to drinking water or regulated water; and
- (f) to promote industry and public awareness and understanding of drinking water quality issues.

28 General powers of the Secretary

The Secretary may do all things that are necessary or convenient to enable him or her to carry out his or her functions under this Act.

29 Secretary may require certain information

- (1) The Secretary may, by written notice, require a water supplier or water storage manager to give the Secretary any specified information that the Secretary reasonably requires to enable the

Secretary to carry out his or her functions under this Act.

- (2) Without limiting subsection (1), the Secretary may require a water supplier to give the Secretary specified information in relation to the action taken by the supplier to comply with any water quality standards that apply to the supplier.
- (3) A water supplier or water storage manager must comply with a requirement within the time specified by the Secretary.
- (4) The time specified for the purposes of subsection (3) must be reasonable.
- (5) In making a requirement, the Secretary—
 - (a) may require information to be given on an ongoing basis; and
 - (b) may specify the form in which the information is to be given.

30 Secretary may accept undertakings

- (1) This section applies if the Secretary is satisfied that a water supplier or a water storage manager—
 - (a) is contravening this Act or the regulations; or
 - (b) has contravened this Act or the regulations in circumstances that make it likely that the contravention will occur again; or
 - (c) is likely to contravene this Act or the regulations.
- (2) The Secretary may accept a written undertaking by the supplier or manager to take specified action within a specified period or periods, or to refrain from taking specified action—
 - (a) to stop the contravention from continuing or occurring again; and

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- (b) to eliminate or minimise the consequences of the contravention.
- (3) The Secretary may only accept an undertaking if it—
- (a) identifies the act, or failure to act, that constitutes, or that constituted or that will constitute, the contravention; and
 - (b) states the period during which the undertaking applies; and
 - (c) is otherwise in a form, and contains the details, specified or approved by the Secretary.
- (4) An undertaking may deal with more than one contravention of this Act or the regulations, regardless of whether or not the contraventions are of the same nature.
- (5) A water supplier or a water storage manager may not be prosecuted in relation to an act, or a failure to act, that is the subject of—
- (a) a completed undertaking; or
 - (b) a current undertaking, unless the supplier or manager is in breach of the undertaking.
- (6) Subsection (5) applies even if the thing that a water supplier or a water storage manager agreed to do, or to not do, in an undertaking will not result in it fully meeting all the relevant obligations imposed under this Act or the regulations on it in respect of the contravention that is the subject of the undertaking.
- (7) Despite anything to the contrary in this section, the Secretary may not accept an undertaking in relation to a contravention of section 34.

31 Secretary may issue enforcement notice

- (1) This section applies if the Secretary is satisfied on reasonable grounds that a water supplier or a water storage manager—
 - (a) is contravening section 7, 8, 11(2), 17(1), 23(1), 23(2), 24, 25 or 29; or
 - (b) is in breach of an undertaking accepted under section 30.
- (2) The Secretary may give the supplier or manager a written notice requiring it, within a reasonable time specified in the notice, to take, or to refrain from taking, any action specified in the notice.
- (3) A water supplier or a water storage manager must comply with the requirement, unless it has a reasonable excuse for not doing so.

Penalty: 240 penalty units.

32 Annual report

- (1) The Secretary must give to the Minister a report in respect of each financial year that—
 - (a) provides a statewide perspective of drinking water quality; and
 - (b) provides details of the activities of the Secretary under this Act during the year and of the costs of those activities; and
 - (c) includes any other details that the Minister has asked the Secretary, by written notice, to include in the report.
- (2) The Secretary must give the report to the Minister no later than 28 February.
- (3) The Minister must ensure that a copy of the report is laid before each House of the Parliament on or

before the 6th sitting day of the House after the day he or she receives the report.

33 Register of variations, exemptions and undertakings

- (1) The Secretary must establish and maintain a register listing—
 - (a) each variation of aesthetic standards approved under section 19; and
 - (b) each exemption from a water quality standard approved under section 20; and
 - (c) each undertaking accepted under section 30.
- (2) The Secretary must ensure that the register contains any details concerning variations, exemptions or undertakings required by the regulations.
- (3) A person may inspect the register at any time that the office in which the register is kept is open for business.
- (4) The Secretary may publish the register, or any details in the register, in any manner or form that the Secretary considers to be appropriate.

Division 2—Incident management

34 Powers of the Secretary if there is a risk to public health

- (1) This section applies if the Secretary believes on reasonable grounds that any drinking water supplied by, or in the possession of, a water supplier or water storage manager is, or may be, or may become, a risk to public health.
- (2) The Secretary may direct the water supplier or water storage manager—
 - (a) to give the Secretary specified information to enable the Secretary to confirm whether a

- risk to public health exists and to assess the nature and severity of the risk; and
- (b) to take specified corrective action in relation to the water to safeguard public health; and
 - (c) to purify water to a specified standard; and
 - (d) to monitor the water supply in a specified manner; and
 - (e) to give the Secretary one or more written reports of any action taken by it to comply with any direction given under this subsection.
- (3) In the case of a water supplier, the Secretary may also direct the water supplier—
- (a) to provide alternative supplies of drinking water; and
 - (b) to notify all affected consumers that water should be boiled, or treated in some other way, before drinking.
- (4) A water supplier or water storage manager must take all reasonable steps to comply with a direction within the time specified by the Secretary (or within any extension of that time approved by the Secretary).
- Penalty: 240 penalty units.
- (5) In specifying the time within which a direction must be complied with, the Secretary must specify a reasonable time.

S. 35
amended by
Nos 108/2004
s. 117(1)
(Sch. 3
item 179),
46/2008
s. 285(2).

35 Limit on power of delegation

Despite anything to the contrary in section 19 of the **Public Health and Wellbeing Act 2008**, the Secretary may only delegate a power conferred on the Secretary by section 34 or 36 to an executive within the meaning of the **Public Administration Act 2004**.

36 Power to assess and address immediate risks

- (1) This section applies if the Secretary believes on reasonable grounds—
 - (a) that there is on any water supply premises any thing that is, that may be, or that may become, an immediate risk to public health relating to drinking water; or
 - (b) that an immediate risk to public health relating to drinking water exists, and that there is, or may be, or will be, on any water supply premises any thing that may assist in assessing, eliminating, removing, controlling or reducing that risk.
- (2) The Secretary may authorise an authorised officer to exercise, in relation to the water supply premises, the powers conferred by subsection (3) for one or more of the following purposes—
 - (a) to assess whether there is an immediate risk to public health, or the nature or severity of such a risk;
 - (b) to eliminate, remove, control or reduce an immediate risk to public health.

Note

Section 48 sets out the process for appointing authorised officers.

- (3) The authorised officer may enter the water supply premises at any reasonable time (having regard to the risk or potential risk) and may—
 - (a) inspect the premises and any thing on the premises;
 - (b) take samples of any water or other thing on the premises;

- (c) require a person at the premises to provide information or to produce documents; and
 - (d) make copies of, or take extracts from, any document kept on the premises;
 - (e) seize any thing on the premises if the authorised officer believes on reasonable grounds that it is necessary to seize the thing to eliminate, remove, control or reduce an immediate risk to public health;
 - (f) destroy any thing on the premises that poses an immediate risk to the public health;
 - (g) use or test any equipment on the premises;
 - (h) take any photographs or make any audio or visual recordings that he or she considers necessary;
 - (i) use any assistants the authorised officer considers necessary to exercise the powers conferred by this section.
- (4) The authorised officer may not, under this section, enter a residence unless the occupier of the residence has consented in writing to the entry and the carrying out of a search.

37 Display of identity cards

- (1) An authorised officer must produce his or her identity card for inspection—
- (a) before exercising a power under this Division, other than a requirement made by post; and
 - (b) if asked to do so, at any time during the exercise of a power under this Division.
- Penalty: 10 penalty units.
- (2) An authorised officer may not continue to exercise any power under this Division if he or she fails to

produce, on request, his or her identity card for inspection by the occupier of any premises on which the authorised officer is exercising the power.

38 Announcement before entry

- (1) Before entering a premises to exercise a power conferred by section 36, the authorised officer, or a person assisting the authorised officer, must announce that he or she is authorised under section 36 to enter the premises and give any person at the premises an opportunity to allow entry to the premises.
- (2) The authorised officer or a person assisting the authorised officer need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of any person; or
 - (b) the effective exercise of the powers conferred by section 36.

39 Occupier to be given copy of consent

- (1) An occupier who consents in writing to the entry and search of their premises or residence under section 36(4) must be given a copy of the signed consent immediately.
- (2) If, in any proceeding, a written consent is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search.

40 Receipt must be given for any thing seized

- (1) An authorised officer may not seize a thing, apparently in the possession or custody of a person, unless he or she makes out and tenders to the person a receipt for the thing seized that—

- (a) identifies the thing; and
 - (b) states the name of the authorised officer and the reason why the thing is being seized.
- (2) If an authorised officer is unable to discover the identity of the owner or custodian of any thing seized, the authorised officer must leave the receipt with, or post it to, the owner of the premises from which the thing was seized.

41 Copies of certain seized things to be given

- (1) If an authorised officer seizes—
- (a) a document; or
 - (b) a thing that can be readily copied; or
 - (c) a storage device that contains information that can be readily copied—
- the authorised officer must give a copy of the thing or information to the owner or custodian of the document, thing or device as soon as is practicable after the seizure.
- (2) Subsection (1) does not apply—
- (a) to any document, thing or device moved under section 43(2); or
 - (b) if the authorised officer is unable to discover the identity of the owner or custodian of the document, thing or device.
- (3) If it is not practicable to comply with subsection (1) in respect of a thing before the authorised officer finishes the search, the authorised officer must give a receipt for the thing to the person from whom it is seized and removed.
- (4) In the case of a paper document, the authorised officer must certify on any copy of the document given to a person under this section that the copy is an accurate copy of the document.

- (5) A copy of a document certified under subsection (4) is to be received in all courts and tribunals as evidence of equal validity to the original.

42 Access to seized things

- (1) If a thing is seized under this Part, the authorised officer who seized the thing must, if practicable, allow the person who would normally be entitled to possession of the thing reasonable access to it while it remains in the possession, or under the control, of the authorised officer.
- (2) This section does not apply if the authorised officer has given the person an accurate copy of the thing.

43 Use of equipment to examine or process things

- (1) An authorised officer may bring on to a premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized.
- (2) If—
- (a) it is not practicable to examine or process the things at the premises; or
 - (b) the occupier of the premises consents in writing—
- the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized.
- (3) The authorised officer, or a person assisting the authorised officer, may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized, if the authorised officer or person assisting believes on reasonable grounds that—

- (a) the equipment is suitable for the examination or processing; and
- (b) the examination or processing can be carried out without damage to the equipment or the thing.

44 Use or seizure of electronic equipment at premises

(1) If—

- (a) a thing found at a premises is, or includes, a disk, tape or other device for the storage of information; and
- (b) equipment at the premises may be used with the disk, tape or other storage device; and
- (c) the authorised officer believes on reasonable grounds that the information stored on the disk, tape or other storage device is relevant to furthering the purpose of the authorised officer's inspection—

the authorised officer or a person assisting the authorised officer may operate, or may require the occupier or an employee of the occupier to operate, the equipment to access the information.

(2) If the authorised officer or a person assisting the authorised officer finds that a disk, tape or other storage device at the premises contains information of the kind referred to in subsection (1)(c), he or she may—

- (a) put the information in documentary form and seize the documents so produced; or
- (b) copy the information to another disk, tape or other storage device and remove that storage device from the premises; or

- (c) if it is not practicable to put the information in documentary form nor to copy the information, seize the disk, tape or other storage device and the equipment that enables the information to be accessed.
- (3) An authorised officer or a person assisting an authorised officer must not operate or seize equipment for the purpose mentioned in this section unless the authorised officer or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

45 Return of seized things

- (1) If an authorised officer seizes a thing under this Division, the authorised officer must take reasonable steps to return the thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the thing has not been returned before the end of the retention period, the authorised officer must take reasonable steps to return it unless—
 - (a) proceedings have commenced within the retention period and those proceedings (including any appeal) have not been completed; or
 - (b) a court makes an order under section 46 extending the retention period.

46 Magistrates' Court may extend period

- (1) An authorised officer may apply to the Magistrates' Court within the retention period or within a period extended by the Court under this section for an extension of that period.

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- (2) The Magistrates' Court may order such an extension if satisfied that retention of the thing is necessary for the purposes of the investigation in relation to which the thing was seized.
 - (3) The Court may adjourn an application to enable notice of the application to be given to any person.

47 Self-incrimination not an excuse

- (1) A person is not excused from complying with a direction made under this Division on the ground that complying with the direction may result in information being provided that might incriminate the person.
- (2) Any information obtained from a natural person under this Division is not admissible in evidence against the person in criminal proceedings other than in proceedings in respect of the provision of false information.
- (3) Despite subsection (2), any information obtained from a person under this Division that is contained in any document or item—
 - (a) that the person is required to keep by any law; or
 - (b) that a water supplier, water storage manager or an officer, employee or agent of a water supplier or water storage manager is required to keep by any law; or
 - (c) that was obtained without the direct assistance of the person—is admissible in evidence against the person in criminal proceedings.
- (4) For the purposes of subsection (3), a person provides direct assistance in the obtaining of a document or item if the person identifies, reveals the location of, or explains the contents of, the document or item.

Division 3—Authorised officers

48 Appointment procedure

- (1) The Secretary may appoint a person to be an authorised officer for the purposes of section 36.
- (2) The Secretary may only appoint a person to be an authorised officer if the Secretary is satisfied that the person is suitably qualified or trained to exercise powers under section 36.
- (3) In appointing a person as an authorised officer, the Secretary must give the person an identity card—
 - (a) that identifies the person by name as an authorised officer under this Act; and
 - (b) that contains a photograph of the person; and
 - (c) that is signed by the person; and
 - (d) that is signed by the Secretary.
- (4) If a person's appointment as an authorised officer is revoked or expires, he or she must immediately return his or her identity card to the Secretary.

49 Offence to obstruct authorised officer

A person must not—

- (a) obstruct, hinder or refuse to comply with a lawful request or direction of; or
- (b) refuse admission to any premises to—

an authorised officer, or any person necessarily assisting an authorised officer, while the authorised officer or person is exercising a power given to the authorised officer or person under this Act.

Penalty: 60 penalty units.

50 Offence to impersonate authorised officer

A person who is not an authorised officer must not directly or indirectly represent that he or she is an authorised officer or is authorised to conduct inspections for the purposes of this Act.

Penalty: 60 penalty units.

Division 4—Administration levy

51 Requirement to pay levy

Each water supplier and water storage manager must pay a levy in respect of any period specified by the Minister on or by the date specified by the Minister to assist in defraying the costs of administering this Act.

52 Meaning of *costs of administering this Act*

- (1) For the purposes of this Division, the costs of administering this Act in a particular period are the costs and expenses incurred, or that are likely to be incurred, by the Secretary in that period in carrying out the Secretary's functions under this Act.
- (2) For the purposes of subsection (1), costs and expenses include notional costs and expenses (such as a proportionate share of general salary costs, overhead costs or depreciation).
- (3) Despite subsection (1), the costs of administering this Act do not include any cost or expense incurred by the Secretary in carrying out any function under Division 2.

53 How amount of levy to be calculated

The amount of the levy payable by a water supplier or water storage manager is to be determined as follows—

- (a) the Minister must fix a period in respect of which the levy is payable and seek advice from the Secretary on the costs, or likely costs, of administering this Act in that period; and
- (b) the Secretary must advise the Minister—
 - (i) in respect of a past period, of the amount of the costs of administering this Act incurred in that period; and
 - (ii) in respect of a current or future period, of the likely amount of the costs of administering this Act in that period; and
- (c) the Minister must apportion the amount between all the water suppliers and water storage managers who are liable to pay the levy in a manner that the Minister considers to be fair; and
- (d) in determining how to apportion the amount, the Minister must consult with each of the following—
 - (i) any Minister administering the **Water Industry Act 1994** or the **Water Act 1989**; and
 - (ii) the Minister administering the **Parks Victoria Act 1998**; and
 - (iii) the Minister administering the **Alpine Resorts (Management) Act 1997**; and
 - (iv) the Treasurer.

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S. 53(d)(ii)
repealed by
No. 85/2006
s. 173(Sch. 1
item 11.2).

54 Collection of the levy

- (1) The Minister must give each water supplier and water storage manager a written notice setting out—
 - (a) the amount it is required to pay as levy in respect of a specified period; and
 - (b) the date the amount is required to be paid by; and
 - (c) how the payment is to be made.
- (2) The Minister must ensure that all amounts paid as levy are paid into the Consolidated Fund.

PART 5—MISCELLANEOUS MATTERS

Division 1—Miscellaneous offence

55 False information not to be given

A person must not—

- (a) in purported compliance with this Act, give to the Secretary or an authorised officer any information or answer that the person knows is false or misleading in a material detail; or
- (b) produce any document that the person knows is false or misleading in a material detail, without informing the person to whom the document is produced of the defect in the document.

Penalty: 240 penalty units.

Division 2—Regulations

56 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) incidental matters in relation to water quality standards;
 - (b) the monitoring of drinking water quality, or any component or characteristic of drinking water, including—
 - (i) specifying the location, frequency and method of collecting samples of drinking water and other water; and
 - (ii) specifying who is to collect the samples (and providing for an approval or accreditation system for collectors); and
 - (iii) specifying the analytical methods to be used to analyse samples; and

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- (iv) specifying who is to conduct analyses of samples (and providing for an approval or accreditation system for analysts); and
 - (v) specifying how the results of analyses and monitoring are to be reported;
- (c) risk management plans and systems, including requirements concerning—
- (i) how incidents and emergencies are to be dealt with;
 - (ii) interactions with other people and bodies in relation to incidents and emergencies;
 - (iii) monitoring and verifying the implementation and continued compliance with those plans;
 - (iv) the keeping of records and the collection of information relevant to the plans;
 - (v) the verification of any record kept or information collected;
 - (vi) the supply of information to consumers to reduce or eliminate risks;
 - (vii) interactions with other water suppliers or water storage managers;
 - (viii) interactions with other people and bodies;
- (d) incidental matters in relation to approved auditors;

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- (e) requiring the reporting of illnesses that may have been caused by water supplied by a water supplier or water storage manager, or of incidents that may have been caused by waterborne things;
 - (f) requiring the disclosure of the public health risks associated with the supply of regulated water;
 - (g) forms for the purposes of this Act;
 - (h) generally prescribing any other matter or thing required or permitted by this Act to be prescribed, or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or of specially limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of person; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
 - (d) may apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time or as in force from time to time; and

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- (e) may confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
 - (f) may provide in a specified case or class of case for the exemption of people or things from any of the provisions of this Act, whether unconditionally or on specified conditions, and either wholly or to such an extent as is specified; and
 - (g) may impose a penalty not exceeding 20 penalty units for a contravention of the regulations; and
 - (h) may be expressed as requiring the achievement of a specified object in relation to any particular subject matter.
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**PART 6—CONSEQUENTIAL AND TRANSITIONAL
PROVISIONS**

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Ss 57, 58
repealed by
No. 29/2011
s. 3(Sch. 1
item 82).

59 Repeal of immunity provision

- (1) Section 166 of the **Water Act 1989** is repealed.
- (2) Despite the repeal of section 166, that section continues to apply to a person who, immediately before that repeal, was a member of an Authority in respect of any action taken by the person in connection with the treatment of water (including disinfection or fluoridation) in accordance with any Act for the remainder of the current term of that member.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 10 April 2003

Legislative Council: 20 May 2003

The long title for the Bill for this Act was "to make provision for the supply of safe drinking water and for other purposes."

The **Safe Drinking Water Act 2003** was assented to on 11 June 2003 and came into operation on 1 July 2004: section 2.

2. Table of Amendments

This Version incorporates amendments made to the **Safe Drinking Water Act 2003** by Acts and subordinate instruments.

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 179) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Safe Drinking Water Act 2003**

Water (Governance) Act 2006, No. 85/2006

Assent Date: 17.10.06
Commencement Date: S. 173(Sch. 1 item 11) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Safe Drinking Water Act 2003**

Public Health and Wellbeing Act 2008, No. 46/2008

Assent Date: 2.9.08
Commencement Date: S. 285 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Safe Drinking Water Act 2003**

Health and Human Services Legislation Amendment Act 2010, No. 29/2010

Assent Date: 8.6.10
Commencement Date: S. 70 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Safe Drinking Water Act 2003**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 82) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Safe Drinking Water Act 2003**

Water Amendment (Governance and Other Reforms) Act 2012, No. 17/2012

Assent Date: 3.4.12
Commencement Date: S. 95 on 1.7.12: Special Gazette (No. 172) 29.5.12 p. 1
Current State: This information relates only to the provision/s amending the **Safe Drinking Water Act 2003**

Protected Disclosure Act 2012, No. 85/2012

Assent Date: 18.12.12
Commencement Date: Ss 141, 142 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2
Current State: This information relates only to the provision/s amending the **Safe Drinking Water Act 2003**

Endnotes

3. Explanatory Details

No entries at date of publication.