VICTORIAN WATER
INDUSTRY ASSOCIATION INC.

"INNOVATION, COOPERATION AND SUSTAINABILITY"

WATER BILL
EXPOSURE DRAFT
VICWATER SUBMISSION

14 February 2014

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TABLE OF CONTENTS

INTRODUCTION

1 The Victorian Water Industry Association ("**VicWater**") is a peak body of the Victorian Water Industry with its membership constituted by Victoria's statutory water corporations. Those corporations are responsible for the provision of urban water and wastewater services, rural water supply including irrigation and related drainage services. VicWater's water corporation members currently operate pursuant to the *Water Act 1989* and will operate in the future under the New Act. Therefore this Draft Bill has significant import for VicWater and its members.

2 This Submission is provided by VicWater on behalf of its water corporation members.

3 VicWater is grateful to take up the opportunity to make submissions in respect of the Draft Bill. VicWater would also like to recognise the significant work already undertaken initially through the Water and Natural Resources Group within the Department of Environment and Primary Industries and now through the Office of Living Victoria in undertaking the key role in facilitating the Draft Bill, including consultation to date.

4 Through this Submission we refer to:

- the *Water Act 1989* as the "Current Act";
- the exposure draft of the Water Bill as the "Draft Bill";
- the proposed new Water Act (once proclaimed) as the "New Act".

For convenience this Submission is divided into the various chapters (where a comment is provided) of the Draft Bill.

5 The Draft Bill is lengthy and various elements are quite technical. In order to keep this submission relatively concise and to address, at times, those technicalities the Submission does assume a level of knowledge of the water industry, the Draft Bill and associated issues. Further explanation, examples or consultation is offered by VicWater if requested and required.

Tony Wright
CEO VicWater

14 February 2014

CHAPTER 1 – PRELIMINARY

Item	Section	Comment / Response
1	S5 & S6-*Core considerations and the precautionary principle*	Inclusion of the core considerations and incorporation of the precautionary principle, separately, are both noted as positive responses to stakeholder consultation, including from VicWater. In particular through the Draft Bill where there is a requirement to consider the "*core considerations"* the Authority "must" also (by operation of section 6) include consideration of the precautionary principle. Would it be appropriate, therefore, to also include in section 5, as one of the core considerations, a new subparagraph indicating that the precautionary principle is a core consideration?

CHAPTER 2 – RESOURCE ASSESSMENT

Item	Section	Comment / Response
1	S16(2)-*Minister's powers in relation to land*	Acknowledging that 16(2) reflects section 24 of the Current Act VicWater asks whether the requirement for an *authorised person* to obtain consent to enter into land, described in the table, effectively overrides the right to enter via other powers under Part 12.2 and 12.3. To put this another way if consent is not obtained does that mean there is no right to enter the relevant land? Alternatively can that entry be enforced either under the other entry provisions of the New Act or for example pursuant to the *Land Acquisition and Compensation Act 1986*. If the concern expressed here is correct then it would be appropriate to amend S16(2) to change the obligation of obtaining consent to an obligation to *"seek*" the relevant consent, as a precondition to entry pursuant to other powers.
2	S18 and S20	The reference in S20(1) to S18(1)(a) appears to require amendment by deletion of the reference to 18(1). There is no 18(2). This error repeats at 20(3).

CHAPTER 3 – RIGHTS IN RELATION TO WATER

Item	Section	Comment / Response
1	S37-*Abutting a waterway*	This new section does not appear to adequately deal with the situation where a lot is subdivided (e.g. into lots A and B) and both lot A and lot B retain a portion of the waterway within or adjacent to both lot A and lot B. Proposed S37(2) states that only one of the occupiers has, after the subdivision, the right to take water under S37(1) which is effectively a right to take water under proposed S34(1)(b). To put this another way proposed S34(1)(b) will continue to apply to both lot A and lot B in our example. The addition of S37(3) to the Draft Bill may have been added to address this issue, which has been raised previously but, with respect, we do not believe that is achieved. The reference to the right to allocate water under 34(1) pursuant to a plan under the *Subdivision Act 1988* is noted however if the relevant subdivision plan is silent then the issue remains unaddressed. Presumably the allocation under the *Subdivision Act* could be to one or other of the lots created or a shared allocation which would then appear to be contrary to S37(2). *VicWater* notes there may be customs or specific practices of which the draftsperson is unaware that address this issue but on its plain words there appears to be an inconsistency.
2	*Storm water generally*	There are a number of Parts and Sections in Chapter 4 (and otherwise in the Draft Bill) which address the potential use of storm water and the following comments also invite further consultation about the proposed regulatory structure: • VicWater supports and encourages the steps forward in relation to facilitating (and to the extent appropriate) regulating the use of storm water as an appropriate resource. • Storm water use projects tend to be at a relatively smaller scale, for individual developments (say 500 or 100 lots or for use in public and recreational areas. In only one case to our knowledge (Wannon Water-Warrnambool) is there a storm water collection scheme operated by an Authority which collects storm water for treatment (from house roofs only) which forms part of the potable water supply. The overall point is that these schemes tend to be lesser scale operations which have quite specific arrangements and are best not encumbered with high levels of regulation. • The use of water resource management orders and declaration of storm water areas, followed by the delegation of decisions around take and use licences to the (presumably) rural corporations, appears to create a level of regulation that in many circumstances may not be justified or appropriate. • In some situations storm water projects will involve the collection and reuse of storm water within a larger

Item	Section	Comment / Response
		subdivision, including reuse in public areas, on owners' corporation land and possible passing through public land (e.g. roads). It is not clear that the proposed structure would allow for these types of arrangements, for example at what point would the relevant "take and use" licence be required or could these projects simply operate with the consent of the relevant council. • Existing take and use licences relate to take and use from infrastructure largely controlled by the water Authority managing or associated with that infrastructure. There are, for example, certain responsibilities around maintenance of that infrastructure on an ongoing basis to allow the continued use of the take and use right or even if those responsibilities are implied by ownership or control only. • A potential take and use licence issued by a rural corporation (under delegation) in relation to storm water works owned by a municipal council has no ability (in the licence) to manage or control the ongoing maintenance of the relevant infrastructure or otherwise effectively guarantee the ongoing supply from that infrastructure. Alternatives to rural corporations being the appropriate delegate need to be investigated. • A system that allows the owner of the stormwater works, that is the municipal council or the Water Authority to issue a consent to connect to a "take and use" stormwater may be more appropriate. • How and on what basis (if at all in certain circumstances) will a charge be made for the stormwater use. • It is unclear, if a municipal council owns the stormwater works, how (on the current Draft Bill) any obligation to allow connection could be enforced against that council. • Finally (we emphasise) that a great deal of work has been done in relation to storm water reuse which VicWater has not necessarily been exposed to and look forward to consultation over these issues.
3	S41-*Take and use licences*	Please Note: These comments are subject to general comments about WRMO's and stormwater at item 2 of Chapter 4 comments. S41(1)(b) proposes the ability to hold a take and use licence from municipal council storm water works however (and correctly) the Draft Bill recognises that water corporations may also own and manage storm water works. If a water corporation wishes to take and use water within its storm water works draft S35 gives the water corporation that right and similarly municipal councils are given that right at S35(2). S35 then indicates the rights under S35 are subject to any water resource management order or subject to any take and use licence. Notably S35(3)(b) also refers to a licence issued to take and use water from storm water works of a water corporation or a council. The sum of the above is that it appears S41(1)(b) may need to be amended to include the right to issue a take and use licence in respect of storm water works of a water corporation (as well as the existing reference to a Council).

CHAPTER 4 – TAKING AND USING WATER

Item	Section	Comment / Response
1	S59 and S60	It is presumed that the absence of the reference to an Authority in relation to storm water works at S60 is because it is otherwise dealt with under s59, namely an offence to take water from the "works of an Authority". Whilst this is partially correct there are consequential components such as the reference to storm water areas and difference in the amounts of the maximum fine which tend to the view that there should be a reference to storm water works of an Authority in S60 also. Notably the consent which avoids the offence under S59 refers to the holding of a water entitlement which would include a take and use licence. Similarly S60(1) references a take and use licence within a storm water area.
2	S72-*Take water from storm water works (of Council)*	Query whether this evidentiary presumption ought to be extended to storm water works of an Authority. This follows on from our comment in respect of S59 and S60.
3	S81(1)	Is it intended that the party who has received an assignment of the whole or part of a water allocation can subsequently assign **either** the whole of the water allocation that has been assigned to the person, or also part of that allocation. If that is the case then the ability for subsequent assignment of both the "whole or part" needs to be allowed for in S81(1) rather than just the whole.
4	S91(2)(e)	Grammar...add "a"
5	S106(1)-*Restraint on mortgaging water shares*	A question has been raised as to whether S106(1) implies only a divided water share can be the subject of a mortgage..is that correct?
6	S209 (**and in other locations)**-*Publish in a newspaper*	The requirement to publish in both State and local newspapers is a shift from the Current Act which generally requires publication in a newspaper circulating in the locality. This can create a practical difficulty in that in some locations there may no longer be a local newspaper which is broadly published or read and water corporations opt to seek publication in a State circulating newspaper only. The cost of advertising can be surprisingly expensive and this effectively doubles that cost (or more). The State and local requirement appears in the "new" sections of the Draft Bill whereas the similar section of the Current Act, to be re-enacted with improvements in the New Act reflect the existing situation. Ideally the requirements should be consistent. VicWater prefers the "circulating in the locality" requirement.

Item	Section	Comment / Response
7	*Water Use Licences and Works Licences* ***The interests of mortgagees***	The Draft Bill maintains what are seen as serious deficiencies under the Current Act which have significant impact upon the value of agricultural land. In particular there is no requirement to obtain the consent of the mortgagee in the situations set out below which to date has resulted in some cases in a significant impact upon the value of land (downwards) and the losses for lenders in respect of farming, including smaller rural based lending enterprises. It also can and does lead to disputes between the water corporation (acting as the Minister delegate) and lenders and has the prospect of lenders litigating with the corporation (or Minister) over these concerns. **Water Use Licences and Annual Use Limits** There is a requirement within the Current Act and Draft Bill to obtain mortgagee consent in relation to water share transfers. There is a requirement within Ministerial regulation to obtain mortgagee consent for the transfer of a Delivery Share. The "value" of the water entitlements however is in the ability to apply the water to the land, which occurs through the Annual Use Limit (**"AUL"**). In the Draft Bill at proposed s186 the existing right to vary an AUL is retained. Upon receipt of an application the Minister (or delegated decision maker) must grant such application if it is otherwise in order. A landowner can (for example) vary an AUL presently holding 250 megalitres down to 1 megalitre (or less) and the joint applicant can increase its AUL by 249 megalitres. This action: • renders the relevant land, if not valueless, then close to that; • any mortgagee interest in the land is similarly impacted, downwards; and • may not be able to be rectified (even at substantial cost for the water) by "putting back" the water, because of the capping of the AUL in relation to the salinity zones. Proposed s174 that requires the transfer of the water use licence (**"WUL"**) with the transfer of the land does not address this issue because that transfer of WUL (which could include transfer to the mortgagee) carries with it only the (lower) amount under a varied AUL. The consequences of this are significant and there have been examples which have caused significant financial hardship and impact to date. The ability to hold a charge against a company, if that company is the owner of the land and the water share, provides no assistance where the owner is a person. Also a number of these entitlements accrued some time ago, before unbundling with no change in holding since. Legislative rectification of this could occur through requiring a mortgagee consent to the variation of conditions under an AUL (ie including the volume of the AUL) presumably under proposed s186 in respect of the application

Item	Section	Comment / Response
		or for joint applications under proposed s188. **Water Use Registrations** It appears the same issue would apply to water use registrations and in particular variations of the AUL under a water use registration. The issue is less significant than WULs because of the lesser volumes for largely stock and domestic. Therefore consideration to amend proposed s204 is also requested. **Works Licences** Similar but different to the above is the suggestion that for there to be a requirement for consent to the transfer of a works licence associated with the delivery of water to a property. As above there are a number of examples where mortgagees in possession have no ability to control the works which deliver the water to the property, thus impacting substantially (downwards) on the value of property. A provision in the New Act requiring the consent of the mortgagee to the land to transfer or otherwise deal with works associated with delivery of water to that land is requested. The implementation of this would not be particularly difficult, analogous to existing requirements for Water Shares and Delivery Shares with a minor increase in administration for the corporations (who are requesting it).

CHAPTER 5 – ENTITIES

Item	Section	Comment / Response
1	S239-*Establishment of Water Corporations*	The footnote to s239 indicating the continued operation of existing water corporations will be dealt with under the *Water (Residual Provisions) Act 1989* is noted. It is observed that to date issues such as these have been proposed to be dealt with under "transitional provisions" which in previous legislation tend to be located in either schedules or the later sections the relevant act (see for example Schedule 2 of the Current Act). However for the Draft Bill the new drafting approach is adopted. Effectively as a reminder we note that various powers provided under, say, s239(4) refer to those powers as being provided to a water corporation "...*established under this section...*". It will need to be clear in the proposed *Water (Residual Provisions) Act 1989* that all the various powers and functions are also held by those "continued" water corporations, not those established in the future under s239. To put it another way the current water corporations were not established under the proposed s239. A full analysis has not yet been done however this proposition will impact on other parts of the Draft Bill where elements of the Current Act are to be dealt with through transitional provisions, either via a schedule to the New Act or incorporated in the proposed *Water (Residual Provisions) Act 1989*.
2	S242(2)-*Abolition of Water Corporations*	The change in drafting form from the Current Act s88 is noted and this comment is largely one of clarification. In order for a water corporation to be abolished it must have no functions or duties to perform. It is presumed that circumstance would eventuate after two or more water corporations had been restructured pursuant to proposed s241 or a new water corporation had been established under s239, effectively taking over any powers or functions of the water corporation to be abolished under s242?
3	S251-*Appointment of directors*	It is noted that neither in the Draft Bill (in particular see proposed s251(2)), nor in the Current Act (see s97), is there specific power for the Minister to appoint the members of the Board of Directors of a water corporation. A query has been raised as to whether that power effectively arises by implication of the various other provisions or whether it may be appropriate to amend the Draft Bill to include that specific power. Following from the above the appointment of the Managing Director (who is appointed by the Board itself) may be appropriately excluded from the power of the Minister. In part this issue arose because of the exclusion in respect of the Managing Director, relating to the terms and conditions of appointment of other directors, proposed in s252(4) and presently existing in s98(3) of the Current Act.

Item	Section	Comment / Response
4	S264-*Validity of things done*	It is not clear what the procedural irregularities proposed s264(a) and (d) are directed at. We speculate in one example it may be designed for a situation where a director has been selected but not yet formally appointed by the Minister. This may be easily explained or it may be a case of drafting style however the query is raised as the purposes are note clear on the plain words.

CHAPTER 6 – DISTRICTS AND RECREATIONAL AREAS

Item	Section	Comment / Response
1	Part 6.1 and 6.2	Water supply districts are defined in the Draft Bill by reference back to proposed s324 (see Dictionary). The Current Act refers to and defines *water districts* and that in turn is currently defined as any district deemed to be a water district under Division 1 of Part 6A or declared to be a water district under Division 3 of Part 6A, both of the Current Act. In checking back through numerous orders, within the Government Gazette it is apparent that there have been other titles used over time to describe such districts, namely *water district* and *water supply district* and *waterworks* and *Urban Water Districts*. It is not clear why the multiple terms were used but it is speculated that water district with an urban reference applied to urban areas and the supply of potable water whereas waterworks district tended to apply to non-urban areas, possibly rural supplies. Examples of the different terminology can be noted in the former schedule 12 appearing in the first version of the *Water Act 1989* when enacted. There may have been a reason for the shifting the reference from water district under the Current Act to water supply district under the Draft Bill however whether that includes the issue raised (namely the use of the different phrases such as water district and waterworks district) should be the subject of further consultation. Our objective in raising this issue is to ensure that when adopting the phrase “water supply district” this definitely includes the various multiple types of districts which exist. An easy fix exists (if indeed one is necessary) is by defining water districts to be included within the ongoing definition of water supply district or given the issue relates to existing districts deal with that in the relevant transitional or savings provisions, including potentially through this new amendment to the Current Act namely the *Water (Residual Provisions) Act 1989. See discussion about transitionals and savings below in respect to existing districts.*

Item	Section	Comment / Response
2	Part 6.1 & 6.2	The Current Act at S122G makes provision for the continuation of existing districts. *Notably the existing reference is to "water district" not to "water supply district", see discussion in the item immediately above.* It is presumed that the existing districts will be preserved either through transitional provisions or regulation yet to be exhibited or potentially dealt with in the *Water (Residual Provisions) Act 1989* which we understand is proposed. The adoption of a definition of water supply district, sewerage district, waterway management district and irrigation district simply by reference to proposed s324 in the Draft Bill, without further legislative action, would mean that only those districts declared (i.e. effectively in the future) pursuant to s324 are districts for the purpose of the New Act. Any transitional or savings provisions in respect of existing districts somehow or other needs to be clearly incorporated as a district to which the New Act applies and various powers are provided. To put this another way there is an extra issue beyond the mere preservation of the existing districts (which can be dealt with via transitional provisions or even the *Water (Residual Provisions) Act 1989*). The extra issue is to ensure that those districts once preserved also incorporate provisions to trigger the various powers in respect of those existing districts under the New Act. It may be our difficulty arises from not having seen the proposed transitional provisions or other legislation and in part because of the drafting techniques adopted in the Draft Bill. An analogous issue is raised earlier in this Submission in respect of the continuation of existing water corporations (and their powers) (see discussion regarding s239-Establishment of water corporations).

Item	Section	Comment / Response
3	*Continuing existence of districts*	Whilst it appears clear the New Act will continue to incorporate the use of districts as a key component of the regulatory structure of water corporations it has been the subject of discussion for some years as to whether districts as a concept can be abolished. VicWater recognises that this may be the subject for discussion, consultation and legislative amendment at a later date however this complete rewrite of the water legislation did and does, provide a valuable opportunity to consider and address the issue now. It is worth observing that the metropolitan companies, whilst operating under licences, simply operated on the basis of their licence area and there was no need for districts or anything associated with them. The adoption of a region or area or responsibility (analogous to the existing but not statutorily created or regulated) regions or areas of the current water corporations could easily be utilised as a base for that work. The only reason these comments are repeated in this Submission is that it had been indicated earlier in the consultation phase in relation to this Draft Bill that there might be opportunity to revisit this issue during the Exhibition Phase. Also in a desire to keep the discussion about the necessity for districts (and the administrative structures and red tape they provide) as a live issue. In closing on this point the improvements, including the reduction in red tape around, the creation, consolidation or extension of districts appearing in the Draft Bill.

CHAPTER 7 – FUNCTIONS AND POWERS

Item	Section	Comment / Response
4	S345-*Application for consent (to connect)*	Section s345 as proposed reflects or re-enacts s145 of the Current Act. This section traditionally relates to applications for connection, at the time of actual connection by an individual property or properties. This may appear obvious however there has been some confusion around this section and its original purpose and activities associated with works required of developers, particularly in larger subdivisional developments. These larger subdivisions and development processes are governed pursuant to the various Price Determinations and other guidelines issued by the ESC. The statutory power to levy the various fees associated with those developer works are found within Part 13-Finance and Accountability, Division 6 of the Current Act and proposed in the Draft Bill in Part 9.3-Owner contribution for work. Other development requirements are also imposed pursuant to the ability of water corporations to place conditions on planning permissions. Further there is the ability for those permit requirements to be the subject of review to VCAT under the *Planning and Environment Act 1987*. Another reason why proposed s345 (and existing 145) should not apply development requirements is the prospect that such terms and conditions are binding on successors in title. It is unrealistic and inappropriate that a water corporation could during the development phase (which imposes substantive infrastructure construction obligations) to create those obligations as terms and conditions which bind future owners of the land, namely individual lot owners. VicWater would like to see S345 amended to make it clear that the section relates to individual connections and should not be seen as relating to development requirements or charges in relation to same. This could be achieved by adding a subsection, for example a new (7) which reads: *"345(7) This section does not apply in respect of owner contributions to Authority works, including charges, otherwise dealt with in Part 9.3"*

Item	Section	Comment / Response
5	S456-*Notice to connect to sewerage works*	When a property owner applies for connection of either water supply works or sewerage works (currently under s145 of the Current Act and under proposed s345 of the Draft Bill) the water corporation has the capacity to impose terms and conditions and those terms and conditions bind the future owners of that property. This is important as those terms and conditions might include particulars around modified sewerage systems (e.g. pressure sewerage schemes) which require specialised infrastructure to be located on the relevant property to be maintained. Another example would be recycled water where terms and conditions may include not using that recycled water for drinking. A number of water corporations utilise the ability to impose such terms and conditions. If however a water corporation compels the connection to a sewerage service the need in certain circumstances to be able to impose terms and conditions (which are then in turn binding on subsequent owners of the land) is just as important. The increased use of pressure sewerage schemes (which incorporate onsite infrastructure) is one example. Notably the lack of such facility within the existing s147 is a gap in the current legislation and effectively creates a loophole such that in a subdivision of say, 70 properties where 60 lots apply to connect and 10 are forced to connect (with the necessary sewerage scheme) there is no ability to impose those terms and conditions on those who were required to connect. (Note: They are only required to connect with EPA consultation and/or for public health issues. VicWater suggests that provisions be added to s456 and s457 as follows: • provisions analogous to proposed s345(3) providing that the notice to connect may include prescribed terms and conditions of connection; • provisions analogous to s345(4) that any terms and conditions imposed are binding on successors in title; and • provisions (potentially incorporated as part of s457 as proposed) that analogous to s346 the owner must comply with any terms and conditions imposed in the notice under s456.
6	S343(3)-*Availability of serviced property declaration*	This subsection fails to specify for how long the serviced property declaration needs to be available at the office of the water corporation and on its website. Effectively it implies indefinitely which would be excessively onerous. Perhaps a period could be added of, say, three or six months after service of the actual declaration notice. As noted this should apply in respect of the obligation of availability for inspection and the website.

Item	Section	Comment / Response
7	S352-*Estimation of water*	Drafts 352(1)(a) refers to two situations namely: • where the meter is connected to a serviced property; or • where the meter is connected to other property (perhaps a supply outside of district or a property in district, supplied by agreement and not declared as serviced). Subsection (2) which then provides the power to calculate the amount of water (where the meter is faulty) is then limited to only the serviced property, arguably. We say arguably because it appears the reference to "*...all land*" is meant to deal with a property which is not serviced but we suggest the words "*...land connected to the works of the Authority"* should be included in subsection (2). In respect of subsection (3) it appears the right to calculate the supply of water where no meter is connected would apply to both property declared as a serviced property or other land connected to the works of the Authority. The lack of consistency in the adoption of those two options or descriptions through s352 suggests it would be helpful to add to subsection (3) "*...any serviced property or land connected to the works of an Authority on which there is no meter connected..."* or words to that effect.
8	S353/355/356	All of the proposed Division 5 of Part 7.2 is restricted to serviced properties. It does not cover water supply by agreement either inside or outside of district. It is suggested that s353, 355 and 356 should all be amended to also apply in cases where the supply is from Authority works to a property by agreement, either not declared a serviced property or outside of district.

Item	Section	Comment / Response
9	S354(b)-*Prohibition against discontinuing supply – Recycled Water*	S354 is directed at preserving drinking water supply for health purposes and water supplied for fighting fire, that is from disconnection. S345(b) however relates to recycled water and in a significant number of cases that recycled water will be supplied to a commercial enterprise or perhaps to irrigate sports fields or a farm. When there is a failure to pay for that supply or other breach there is no health or public safety reason why that recycled water should not be discontinued. Currently the reference at s345(b) states that this refers to recycled water supplied under Division 1 of Part 7.5 which refers to all supplies within a water supply district. Notably the reference to Division 1 Part 7.5 has replaced a more recent version which referred to Division 5 of Part 7.5 however the adoption of the reference to Division 1 will still relate to recycled water supply to properties for trade, commercial or like purposes that are in the water supply district. Also the adoption of the reference to division 1 of Part 7.5 means that if recycled water was provided to a customer outside of the water supply district and that water did in fact relate to toilet flushing or the like (i.e. sanitary purposes) then under the current draft the water corporation would (inappropriately) be able to discontinue that supply. We suggest that the amendment previously suggested namely something along the lines of: "*... domestic purposes including sanitary purposes...*" would appropriately meet the need to prohibit the recycled water supply which serves domestic purposes, for example toilet flushing. If this amendment does not occur it has the potential to impact fundamentally on the commercial operations of water businesses in relation to recycled water supplied to commerce, agriculture and trade when that is unlikely to be the intention.

Item	Section	Comment / Response
10	Gippsland Water – Deleted S122F of Current Act Specific powers in relation to the Gippsland Soil and Organic Recycling Facility ("SORF")	Gippsland Water operates, at Dutson Downs, a facility which it would not otherwise be entitled to operate (in respect of part of its activities) except for the existence of s122F of the Current Act. In particular this is the receipt of a variety of organic and chemical wastes authorised through an EPA Licence, significantly broader than the licence of other water corporations. In particular this includes tannery waste and soil with oil contamination and sludge, asbestos and grease trap waste. Notably: • there were a variety of specific permissions which culminated in the inclusion of Schedule 8 of the Water Act 1989; • an omission in 1997 the Water Act (Further Amendment) Act 1997 accidentally repealed Gippsland Water's powers and it was effectively operating outside power; • in June 2003 the *Essential Services Commission Other Amendments Act 2003* amended the Current Act and reinstated these functions; and • in 2006 the *Water (Governance) Act 2006* included the current section 122F. Gippsland Water provides a vital disposal source for key industries and there needs to be certainty around the ability of Gippsland Water to continue to provide those services. The request for retention of a section like s122F of the Current Act has received a response from DEPI to date of: • the existing operation will be dealt with via a transitional provision; and • future approvals will require Ministerial approval. The Ministerial approval will presumably come under the new s358. It would appear likely that transitional provisions can only provide approval for existing activities or current contractual arrangements, and the expiration of those contracts or upon any variation of the activity it is plausible further Ministerial authority will be required. Notable also is that the Minister can withdraw his or her approval for such an activity at any time. Whilst the new Ministerial permission potentially as outlined in s358 can operate to deal with the issue Gippsland Water specifically seeks the inclusion of a section analogous to the current s122F.

Item	Section	Comment / Response
11	S632-*Ownership of Works*	The new s362 partially replacing s138 of the Current Act adopts a new drafting style of not specifying that Works presently owned by an Authority, continue to be owned by the Authority as at the commencement of the relevant section. Presumably there is an intention to incorporate provisions analogous to the current s138(1)(a) in transitional provisions or the like. VicWater's preference would be that the ownership of existing Works actually appears in the New Act however if it is to be dealt with via some form of transitional provision we highlighted that need here.
12	S380-*Removal of Trees*	Ideally this should refer to "*...trees and other vegetation..."* as many easements or works of an Authority can be obstructed significantly by vegetation which is not strictly defined as a tree. For example a carriageway easement or the like. Notably it is not clear in the Current Act (see the current s148) or in the Draft Bill (see the draft s732) that an Authority can require a landowner to remove vegetation as opposed to a tree. If the amendment requested is accepted then the additional words "*...any other vegetation..."* would need to be added to s382 and s383 as proposed also.
13	S405-*Plans of Authority works*	This appears to be a new provision which requires the Authority to keep its plans up to date. This new positive obligation on water corporations carries with it the potential that a failure to keep plans up to date and, thereafter there is an attempt by a person to rely on an out of date or inaccurate plan, may incur liability for the Authority. Many Authority plans are based on very old information and it is a regular occurrence that works are not located precisely where they are expected to be (based on some plan). Notably also Authorities rely on developers to complete plans of their works and submit those post construction to form part of the Authority records. In short inaccuracies will exist without fault or lack of diligence from the Authority. Authorities readily acknowledge the need for sound endeavours in relation to the maintenance of plans however there is concern in relation to potential liability. That concern is real given there are often complaints made where in a situation (like that mentioned above) there is an attempt to rely on old and/or inaccurate plans. A solution would be the inclusion of a provision like the proposed s403 which indicates that there is no liability to be incurred by an Authority for any failure to maintain accurate plans where the Authority is acting on a bona fide basis. Such a change is requested.

Item	Section	Comment / Response
14	S406(3)-*Emergency management plans and the Statement of Obligations*	Proposed s406(3) would appear to be redundant in the sense that there is an obligation on the water corporation to take account of the Statement of Obligations in any event. At best the subsection would appear to operate as a reminder, can it be deleted?
15	S425	Irrigation properties get a special definition of "serviced property" with reference to proposed s343(1)(c)(i). As noted elsewhere s343 only operates in respect of new declarations of serviced properties and those properties which are currently serviced will need to be saved or preserved via transitional provisions. In defining serviced property there is a significant issue raised by VicWater and the reader is referred to that comment within the Dictionary section. Again this seems to arise out of the drafting technique of dealing with existing issues through transitional or potential amendments to the Current Act to preserve certain matters. Accepting that approach, the purpose of this comment is to highlight the matter to ensure it is not lost in the transitionals or preserving legislation.
16	S448-*Special Water Supply Catchment Areas*	This comment is not so much about the need for any amendment to these provisions rather references the issue with special water supply catchment areas. In the schedule to all planning schemes in Victoria it requires the referral of any planning permit application to the water corporation with responsibility for the particular special water supply catchment area. The difficulty is that those special water supply catchment areas were established, in many cases, many years ago and most municipal councils do not know whether they should refer the particular application to the rural authority or the urban authority or the catchment management authority or all three. The solution probably rests in amendments to either the *Planning and Environment Act 1987* or the relevant planning schemes rather than modification of sections in the Draft Bill.

Item	Section	Comment / Response
17	S454-*Functions under this Division (sewerage)*	Currently the combination of s173 and s174 of the Current Act allows an Authority to provide sewerage functions both inside its sewerage district and with Ministerial consent, outside. The Draft Bill allows an Authority to provide services outside district, without Ministerial consent. Proposed s454 states there is an ability to provide services to "*...any serviced property or any person"* which is a mix of two concepts namely provision of a service to the property and a provision of a service to a person. Potentially the provision of a service to the person could be provision of a service outside of the sewerage district (i.e. not to a serviced property). If (as is at least arguable) the reference to person is actually limited to a person occupying a serviced property then s454 does not appear to allow the provision of sewerage services outside of district which is unlikely to be the intent. It is suggested that s454 may read: *"A water corporation has the function to provide to any property or to any person, the service of collecting, conveying, treating and disposing or recycling of sewage and trade waste".* That is, delete the reference to serviced property which is covered in any event.
18	S455	It remains unclear what purpose s455 as proposed achieves. Apparently it had its origins in the *Sewerage Districts Act 1958.* There is no similar provision in relation to water supply works and never has been. Effectively, therefore, the Authority must serve an extra notice in relation to sewerage works under s455 (this being the re-enactment of s178 under the Current Act). This is red tape which provides no substantive additional benefit and adopts a separate process for sewerage works as opposed to water supply works. This is not a major issue but the inconsistency in approach and the red tape component is raised.

Item	Section	Comment / Response
19	*No section – issue with sewerage powers*	S442 as proposed inserts a specific provision which allows a water corporation to provide a water supply by agreement. Trade waste services also allow service to be provided by agreement. It would appear appropriate to include a specific provision within Division 5 – Sewerage of proposed Part 7.5 analogous to s442. That is the provision of sewerage services by agreement either inside or outside of district. This would allow a water corporation to agree to provide sewerage services, allowing discharge into its infrastructure and be subject to the same sort of criteria as noted in s442(2) but in relation to sewerage services.

Item	Section	Comment / Response
20	S461 to 466 inclusive-*Trade Waste Consents*	The rationale for creating a two tiered process for trade waste agreements has been explained, namely that all trade waste discharge is intended to require firstly a "*consent*" and that some of those consents (for more significant trade waste discharge) also require an agreement. This two tier process is unnecessary but can operate successfully subject to: • amendments to all trade waste consents and agreements of all water corporations; and • can operate better with some suggested amendments to the proposed new sections set out below. Because the trade waste agreement will effectively operate as a subset to a non standard consent, clarity around how and when the water corporation can amend, revoke or otherwise deal with trade waste agreements is sought. • For example, proposed section 463(4) allows a water corporation to revoke a consent or a trade waste agreement for material breach, this constituting an important and welcome improvement in the legislation. However, section 463(1) allows the water corporation to amend a consent, on notice, and it is not clear whether that right to amend a consent would extend to a right to amend a trade waste agreement. • VicWater requests an amendment to section 463(1) with the necessary ancillary amendments, to allow a water corporation to amend the trade waste agreement. It is noted the change is vital, has been requested previously and has not been incorporated into the Draft Bill. • Similarly, section 466, allowing entry to a property, believing it is occupied by a person holding a consent, should also apply to a trade waste agreement. • Transitional provisions – care will be required in relation to transitional provisions relating to existing trade waste agreements and consents (which are also sometimes called permits). Most importantly the various provisions provided under the New Act ought to apply to existing trade waste agreements or consents and that clarity is requested by VicWater either in the transitional provisions or by amendment to the new specific powers and functions in relation to trade waste.
21	S465-*Breach of conditions of consent - offence*	Proposed section 465 limits the nature of the statutory offence to certain specified items. We note as follows: • A crucial potential offence relates to the failure of a trade waste customer to notify the water corporation of a change in industrial, commercial or other processes that may impact significantly on the trade waste. This is analogous to the proposed draft condition 462(4)(e) in terms of conditions that may be incorporated. It is requested that the failure to comply with such a condition also be added as an offence under proposed S465.

CHAPTER 9 – FINANCE

Item	Section	Comment / Response
1	S575-*Definitions*	A separate definition of sewage disposal charge has been included which then references proposed s576, which allows the Authority to set the charge. This may refer to the removal of solid waste or the physical transportation of sewage (or trade waste?) from a property (as opposed to disposal through the reticulated system). Confirmation of this is sought. The definition is however limited to "serviced properties" only. VicWater seeks this definition be expanded to cover situations which may occur of disposal of sewage waste from premises that are not serviced properties. Also with the revised definition of sewage now excluding trade waste the definition requires the additional reference to trade waste. The definition could simply end after the words "*...service of disposing sewage and trade waste."*
2	S584-*Charge for additional works and services*	The proposed s584 only in part replaces the s264 in the Current Act. The significant difference is that proposed s584 only allows the imposition of such charges for serviced properties, within district. S264 was not so limited. It is not known whether this is a deliberate decision or arises out of the efforts to restructure the charging and financing provisions of the Draft Bill. In a broader sense Part 9.2 tends to relate to serviced properties within district and therefore whether deliberately or by omission there appears to be a loss of capacity to impose charges for services for works outside of district. That is, rather than by agreement with the particular owner. Further consultation about whether the ability of the Authorities to charge for those outside district services and works may need to occur. At present it would appear a version closer to the existing s264 needs to be incorporated (obviously without the reference to the ability to set charges via By-law) to allow charges outside of district on to unserviced properties or customers.
3	S592-*Separate Occupancies*	This is a new concept to be applied in relation to separate occupancies referencing the definition in the Valuation of Land Act rather than the ability to separately meter the particular part of the property for separate premises. Further consideration of the impact of the adoption of these provisions needs to be undertaken.

Item	Section	Comment / Response
4	S600-*Owner contribution for cost of works*	The table at proposed section 600 takes various charging provisions from the Current Act and places them in a tabular form. In particular item 4 allows a contribution to be required in respect of subdivisions however it only refers to subdivisions which are "*referred to the Authority*". Item 4 derives from the current section 268(2) which at the time it was drafted required the formal referral, pursuant to section 55 of the Planning and Environment Act 1987, of all subdivisions. The requirement for such referrals has now been modified and 2 lot subdivisions are no longer referred. 2 lot plans represent a significant percentage of all subdivisions. The simple solution for this is to modify column 4, *Circumstances*, of Item 4 to state: *"a proposal for the subdivision of land under the Planning and Environment Act 1987."* An earlier request for this change has not been responded to in the Draft Bill and given the requested change effectively takes account and the changes to other legislation, which has since occurred we respectfully suggest such a change should be made.
5	S600(3)-*Fire plugs*	We suggest this should refer to: *"Fire plugs means fire plugs referred to in section 444 (3) that have or **will be** installed **by** an Authority".* The change has been suggested previously and relates to the fact that the charges are often levied before the works are done. The current drafting only allows for existing works.
6	S602	Section 602(1)(b) calls for the date by which the proposed charge must be paid and is a new requirement to the existing notice under section 268(4) of the Current Act. It is unnecessary and adds confusion. The notice under section 602 describes the nature of the charge and the right to object to it and potentially seek review of that charge in VCAT. The date by when the charge must be paid is dealt with under proposed section 620(2) which includes variable dates dependent on whether there are objections or the like. If that is the case then in order to achieve compliance with the requirement to incorporate a date under proposed section 602(1)(b) there would need to be a range of date options provided in the relevant notice. We suspect the above is why that requirement does not appear in the Current Act and we suggest it should not appear in the Draft Bill.

Item	Section	Comment / Response
7	S602(2)-*Date for payment in notice under s602*	Following from comments above given the relevant dates for payment will need to be specified only <u>after</u> the various things have occurred (and will vary) as set out in proposed section 620 table, we suggest proposed section 602(2) ought be deleted. There is no similar provision in the Current Act and allowance is already provided elsewhere in the Draft Bill for the payment date, in particular in Part 9.4. In fact the current drafting creates a potential inconsistency.
8	S622-*Instalment payment arrangements*	Making the proposed s621 (namely the right for a person to choose to pay by instalments) subject to proposed s622 is noted as an earlier correction requested by VicWater. We note that s622(1)(a) only mandates the ability to pay by instalments in respect of annual charges. S622(2) also now correctly addresses items 4, 5 and 6 of the table at s600. VicWater presumes that any obligation on Authorities to provide instalment arrangements for compulsory schemes (currently referred to in items 1, 2 and 3 of the proposed s600) will be dealt with pursuant to ESC direction and is therefore managed through the proposed s622(3).
9	S639-*Recovery of charges imposed*	S639(3) relates to the situation where an amount owing is owed by the owner of the property and constitutes a charge against the property. In particular s639(3) confirms that the charge applies whether or not the Authority has agreed to defer the payment. The other method by which payment can effectively be deferred is via the instalment provisions which will apply in respect of any annual charges or may apply for compulsory charging schemes (see item 1, 2 and 3 of proposed s600). VicWater suggests that proposed s639 be amended to read "*...to defer the payment, or accept payment by instalment, of the whole or any part of an amount*".
10	S653-*Inspection of rate records*	This provision has been brought over from legislation which was incorporated at the request of Melbourne Water Corporation some years ago. Notably it does not currently apply to other water corporations or in the Draft Bill. There are continuing issues with water corporation rate records not being updated to achieve both accuracy and also consistency with municipal rate records. VicWater requests that the reference under s653 be expanded from just Melbourne Water Corporation to include other water corporations to meet this growing concern.

CHAPTER 11 – LIABILITIES

Item	Section	Comment / Response
1	S676	The new s676, which now includes Municipal Councils on a similar basis to the Current Act in s157, which applies to Authorities, is noted. A question has been raised as to whether there may be Council assets or works (other than stormwater works or waterway management schemes) which give rise to potential for such a claim, which should also be dealt with under proposed s676. That is, rather than the proposed s670, which is the re-enactment of the current s16. It may be appropriate to consult with Municipal Association of Victoria to find out whether there are other works which contain water (e.g. recreational lakes or other things of that nature which are not formally storm water works) which might be similarly included. This specificity around which types of activities are governed by the proposed s676 for Councils may have also led to the additional specificity around proposed s675 for water corporations and in particular proposed s675(3), which is different to the Current Act. The Current Act relates to all functions or activities of a water corporation whereas s675 sets out, in paragraphs (a) to (h) inclusive, various functions. It would appear that those functions are so wide ranging that they would encompass all areas of activity undertaken by a water corporation that may give rise to a claim. The nature of this particular change will be further canvassed with water corporations and if that does need to be addressed VicWater will consult further with OLV.

CHAPTER 12 – PROVISIONS RELATING TO LAND

Item	Section	Comment / Response
1	S681-*Definitions (definition of "new works")*	The definition of New Works which appeared in earlier drafts of the Draft Bill has been omitted in this Exposure Draft. It is understood that OLV acknowledged that omission and was seeking the reinsertion of that definition of New Work. As previously noted the inclusion of the definition of New Works is vitally important, particularly in relation to backlog sewerage schemes where installation of such sewerage works are to be excluded from the proposed new requirements to obtain an interest in the relevant land (e.g. via easement) or an access agreement before the installation of works can occur. VicWater strongly supports the reinclusion of the definition of New Works on the same terms as it appeared in the earlier drafts of the Bill.
2	S693-*Entry to construct or install works*	It is noted that s693(a) will be the method most likely adopted to enter and construct work, namely the creation of an easement first before there is entry to lay a pipeline. Practically even if an easement is acquired that easement is usually smaller (usually narrower) than the area of the land that may need to be entered to actually install the infrastructure. Water corporations as Acquiring Authorities have rights under the *Land Acquisition and Compensation Act 1986* to enter and temporarily occupy and also presently under section 133 they would be entitled to the land. VicWater's current reading of the proposed s693(a) is that after acquisition of the relevant easement interest the Authority could then exercise its rights of entry, including temporary occupancy on other parts of the land during construction. If there is any doubt about this it may be appropriate to make an amendment to the Draft Bill to make that clear. That amendment may best occur to proposed s693.
3	694(3)(c)-*Entry for investigative purposes*	This subsection relates to water quality issues and the requirement to give seven days notice to collect a water quality sample. This is inappropriate given the level of risk that may be associated with deficient water quality and public health. It is suggested that the suspected failure to meet the quality standards required under the *Safe Drinking Water Act 2003* ought to be included as an emergency situation and not simply investigative this allowing urgent entry for this purpose.

Item	Section	Comment / Response
4	S694(4)-*Entry to residential land*	It is suggested there ought be a new subsection (c) relating to emergency entry adopting the definition of emergency that now appears, helpfully, in the proposed Dictionary.
5	S725-*Evidentiary presumptions*	VicWater requests that proposed s725(1) is NOT limited to serviced properties. The request relates to the regular provision of water supply by agreement either outside of district or within, for properties which are not declared as serviced. It is the case that water restriction arrangements and permanent water saving controls need to apply to water supply by agreement. We suggest the deletion of the word "*serviced*" from proposed s725(1).
6	S734-*Uncovering or exposing works if registered easement exists*	VicWater opposes the inclusion of the defences at proposed s734(3) and (4). The existence of the registered easement makes it clear that there are going to be Authority assets located within the registered easement, disclosed on the title, and the failure of the accused to seek the consent of the Authority is just that, a failure. In no situation to our knowledge do registered easements ever actually identify the location of the assets. The accused will always be able to claim it as a defence because no registered easement will ever locate the relevant pipeline and the offence will never be made out. Further, access agreements are a new concept and (with respect) are unlikely to be utilised in the long term in relation to the location of assets in any event. Similarly subsection (4) raises concerns as "accurately identify" is going to create a fact based issue in every case of the level of accuracy required. We respectfully suggest these defences in the subsection should be removed. In part they have been created because of the strict liability issue however it would be better to have the strict liability element removed and also the defences at (3) & (4).

CHAPTER 13 – OFFENCES

Item	Section	Comment / Response
1	S732-*Structures over works*	The addition to proposed s732(b) of the words "*...knowingly or recklessly...*" has the potential to substantially change how the proposed section operates. That is represents a shift in policy and impact compared to s148 of the Current Act. The intent of these extra words was presumably to excuse a person for negligently or accidently (as opposed to knowingly or recklessly) interfering with the works of an Authority or placing a structure on them. For example a garden shed, by accident. Unfortunately because proposed s732 (like the existing s148) also operates as the consent for such works to occur the change to the drafting means that if a person merely accidently places something on top of the works of an Authority (or otherwise interferes with those works) it will not be necessary for them to either remove that structure or repair that damage. The need for the build over consent is not triggered if the original placement is only negligent or accidental. The solution to this is to return proposed s732(b) to its form under the current s148 (i.e. remove the words knowingly or recklessly) and then create an exemption or defence to the actual offence, perhaps by modification to proposed s732(2). This difficulty is emphasised by the inconsistency that would also then exist between the proposed s732(b) and (c). That is proposed s732(1)(c) does not exempt those actions on the basis of either negligent or accidental acts.
2	S732-*Structures over works*	A separate issue in relation to proposed s732 is the word "structure". Issues arise where something of significance is placed above either an easement or Authority works, for example a large water tank or a concrete path or the like and there is an assertion that this does not constitute a "structure". This is not defined in the Current Act or Draft Bill. It is suggested that s732 be amended to reference something like: "*...cause or permit any structure to be built, any chattel, plant or works to be carried out or placed upon, or any filling to be placed, on land over which -...."* If agreed this change would also need to be made to subsections 732(1)(a) and (b).

Item	Section	Comment / Response
3	s749(2)-*Power to prosecute*	Proposed s749(2) allows an Authority to undertake enforcement in relation to Authority works (inside or outside of a district) or which occurs within the district of an Authority and finally relating to the power or function delegated by the Minister to the Authority. It is likely that an Authority may seek to enforce the Act in respect of an action or activity or provision of services (or the like) which is outside of the district of an Authority but is not in relation to Authority works. An example may be where the Authority has created an easement over land but not yet installed works. Building on that easement before the works are in place, would not allow enforcement under the current drafting of s749(2). Another example might be the obstruction of an Authority officer on land outside of district. This has a greater potential to occur in relation to the rural authorities. The overall point is that s749(2)(a) operates to limit the enforcement of breaches of the Act unless it strictly relates to Authority works. VicWater seeks the amendments to the Draft Bill to rectify this.
4	S752(4)	The reference to "*interfere with*" might be helpfully clarified by adding the word "*bypass*" which is obviously a key potential interference that may occur with meters when water theft is involved.
5	S760	The drafting limits this to serviced properties which therefore excludes any discharges into Authority works which are supplied by agreement and the property is not declared as a service property. Within that excluded group would be any property which receives a service by agreement outside of district. This may include quite significant customers in respect of trade waste or industrial discharges. VicWater requests that s760 be amended such that the presumption applies in respect of any discharge from a property connected to Authority works (including stormwater works) and is not limited to just serviced properties.

CHAPTER 14 – GENERAL

Item	Section	Comment / Response
1	Part 14.4-*VCAT review*	The tabulation of the VCAT review provisions is a welcome addition in the Draft Bill in terms of clarity. VicWater is seeking an analysis of how many of the 85 reviewable decisions are new or are already existing. *If a copy of such analysis or document is available VicWater seeks this.* VicWater would value the opportunity to make further comments about the new or modified review provisions during further consultation phases.
2	S783-*Matter VCAT must take account of*	Proposed s783 inserts a new requirement that in any and all VCAT determinations (except for under s784-Valuations) there is a requirement to take account of: • any relevant planning scheme; • any planning scheme or amendment that has been adapted; and • any State Environment Protection Policy. Because of the approach of grouping all VCAT reviews together within Part 14.4 this has the effect of applying these three considerations to effectively 84 of 85 VCAT reviews for most of which these three factors will have no relevance. Because they are specifically noted, even if they bear no relationship to the relevant decision they will need to be considered and then presumably dismissed. With respect the inclusion of the words "...where appropriate.." is not an answer because advocates for VCAT applicants will seek to take advantage of the application of provisions which appear to have little application. One example is consideration of the planning scheme provisions in relation to decisions about infrastructure provisions. Water corporations should consult with but cannot be driven by, the aspirations of developers and planning authorities as to where sewerage schemes or water supply schemes should be instigated. Obviously one developer will have different views to another depending on where their land is located. Another reference is where proposed s783(b) requires the taking into account (where appropriate) of a planning scheme amendment *when **adopted** by the planning authority*. The "adoption" of a planning scheme amendment by the planning authority does not mean it is law or regulation merely that one stage in the planning scheme amendment process has been completed. Proposed s783(b) appears to be a borrowing of a section from the *Planning and Environment Act 1987,* namely s84B(2)(g) which is directed at an obligation of planning authorities and VCAT to take account of seriously entertained planning

Item	Section	Comment / Response
		proposals in planning permit applications. In other words (with respect) it has little or nothing to do with decisions of an Authority or VCAT on review, under the New Act. At the very least VicWater would like to see an analysis of why and how this catchall obligation to consider these matters has been incorporated into the VCAT review provisions in proposed Part 14.4. The strong preference at present, is that the proposed section 783 be deleted.
3	S786	VicWater is not aware of whether there is an existing provision for VCAT to order compensation in relation to reviews by VCAT in respect of decisions under proposed s489(1). Proposed s489(1) relates to a declaration of flood levels and the capacity of the person to make an application for review in respect of same. If (as may potentially be the case) a new compensation provision has been added it is appropriate for further consultation and explanation to occur in relation to same given its potential to impact the relevant authorities.

DICTIONARY

Item	Section	Comment / Response
1	S3-*Biosolids*	The proposed definition refers to wastewater which is not defined in the Draft Bill. Suggest change to *"...trade waste or sewage"*.
2	S3-*Closed Catchment*	Is a new definition and is limited to rainfall caught and diverted to a dam. The query is whether that is technically correct. Can it be diverted to a waterway, for example. In considering this note that catchment as defined under the *Catchment and Land Protection Act* has a broader definition of catchment, referencing both run off and percolation and water to streams or stream systems?
3	S3-*Septic (Tank) System*	Previously VicWater asked whether it was appropriate to consider deleting the word "tank" from this definition, perhaps simply *"...septic system*". The whole definition has now been removed and we query if that is a deliberate omission.
4	S3-*Serviced Property*	The definition is limited to the properties declared under the New Act, it having been indicated that serviced properties under the Current Act (or even legislation prior to that) will be dealt with in the transitional provisions, which have not yet been published. Technically attending to this in the transitional provisions will work however it remains a preference of VicWater to incorporate this within the definitions, rather than transitional. This because: • a separate location from or within the New Act for such a key defined term is likely to lead to misunderstanding or confusion; • the overwhelming majority of serviced properties will be existing serviced properties. It is curious to deal with that majority via transitional; • it is the way it is dealt with in the Current Act, that is within the definitions and not transitional. Regardless of where it is defined it is requested that it be defined in the following manner: *"Land or part of land, within a sewerage district or a water supply district, which immediately before the commencement of this section was receiving a service, other than by agreement, from the Authority responsible for that district."*

Item	Section	Comment / Response
5	S3-*Serviced Property*	The draft definition replaces the word "*property"* currently appearing within the Current Act with the word "*land*". It is understood the rationale for this is to move away from the use of the word property however "*land"* carries the connotation of a single title, such as a lot on a plan of subdivision. The Current Act, the various Price Determinations and (we believe) the intention of the New Act is to leave a situation where a separate premises that can be provided with a water meter (both actually and potentially) can be declared as a serviced property. That is, something less than a separate title or lot on a plan in area. For example a separate dwelling in a retirement village, that is not on a separate title or a separate level in a multilevel building that is not the subject of a strata subdivision. We respectfully suggest that the definition, therefore be: *"**Serviced Property** means land, or part of land:* *(a) that has been declared to be a serviced property under section 363 or 458(8)(b); or* *(b) within a sewerage district or water supply district, which immediately before the commencement of this section was receiving a service, other than by agreement, from the Authority responsible for that district."*
6	S3-*Works*	It is recognised as an inclusive definition however it is observed there is no reference in subparagraph (b) to sewerage. Perhaps: *"(iv) the collection, transport, treatment, storage, disposal or recycling of sewage or trade waste; and"* Items (b)(i), (ii) and (iii) are no more significant than sewage infrastructure and this absence, as a key component of the services provided by the majority of Victoria's water corporations, is incongruous.