



Ms Helen Vaughan  
Deputy Secretary, Water and Catchments  
Department of Environment, Land, Water and Planning  
Level 11, 8 Nicholson Street  
EAST MELBOURNE VIC 3002

23 November 2020

Dear Ms Vaughan

**REGULATORY IMPACT STATEMENT FOR THE PROPOSED WATER (GENERAL)  
REGULATIONS 2020**

I would like to thank your staff at the Department of Environment, Land, Water and Planning (DELWP) for working with my team at Better Regulation Victoria on the preparation of a Regulatory Impact Statement (RIS) for the proposed Water (General) Regulations 2020.

As you know, the Commissioner for Better Regulation provides independent advice on the adequacy of analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be written clearly so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 28 October 2020 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

**Background**

The proposed regulations replace four out of nine sets of regulations made under the *Water Act 1989* (the Act), which will expire between March and August 2021.

The *Water (Subdivisional Easements and Reserves) Regulations 2011* prescribe the rights of Authorities (water corporations or Catchment Management Authorities) upon the creation of an easement or reserve for the use of the Authority when land is subdivided.

The *Water (Notice of Disposition) Regulations 2020* prescribe the form of the notice of disposition of interests in land that must be provided to water corporations upon disposition of property. They were made earlier this year to replace the *Water (Notice of Disposition) Regulations 2010* with small changes, which are proposed to continue.

The *Water (Register of Interests) Regulations 2020* prescribe the form of returns and provide for applications relating to the register of interests of board members of water corporations under section 113 of the Act. They were made earlier this year to replace the *Water (Notice of Disposition) Regulations 2010* with small changes, which are proposed to continue.

Finally, the *Water (Long Service Leave) Regulations 2011* provide for the calculation and portability of long service leave entitlements for employees of water corporations.

By consolidating these regulations into a single set, the RIS proposes that the administrative burden on DELWP of managing multiple sets of regulations will be reduced, and the requirements will be easier for regulated entities to understand.

The remaking process and RIS provides an opportunity to review the regulations and look for ways to improve them. DELWP has reviewed each of the current regulations to determine whether they remain appropriate and to propose amendments to outdated regulations.

## **Analysis**

In the RIS, DELWP considers the matters set in each of the current regulations in turn. For the two sets of regulations remade in 2020, the analysis focuses on the previous (2010) regulations so the case for continuing the 2020 changes can be clearly made.

This is done through a discussion of each issue, drawing on a combination of quantitative data and cost estimates, as well as more qualitative arguments where relevant. These discussions are informed by DELWP's consultation with the water and conveyancing sectors, who are most affected by the current and proposed regulations.

### *Subdivisional Easements and Reserves*

The *Water (Subdivisional Easements and Reserves) Regulations 2011* aim to provide a clear framework when easements or reserves are required on private property to support the provision and management of public water infrastructure. They enable authorities to access private land and limit those authorities' impositions on landowners' property rights.

The RIS proposes that the current arrangements, which enable different rights depending on the purpose of the easement (carriageway, pipeline or channel, drainage, or waterway management), should continue.

DELWP explains that other approaches (including relying on common law principles, or allowing rights to be customised on a per-property basis) were not considered as clear or as cost-effective as the current regulations.

#### Transfer of Land – Notices of Disposition

The *Water (Notice of Disposition) Regulations 2020* set out how landowners should notify water corporations that they have sold their property, so that any outstanding water charges can be levied against the purchaser (as the purchaser becomes liable under the Act for those charges).

DELWP notes that ideally this would happen through the same mechanism used by local councils and the State Revenue Office (SRO) to notify acquisitions of property. These agencies use identical systems, but are not permitted by their legislation to share information with water corporations.

Noting that legislative constraint, the RIS considers three options:

- Option 1: Continuing the 2010 arrangements
- Option 2: Slightly modifying the form for consistency with the acquisition forms
- Option 3: Modifying the form, and also expanding the scope of dispositions that must be notified

Option 2 is proposed on the basis that, although the notification process is an important procedural step, there was little evidence that the additional information considered under Option 3 would provide significant additional value to water corporations. This was the position adopted in the *Water (Notice of Disposition) Regulations 2020*, and it is proposed that this will continue.

#### Register of Interests of Board Members

The *Water (Register of Interests) Regulations 2020* prescribe a form for board members to disclose any relevant financial or private interests they may hold. They also prescribe the form to be used by a person wishing to access the register of board members' disclosed interests.

The proposed regulations remove the requirement for witnesses on these declarations, and make other minor changes to align the form with what is required for Catchment Management Authorities. This was the position adopted in the *Water (Register of Interests) Regulations 2020* and it is proposed that this will continue.

These changes remove some administrative burden, while maintaining the strength of important probity processes.

### Long Service Leave

The Act provides for long service leave entitlements for employees of water corporations in accordance with the *Water (Long Service Leave) Regulations 2011*, which set out key details about those entitlements. There are approximately 5,360 full-time equivalent staff working for water corporations, and around \$7.5 million is paid out in long service entitlements per year.

Again, without the clarity and detail of the regulations, parties would rely on common law in the event of disputes. The regulations clarify a set of reasonable entitlements, consistent with other industries.

The proposed regulations make slight amendments to the current arrangements, including removing a requirement for an employee to be employed by another water corporation for a minimum of three years for that to be considered "previous service". This is expected to increase the cost of leave entitlements by approximately \$1 million over the next 10 years. It will be consistent with other long service leave arrangements, such as in the *Long Service Leave Act 2018*.

### **Implementation and Evaluation**

The proposed Regulations largely continue the current arrangements. As such, no specific implementation plan, transitional arrangements or significant changes to evaluation are necessary. To explain this approach to stakeholders, DELWP provides the following advice:

*The proposed regulations are generally of a minor nature and will not be formally reviewed until they are next remade. The department will continue to engage with stakeholders on a regular basis to discuss the effectiveness of the Regulations and any suggestions for change. Existing, on-going relationships with key stakeholders (e.g. Water Corporations) will serve to ensure that regular feedback is provided on the effectiveness of the prescribed forms and on the long service leave changes.*

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on 03 7005 9772.

Yours sincerely



**Anna Cronin**

Commissioner for Better Regulation