



VICTORIAN WATER
INDUSTRY ASSOCIATION INC.

"INNOVATION, COOPERATION AND SUSTAINABILITY"

Legal Compliance and Information Manual Victorian Water Industry



UPDATE BULLETIN
Issue 5, September 2011

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Introduction

The Victorian Water Industry Association Legal Compliance and Information Manual ("**Manual**") was first published in May 2008. This is the fifth bulletin prepared by Russell Kennedy Solicitors to provide updates on legislative and other changes to the content of the Manual. The bulletin is intended to provide you with information about the changes to legislation and the location of that information in the Manual. The information in this bulletin is current to September 2011.

1 Acts

1.1 *Environment Protection (Landfill Levies) Act 2011 (Vic)*

Paragraph 58.12.18

This Bill has been passed in the Victorian Parliament and commences operation on 1 July 2011.

As of 1 July 2011, the landfill levies for deposits of municipal and industrial waste have increased. These amounts will be effective until 30 June 2012.

1.2 References to departments and positions

The following titles of government departments and/or roles within government departments have changed:

1.2.1 *Privacy Act 1988 (Cth)*

Paragraph 107

The role of "Privacy Commissioner" has been changed to "Information Commissioner".

1.2.2 *Safe Drinking Water Act 2003 (Vic)*

Paragraphs 9.14.7 and 51

References to the "Department of Human Services" have been changed to the "Department of Health".

1.3 *Competition and Consumer Act 2010 (Cth)*

Paragraphs 75.4.1, 102.2.2, 113.1, 117-122

As foreshadowed in the January 2011 update bulletin, the *Competition and Consumer Act 2010 (Cth)* came into operation on 1 January 2011 replacing the *Trade Practices Act 1974 (Cth)*. This has been accompanied by significant changes to the *Fair Trading Act 1999 (Vic)*.

The *Competition and Consumer Act 2010 (Cth)* includes Australia wide competition laws and the now applicable Australian Consumer Law.



1.3.1 Competition laws

Competition law in Australia has not been amended by the replacement of the *Trade Practices Act 1974* (Cth) with the *Competition and Consumer Act 2010* (Cth).

All provisions of the *Trade Practices Act 1974* (Cth) are now contained in the *Competition and Consumer Act 2010* (Cth).

1.3.2 Australian Consumer Law

The Australian Consumer Law is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth). It provides for an Australia wide national consumer law which applies to both individuals and corporations engaging in trade or commerce. The Law incorporates replaced provisions of the *Trade Practices Act 1974* as well as best practice provisions from now repealed State and Territory Laws.

The commencement of the Australian Consumer Law results in substantial amendments to the Manual in order to provide for the new references to Acts and sections of existing provisions as well as substantive changes to consumer laws.

1.4 *Price Determination – new guideline from the Essential Services Commission (“ESC”)*

Readers may be aware that prices set by water businesses must, in addition to complying with the requirements of either the *Water Act 1989* or *Water Industry Act 1994*, comply with terms of the Price Determination for the respective water business approved by the ESC.

In relation to the urban businesses, the ESC has issued a new guideline designed to assist in the application of the Price Determination.

Any guideline issued by the ESC is not supposed to change the intent of the Price Determinations themselves, however, elements of this guideline have been the subject of extensive discussion.

Key issues within the guideline and the Price Determination relates to whether the ability to apply a New Customer Contribution (“**NCC**”) might only apply to lots on a plan of subdivision as opposed to any premises (ie. an area less than an actual allotment) which might be the subject of a separate water meter. NCC’s may continue to be applied to all separate premises (as opposed to separate lots on a title). A number of other changes have been made which include, for example, guidance in relation to when a contribution can be required from a developer in relation to a shared asset.

The guideline can be accessed on the website of the ESC.

A new edition of the Legal Compliance and Information Manual will be published in the second half of 2011, incorporating all amendments that have occurred since August 2009.

Queries on any of the content of this update bulletin can be directed to Andrew Sherman or Marcus Heath of Russell Kennedy



This update bulletin is not a substitute for legal advice and is not designed to provide specific legal advice in relation to any particular matter. It is intended as a guide to changes to the Victorian Water Industry Legal Compliance and Information Manual. It is strongly recommended that adequate legal advice should be sought if legal issues are involved. The Victorian Water Industry Association and the authors, Russell Kennedy Solicitors accept no liability where any party acts in reliance on information in this update bulletin.

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