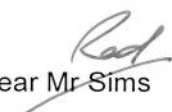


23 November 2011
Our ref: C/11/28111

Mr Rod Sims
Chairman
Australian Competition and Consumer Commission
GPO Box 520
Melbourne Vic 3001


Dear Mr Sims

APPLICATION FOR ACCREDITATION

I am writing to apply for accreditation of arrangements for the Essential Services Commission to approve or determine regulated charges of Part 6 operators and Part 7 operators relating to State water resources. This letter covers attachments that contain information relevant to the application as set out in the *Water Charge (Infrastructure) Rules 2010*.

The arrangements to be accredited are set out in the *Water Legislation Amendment (Water Infrastructure Charges) Act 2011 (Vic)*, a copy of which is at Attachment A.

Attachment B addresses the criteria set out in Schedule 4 (Information to be included in an application under Part 9) of the *Water Charge (Infrastructure) Rules 2010*.

At Attachment C is evidence that the application has the support of the Head of the Department with responsibility for the Essential Services Commission, the Department of Treasury and Finance. This is included to comply with rule 60 (2)(c) of the *Water Charge (Infrastructure) Rules 2010*. Also at Attachment C is a letter of support from the Victorian Minister for Water.

I trust this information is sufficient. Your staff can contact Jason Fitts on jason.fitts@esc.vic.gov.au or (03) 9651 0224 if they have any queries.

Yours sincerely



Dr Ron Ben-David
Chairperson
Essential Services Commission

ATTACHMENT A – LEGISLATION

Water Legislation Amendment (Water Infrastructure Charges) Act 2011

No. 63 of 2011

TABLE OF PROVISIONS

<i>Section</i>		<i>Page</i>
PART 1—PRELIMINARY		
		1
1	Purposes	1
2	Commencement	2
PART 2—AMENDMENT OF THE WATER INDUSTRY ACT 1994		
		3
3	New section inserted after section 4	3
	4AA Parts 1A and 1B to prevail	3
4	New section inserted after section 4A	3
	4AB Non application to Basin water charges	3
5	Application of Essential Services Commission Act 2001	3
6	Insertion of new Part after Part 1A	4
PART 1B—APPROVAL OR DETERMINATION OF BASIN WATER CHARGES		
		4
4J	Interpretation	4
4K	Application of Commonwealth provisions	6
4L	Commission is State Agency	6
4M	Powers of Commission	6
4N	Cessation of effect of provisions	6
4O	Power of Commission to apply for accreditation	7
4P	Notification of accreditation etc.	7
4Q	Recovery of Commission's costs	8
PART 3—AMENDMENT OF THE ESSENTIAL SERVICES COMMISSION ACT 2001 AND THE WATER ACT 1989		
		10
7	Functions of the Commission— Essential Services Commission Act 2001	10
8	Insertion of new section after section 10— Essential Services Commission Act 2001	10
	10A Commission's functions in relation to particular Basin water charges	10
9	Insertion of definition in Water Act 1989	11
10	Objections to tariffs or fees— Water Act 1989	11
11	Objections to required payments— Water Act 1989	12

<i>Section</i>	<i>Page</i>
PART 4—REPEAL OF AMENDING ACT	13
12 Repeal of amending Act	13
ENDNOTES	14



Victoria

Water Legislation Amendment (Water Infrastructure Charges) Act 2011[†]

No. 63 of 2011

[Assented to 15 November 2011]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to amend the **Water Industry Act 1994**—
 - (i) to apply certain provisions of the Water Charge (Infrastructure) Rules 2010 of the Commonwealth as a law of the State to enable the Essential Services Commission, established under the

Essential Services Commission Act 2001, to approve or determine charges for the provision of certain water services in the State; and

- (ii) to enable the Essential Services Commission to apply for accreditation of those arrangements by the Australian Competition and Consumer Commission; and
- (b) to make related and consequential amendments to that Act and other Acts.

2 Commencement

This Act comes into operation on the day after the day on which this Act receives the Royal Assent.

**PART 2—AMENDMENT OF THE WATER INDUSTRY ACT
1994**

3 New section inserted after section 4

After section 4 of the **Water Industry Act 1994**
insert—

"4AA Parts 1A and 1B to prevail

If there is any inconsistency between a provision of Part 1A or Part 1B and a provision of the **Essential Services Commission Act 2001** or the **Water Act 1989**, the provision of Part 1A or Part 1B prevails to the extent of that inconsistency."

See:
Act No.
121/1994.
Reprint No. 6
as at
29 February
2008
and
amending
Act Nos
15/2008,
68/2009,
69/2009,
6/2010 and
29/2010.
LawToday:
www.
legislation.
vic.gov.au

4 New section inserted after section 4A

After section 4A of the **Water Industry Act 1994**
insert—

"4AB Non application to Basin water charges

- (1) This Part does not apply to any approving or determining of a Basin water charge.
- (2) In this section *Basin water charge* has the same meaning as in Part 1B."

5 Application of Essential Services Commission Act 2001

- (1) In section 4B(1)(a) of the **Water Industry Act 1994**, for "this Act" **substitute** "Part 1A of this Act".
- (2) Section 4B(3) of the **Water Industry Act 1994** is **repealed**.

6 Insertion of new Part after Part 1A

After Part 1A of the **Water Industry Act 1994**
insert—

"PART 1B—APPROVAL OR DETERMINATION OF BASIN WATER CHARGES

4J Interpretation

(1) In this Act—

accredited arrangements has the same meaning as in the Commonwealth Water Charge Rules;

applied Victorian provisions means the Commonwealth provisions as applied under section 4K;

Basin water charge means a regulated charge for a service in relation to Basin water resources provided by a Part 6 operator or Part 7 operator;

Basin water resources has the same meaning as *State water resources* has in the Commonwealth Water Charge Rules in relation to Victoria;

Commonwealth provisions has the same meaning as *applied provisions* has in rule 59(2) of the Commonwealth Water Charge Rules;

Commonwealth Water Charge Rules means the Water Charge (Infrastructure) Rules 2010 of the Commonwealth;

Part 6 operator has the same meaning as in the Commonwealth Water Charge Rules;

Part 7 operator has the same meaning as in the Commonwealth Water Charge Rules;

regulated charge has the same meaning as in the Commonwealth Water Charge Rules;

State Agency has the same meaning as in the Commonwealth Water Charge Rules.

- (2) Section 3(2) and (3) does not apply to this Part.
- (3) The **Interpretation of Legislation Act 1984** does not apply to the applied Victorian provisions.
- (4) The Acts Interpretation Act 1901 of the Commonwealth applies to the applied Victorian provisions to the same extent that that Act applies to the Commonwealth Water Charge Rules, and as if—
 - (a) that Act, as so applied, were enacted as a law of Victoria; and
 - (b) the applied Victorian provisions were an Act and each rule of the applied Victorian provisions were a section of an Act.

Note

See section 5 of the Water Act 2007 of the Commonwealth as to the application of the Acts Interpretation Act 1901 of the Commonwealth.

- (5) The following provisions apply to the applied Victorian provisions—
 - (a) any expressions used in the applied Victorian provisions have the same meaning as in the Water Act 2007 of the Commonwealth and the Water

Regulations 2008 of the
Commonwealth; and

- (b) the applied Victorian provisions must be read consistently with the Water Act 2007 of the Commonwealth and must be read so as not to exceed the rule making power in section 92 of that Act and any other ancillary rule making powers in that Act.
- (6) If a provision of the applied Victorian provisions would, but for subsection (4) or (5), be construed as exceeding the rule making powers referred to in subsection (5)(b), the provision is taken to have effect to the extent that it does not exceed that rule making power.

4K Application of Commonwealth provisions

In respect of Basin water charges, the Commonwealth provisions apply as a law of the State.

4L Commission is State Agency

For the purposes of rule 59(1)(b) of the Commonwealth Water Charge Rules and the applied Victorian provisions, the Commission is specified as the State Agency.

4M Powers of Commission

The Commission has all the powers that are necessary to perform its functions as a State Agency under the applied Victorian provisions.

4N Cessation of effect of provisions

Sections 4K, 4L and 4M do not have effect if this Part is not accredited arrangements.

4O Power of Commission to apply for accreditation

- (1) The Commission may apply to the Australian Competition and Consumer Commission for this Part to be accredited as accredited arrangements.
- (2) In addition to subsection (1), the Commission has the power to do anything necessary for this Part to be accredited as accredited arrangements.

4P Notification of accreditation etc.

- (1) If the Australian Competition and Consumer Commission approves this Part as accredited arrangements, within 7 days after that approval, the Commission must publish notice of that approval in the Government Gazette.
 - (2) A notice under subsection (1) must include—
 - (a) publication of the Australian Competition and Consumer Commission's decision to approve the arrangements; and
 - (b) the date on which the decision of the Australian Competition and Consumer Commission came into effect.
 - (3) If the Australian Competition and Consumer Commission revokes accreditation of this Part as accredited arrangements, within 7 days after that revocation, the Commission must publish notice of that revocation in the Government Gazette.
-

- (4) A notice under subsection (3) must include—
- (a) publication of the Australian Competition and Consumer Commission's decision to revoke accreditation of this Part as accredited arrangements; and
 - (b) the date on which the decision of the Australian Competition and Consumer Commission came into effect.
- (5) If accreditation of this Part as accredited arrangements ceases to have effect under the Commonwealth Water Charge Rules, within 7 days after that ceasing to have effect, the Commission must publish notice of that ceasing to have effect in the Government Gazette.
- (6) A notice under subsection (5) must include the date on which the accredited arrangements cease to have effect.

4Q Recovery of Commission's costs

- (1) The Minister administering the **Essential Services Commission Act 2001** must determine the amount to be contributed by each Part 6 operator or Part 7 operator towards the costs that are incurred or are likely to be incurred by the Commission in the exercise of its powers and the performance of its functions and duties under the applied Victorian provisions.
- (2) The amount that a Part 6 operator or Part 7 operator is to contribute under subsection (1) is payable at the intervals and in the amounts determined by the Minister administering the **Essential Services Commission Act 2001**.
-

-
- (3) The Minister administering the **Essential Services Commission Act 2001** must give notice in writing of any determination made by the Minister under subsection (1) or (2) to a Part 6 operator or Part 7 operator to whom the determination applies.
- (4) The Minister administering the **Essential Services Commission Act 2001** must not make a determination under subsection (1) or (2) unless the Minister has first consulted with the Minister administering this section.

_____".

**PART 3—AMENDMENT OF THE ESSENTIAL SERVICES
COMMISSION ACT 2001 AND THE WATER ACT 1989**

**7 Functions of the Commission—Essential Services
Commission Act 2001**

In section 10 of the **Essential Services
Commission Act 2001**—

(a) in paragraph (l), for "**2007.**" substitute
"**2007;**";

(b) after paragraph (l) **insert**—

"(m) if, under Part 1B of the **Water
Industry Act 1994**, the
Commonwealth provisions (within the
meaning of that Part) are applied as a
law of the State, to perform the
functions conferred on the Commission
as the State Agency under those
provisions."

**8 Insertion of new section after section 10—Essential
Services Commission Act 2001**

After section 10 of the **Essential Services
Commission Act 2001** **insert**—

**"10A Commission's functions in relation to
particular Basin water charges**

The following provisions do not apply to the
functions of the Commission referred to in
section 10(m)—

(a) sections 8, 8A and 26; and

(b) Part 4 (other than sections 37 and 38 to
the extent necessary for the operation of
Part 5); and

See:
Act No.
62/2001.
Reprint No. 3
as at
1 July 2008
and
amending
Act Nos
70/2007,
6/2010 and
40/2011.
LawToday:
www.
legislation.
vic.gov.au

(c) Part 7 (other than sections 61 and 64).

Note

Parts 3, 3A and 6 do not apply to the Commission's function under section 10(m) because that function does not relate to a regulated industry."

9 Insertion of definition in Water Act 1989

Insert the following definition in section 3(1) of the **Water Act 1989**—

"Essential Services Commission means the Essential Services Commission established under the **Essential Services Commission Act 2001**;"

See:
Act No.
80/1989.
Reprint No. 10
as at
1 January
2011
and
amending
Act Nos
50/2010 and
29/2011.
LawToday:
www.
legislation.
vic.gov.au

10 Objections to tariffs or fees—Water Act 1989

After section 266(7) of the **Water Act 1989**
insert—

"(8) A person is not entitled to object under subsection (1) to a tariff or the imposing of a fee under a tariff set by an Authority, if the tariff or the fee is a Basin water charge.

(9) In this section—

Basin water charge means a regulated charge for a service in relation to Basin water resources provided by an Authority;

Basin water resources has the same meaning as **State water resources** has in the Water Charge (Infrastructure) Rules 2010 of the Commonwealth in relation to Victoria;

regulated charge has the same meaning as in the Water Charge (Infrastructure) Rules 2010 of the Commonwealth."

11 Objections to required payments—Water Act 1989

After section 271(4) of the **Water Act 1989**
insert—

- "(5) A person is not entitled to object under subsection (1) to a payment the person is required to make under section 268, 269 or 270, if the payment is a Basin water charge.
- (6) In this section—

Basin water charge means a regulated charge for a service in relation to Basin water resources provided by an Authority;

Basin water resources has the same meaning as *State water resources* has in the Water Charge (Infrastructure) Rules 2010 of the Commonwealth in relation to Victoria;

regulated charge has the same meaning as in the Water Charge (Infrastructure) Rules 2010 of the Commonwealth."

PART 4—REPEAL OF AMENDING ACT

12 Repeal of amending Act

This Act is **repealed** on the first anniversary of its commencement.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 12 October 2011

Legislative Council: 27 October 2011

The long title for the Bill for this Act was "A Bill for an Act to amend the **Water Industry Act 1994** to apply certain provisions of the Water Charge (Infrastructure) Rules 2010 of the Commonwealth as a law of Victoria to enable the Essential Services Commission to approve or determine charges for the provision of certain water services in the State and to make related and consequential amendments to that Act and other Acts and for other purposes."

ATTACHMENT B – SCHEDULE 4 CRITERIA

4(1) The name and address of the applicant.

Essential Services Commission

Level 2
35 Spring Street
Melbourne Victoria 3000

4(2) The title of the State Act under which the applicant is established or appointed.

The Essential Services Commission Act 2001 (Vic).

4(3) The title of the State Act under which the applied provisions are applied as a law of the State.

Water Legislation Amendment (Water Infrastructure Charges) Act 2011

4(4) The public purpose for which the applicant is established or appointed.

Whereas section 8 of the *Essential Services Commission Act 2001* (Vic) sets out the Commission's purpose for regulating Victoria's "regulated industries"¹, this purpose will not apply when the Essential Services Commission (ESC) is approving or determining Basin water charges under the new Part 1B of the *Water Industry Act 1994* in accordance with the Rules. Section 8 of the *Essential Services Commission Act 2001* is expressly disapplied in this circumstance so as to avoid any inconsistency with the ESC's obligation to apply the *Water Charging Objectives and Principles* in Schedule 2 of the *Water Act 2007* (Cth).

10 Functions of the Commission

The functions of the Commission are—

(a) to perform such functions as are conferred by this Act and the relevant legislation under which a regulated industry operates;

(b) to advise the Minister on matters relating to the economic regulation of regulated industries, including reliability issues;

¹ Section 8 of the *Essential Services Commission Act 2001* provides as follows:

8 Objective of the Commission

(1) In performing its functions and exercising its powers, the objective of the Commission is to promote the long term interests of Victorian consumers.

(2) Without derogating from subsection (1), in performing its functions and exercising its powers in relation to essential services, the Commission must in seeking to achieve the objective specified in subsection (1) have regard to the price, quality and reliability of essential services.

- (c) when requested by the Minister to do so, to conduct an inquiry into any systemic reliability of supply issues related to a regulated industry or other essential service specified by the Minister in the request;
- (d) to conduct inquiries and report under Part 5 on matters relating to regulated industries;
- (e) to make recommendations to the Minister as to whether an industry which provides an essential service should become a regulated industry or whether a regulated industry should continue to be a regulated industry;
- (f) to conduct public education programs—
- for the purpose of promoting its objectives under this Act and the relevant legislation; and
 - in relation to significant changes in the regulation of a regulated industry;
- (g) to advise the Minister in relation to any other matter referred to the Commission by the Minister;
- (h) to administer this Act;
- (i) to perform the functions conferred on the Commission by or under Part VI of the Transport Act 1983;
- (j) to perform the functions conferred on the Commission by the Victorian Renewable Energy Act 2006;
- (k) to perform the functions conferred on the Commission by the Victorian Energy Efficiency Target Act 2007;
- (l) to perform the functions conferred on the Commission by the Accident Towing Services Act 2007;
- (m) if, under Part 1B of the *Water Industry Act 1994*, the Commonwealth provisions (within the meaning of that Part) are applied as a law of the State, to perform the functions conferred on the Commission as the State Agency under those provisions".

4(5) A statement as to whether the criteria set out in Schedule 5 are satisfied.

The criteria and a statement setting out how they are satisfied are below.

Schedule 5 Criteria for accreditation of arrangements

5(1) There must be a law of the State:

(a) under which the applied provisions are a law of the State; and

(b) that includes provision to the effect that the applied provisions operate in the State only during such period or periods as an accreditation of arrangements under Part 9 has effect.

The "applied provisions" are a law of the State pursuant to section 4K of the *Water Industry Act 1994* (Vic).

Section 4K will not apply unless the ESC obtains accreditation for arrangements under Part 9 of the *Water Charge (Infrastructure) Rules 2010* (Cth) (refer to section 4N of the *Water Industry Act 1994* (Vic)). Therefore the applied provisions will operate in Victoria only during such period or periods as an accreditation of arrangements under Part 9 of the Rules has effect.

5(2) The functions of the State Agency must include the functions conferred on a Regulator under the applied provisions.

The functions of the ESC include the functions conferred on a Regulator under the "applied provisions" as set out in the following sections.

(a) Section 10 of the *Essential Services Commission Act 2001* (Vic): "the functions of the Commission are- ...

(a) ... (l)....

(m) if, under Part 1B of the *Water Industry Act 1994*, the Commonwealth provisions (within the meaning of that Part) are applied as a law of the State, to perform the functions conferred on the Commission as the State Agency under those provisions".

(b) Section 4M of the *Water Industry Act 1994* (Vic): "the Commission has all the powers that are necessary to perform its functions as a State Agency under the applied Victorian provisions", where "applied Victorian provisions" means the applied provisions.

5(3) The State Agency must not be subject to the direction or control of a Minister of the State in carrying out its functions under the applied provisions.

Section 12 of the *Essential Services Commission Act 2001* (Vic) will apply when the ESC is carrying out its functions under the applied provisions. Section 12 provides that-

“Except as provided by or under this Act or any other Act, the Commission is not subject to the direction or control of the Minister”

There is not a provision under any of the Acts relevant to the ESC's powers and functions to approve or determine Basin water charges that would make the ESC subject to the direction or control of a Minister in carrying out its functions under the "applied provisions".

5(4) The State Agency must not be, or have a relevant interest in, a Part 6 operator or a Part 7 operator.

The ESC is not a Part 6 or Part 7 operator as it does not provide water infrastructure services. The ESC also does not have a "relevant interest" in such an operator.

4(6) The arrangements for which the applicant seeks accreditation, being arrangements for approving or determining regulated charges of Part 6 operators and Part 7 operators under the applied provisions.

The arrangements for which the Essential Services Commission is applying for accreditation are those prescribed in Part 1B of the *Water Industry Act 1994*, and in particular, new section 4K of that Act.

ATTACHMENT C – LETTERS OF SUPPORT



Minister for Water

Ref: MBR019560

Mr Rod Sims
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

1 Spring Street
GPO Box 4440
Melbourne Victoria 3001
Telephone: (03) 9938 5954
Facsimile: (03) 9658 4191
DX 210404

Dear Mr Sims

ESSENTIAL SERVICES COMMISSION'S APPLICATION FOR ACCREDITATION FROM THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

The Victorian Government supports the accreditation of the Essential Services Commission (ESC), by the Australian Competition and Consumer Commission (ACCC), to continue to undertake pricing determinations for rural water businesses in Northern Victoria in accordance with the *Water Charge (Infrastructure) Rules 2010*.

It was the clear policy goal of Commonwealth and State Governments, in the Agreement on Murray Darling Basin (MDB) Reform, to support the accreditation of State regulators to make pricing determinations in the MDB. The intent of the Agreement is codified in the Explanatory Memorandum to the *Water Act 2007 (Cth)* which states that the provision on price determinations is intended to allow State agencies to continue to make price determinations where the ACCC is confident that the determinations are being made consistently with the water charge rules.

A Bill that enacts relevant provisions of the *Water Charge (Infrastructure) Rules 2010* as state law and enables the ESC to seek accreditation from the ACCC of the Victorian applied provisions in the Bill has now been passed by the Victorian Parliament.

Accreditation of the ESC will ensure that Victoria's rural water customers will continue to benefit from the ESC's familiarity with the key challenges facing the region such as Murray Darling Basin Plan and the Northern Victorian Irrigation Renewal Project. This background will be useful in ensuring a smooth transition to the new regulatory arrangements.

I understand the Department of Sustainability and Environment has been working co-operatively with officers of the ACCC, ESC, and the Department of Sustainability, Environment, Water Population, and the Arts.

I look forward to receiving notice from you that the ESC has been successful in its application and accreditation under the *Water Charge (Infrastructure) Rules 2010*.

Yours sincerely

PETER WALSH MLA
Minister for Water

Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Information Privacy Act 2000. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Manager Privacy, Department of Sustainability & Environment, PO Box 500, East Melbourne, 8002.





Department of Treasury and Finance

1 Treasury Place
GPO Box 4379
Melbourne Vic 3001
Australia
Telephone: (+61 3) 9651 5111
Facsimile: (+61 3) 9651 5298
DX 210759

10 NOV 2011

Mr Rod Sims
Chairman
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VICTORIA 3001

Dear Mr Sims

**SUPPORT FOR ACCREDITATION OF THE ESSENTIAL SERVICES
COMMISSION UNDER THE WATER CHARGE (INFRASTRUCTURE)
RULES 2010**

I am writing to support the Essential Services Commission's (ESC) application to the Australian Competition and Consumer Commission (ACCC) for the accreditation of arrangements according to the Water Charge (Infrastructure) Rules 2010. I am writing in my capacity as the Head of the Department responsible for the ESC to meet the requirements of 60 (2)(c) of the Water Charge (Infrastructure) Rules 2010.

The Minister for Water, when tabling legislation to facilitate the accreditation process, emphasised the Victorian Government's wish for the ESC to act as a single economic regulator of the water sector in Victoria. I understand that staff from the Department of Sustainability and Environment, the Department of Treasury and Finance and the ESC, have been liaising with the ACCC regarding the requirements for accreditation.

I understand that a successful accreditation application would enable the ESC to determine regulated charges for Victorian rural water businesses in the Murray-Darling Basin according to the Pricing Principles developed by the ACCC.

I can confirm that the Government of Victoria has passed legislation to enable the ESC to comply with the requirements of accreditation.

Yours sincerely

Grant Hehir
Secretary