



CRC for  
**Water Sensitive Cities**

Project A3.2 : Better Regulatory Frameworks  
Final Report : Results of Legislative Stock-take for  
Victoria

December, 2013



An Australian Government Initiative



**CRC**  
AUSTRALIA

Project A3.2 : Better Regulatory Frameworks  
Final Report: Results of Legislative Stock-take for Victoria

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## TABLE OF ABBREVIATIONS

ABBREVIATION	FULL REFERENCE
Building Code	Building Code of Australia
CLP Act	Catchment and Land Protection Act 1994
Constitution	Constitution Act 1975
EPA	Environment Protection Authority
EP Act	Environment Protection Act 1970
ESC Act	Essential Services Commission Act 2001
Food Act	Food Act 1984
LG Act	Local Government Act 1989
Plumbing Code	Plumbing Code of Australia
SDW Act	Safe Drinking Water Act 2003
SDW Regulations	Safe Drinking Water Regulations 2005
SEPP (Groundwaters of Victoria)	State Environment Protection Policy (Groundwaters of Victoria)
SEPP (Waters of Victoria)	State Environment Protection Policy (Waters of Victoria)
SOO	Statement of Obligations
Trade Waste Code	Trade Waste Customer Service Code
Water Act	Water Act 1989
WELS Act	Water Efficiency Labelling and Standards Act 2005
WI Act	Water Industry Act 1994
WIRO	Water Industry Regulatory Order
WSC	Water Sensitive Cities

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## Executive Summary

This report contains the results of Maddocks' legislative stock-take for Victoria to determine the extent to which legislative frameworks might facilitate or hinder the establishment of Water Sensitive Cities (WSC). The focus of the review that has been undertaken is on primary and selected secondary State legislation.

The stock-take reveals that there is a plethora of legislative instruments that could directly or indirectly affect the establishment of a WSC. Some of these instruments were assessed as potentially facilitating the establishment of a WSC, whereas others could hinder the establishment of a WSC.

### Legislative instruments that could facilitate establishment of a Water Sensitive City

A number of the legislative instruments considered support certain important aspects of a WSC. In particular, the regulatory framework provides significant support for initiatives that seek to ensure conservation and sustainable use of water resources and environmental protection of water resources.

There is a wide range of tools that exist across the legislative framework that could be employed to ensure that these two important WSC objectives are achieved. Nevertheless, these tools are scattered throughout the regulatory framework rather than being consolidated and utilised in a co-ordinated and consistent manner. Accordingly, a more streamlined and coherent approach towards both of these issues across the entire regulatory framework could be beneficial.

### Legislative instruments that could hinder establishment of a Water Sensitive City

The regulatory framework also contains some potential obstacles to the establishment of a WSC. Notably, the regulatory framework appears to provide limited support for alternative water sources, which will be critical to the achievement of a WSC.

While there are supportive references scattered throughout the regulatory framework to these types of projects and the water sources upon which they rely, the regulatory framework appears to focus predominantly on the risks associated with these types of projects.

Indeed, the regulatory framework treats risks to health as a paramount consideration. Whilst this approach is understandable, it could also pose an obstacle to attainment of a WSC. In particular, the regulatory framework emphasises the need to identify, assess and manage risks to health in relation to a broad range of water projects, including those involving potable water sources and others involving non-potable water sources.

The regulatory framework also contains a range of provisions that are aimed at addressing risks arising from water resources, including those that go beyond risks to health such as risks to the environment. These provisions could be particularly relevant for alternative water source projects that rely upon water sources for which the risks to the health and/or to the environment are relatively high. It is possible that the uptake of such projects could be deterred if the risks associated with these projects are assessed to be too high under the regulatory framework compared to the benefits of alternative water source projects.

The pursuit of alternative water source projects could be further undermined through the treatment of a range of issues in the regulatory framework. The provisions dealing with access and use of water resources do not readily accommodate projects that involve taking and using water resources for the purposes of developing and providing alternative water sources for end-users.

In addition, the water supply provisions contained in the regulatory framework do not appear to encompass and provide for the broad range of alternative water sources that could be supplied by water authorities.

The frame of reference in evaluating and pricing water in the regulatory framework appears to be quite limited and does not explicitly accommodate WSC objectives and principles. When considered as a whole, the various regulatory obstacles could deter the uptake of alternative water source projects.

### Regulatory tension

Overall, there also appears to be a tension in the regulatory framework between, on the one hand, legislative instruments that appear to acknowledge and support WSC (such as the Water Act 1989) and, on the other hand, legislative instruments that focus on the risks associated with WSC (such as the Environment Protection Act 1970 and the relevant State environment protection policies). Given that the objectives underlying the various legislative instruments are quite different, this tension is understandable. However, a degree of reconciliation may be necessary - particularly, in relation to alternative water source projects – if the WSC vision is to be fully realised.

Ideally, efforts should be made to operationalize the facilitative provisions before reform is sought of the provisions that might hinder the establishment of a WSC. In this regard, the review revealed that there is an array of instruments identified in the regulatory frameworks that could potentially be used to further WSC initiatives, including Ministerial directions, licences, conditions, by-laws and codes. These instruments could be further explored to determine whether there are any practical impediments to their use to promote WSC.

### Role of regulatory entities in establishing a WSC

The stock-take also revealed a wide variety of regulatory entities that have a role to play in establishing WSC based on the legislative instruments considered, including Ministers, water authorities, councils, regulators (EPA, Building Commission, ESC), other statutory authorities (e.g. Catchment Management Authorities) and planning authorities. The practical relationship and interaction between these entities across the various regulatory frameworks, particularly in the context of pursuing WSC initiatives, is not always clear and would benefit from further analysis and consideration.

### Current legislative reviews

Finally, there are various legislative reviews currently underway that are likely to have an impact on the regulatory framework for WSC in Victoria. These reviews include:

- Review of the Water Act 1989 by the Department of Environment and Primary Industries.
- Review of the Safe Drinking Water Regulations 2005 by the Department of Health.

- Review of planning and building regulation by the Office of Living Victoria

A further legislative review of the regulatory landscape in Victoria may be desirable once these reviews have been completed.



## 1. Introduction

- 1.1 CRC Project A3.2 – ‘Better Regulatory Frameworks for Water Sensitive Cities’ – involves an assessment of regulatory frameworks to determine the extent to which these frameworks facilitate or hinder the establishment of ‘Water Sensitive Cities’ (WSC).
- 1.2 The CRC for Water Sensitive Cities explains the notion of a WSC as follows:

Water sensitive cities are resilient, liveable, productive and sustainable. They interact with the urban hydrological cycle in ways that: provide the water security essential for economic prosperity through efficient use of the diversity of water resources available; enhance and protect the health of watercourses and wetlands; mitigate flood risk and damage; and create public spaces that harvest, clean and recycle water. Its strategies and systems for water management contribute to biodiversity, carbon sequestration and reduction of urban heat island effects.<sup>1</sup>
- 1.3 Maddocks has been commissioned to undertake an assessment of legislative frameworks in Victoria, Western Australia and Queensland to determine the extent to which these frameworks might facilitate or hinder the establishment of a WSC. The focus of the reviews to be undertaken by Maddocks is on primary and selected secondary State legislation.
- 1.4 Project A3.2 conceives of ‘regulation’ in broad terms as a practice that includes not only interventions accomplished through formal legal rules but also extends to interventions made through a range of other mechanisms. Accordingly, this stock-take – which focuses exclusively on legislation – lays the foundation for a separate review, which is being undertaken by other members of the Project Team, focused on mapping the most significant regulatory tools currently at play in the urban water management regulatory space in Melbourne, Victoria. In turn, this legislative stock-take as well as the regulatory space mapping will provide the foundation for future case study research to be undertaken by the Project Team to explore in depth specific elements of the regulatory space that are particularly facilitating or hindering the adoption of new urban water technologies and a progressive evolution towards WSC in Victoria.
- 1.5 This report contains the results of Maddocks’ legislative stock-take for Victoria, which are contained in the Appendix.

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<sup>1</sup> <http://watersensitivecities.org.au/what-is-a-water-sensitive-city/>.

## 2. Methodology

2.1 This section of the report explains the methodology applied in undertaking the legislative stock-take of Victoria's regulatory regime.

### Template

2.2 A template has been developed to capture the results of the regulatory stock-take for Victoria.

2.3 The template includes the following:

2.3.1 Overview of legislative instruments considered as part of the stock-take;

2.3.2 Relevant provision(s) of the legislative instrument that may be relevant to the establishment of a WSC;

2.3.3 Specific topic or issue raised by the provision that is relevant to the establishment of a WSC; and

2.3.4 Assessment of the extent to which the provision can facilitate or hinder establishment of a WSC.

### Scope of instruments considered

2.4 The legislative stock-take focuses on primary legislation. However, reference has also been made to subordinate instruments where they are intrinsically linked to the primary instruments that have been considered.

2.5 The stock-take involved consideration of a broad range of regulatory instruments. Some instruments exclusively or predominantly deal with water resources whereas other instruments have more general application.

2.6 The legislative instruments that have been considered for the Victorian regulatory stock-take are:

2.6.1 Water Act 1989 (Water Act)

2.6.2 Water Industry Act 1994 (WI Act)

2.6.3 Statement of Obligations (made under the Water Industry Act 1994) (SOO)

2.6.4 Essential Services Commission Act 2001 (ESC Act)

2.6.5 Water Industry Regulatory Order (made under the Water Industry Act 1994) (WIRO)

2.6.6 Trade Waste Customer Service Code (made under the Water Industry Act 1994) (Trade Waste Code)

2.6.7 Constitution Act 1975 (Constitution)

- 2.6.8 Environment Protection Act 1970 (EP Act)
  - 2.6.9 State Environment Protection Policy (Waters of Victoria) (made under the Environment Protection Act 1970) (SEPP (Waters of Victoria))
  - 2.6.10 State Environment Protection Policy (Groundwaters of Victoria) (made under the Environment Protection Act 1970) (SEPP (Groundwaters of Victoria))
  - 2.6.11 Catchment and Land Protection Act 1994 (CLP Act)
  - 2.6.12 Water Efficiency Labelling and Standards Act 2005 (WELS Act)
  - 2.6.13 Local Government Act 1989 (LG Act)
  - 2.6.14 Building Code of Australia (made pursuant to the Building Act 1993 and the Building Regulations 2006) (Building Code)
  - 2.6.15 Plumbing Code of Australia (made pursuant to the Building Act 1993 and the Building Regulations 2006) (Plumbing Code)
  - 2.6.16 Safe Drinking Water Act 2003 (SDW Act)
  - 2.6.17 Safe Drinking Water Regulations 2005 (made under the Safe Drinking Water Act 2003) (SDW Regulations)
  - 2.6.18 Food Act 1984 (Food Act).
- 2.7 The legislative stock-take does not include consideration of non-binding instruments, including the range of environmental and health guidelines that have been issued for drinking water and for alternative water source projects.
- 2.8 In addition, because the emphasis of the CRC is on water sensitive 'cities', regulatory instruments relevant to the management of water resources in rural areas have, for the most part, not been included in the stock-take. So, for example, the regime established for the trading of water rights in the Murray-Darling Basin (including in Victoria) has not been considered in the stock-take.
- 2.9 Finally, the legislative stock-take does not include consideration of planning instruments because this is being dealt with in CRC Project B5.1 – 'Statutory Planning for Water Sensitive Urban Design'.

#### WSC topics and issues

- 2.10 The stock-take includes identification of topics or issues that may be relevant to the establishment of a WSC, based on the CRC's definition of a WSC in paragraph 1.2 above. Each regulatory provision considered in the stock-take was characterised as relating to one or more of these WSC topics or issues.
- 2.11 The complete list of topics and issues identified in the stock-take together with a brief explanation of the types of provisions that may be related to each is set out in Table 1 below.

Table 1. Explanation of WSC topics and issues

WSC TOPICS AND ISSUES	
Conservation and sustainable use of water resources	Provisions associated with the management of water to ensure that it is conserved and used in a way to help meet current and future demand.
Environmental protection	Provisions that deal with environmental protection of water resources and the broader physical context within which those resources are located.
Alternative water source projects	Provisions that address (directly or indirectly) alternative water source projects, including wastewater, recycled water, stormwater and managed aquifer recharge. These provisions may explicitly authorise alternative water source projects. Alternatively, they may include a power, obligation, requirement that may have an impact on the uptake of such projects.
Access to and use of water resources	Provisions that deal with rights of access to take and use water resources.
Supply of water	Provisions that relate to the supply of water (whether recycled or other) by water authorities.
Economic evaluation and pricing of water	Provisions that deal with the manner in which water is valued and priced for supply and delivery of water resources to end-users.
Risks to/associated with water resources	Provisions that deal with the identification and/or management of risks to water resources as well as risks posed by water resources, including water from alternative water source projects.
Risks to health	Provisions that deal with identification and response to risks to health associated with the supply of water, including recycled water and other alternative water sources.
Flooding	Provisions that address mitigation and/or adaptation to flooding.
Financial tools	Provisions that could provide financial means to advance WSC initiatives and projects.
Research and raising awareness	Provisions that promote research and raising awareness regarding issues that could advance WSC.

WSC TOPICS AND ISSUES	
Institutional framework and governance	Provisions that deal with the regulators, regulated entities and other stakeholders that may be involved in the governance and management of water resources, which could affect the advancement of WSC.
General	Provisions that broadly deal with WSC but because of their generality it is difficult to identify a particular WSC issue or topic implicated by the provision.

Assessment

- 2.12 The primary objective of the legislative stock-take is to determine the extent to which the regulatory frameworks under consideration potentially facilitate or hinder the establishment of a WSC. Accordingly, the vision of a WSC (set out above in paragraph 1.2) has been used as a basis for assessing each provision under consideration. More specifically, the assessment has sought to determine the extent to which each provision could hinder or facilitate achievement of this vision.
- 2.13 However, the assessment needs to be qualified for the following main reasons:
  - 2.13.1 The vision of a WSC, which has been used as the basis for the assessment, is abstract rather than concrete. Therefore, in some cases it was difficult to make a definitive assessment of whether or not a particular provision is capable of facilitating or hindering the establishment of a WSC as this could depend upon the how the notion of a WSC is realised in practice.
  - 2.13.2 The vision of a WSC is multifaceted. Therefore, a particular provision may support some aspects of a WSC but not others.
  - 2.13.3 The assessment of individual provisions has been based on the text of the relevant legislative instrument. It does not account for the historical evolution of that instrument. Nor does it consider the practical context in which the provisions may be applied, including the existence or absence of infrastructure and the mindset of relevant decision-makers. These factors may convert a provision that is, on its face, facilitative into one that is a hindrance and vice versa.
- 2.14 In addition, the Appendix contains an assessment of individual provisions in isolation. An overall assessment has also been undertaken in relation to each WSC topic/issue, considering the regulatory framework as a whole. The results of the overall assessment are outlined in the following section of this report.



### 3. Analysis of legislative stock-take results

- 3.1 This section of the report sets out the results of the legislative stock-take for Victoria. In particular, it determines the extent to which the regulatory framework effectively facilitates or hinders WSC when considered through the perspective of each WSC topic or issue identified above in paragraph 2.11.
- 3.2 For each WSC topic or issue, the report includes an identification of the key legislative instruments, decision-makers, regulatory tools and obstacles. It also includes an identification of any other related WSC topics or issues and an overall assessment of how the regulatory framework addresses the relevant topic or issue.

Conservation and sustainable use of water resources

- 3.3 The stock-take revealed a large number of provisions that related to the conservation and sustainable use of water resources in Victoria. A summary of the main findings of the stock-take in relation to this issue is set out in Table 2 below.

Table 2. Summary Table: Conservation and sustainable use of water resources

SUMMARY TABLE: CONSERVATION AND SUSTAINABLE USE OF WATER RESOURCES	
Definition	- Provisions associated with the management of water to ensure that it is conserved and used in a way that helps to meet current and future demand.
Key regulatory instrument(s)	- Water Act
Other relevant regulatory instruments	- EP Act - ESC Act - WELS Act - LG Act - SEPP (Waters of Victoria) - SOO
Key decision-makers	- Minister for Water - Water authorities
Main regulatory tools for WSC	<u>Tools available to the Minister for Water:</u> - Environmental Water Reserve (Water Act) - Sustainable Water Strategies (Water Act and the CLP Act) - Designation of water supply protection areas (Water Act) - Directions to water authorities (Water Act)

SUMMARY TABLE: CONSERVATION AND SUSTAINABLE USE OF WATER RESOURCES	
	<ul style="list-style-type: none"> <li>- Statement of Obligations applicable to water authorities (Water Act)</li> <li>- Conditions imposed on licences (Water Act)</li> </ul> <p><u>Tools available to water authorities:</u></p> <ul style="list-style-type: none"> <li>- Programs and plans to conserve water (Water Act)</li> <li>- Measures to respond to water shortages (Water Act, SOO)</li> <li>- Conditions imposed on authorisation (Water Act)</li> </ul> <p><u>Other tools</u></p> <ul style="list-style-type: none"> <li>- Enforcement action under the Water Efficiency Labelling and Standards Scheme (WELS Act)</li> <li>- Environment and resource efficiency plans (EP Act)<sup>2</sup></li> </ul>
Main regulatory obstacles to WSC	<ul style="list-style-type: none"> <li>- Large number of potentially relevant provisions and unclear whether they are all practically applied in a consistent manner.</li> <li>- Potential lack of coherent approach towards conservation and sustainable use of water resources across the entire regulatory framework.</li> </ul>
Other related WSC topics/issues	<ul style="list-style-type: none"> <li>- Environmental protection.</li> </ul>
Overall assessment of relevant aspects of regulatory regime	<ul style="list-style-type: none"> <li>- Overall, the regulatory framework provides significant support for initiatives that seek to ensure conservation and sustainable use of water resources. This is evident from the fact that the objectives and decision-making mechanisms in numerous regulatory instruments comprising the regulatory framework make reference to the need to ensure conservation and sustainable use of water resources. In addition, there is a wide range of tools that exist across the regulatory framework that could be employed to ensure the conservation and sustainable use of water resources. Nevertheless, the regulatory framework could benefit from a more streamlined and coherent approach towards this issue across the entire regulatory framework.</li> </ul>

<sup>2</sup> The EPA's Environment and Resource Efficiency Plans (EREP) program is due to end in 2013.



Legislative instruments

- 3.4 The principal legislative instrument that addresses conservation and sustainable use of Victoria's water resources is the Water Act. However, conservation and sustainable use of water resources is also supported by a range of other regulatory instruments, albeit less directly in some cases. These instruments include the EP Act, ESC Act, WELS Act, LG Act, SEPP (Waters of Victoria) and SOO.

Regulatory objectives

- 3.5 The objectives identified in legislative instruments can provide a good indication of the regulatory focus and priorities associated with the instruments in question.
- 3.6 The objectives of a number of legislative instruments comprising the regulatory framework make reference to conservation and sustainable use of resources. In some cases, the reference to conservation and sustainable use of water resources is explicit whereas, in other cases, it is implicit:
- Water Act: One purpose of the Water Act is 'to make sure that water resources are conserved and properly managed for sustainable use for the benefit of present and future Victorians'.<sup>3</sup> In addition, the Act states that another purpose of the Act is 'to foster the provision of responsible and efficient water services suited to various needs and various consumers'.<sup>4</sup>
  - EP Act: The EP Act creates a legislative framework for the protection of the environment having regard to the principles of environmental protection, which include the principle of conservation of biological diversity.<sup>5</sup>
  - WI Act: Under the WI Act, the objectives of the ESC in relation to the regulated water industry include to ensure that regulatory decision-making has regard to the environmental sustainability – including water conservation – obligations of regulated entities.<sup>6</sup>
  - WELS Act: The objects of the Act are, among other things, to conserve water supplies by reducing water consumption.<sup>7</sup>
  - LG Act: The primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions, including to ensure that resources are used efficiently and effectively and services are provided in accordance with the Best Value Principles to best meet the needs of the

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<sup>3</sup> s.1(d) Water Act.

<sup>4</sup> s.1(h) Water Act.

<sup>5</sup> ss.1A-1L EP Act:

<sup>6</sup> s.4C WI Act.

<sup>7</sup> s.3 WELS Act.



local community.<sup>8</sup> This objective could be interpreted as including conservation and sustainable use of resources.

- SEPP (Waters of Victoria): This SEPP includes principles to guide decisions about the protection and management of Victoria's surface waters, including the following principles which support conservation and sustainable use of water resources:
  - Principle of integration of economic, social and environmental considerations.
  - Principle of intergenerational equity
  - Principle of conservation of biological diversity and ecological integrity.<sup>9</sup>

#### Key decision-makers

- 3.7 The key decision-makers that could help to ensure the conservation and sustainable use of water resources are the Minister for Water and, to a lesser extent, the water authorities. As is evident from the discussion below, these bodies possess a wide range of tools that could be used to pursue this WSC objective.

#### Regulatory tools

- 3.8 The regulatory framework contains a wide range of tools available to a variety of bodies that are either explicitly designed to ensure conservation and sustainable use of water resources or could be employed to do so.

Tools available to the Minister for Water:

- Environmental water reserve: The Water Act establishes the notion of an 'environmental water reserve', which comprises water that is set aside for the environment.<sup>10</sup> The environmental water reserve could be used to help encourage conservation and sustainable use of water resources.
- Sustainable water strategies: The Minister for Water must, among other things, ensure that a program of sustainable water strategies is undertaken for the State in accordance with the Water Act.<sup>11</sup> The Water Act provides for the preparation of Sustainable Water Strategies for regional areas in the State. These strategies must identify ways to increase and set priorities for increasing the volume of water in the

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<sup>8</sup> s.3C LG Act.

<sup>9</sup> Clause 6 SEPP (Waters of Victoria).

<sup>10</sup> ss.4A and 4B Water Act.

<sup>11</sup> ss.22(1)(ab) and (c) Water Act.



environmental water reserve to improve the environmental values and health of water ecosystems.<sup>12</sup>

- Designation of water supply protection areas: The Water Act provides that the Minister may declare an area to be a water supply protection area for the protection of groundwater resources in the area or the surface water resources in the area or both upon application by authorised users of water, a water authority or other body that has responsibilities in the area.<sup>13</sup>
- Ministerial directions: Under the Water Act, water authorities must perform their functions and exercise their powers subject to any directions given by the Minister.<sup>14</sup> Ministerial directions could be used to ensure that WSC objectives are furthered through the performance of functions and powers, including conservation and sustainable use of water resources.
- Statement of Obligations applicable to water authorities: Under the Water Act, the Minister may issue a Statement of Obligations to a waterway authority with waterway management functions.<sup>15</sup> The Statement of Obligations could be used to specify WSC principles and objectives, including conservation and sustainable use of water resources.
- Conditions imposed on licences: The Minister for Water has power under the Water Act to impose conditions when authorising a range of activities and when issuing licences. Theoretically, conditions can be imposed to ensure conservation and sustainable use of water resources. Specifically, the Minister can impose a broad range of conditions to a take and use licence<sup>16</sup>, including the maximum amounts of water which may be taken in particular periods or circumstances and the conservation policy of the Government.<sup>17</sup> In addition, the Minister can impose a variety of conditions on a licence to construct works<sup>18</sup>, including: the maintenance of the environmental water reserve in accordance with the environmental water reserve objective; the implementation of the conservation policy of the government and the maximum amounts of water which may be taken in particular periods or circumstances from any bore or works to which the licence relates.<sup>19</sup>

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<sup>12</sup>ss.22B and 22C Water Act.

<sup>13</sup> s.27 Water Act.

<sup>14</sup> ss. 125 and 307 Water Act.

<sup>15</sup> s.186A Water Act.

<sup>16</sup> Licences to construct works are issued pursuant to s.51 of the Water Act.

<sup>17</sup> s.56 Water Act.

<sup>18</sup> Take and use licences are issued pursuant to s.51 of the Water Act.

<sup>19</sup> s.68 Water Act.

Tools available to water authorities:

- Programs and plans to conserve water: Under the Water Act, water authorities that have a water district have the power to develop and implement programs for the conservation and efficient use of water.<sup>20</sup> In addition, under the Water Act, water authorities with a waterway management district have a range of functions in relation to designated waterways, which could also be used to help ensure conservation and sustainable use of water resources, namely:
  - to develop and to implement schemes for the use, protection and enhancement of land and waterways;
  - to develop and implement plans and programs and carry out works and activities to maintain the environmental water reserve in accordance with the environmental water reserve objective;
  - to develop and implement plans and programs and carry out works and activities to improve the environmental values and health of water ecosystems, including their biodiversity, ecological functions, quality of water and other uses that depend on environmental condition.<sup>21</sup>
- Measures to respond to water shortages: Water authorities also have a range of tools available to them to help conserve water when water shortages arise. In particular, under the Water Act, water authorities have the power to reduce, restrict or discontinue water supply for a variety of reasons, including cases whether there is a risk of future water shortages.<sup>22</sup> This power is supplemented by the ability to make by-laws to regulate, restrict or prohibit the use of water either generally or for a specific purpose.<sup>23</sup> In addition, water authorities must prepare a water savings plan, which must comply with any directions or guidelines issued by the Minister for Water.<sup>24</sup> The SOO further provides that all urban water corporations must develop a Drought Response Plan that governs the management of the supply of water by the Corporation in any period of drought or when the supply of water is limited.<sup>25</sup>
- Conditions imposed on authorisation: Under the Water Act, a water authority or other public statutory authority that has power to authorise or permit any activity or change in the use of land that may affect an

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<sup>20</sup> s.163(1) Water Act.

<sup>21</sup> s.189 Water Act.

<sup>22</sup> s.141 Water Act.

<sup>23</sup> s.171 Water Act.

<sup>24</sup> s.170A Water Act.

<sup>25</sup> Clause 6-5 SOO.



existing drainage regime<sup>26</sup> must make the authorisation or permission subject to any conditions that are required to ensure the conservation of waterways, wetlands and aquifers and may withhold the authorisation or permission until any works are carried out or any measures undertaken that are required for avoiding or lessening any possible adverse effect of the granting of the authorisation or permission.<sup>27</sup>

Other tools:

- Enforcement of WELS Scheme: There are a range of provisions regarding labelling and selling products that do not comply with the WELS scheme, which seeks to ensure water efficiency. Enforcement of these provisions by the Commonwealth WELS Regulator can help to ensure conservation and sustainable use of water resources.<sup>28</sup>
- Environment and resource efficiency plans: A person who undertakes an activity that is regulated by the EPA under the EP Act must prepare an Environment and Resource Efficiency Plan, which would also apply to water. Among other things an EREP must include a plan of actions to achieve environmental resource efficiency gains, which could help conservation and sustainable use of water resources.<sup>29</sup> However, it should be noted that the EREP program is due to expire at the end of 2013.

- 3.9 There is also a variety of mechanisms in the regulatory framework that require consideration of issues relating to conservation and sustainable use of Victoria's water resources. In most cases, these mechanisms involve decision-making by both the Minister for Water as well as by water authorities.

Decision-making by the Minister for Water:

- Long-term water resources assessment: Under the Water Act, the Minister for Water must ensure the preparation of a long-term water resources assessment, every 15 years after the first report, which is due in 2017. Among other things, this assessment must identify whether or not there has been any decline in the long-term availability of surface water or groundwater and whether the decline has fallen disproportionately on the environmental water reserve or on the allocation of water for consumptive purposes.<sup>30</sup>
- Granting entitlements and licences: In deciding whether or not to grant a bulk entitlement<sup>31</sup>, an allocation of an environmental entitlement<sup>32</sup>, a

<sup>26</sup> An existing drainage regime is all physical and hydrological circumstances that may affect drainage in a catchment.

<sup>27</sup> s.12 Water Act.

<sup>28</sup> ss.33 – 38 WELS Act.

<sup>29</sup> ss.26H and 26I EP Act.

<sup>30</sup> ss.22K and L Water Act.

<sup>31</sup> s.40 Water Act.

take and use licence<sup>33</sup>, or a licence to construct works<sup>34</sup>, the Minister for Water must take into account a range of matters including any adverse effect that the allocation or use of water under the entitlement is likely to have on existing authorised uses of water; a waterway or an aquifer; a drainage regime; maintenance of the environmental water reserve and the conservation policy of the government.

Decision-making by water authorities:

- Performance of functions, exercise of powers and carrying on duties: The Water Act provides that, in performing their functions, exercising powers and carrying on duties, water authorities must have regard to a range of principles that may support measures to ensure conservation and sustainable use of water resources including 'the need to ensure that water resources are conserved and properly managed for sustainable use and for the benefit of present and future generations'.<sup>35</sup> In addition, the SOO emphasises the need for water authorities to find innovative ways to be efficient,<sup>36</sup> which may also support measures to ensure conservation and sustainable use of water resources.
- Development of trade waste management policies and practices: The SOO provides that, in developing trade waste management policies and practices, water authorities (other than rural authorities) should be guided by the environmental protection principles set out in the EP Act, including the principle of conservation of biological diversity and ecological integrity.<sup>37</sup>

Other

- Building approval for projects involving plumbing: The Plumbing Code of Australia refers in both the performance requirements and the deemed-to-satisfy to the need to "conserve water" in relation to non-drinking water installations, roof drainage installations, stormwater drainage installations and on-site wastewater management system installations.<sup>38</sup>

### Regulatory obstacles

- 3.10 There are no obvious regulatory obstacles to the pursuit of conservation and sustainable use of water resources. Indeed, the regulatory framework appears to

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<sup>32</sup> s.48F Water Act.

<sup>33</sup> s.53 Water Act.

<sup>34</sup> s.68 Water Act.

<sup>35</sup> s.93 Water Act.

<sup>36</sup> Clause 1-6 SOO.

<sup>37</sup> Clause 7-8(2) SOO.

<sup>38</sup> Sections B (Water Services), D (Stormwater Drainage Systems) and F (On-Site Wastewater Systems) Plumbing Code of Australia.

provide significant support for initiatives that seek to ensure conservation and sustainable use of water resources. Nevertheless, there is a potential lack of coherence in approach towards conservation and sustainable use of water resources across the entire regulatory framework given diversity regarding the types of regulatory tools that support conservation and sustainable use of water resources, the regulatory instruments establishing the tools and the bodies that possess the power to utilise these tools.

#### Environmental protection

- 3.11 As in the case of conservation and sustainable use of water resources, the stock-take revealed a significant number of provisions that related to environmental protection of water resources in Victoria. Moreover, a number of these provisions overlap with those identified in relation to the conservation and sustainable use of water resources. A summary of the main findings of the stock-take in relation to this issue is set out in Table 3 below.

Table 3. Summary Table: Environmental protection

SUMMARY TABLE: ENVIRONMENTAL PROTECTION	
Definition	- Provisions that deal with environmental protection of water resources and the broader physical context within which those resources are located.
Main regulatory instrument(s)	- EP Act - SEPP (Waters of Victoria) - SEPP (Groundwaters of Victoria) - Water Act
Other relevant regulatory instruments	- SOO
Key decision-makers	- EPA - Minister for Water - Water authorities
Main regulatory tools for WSC	<u>Tools available to the EPA</u> - State Environment Protection Policy (EP Act)

SUMMARY TABLE: ENVIRONMENTAL PROTECTION	
	<ul style="list-style-type: none"> <li>- Powers to issue works approval, licences, permits, pollution abatement notices (EP Act)</li> <li>- Economic measures to avoid or minimise harm to the environment (EP Act)</li> </ul> <p><u>Tools available to the Minister for Water:</u></p> <ul style="list-style-type: none"> <li>- Environmental Water Reserve (Water Act)</li> <li>- Sustainable Water Strategies (Water Act and the CLP Act)</li> <li>- Designation of water supply protection areas (Water Act)</li> <li>- Directions to water authorities (Water Act)</li> <li>- Statement of Obligations applicable to water authorities (Water Act)</li> <li>- Conditions imposed on licences (Water Act)</li> </ul> <p><u>Tools available to water authorities:</u></p> <ul style="list-style-type: none"> <li>- Programs and plans to conserve water (Water Act)</li> <li>- Measures to respond to water shortages (Water Act, SOO)</li> <li>- Conditions imposed on authorisation (Water Act)</li> </ul> <p><u>Other tools</u></p> <ul style="list-style-type: none"> <li>- Enforcement action under the Water Efficiency Labelling and Standards Scheme (WELS Act)</li> <li>- Environment and resource efficiency plans (EP Act)<sup>39</sup></li> </ul>
Main regulatory obstacles to WSC	<ul style="list-style-type: none"> <li>- Large number of potentially relevant provisions and unclear whether they are all practically applied in a consistent manner.</li> <li>- Potential lack of coherent approach towards environmental protection of water resources across</li> </ul>

<sup>39</sup> The EPA's Environment and Resource Efficiency Plans (EREP) program is due to end in 2013.



SUMMARY TABLE: ENVIRONMENTAL PROTECTION	
	the entire regulatory framework.
Other related WSC topics/issues	- Conservation and sustainable use of water resources.
Overall assessment of relevant aspects of regulatory regime	- Overall, the regulatory framework provides significant support for initiatives that seek to ensure environmental protection of water resources. This is evident from the fact that decision-making mechanisms in numerous regulatory instruments comprising the regulatory framework make reference to the need to ensure environmental protection of water resources. In addition, there is a wide range of tools that exist across the regulatory framework that could be employed to ensure environmental protection of water resources. Nevertheless, the regulatory framework could benefit from a more streamlined and coherent approach towards this issue across the entire regulatory framework.

#### Legislative instruments

- 3.12 The principal legislative instruments relating to environmental protection of Victoria's water resources are contained in the EP Act, SEPP (Waters of Victoria), SEPP (Groundwaters of Victoria) and the Water Act. Environmental protection of water resources is also supported by other regulatory instruments albeit less directly, including the SOO.

#### Key decision-makers

- 3.13 The key decision-maker regarding environmental protection of water resources is the EPA, which is responsible for environmental protection in Victoria. However, the Minister for Water and, to a lesser extent, the water authorities also have a role to play in this regard.



### Regulatory tools

- 3.14 The regulatory framework contains a wide range of tools available to a variety of bodies that are either explicitly designed to environmental protection of water resources or could be employed to do so.

#### Tools available to the EPA:

- State environment protection policy: The EPA has the power to recommend the adoption of SEPPs. These are subordinate legislation which are aimed at providing more detailed requirements and guidance in relation to the application of the Act.<sup>40</sup> The EPA has already issued 2 SEPPs which relate to Victoria's waters – namely the SEPP (Waters of Victoria) and SEPP (Groundwaters of Victoria). These are important instruments to protect Victoria's water resources. SEPP (Waters of Victoria) covers a broad range of water environments, including aquatic reserves, wetlands and lakes, forests, plains, inlets, coasts and ports. The SEPP also covers a wide range of beneficial uses including recreation, aesthetic enjoyment, cultural and spiritual values, agriculture and irrigation, aquaculture, industrial and commercial use, human consumption. SEPP (Groundwaters of Victoria) applies to groundwater. The beneficial uses that are protected by the SEPP include maintenance of ecosystems, potable water supply, use for agriculture, parks, gardens, stock, industry and buildings.
- Powers to issue works approval, licences, permits, pollution abatement notices: The EPA has a variety of tools available to it to control the environmental impact of activities, including those that affect Victoria's water resources.<sup>41</sup>
- Economic measures to avoid or minimise harm to the environment: The EPA may develop economic measures for the purpose of providing an economic incentive to avoid or minimise harm to the environment.<sup>42</sup> An emissions trading scheme was originally contemplated when this provision was first inserted into the Act. Nevertheless, it is possible that, if water sources are at risk, the EPA can use its power to develop economic measures to help mitigate the relevant risks.

#### Tools available to the Minister for Water:

- Environmental water reserve: The Water Act establishes the notion of an 'environment water reserve', which comprises water that is set aside for

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<sup>40</sup> s.13(1)(c) EP Act.

<sup>41</sup> s.13(1)(d) EP Act. Notably, pursuant to s. 13(1)(b) of the EP Act, the EPA only has power to control activities involving discharge of waste to the environment, which means that the EPA's functions are limited (if not non-existent) in relation to closed loop systems, for which there is no discharge to the environment.

<sup>42</sup> s.19AA EP Act.

the environment.<sup>43</sup> The environmental water reserve could be used to help encourage conservation and sustainable use of water resources.

- Assessment of water resources and the environment: Under the Water Act, the Minister has power to undertake investigations and an assessment of water resources and the environment in connection with waterways. Such assessments and investigations could lay foundation for environmental protection measures to be taken in relation to Victoria's water resources.<sup>44</sup>
- Sustainable water strategies: The Minister for Water must, among other things, ensure that a program of sustainable water strategies is undertaken for the State in accordance with the Act.<sup>45</sup> The Water Act provides for the preparation of Sustainable Water Strategies for regional areas in the State. Among other things these strategies must identify ways to increase and set priorities for increasing the volume of water in the environmental water reserve to improve the environmental values and health of water ecosystems.<sup>46</sup>
- Designation of water supply protection areas: The Water Act provides that the Minister may declare an area to be a water supply protection area for the protection of groundwater resources in the area or the surface water resources in the area or both upon application by authorised users of water, a Water Authority or other body that has responsibilities in the area.<sup>47</sup>
- Ministerial directions: Under the Water Act, water authorities must perform their functions and exercise their powers subject to any directions given by the Minister under s. 307.<sup>48</sup> Ministerial directions could be used to ensure that WSC objectives are furthered through the performance of functions and powers, including environmental protection of water resources.
- Statement of Obligations applicable to water authorities: Under the Water Act, the Minister may issue a Statement of Obligations to a waterway authority with waterway management functions.<sup>49</sup> The Statement of Obligations could be used to specify WSC principles and objectives, including environmental protection of water resources.
- Conditions imposed on authorisation/ licences: The Minister for Water has power under the Water Act to impose conditions when authorising a

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<sup>43</sup> ss.4A and 4B Water Act.

<sup>44</sup> s.213 Water Act.

<sup>45</sup> ss.22(1)(ab) and (c) Water Act.

<sup>46</sup> ss.22B and 22C Water Act.

<sup>47</sup> s.27 Water Act.

<sup>48</sup> ss. 125 and 307 Water Act.

<sup>49</sup> s.186A Water Act.

range of activities and when issuing licences. Theoretically, conditions can be imposed to ensure conservation and sustainable use of water resources. Specifically, the Minister can impose a broad range of conditions to a take and use licence<sup>50</sup>, including the protection of the environment, which includes the riverine and riparian environment.<sup>51</sup> In addition, the Minister can impose a broad range of conditions on a licence to construct works<sup>52</sup>, including the protection of the environment, which extends to the riverine and riparian environment.<sup>53</sup>

Tools available to water authorities:

- Programs and plans to conserve water: Under the Water Act, water authorities that have a water district have the power to develop and implement programs for the conservation and efficient use of water.<sup>54</sup> In addition, under the Water Act, water authorities with a waterway management district have a range of functions in relation to designated waterways, which could be used to help ensure conservation and sustainable use of water resources, namely:
  - to develop and to implement effectively schemes for the use, protection and enhancement of land and waterways;
  - to develop and implement plans and programs and carry out works and activities to maintain the environmental water reserve in accordance with the environmental water reserve objective;
  - to develop and implement plans and programs and carry out works and activities to improve the environmental values and health of water ecosystems, including their biodiversity, ecological functions, quality of water and other uses that depend on environmental condition.<sup>55</sup>
- Measures to respond to water shortages: Water authorities also have a range of tools available to them to help conserve water when water shortages arise. In particular, under the Water Act, water authorities have the power to reduce, restrict or discontinue water supply for a variety of reasons, including cases whether there is a risk of future water shortages.<sup>56</sup> This power is supplemented by the ability to make by-laws to regulate, restrict or prohibit the use of water either generally or for a

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<sup>50</sup> Licences to construct works are issued pursuant to s.51 of the Water Act.

<sup>51</sup> s.56 Water Act.

<sup>52</sup> Take and use licences are issued pursuant to s.51 of the Water Act.

<sup>53</sup> s.68 Water Act.

<sup>54</sup> s.163(1) Water Act.

<sup>55</sup> s.189 Water Act.

<sup>56</sup> s.141 Water Act.

specific purpose.<sup>57</sup> In addition, water authorities must prepare a water savings plan, which must comply with any directions or guidelines issued by the Minister for Water.<sup>58</sup> The SOO further provides that all urban water corporations must develop a Drought Response Plan that governs the management of the supply of water by the Corporation in any period of drought or when the supply of water is limited.<sup>59</sup>

- Conditions imposed on authorisation: Under the Water Act, a water authority or other public statutory authority that has power to authorise or permit any activity or change in the use of land that may affect an existing drainage regime<sup>60</sup> must make the authorisation or permission subject to any conditions that are required to ensure the conservation of waterways, wetlands and aquifers and may withhold the authorisation or permission until any works are carried out or any measures undertaken that are required for avoiding or lessening any possible adverse effect of the granting of the authorisation or permission.<sup>61</sup>

Other tools:

- Enforcement of WELS Scheme: There are a range of provisions regarding labelling and selling products that do not comply with the WELS scheme, which seeks to ensure water efficiency. Enforcement of these provisions by the Commonwealth WELS Regulator can help to ensure conservation and sustainable use of water resources.<sup>62</sup>
- Environment and resource efficiency plans: A person who undertakes an activity that is regulated by the EPA under the EP Act must prepare an Environment and Resource Efficiency Plan, which would also apply to water. Among other things and EREP must include a plan of actions to achieve environmental resource efficiency gains, which could help conservation and sustainable use of water resources.<sup>63</sup> However, it should be noted that the EREP program is due to expire at the end of 2013.

3.15 There is also a variety of mechanisms in the regulatory framework that require consideration of issues relating to environmental protection of Victoria's water resources. These mechanisms involve decision-making by both the Minister for Water as well as by water authorities.

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<sup>57</sup> s.171 Water Act.

<sup>58</sup> s.170A Water Act.

<sup>59</sup> Clause 6-5 SOO.

<sup>60</sup> An existing drainage regime is all physical and hydrological circumstances that may affect drainage in a catchment.

<sup>61</sup> s.12 Water Act.

<sup>62</sup> ss.33 – 38 WELS Act.

<sup>63</sup> ss.26H and 26I EP Act.

#### Decision-making by the Minister for Water:

- Long-term water resources assessment: Under the Water Act, the Minister for Water must ensure the preparation of a long-term water resources assessment, every 15 years after the first report, which is due in 2017. Among other things, this assessment must identify whether or not there has been any decline in the long-term availability of surface water or groundwater, whether the decline has fallen disproportionately on the environmental water reserve or on the allocation of water for consumptive purposes and whether there has been any deterioration in waterway health for reasons related to flow..<sup>64</sup>
- Granting entitlements and licences: In deciding whether or not to grant a bulk entitlement<sup>65</sup>, an allocation of an environmental entitlement<sup>66</sup>, a take and use licence<sup>67</sup>, or a licence to construct works<sup>68</sup>, the Minister for Water must take into account a range of matters including any adverse effect that the allocation or use of water under the entitlement is likely to have on existing authorised uses of water; a waterway or an aquifer; a drainage regime; maintenance of the environmental water reserve and the need to protect the environment, including the riverine and riparian environment.

#### Decision-making by water authorities:

- Performance of functions, exercise of powers and carrying on duties: The Water Act provides that, in performing their functions, exercising powers and carrying on duties, water authorities must have regard to a range of principles that may support measures to ensure environmental protection of water resources including 'the need to integrate both long term and short term economic, environmental, social and equitable considerations'.<sup>69</sup> In addition, the SOO emphasises the need for water authorities to find innovative ways to enhance environmental outcomes and to reduce detrimental environmental impacts,<sup>70</sup> which may also support measures to ensure conservation and sustainable use of water resources.
- Development of trade waste management policies and practices: The SOO provides that, in developing trade waste management policies and practices, water authorities (other than rural authorities) should be guided by the environmental protection principles set out in the EP Act,

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<sup>64</sup> ss.22K and L Water Act.

<sup>65</sup> s.40 Water Act.

<sup>66</sup> s.48F Water Act.

<sup>67</sup> s.53 Water Act.

<sup>68</sup> s.68 Water Act.

<sup>69</sup> s.93 Water Act.

<sup>70</sup> Clause 1-6 SOO.

including integration of economic, social and environmental considerations and integrated environmental management.<sup>71</sup>

Other:

- Building approval for projects involving plumbing: The Plumbing Code of Australia refers in both the performance requirements and the deemed-to-satisfy to the need to 'safeguard the environment' in relation to non-drinking water installations, roof drainage installations, stormwater drainage installations and on-site wastewater management system installations.<sup>72</sup>

### Regulatory obstacles

- 3.16 There are no obvious regulatory obstacles to environmental protection of Victoria's water resources. Indeed, the regulatory framework appears to provide significant support for initiatives that seek to protect water resources. Nevertheless, there is a potential lack of coherence in the approach towards environmental protection of water resources across the entire regulatory framework given diversity regarding the types of regulatory tools that support conservation and sustainable use of water resources, the regulatory instruments establishing the tools and the bodies that have the power to utilise these tools.

### Alternative water source projects

- 3.17 Unlike the WSC topics and issues that have been discussed earlier in this report, alternative water source projects are not typically dealt with explicitly in the various instruments that comprise the regulatory framework, although there may be references to the inputs and infrastructure associated with these types of projects in these instruments. Therefore, for the most part, the assessment of the regulatory framework in relation to alternative water source projects has involved consideration of whether or not particular regulatory provisions might facilitate or hinder the uptake of these projects, even though the regulatory provisions in question may have been designed for other objectives. A summary of the main findings of the stock-take in relation to this issue is set out in Table 4 below.

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<sup>71</sup> Clause 7-8(2) SOO.

<sup>72</sup> Sections B (Water Services), D (Stormwater Drainage Systems) and F (On-Site Wastewater Systems) Plumbing Code of Australia.

Table 4. Summary Table: Alternative water source projects

SUMMARY TABLE: ALTERNATIVE WATER SOURCE PROJECTS	
Definition	<ul style="list-style-type: none"> <li>- Provisions that address (directly or indirectly) alternative water source projects, including wastewater, recycled water, stormwater and managed aquifer recharge. These provisions may explicitly authorise alternative water source projects. Alternatively, they may include a power, obligation, requirement that may have an impact on the uptake of such projects.</li> </ul>
Main regulatory instrument(s)	<ul style="list-style-type: none"> <li>- Water Act</li> </ul>
Other relevant regulatory instruments	<ul style="list-style-type: none"> <li>- SEPP (Waters of Victoria)</li> <li>- SEPP (Groundwaters of Victoria)</li> <li>- SOO</li> <li>- WIRO</li> <li>- Trade Waste Customer Service Code</li> </ul>
Key decision-makers	<ul style="list-style-type: none"> <li>- Water authorities</li> </ul>
Main regulatory tools for WSC	<ul style="list-style-type: none"> <li>- The regulatory framework contains various references to alternative sources of water (particularly recycled water and stormwater), which could support the uptake of alternative water source projects (Water Act, LG Act, Trade Waste Customer Service Code).</li> </ul>
Main regulatory obstacles to WSC	<ul style="list-style-type: none"> <li>- Limited private rights to water (Water Act)</li> <li>- Bulk water entitlements do not apply to recycled water (Water Act)</li> <li>- Absence of provisions dealing with storage of alternative water sources, particularly stormwater and recycled water</li> <li>- Regulatory requirements regarding risk management associated with alternative water sources (SEPP (Waters of Victoria), SEPP (Groundwaters of Victoria),</li> </ul>



SUMMARY TABLE: ALTERNATIVE WATER SOURCE PROJECTS	
	SOO, WIRO, Water Act)
Other related WSC topics/issues	<ul style="list-style-type: none"> <li>- Supply of water</li> <li>- Risks to/associated with water resources</li> <li>- Risks to health</li> <li>- Economic valuation and pricing</li> </ul>
Overall assessment of relevant aspects of regulatory regime	<ul style="list-style-type: none"> <li>- Overall, the regulatory framework appears to provide limited support for alternative water source projects. While there are some supportive references in the regulatory framework to these types of projects and the water sources upon which they rely, the regulatory framework appears to focus predominantly on the risks associated with these types of projects. When considered as a whole, the various regulatory obstacles could deter the uptake of alternative water source projects.</li> </ul>

#### Legislative instruments

- 3.18 The primary legislative instrument that could affect the uptake of alternative water source projects is the Water Act. However, there are a number of other instruments that are also likely to be relevant including the SEPP (Waters of Victoria), SOO, WIRO and the Trade Waste Customer Service Code.

#### Regulatory objectives

- 3.19 The objectives of a number of regulatory instruments comprising the regulatory framework could be interpreted as supporting the uptake of alternative water source projects.
- Water Act: The Water Act states that one of its purposes is 'to foster the provision of responsible and efficient water services suited to the various needs and various consumers'.<sup>73</sup> This purpose could be construed as supporting projects and initiatives to enhance the range of options available to consumers, while at the same time ensuring that the supply of water is responsible and efficient.
  - LG Act: The LG Act makes it clear that the objectives of a council are broad, including environmental viability and sustainability, efficient use of

<sup>73</sup> s.1 Water Act.



resources and accessibility of services and facilities.<sup>74</sup> These objectives could be interpreted as providing justification for councils to become involved with conservation of water resources and, potentially, alternative water source projects. In addition, councils can play an important role in supporting alternative water source projects – particularly, involving stormwater – given their management and control of local drains and sewers.<sup>75</sup>

#### Key decision-makers

- 3.20 The main decision-makers that could play a role in encouraging investment in alternative water source projects under the regulatory instruments considered are water authorities. However, councils (through their planning functions), private investors and developers will also be instrumental in ensuring the success of alternative water source projects.

#### Regulatory tools

- 3.21 There are a number of provisions in the regulatory framework that either explicitly or implicitly encourage or support alternative water source projects:

- Wastewater:
  - The Water Act vests broad powers in water authorities responsible for sewerage. The Act specifically empowers water authorities to develop and implement programs and reuse of treated wastewater, which would accommodate initiatives undertaken by water authorities in relation to alternative water source projects using wastewater.<sup>76</sup> Water authorities also have the power to undertake research and raise public awareness in relation to such projects.<sup>77</sup>
  - The SEPP (Waters of Victoria) states that the EPA needs to work with protection agencies, communities and businesses to ensure that re-use and recycling of wastewater is maximised.<sup>78</sup>
  - The SOO contains guiding principles for water authorities applicable to the performance of functions, exercise of powers and carrying out of duties by the water authorities. Among other things, water authorities must have regard to the need to find innovative ways to optimise the operation of water and

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<sup>74</sup> s.3C LG Act.

<sup>75</sup> s.198 LG Act.

<sup>76</sup> s. 173(1) Water Act.

<sup>77</sup> s. 173(1) Water Act.

<sup>78</sup> Clause 40 SEPP (Waters of Victoria).

wastewater systems.<sup>79</sup> Arguably, this principle supports investment in alternative water source projects, particularly those involving wastewater.

- Stormwater:
  - The SOO also contains provisions that could support alternative water source projects involving stormwater. In particular, in relation to waterways and drainage services provided by Melbourne Water, the SOO provides that Melbourne Water must develop a strategy that sets out the responsibilities, goals, levels of service and programs of work for waterway management, flood management and drainage taking into consideration, among other things opportunities for stormwater capture and fit-for-purpose re-use.<sup>80</sup>
  
- Recycled water:
  - In addition, the SOO contains provisions regarding the management of trade waste, which could support alternative water source projects using recycled trade waste water. In particular, the SOO provides that all water authorities (other than rural water authorities) must develop policies and practices to manage trade waste to, among other things, protect its sewerage systems, including to facilitate recycling by ensuring that accepted trade waste does not present barriers to recycling or reuse of wastewater or biosolids.<sup>81</sup>
  - Trade waste agreements could potentially be used to better manage sewage to facilitate utilisation in the context of alternative water source projects. While the Water Act does not dictate the contents of such agreements, the ESC has issued the Trade Waste Customer Service Code. The Code imposes obligations on water authorities in relation to the provision of trade waste services.<sup>82</sup>

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<sup>79</sup> Clause 1-6 SOO.

<sup>80</sup> Clause 6-3(1) SOO.

<sup>81</sup> Clause 7-8(1) SOO.

<sup>82</sup> Part A Trade Waste Customer Service Code

### Regulatory obstacles

3.22 There are also a number of provisions in the regulatory framework that could be an impediment to the uptake of alternative water source projects:

- Private rights to water:
  - The Water Act vests a statutory right to use water. Notably, the section refers to the right to 'use' water, but not the right to otherwise deal with the water (e.g. on-selling). The Act also refers to the right to use water lawfully taken or received from works of a water authority. However, the relevant provision does not apply to water taken from local council's stormwater works (i.e. public drains).<sup>83</sup> These aspects could limit access to alternative water source projects involving rainwater collected on private land as well as those involving harvesting of stormwater from council drains.
  - Unless there is an as-of-right entitlement to take and use water under the Water Act (i.e. for stock and domestic purposes or in relation to rainwater or other water that occurs or flows on land occupied by the relevant person), authorisation is required.<sup>84</sup> Section 51 is the primary means of obtaining authorisation to take and use water in relation to 'non-declared systems' (that is systems, where the unbundling of rights to water and land has not occurred). Among other things, a licence obtained under section 51 entitles the holder to take and use water from a waterway and groundwater. Notably, section 51 expressly excludes an application for a licence to take and use recycled water.
- Authority rights to take water:
  - Under the Water Act, a water authority has the right to take water in accordance with a bulk entitlement or any other entitlement, licence or other right bestowed under the Act and may use that water for any purpose connected with the exercise of its functions under the Water Act or the Local Government Act 1989.<sup>85</sup> However, bulk entitlements are not available for recycled water,<sup>86</sup> which may limit the scope for supply of recycled water by water authorities through bulk entitlements.
- Risk management:
  - The SOO requires the water authorities to develop and implement plans, systems and processes having regard to ISO31000:2009 to

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<sup>83</sup> s.8(4) Water Act.

<sup>84</sup> s.51(1) Water Act.

<sup>85</sup> ss.9(1) and (2) Water Act.

<sup>86</sup> s.36 Water Act.

ensure that risks associated with functions performed and services provided by the Corporation are identified, assessed, prioritised and managed.<sup>87</sup> The requirement to ensure compliance with ISO31000 could deter the uptake of alternative water source projects, depending upon the way in which ISO31000 is applied in practice to manage risks associated with these projects.

- Under the Constitution, a public authority retains responsibility for all water services, even if the provision of these services is outsourced to a third party.<sup>88</sup> To the extent that a public authority currently has responsibility for the supply of water services in relation to alternative water supply projects, it may be reluctant to outsource the supply to a third party if the risks are considered too high. This could effectively discourage the uptake of alternative water source projects.
- The SEPP (Waters of Victoria) specifically refers to the re-use and recycling of wastewater. It requires that such projects do not pose environmental risks to beneficial uses.<sup>89</sup> It is possible that application of the SEPP could hinder uptake of re-use/recycling projects involving wastewater if environmental protection concerns are considered to dominate over the need to invest in alternative water source.
- In addition, the SEPP (Waters of Victoria) provides that on-site domestic wastewater needs to be managed to prevent the transport of nutrients, pathogens and other pollutants to surface waters and to prevent any impacts on groundwater beneficial uses.<sup>90</sup> It is possible that the application of the SEPP could hinder uptake of onsite domestic re-use/recycling projects involving wastewater if environmental protection concerns are considered to dominate over the need to invest in alternative water sources.
- The SEPP (Waters of Victoria) refers to waters in stormwater drains.<sup>91</sup> However, the emphasis is on protecting the potential adverse environmental impacts of water in these drains, rather than treating stormwater as a resource. This may deter the uptake of alternative water source projects, particularly those involving harvesting and re-use of stormwater from drains.
- The SEPP (Groundwaters of Victoria) notes that groundwater is an undervalued resource and refers to the need to protect this resource. However, it is implicit that the emphasis is on

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<sup>87</sup> Clause 5-1 SOO.

<sup>88</sup> s.97 Constitution.

<sup>89</sup> Clause 31 SEPP (Waters of Victoria).

<sup>90</sup> Clause 32 SEPP (Waters of Victoria).

<sup>91</sup> Clause 46 SEPP (Waters of Victoria).

environmental protection rather than protection for use of groundwater in the context of alternative water source projects, particularly managed aquifer recharge.<sup>92</sup> This could potentially hinder the uptake of alternative water source projects involving groundwater.

- The Plumbing Code of Australia refers in both the performance requirements and the deemed-to-satisfy provisions to a range of risks associated with non-drinking water installations, roof drainage installations, stormwater drainage installations and on-site wastewater management system installations. These risks must be taken into account in the context of the design and construction of these installations.<sup>93</sup> This requirement could deter the uptake of alternative water source projects, particularly those involving recycled water or wastewater.
  - The SDW Act requires water suppliers and water storage managers to prepare and implement plans to manage risks in relation to drinking water and some types of non-potable water.<sup>94</sup> In addition, the Food Act deals with the handling and sale of unsafe or unsuitable 'food', which includes products containing water or prepared with water.<sup>95</sup> These provisions could hinder the uptake of alternative water source projects if the water is destined for human consumption and the risks to health are or could be relatively high.
- Other regulatory controls:
- The EP Act provides that a person must not construct a septic tank system unless that person holds a permit (issued by the relevant council).<sup>96</sup> The Water Act deals with the process that must be followed in relation to septic tank permit applications. Septic tank systems comprise onsite wastewater treatment systems. On-site septic tank systems could potentially be used to collect wastewater for re-use. The extent to which these systems could actually be used in this way will depend upon the requirements that are imposed by the relevant water authority, council and EPA in any given case.
  - Pursuant to the WIRO, the ESC has the power to regulate standards and conditions of service and supply in relation to, among other things, bulk and retail recycled water services.<sup>97</sup> The types of

<sup>92</sup> Clause 5(2) SEPP (Groundwaters of Victoria).

<sup>93</sup> Parts B3, D1, D2 and Part F1 Plumbing Code.

<sup>94</sup> ss. 1(2)(a), 3, 7, 8 and 9 SDW Act.

<sup>95</sup> ss. 9, 11 and 12 Food Act.

<sup>96</sup> s. 53L EP Act.

<sup>97</sup> Clause 6(a) WIRO.

standards and conditions that the ESC may impose may affect whether or not alternative water supply projects – particularly, those involving recycled water – are encouraged or deterred.

- The WIRO also empowers the ESC to regulate prices in relation to bulk and retail recycled water services.<sup>98</sup> The level of prices that the ESC may impose will affect whether or not investment in alternative water supply projects – particularly, those involving recycled water – is encouraged or deterred. Notably, the pricing principles contained in the WIRO refer to the need to provide appropriate signals to customers about the sustainable use of Victoria’s water resources, which could be used to support WSC objectives/initiatives. The WIRO sets out the considerations that the ESC must take into account in deciding whether or not to approve prices.<sup>99</sup> The considerations to which the ESC may have regard in determining whether or not to approve prices – including for recycled water services – are limited and do not appear to accommodate consideration of WSC principles

#### Access to and use of water resources

3.23 A limited number of provisions dealing with access to and use of water resources were identified in the stock-take. A summary of the main findings of the stock-take in relation to this issue is set out in Table 5 below.

Table 5. Summary Table: Access to and use of water resources

SUMMARY TABLE: ACCESS TO AND USE OF WATER RESOURCES	
Definition	- Provisions that deal with rights of access to take and use water resources.
Main regulatory instrument(s)	- Water Act
Other relevant regulatory instruments	- None
Key decision-makers	- Crown (Victorian Government)
Main regulatory tools for	- None

<sup>98</sup> Clause 6(b) WIRO.

<sup>99</sup> Clause 9 WIRO.

SUMMARY TABLE: ACCESS TO AND USE OF WATER RESOURCES	
WSC	
Main regulatory obstacles to WSC	<ul style="list-style-type: none"> <li>- Crown controls water resources (Water Act)</li> <li>- Limited private rights (Water Act)</li> <li>- Absence of a third party access regime (ESC Act)</li> </ul>
Other related WSC topics/issues	<ul style="list-style-type: none"> <li>- Alternative water source projects</li> <li>- Supply of water</li> </ul>
Overall assessment of relevant aspects of regulatory regime	<ul style="list-style-type: none"> <li>- The regulatory framework applicable to the access to and use of water resources was developed at a time when alternative water source projects had not yet been conceived. The regulatory framework vests the right to control all natural water sources in the Crown. Rights to access and use alternative water sources (e.g. stormwater) are not explicitly addressed in the regulatory framework. Therefore, the structure of the regulatory framework does not readily accommodate projects that involve taking and using water resources for the purposes of developing and providing alternative water sources for end-users.</li> </ul>

#### Legislative instruments

- 3.24 The main legislative instrument that affects the access to and use of water resources in Victoria is the Water Act.

#### Key decision-makers

- 3.25 The Crown controls water resources in Victoria and, therefore, is the primary decision-maker of relevance.

#### Regulatory obstacles

- 3.26 In Victoria, the Crown controls the right to determine rights to take and use natural water resources – specifically, water in waterways and groundwater<sup>100</sup>, although the Crown must not limit certain rights to water conferred under the Act. Depending upon how this right is exercised by the Crown and the mechanisms

<sup>100</sup> s.7 Water Act.

established to enable access to water resources, the ability of third parties to take and use water for WSC projects could be limited.

- 3.27 Limited private rights also exist to take and use water that occurs on or adjacent to land.<sup>101</sup> However, there are no rights to deal with the water. Moreover, the regulatory framework does not currently provide for taking water from local council's stormwater infrastructure, which could limit the uptake of alternative water source projects using these sources of water.
- 3.28 Notably, the access framework set out in the ESC Act only applies to those regulated industries that have a specific access regime in place. None currently exist in Victoria, even though the ESC undertook an inquiry into an access regime for water and sewerage infrastructure services in 2009. Therefore, the only option to seek access to water and sewerage infrastructure in Victoria exists under Part IIIA of the Competition and Consumer Act 2010. However, in order to invoke Part IIIA, the relevant infrastructure service must be declared. As yet, the supply of water and wastewater services has not been so declared. Therefore, Part IIIA cannot yet be availed of by prospective proponents of alternative water source projects.

#### Supply of water

- 3.29 A limited number of provisions dealing with supply of water were identified in the stock-take. A summary of the main findings of the stock-take in relation to this issue is set out in Table 6 below.

Table 6. Summary Table: Supply of Water

SUMMARY TABLE: SUPPLY OF WATER	
Definition	- Provisions that relate to the supply of water (whether recycled or other) by water authorities.
Main regulatory instrument(s)	- Water Act
Other relevant regulatory instruments	- Constitution - WIRO
Key decision-makers	- Water authorities
Main regulatory tools for	

<sup>101</sup> s.8 Water Act.



SUMMARY TABLE: SUPPLY OF WATER	
WSC	<p><u>Tools available to water authorities</u></p> <ul style="list-style-type: none"> <li>- Power to reduce, restrict or discontinue the supply of water to secure the supply of water when water resources are scarce (Water Act).</li> </ul>
Main regulatory obstacles to WSC	<ul style="list-style-type: none"> <li>- Constitutional limit on outsourcing supply of water to private entities (Constitution)</li> <li>- Ability to supply bulk recycled water limited (Water Act)</li> <li>- Evaluation of costs and benefits under the economic regulation framework may undermine economic viability of supply of alternative water sources (WIRO)</li> </ul>
Other related WSC topics/issues	<ul style="list-style-type: none"> <li>- Alternative water sources</li> <li>- Economic evaluation and pricing of water</li> </ul>
Overall assessment of relevant aspects of regulatory regime	<ul style="list-style-type: none"> <li>- The regulatory framework does not appear to encompass and provide for the broad range of alternative water sources that could be supplied by water authorities. Moreover, the manner in which the ESC regulates the supply of water through standards, conditions and pricing may affect investment in and, therefore, the availability of alternative water source for supply. On the positive side, water authorities do have powers available to them to reduce, restrict or discontinue the supply of water, including to encourage conservation and sustainable use of water and in order to secure the supply of water when water resources are scarce.</li> </ul>

#### Legislative instruments

- 3.30 The main regulatory instrument of relevance to the supply of water is the Water Act. However, the WIRO and the Constitution could also affect the supply of water, particularly when water is proposed to be supplied from alternative water sources.

Key decision-makers

- 3.31 Water authorities are the main decision-makers involved in the supply of water.

Regulatory tools

- 3.32 There are a number of powers available to water authorities to reduce, restrict or discontinue the supply of water, including through Drought Response Plans.<sup>102</sup> These powers could be used to secure the supply of water when water resources are scarce.

Regulatory obstacles

- 3.33 The ability of third parties other than the established water authorities to supply water is potentially limited by the Constitution. Under the Constitution, a public authority retains responsibility for all water services, even if the provision of these services is outsourced to a third party.<sup>103</sup> To the extent that a public authority currently has responsibility for the supply of water and water services in relation to alternative water supply projects, it may be reluctant to outsource that supply to a third party if the risks are considered too high. This could effectively discourage the uptake of alternative water source projects.
- 3.34 In addition, under the Water Act, the ability of water authorities to supply bulk recycled water by water authorities is restricted, even though the WIRO anticipates the supply of bulk recycled water.<sup>104</sup> While the matters that must be considered in determining whether or not a bulk entitlement should be issued are broad and, potentially, allow consideration of WSC objectives<sup>105</sup>, the ability of water authorities to apply for a bulk entitlement does not extend to recycled water, which may limit the scope for the supply of recycled water by water authorities through bulk entitlements.<sup>106</sup>
- 3.35 Moreover, the ESC has a range of powers that could affect the economic viability of the supply of recycled water. Specifically, the WIRO, which covers bulk and retail recycled water services, empowers the ESC to regulate prices, standards and conditions of service and supply for such services.<sup>107</sup> The level of prices and types of standards and conditions that the ESC may impose may affect whether or not alternative water supply projects – particularly, those involving recycled water – are encouraged or deterred.
- 3.36 Notably, the pricing principles in the WIRO refer to the need to provide appropriate signals to customers about the sustainable use of Victoria's water

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<sup>102</sup> ss. 141 and 171 Water Act and clause 6-5 SOO.

<sup>103</sup> s.97 Constitution.

<sup>104</sup> s. 36 Water Act

<sup>105</sup> s.40 Water Act.

<sup>106</sup> s.36 Water Act.

<sup>107</sup> Clauses 6(a) and (b) and 14(1) WIRO.

resources<sup>108</sup>, which could be used to support WSC objectives/initiatives, including investment in alternative water source projects. However, whether or not prices actually ensure sustainable use of Victoria's water resources will depend upon how the principles are applied in practice by the ESC.

#### Economic evaluation and pricing of water

- 3.37 A summary of the main findings of the stock-take in relation to economic evaluation and pricing of water is set out in Table 7 below.

Table 7. Summary Table: Economic evaluation and pricing of water

SUMMARY TABLE: ECONOMIC EVALUATION AND PRICING OF WATER	
Definition	- Provisions that deal with the manner in which water is valued and priced for supply and delivery of water resources to end-users.
Main regulatory instrument(s)	- WIRO
Other relevant regulatory instruments	- ESC Act - WI Act - Water Act
Key decision-makers	- ESC
Main regulatory tools for WSC	- None
Main regulatory obstacles to WSC	- There appears to be limited flexibility within the regulatory framework for the ESC to account for WSC objectives and principles when making determinations regarding the evaluation and pricing of water (WIRO).
Other related WSC topics/issues	- Supply of water - Alternative water source projects

<sup>108</sup> Clause 14(1) WIRO.

## SUMMARY TABLE: ECONOMIC EVALUATION AND PRICING OF WATER

Overall assessment of relevant aspects of regulatory regime	<ul style="list-style-type: none"> <li>- The ESC's frame of reference in evaluating and pricing water appears to be quite limited and does not explicitly accommodate WSC objectives and principles. Even though the ESC is authorised to account for considerations in other relevant instruments, the extent to which considerations in these instruments are broad enough to overcome the specific and much narrower considerations identified in the ESC Act is unclear.</li> </ul>
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Legislative instruments

- 3.38 The primary legislative instrument that affects evaluation and pricing of water is the WIRO, which is made under the WI Act.

Key decision-makers

- 3.39 The WIRO is applied by the ESC pursuant to its powers under the ESC Act.

Regulatory Objectives

- 3.40 As the name of the WI Act implies, it contains provisions to regulate water sector participants, including water authorities. The Act states that the objectives of the ESC in relation to the regulated water industry include ensuring that the regulatory decision-making has regard to health, safety, environmental sustainability (including water conservation) and social obligations of regulated entities.<sup>109</sup> However, in the ESC Act – pursuant to which the ESC applies the WIRO – the emphasis in describing the objectives and functions of the ESC is on efficiency, price and quality.<sup>110</sup> Notably, there is no specific reference to objectives and principles that could potentially support WSC initiatives in the ESC Act.

Regulatory obstacles

- 3.41 The WI Act provides for the development of a WIRO, which may specify parameters for the ESC's regulation of the water sector. The Act implies that the WIRO may not include matters relating to the quality and performance standards of a health, environmental or technical nature.<sup>111</sup> This may limit the ESC's consideration under the WIRO to purely economic matters.

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<sup>109</sup> s.4C WI Act.

<sup>110</sup> ss. 1 and 8 ESC Act.

<sup>111</sup> s.4D WI Act.

- 3.42 Overall, the ESC's frame of reference in evaluating and pricing water appears to be quite limited and does not explicitly accommodate WSC objectives and principles. Even though the ESC is authorised to account for considerations in other relevant instruments, the extent to which considerations in these instruments are broad enough to overcome the specific and much narrower considerations identified in the ESC Act is unclear.

#### Risks to/associated with water sources

- 3.43 The regulatory framework deals both with risks to water sources – for example, through pollution. However, it also addresses risks associated with or arising from water sources. A summary of the main findings of the stock-take in relation to both sets of issues is set out in Table 8 below.

Table 8. Summary Table: Risks to/associated with water sources

SUMMARY TABLE: RISKS TO/ASSOCIATED WITH WATER SOURCES	
Definition	- Provisions that deal with the identification and/or management of risks to water resources but also risks associated posed by water resources, including water from alternative water source projects.
Main regulatory instrument(s)	- Water Act - EP Act - SEPP (Waters of Victoria)
Other relevant regulatory instruments	- SOO - Trade Waste Customer Service Code
Key decision-makers	- Minister for Water - Water authorities - EPA
Main regulatory tools for WSC	<u>Tools available to Minister for Water</u> - Sustainable Water Strategies (if extended to urban areas) (Water Act)  <u>Tools available to water authorities</u>

SUMMARY TABLE: RISKS TO/ASSOCIATED WITH WATER SOURCES	
	<ul style="list-style-type: none"> <li>- Implementation of plans, systems and processes to manage risks to/associated with water resources (SOO, Trade Waste Customer Service Code)</li> </ul> <p><u>Tools available to the EPA</u></p> <ul style="list-style-type: none"> <li>- Issuance of works approvals, licences, permits, pollution abatement notices, minor works pollution abatement notices</li> </ul>
Main regulatory obstacles to WSC	<ul style="list-style-type: none"> <li>- The regulatory framework includes a variety of mechanisms and powers vested in a range of bodies to address risks to water sources, including environmental risks to water sources and health risks associated with some water sources. These mechanisms could hinder WSC initiatives – particularly, alternative water source projects – if, for example, the risks associated with those projects are considered to be too high.</li> </ul>
Other related WSC topics/issues	<ul style="list-style-type: none"> <li>- Alternative water source projects</li> <li>- Environmental protection</li> <li>- Risks to health</li> </ul>
Overall assessment of relevant aspects of regulatory regime	<ul style="list-style-type: none"> <li>- The regulatory framework contains some important tools to protect water resources. However, the framework also contains a range of provisions that are aimed at addressing risks arising from water resources. These provisions could be particularly relevant for alternative water source projects. It is possible that the uptake of such projects could be deterred if the risks associated with these projects are assessed to be too high under the regulatory framework.</li> </ul>

#### Legislative instruments

- 3.44 The main legislative instruments that address risks to or associated with water resources are the Water Act, the EP Act and the SEPP (Waters of Victoria). Provisions in the SOO and the Trade Waste Customer Service Code also support the provisions contain in the main regulatory instruments.

Key decision-makers

- 3.45 The key decision-makers include the Minister for Water, regarding the development of a Sustainable Water Strategy, which could involve help to manage risks to water resources. Water authorities also have a role to play in managing risks associated with water resources for which they are responsible. Finally, as regulator of the environment, the EPA also plays an important role in ensuring any environmental risks associated with water resources are effectively managed and responded to, where necessary.

Regulatory tools

- 3.46 The regulatory framework includes a variety of mechanisms and powers vested in a range of bodies to address risks to water sources.
- 3.47 Specifically, the Minister for Water has power under the Water Act to establish a Sustainable Water Strategy to provide for the strategic planning of the use of water resources in the region to which it applies, to identify threats to the water supply and the quality of water, and to identify ways to improve the management and use of water resources.<sup>112</sup> Notably, these strategies are developed in relation to regional areas and are, therefore, not directly relevant to WSC initiatives in an urban context. Nevertheless, a regional Sustainable Water Strategy may have implications for downstream WSC projects in an urban context.
- 3.48 In addition, under the Water Act, water authorities have the power to reduce, restrict or discontinue water supply for a variety of reasons, including cases whether there is a risk of future water shortages.<sup>113</sup> This power is complemented by the SOO, which requires the implementation of plans, systems and processes to ensure that risks associated with the operations of the water authorities are adequately managed.<sup>114</sup> These risks could include risks to water sources that are needed for delivery to consumers.
- 3.49 The Trade Waste Customer Service Code also requires risks to be identified and appropriately managed by the trade waste customer or water authority in relation to trade waste that is introduced into a water authority's sewerage system.<sup>115</sup>
- 3.50 There are also additional tools available to the EPA to help manage risks to water resources. In particular, the EPA has power, through the issuance of works approvals, licences, permits, pollution abatement notices, minor works pollution abatement notices and a variety of other tools to control the environmental impacts of activities.<sup>116</sup> These powers could be used to protect water from discharges that could harm water resources. The EPA also has power under the EP Act to develop economic measures to help mitigate the relevant risks (although

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<sup>112</sup> ss.22B and 22C Water Act.

<sup>113</sup> s.141 Water Act.

<sup>114</sup> Clause 5-1 SOO.

<sup>115</sup> Clauses 3.1 and 3.2 Trade Waste Customer Service Code.

<sup>116</sup> s.13 EP Act.

this power was originally intended for the development of a possible emissions trading scheme by the EPA).<sup>117</sup>

- 3.51 These powers are complemented by the SEPP (Waters of Victoria), which provides for the identification of risks to water sources<sup>118</sup> as well as the risks to beneficial uses of water sources associated with alternative water source projects, including those involving wastewater re-use and recycling, onsite domestic wastewater management and groundwater.<sup>119</sup> In addition, water suppliers and water storage managers are required to prepare and implement plans to manage risks in relation to drinking water and some types of non-potable water.<sup>120</sup>

#### Regulatory obstacles

- 3.52 The regulatory framework includes a variety of mechanisms and powers vested in a range of bodies to address risks to water sources. These mechanisms could hinder WSC initiatives – particularly, alternative water source projects – if, for example, the risks associated with those projects are considered to be too high.

#### Risks to health

- 3.53 Various regulatory instruments deal with the risks to human health associated with water resources, including alternative water sources. A summary of the main findings of the stock-take in relation to this issue is set out in Table 9 below.

Table 9. Summary Table: Risks to health

SUMMARY TABLE: RISKS TO HEALTH	
Definition	- Provisions that deal with identification and response to risks to health associated with the supply of water, including recycled water and other alternative water sources.
Main regulatory instrument(s)	- SOO - SDW Act - Plumbing Code
Other relevant	- Food Act

<sup>117</sup> ss.13 and 19AA EP Act.

<sup>118</sup> Clause 11 SEPP (Waters of Victoria).

<sup>119</sup> Clauses 31, 32 and 45 SEPP (Waters of Victoria).

<sup>120</sup> ss.1(2)(a), 3, 7,8 and 9 SDW Act.



SUMMARY TABLE: RISKS TO HEALTH	
regulatory instruments	- WI Act
Key decision-makers	- Water authorities, water suppliers, water storage managers - Department of Health - Victorian Building Authority
Main regulatory tools for WSC	- None
Main regulatory obstacles to WSC	- Multiple requirements to identify and appropriately manage risks to health (SOO, SDW Act, Plumbing Code)
Other related WSC topics/issues	- Risks to/associated with water resources
Overall assessment of relevant aspects of regulatory regime	- When considered as a whole, the regulatory framework emphasises the need to identify, assess and manage risks to health in relation to a broad range of water projects, including those involving potable water sources and other involving non-potable water sources. The relevant provisions could hinder WSC initiatives (particularly, alternative water source projects), depending upon the nature of the health risks posed by a WSC project and the way in which those risks are assessed and required to be managed under the regulatory framework.

#### Legislative instruments

- 3.54 The main legislative instruments that address risks to health are the SOO, the SDW Act and the Plumbing Code. However, relevant provisions are also found in the Food Act and the WI Act.

#### Key decision-makers

- 3.55 Water authorities, water suppliers and water storage managers are responsible under the regulatory framework to ensure that risks to health associated with the supply of water to end-users are appropriately managed. As the primary regulator of health issues, the Department of Health plays an important role in assessing risks to health in the context of alternative water source projects. In addition, the

Victorian Building Authority plays a role in ensuring that the relevant provisions regarding plumbing systems that involve alternative water sources comply with the Plumbing Code.

#### Regulatory objectives

- 3.56 A number of the regulatory instruments under consideration had the protection of human health and the mitigation of risks to health as a central objective – particularly the SDW Act and the Food Act. This objective is also referred to in the WI Act, which states that the objectives of the ESC in relation to the regulated water industry include to ensure that regulatory decision-making includes consideration of the health obligations of the regulated entities.<sup>121</sup>

#### Regulatory obstacles

- 3.57 Water authorities are required under the SOO to take steps to ensure that risks associated with performance of their functions (including risks to health) are appropriately identified, assessed, prioritised and managed. In relation to trade waste, water authorities are specifically required to develop policies and practices to manage trade waste to facilitate recycling by ensuring that trade waste accepted does not present barriers to recycling or reuse of wastewater or biosolids. Nevertheless, water authorities must also protect their sewerage systems including treatment works and processes and the health and safety of the public and of people working in or operating those systems.<sup>122</sup>
- 3.58 In addition, risk management plans must be prepared by water suppliers and water storage managers under the SDW Act.<sup>123</sup> The information that must be contained in a risk management plan includes:
- details of the activities undertaken and measures taken to manage hazards and risks to the quality of the water identified in the risk management plan, including the method by which the effectiveness of these features is verified.
  - details of the features of the system of supply designed to assist in the management of risks to the quality of the water identified in the risk management plan, including the method by which the effectiveness of these features is verified.
  - in the case of a water supplier, details of the procedures for consultation with water storage managers and other water suppliers for the purpose of achieving agreement on the hazards and risks to quality of the water supplied.<sup>124</sup>

<sup>121</sup> s.4C WI Act.

<sup>122</sup> Clauses 5-1 and 7-8(1) SOO.

<sup>123</sup> ss.1(2)(a), 3, 7, 8 and 9 SDW Act.

<sup>124</sup> Regulation 6 Safe Drinking Water Regulations 2005.

- 3.59 Drinking water must also meet applicable water quality standards.<sup>125</sup> The Food Act, which applies to water if it is destined for human consumption, also contains restrictions on handling, dealing with and selling products that contain water.<sup>126</sup>
- 3.60 The Plumbing Code of Australia contains a suite of provisions that require risks to health to be taken into account by those involved in the construction of a variety of installations involving water, including non-drinking water installation, roof drainage installations, stormwater drainage installation, and on-site wastewater management system installation.<sup>127</sup> While the Plumbing Code of Australia also includes objectives that could support WSC objectives in relation to these types of installations – particularly, conservation and sustainable use of water and environmental protection – the emphasis on risks to health and the need to manage those risks could deter projects involving these kinds of installations.

### Flooding

- 3.61 The stock-take did not reveal many provisions dealing with flooding among the regulatory instruments considered. However, it should be noted that flood risk is dealt with more comprehensively under the planning scheme, which is being considered in the context of CRC Project B5.1. A summary of the main findings of the stock-take in relation to this issue is set out in Table 10 below.

Table 10. Summary Table: Flooding

SUMMARY TABLE: FLOODING	
Definition	- Provisions that address mitigation and/or adaptation to flooding.
Main regulatory instrument(s)	- Water Act - Building Code
Other relevant regulatory instruments	- Planning Scheme (assessed in Project B5.1)
Key decision-makers	- Minister for Water - Water authorities - Victorian Building Authority

<sup>125</sup> ss.1(2)(c) and 17 SDW Act.

<sup>126</sup> ss. 9, 9A, 11(2), 12(2) Food Act.

<sup>127</sup> BO3, BP3.3, B3.2, DO1, DO2; FO1, FP1.1 Plumbing Code.

SUMMARY TABLE: FLOODING	
Main regulatory tools for WSC	<p><u>Tools available to Minister for Water:</u></p> <ul style="list-style-type: none"> <li>- Flood risk mitigation strategies and plans (Water Act)</li> </ul> <p><u>Tools available to water authorities:</u></p> <ul style="list-style-type: none"> <li>- Flood risk mitigation strategies and plans (Water Act)</li> </ul> <p><u>Tools available to Victorian Building Authority:</u></p> <ul style="list-style-type: none"> <li>- Enforcement of Building Code (Building Act)</li> </ul>
Main regulatory obstacles to WSC	<ul style="list-style-type: none"> <li>- Possible lack of coherence between regulatory instruments.</li> </ul>
Other related WSC topics/issues	<ul style="list-style-type: none"> <li>- Planning Scheme (assessed in Project B5.1)</li> </ul>
Overall assessment of relevant aspects of regulatory regime	<ul style="list-style-type: none"> <li>- The regulatory framework does contain provisions that provide for flood risk to be mitigated. However, the aspects of the regulatory framework considered do not deal extensively with this issue. Rather, this issue is dealt with more extensively in the Planning Scheme, which is the subject of consideration in CRC Project B5.1. An overall assessment will be needed once relevant provisions of the Planning Scheme have been undertaken in CRC Project B5.1.</li> </ul>

### Legislative instruments

- 3.62 Among the legislative instruments considered in the regulatory stock-take, the main regulatory instruments dealing with flood risks are the Water Act and the Building Code.

Key decision-makers

- 3.63 The key decision-makers in relation to flooding under the Water Act are the Minister for Water and water authorities. In relation to relevant provisions under the Building Code, in the first instance, developers and building surveyors are responsible for ensuring compliance with the Building Code. However, the Victorian Building Authority also has a role in ensuring compliance with these provisions.

Regulatory tools

- 3.64 The Minister for Water and water authorities have broad powers under the Water Act to institute strategies and plans to minimise the risk of flooding.<sup>128</sup> Flood mitigation measures will form an important component of an Integrated Water Cycle Strategy. In addition, the Victorian Building Authority can take enforcement action under the Building Code to ensure compliance with the relevant provisions of the Code.

Regulatory obstacles

- 3.65 The aspects of the regulatory framework considered do not extensively deal with flood risk, including the ways in which such risk can be mitigated. This issue is dealt with more extensively in the Planning Scheme. It will be necessary to determine whether the provisions in the Planning Scheme are coherent with those contained in the broader regulatory framework, particularly the Building Code once relevant provisions of the Planning Scheme have been undertaken in CRC Project B5.1.

Financial tools

- 3.66 The regulatory framework contains a number of provisions that have been broadly labelled as 'financial tools' – that is, financial measures that could be used to advance WSC issues and projects. A summary of the main findings of the stock-take in relation to this issue is set out in Table 11 below.

Table 11. Summary Table: Financial tools

SUMMARY TABLE: FINANCIAL TOOLS	
Definition	- Provisions that could provide financial means to advance WSC initiatives and projects.
Main regulatory instrument(s)	- Water Act

<sup>128</sup> ss.122ZL and 202 Water Act.

SUMMARY TABLE: FINANCIAL TOOLS	
Other relevant regulatory instruments	<ul style="list-style-type: none"> <li>- WIRO</li> <li>- ESC Act</li> </ul>
Key decision-makers	<ul style="list-style-type: none"> <li>- Water authorities</li> </ul>
Main regulatory tools for WSC	<ul style="list-style-type: none"> <li>- Environmental contributions (Water Act)</li> <li>- Charging/revenue raising powers (Water Act)</li> </ul>
Main regulatory obstacles to WSC	<ul style="list-style-type: none"> <li>- The extent to which the financial tools contained in the Water Act can be utilised to pursue WSC initiatives and objectives may depend upon the application of the water evaluation and pricing principles contained in the WIRO by the ESC.</li> </ul>
Other related WSC topics/issues	<ul style="list-style-type: none"> <li>- Water evaluation and pricing principles and alternative water source projects.</li> </ul>
Overall assessment of relevant aspects of regulatory regime	<ul style="list-style-type: none"> <li>- The Water Act establishes some financial tools that could, potentially, be utilised to pursue WSC initiatives. However, the extent to which these tools can be utilised for this objective may depend upon the application of the water evaluation and pricing principles contained in the ESC Act. At present, WSC initiatives are not clearly accommodated within the ESC regulatory framework, which may limit the use of the financial tools in the Water Act for this purpose.</li> </ul>

#### Legislative instruments

- 3.67 The main legislative instrument that contains financial tools that could potentially be utilised to advance WSC initiatives and projects is the Water Act. However, to the extent that these financial tools are used to provide infrastructure and services by water authorities, the ESC Act and the WIRO may also be relevant because these instruments concern the economic evaluation and pricing of water.

#### Key decision-makers

- 3.68 The Water Act vests power in water authorities to utilise a variety of financial tools, a number of which could potentially be used to fund WSC projects.

### Regulatory tools

- 3.69 Under the WI Act, each water supply authority must, for each financial year, pay an 'environmental contribution for the purposes of funding initiatives that seek to promote the sustainable management of water or address adverse water-related environmental impact'.<sup>129</sup>
- 3.70 In addition, there are a number of general provisions in the regulatory regime that potentially could be used to raise revenue to support WSC initiatives. In particular, under the Water Act, water authorities have a general power to charge for anything they do in performance of their functions,<sup>130</sup> which could potentially include the delivery of alternative water source projects. These water authorities also have an ability to require payment from property owners for services that benefit from such services, which could also potentially include alternative water source projects.<sup>131</sup>
- 3.71 The Water Act indicates that water authorities may use any income they receive for or in connection with or incidental to the performance of its functions.<sup>132</sup> Accordingly, water authorities have discretion to utilise these financial tools to pursue WSC initiatives.

### Regulatory obstacles

- 3.72 The extent to which the financial tools contained in the Water Act can be utilised to pursue WSC initiatives and objectives may depend upon the application of the water evaluation and pricing principles contained in the WIRO by the ESC. At present, WSC initiatives are not clearly accommodated within the ESC regulatory framework, which may limit the use of the financial tools in the Water Act for this purpose.

### Research and raising awareness

- 3.73 The regulatory stock-take revealed a number of provisions that could support research and raise awareness in relation to WSC objectives and projects. A summary of the main findings of the stock-take in relation to this issue is set out in Table 12 below.

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<sup>129</sup> ss.193 & 194 WI Act.

<sup>130</sup> s.264 Water Act.

<sup>131</sup> s.268 Water Act.

<sup>132</sup> s.252 Water Act.



Table 12. Summary Table: Research and raising awareness

SUMMARY TABLE: RESEARCH AND RAISING AWARENESS	
Definition	- Provisions that promote research and raise awareness regarding issues that could advance WSC.
Main regulatory instrument(s)	- Water Act - SEPP (Waters of Victoria)
Other relevant regulatory instruments	- None
Key decision-makers	- Minister for Water - Water authorities - EPA - Councils
Main regulatory tools for WSC	<p><u>Tools available to Minister for Water:</u></p> <ul style="list-style-type: none"> <li>- Public education programs (Water Act)</li> </ul> <p><u>Tools available to water authorities:</u></p> <ul style="list-style-type: none"> <li>- Conduct research (Water Act)</li> <li>- Public education programs (Water Act)</li> </ul> <p><u>Tools available to EPA and councils:</u></p> <ul style="list-style-type: none"> <li>- Stakeholder engagement (SEPP (Waters of Victoria))</li> </ul>
Main regulatory obstacles to WSC	- There are no regulatory obstacles as such. However, lack of resources and prioritisation of WSC topics/issues could mean that, in practice, the regulatory tools are not employed to further WSC objectives and initiatives.
Other related WSC topics/issues	- Research and raising awareness are linked with most of the other WSC topics and issues.



### SUMMARY TABLE: RESEARCH AND RAISING AWARENESS

Overall assessment of relevant aspects of regulatory regime	<ul style="list-style-type: none"> <li>- The existence of regulatory provisions that promote research and raise awareness regarding issues that could foster WSC is significant and could help to further the WSC agenda. However, commitment to WSC will be necessary before these provisions can be operationalized to progress WSC initiatives.</li> </ul>
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#### Legislative instruments

- 3.74 Legislative provisions that promote research and raise awareness regarding WSC objectives and issues do not feature prominently in the regulatory frameworks. Nevertheless, some support can be found in the Water Act and the SEPP (Waters of Victoria).

#### Key decision-makers

- 3.75 Under the regulatory framework, both the Minister for Water and water authorities could have a role to play in undertaking research and raising awareness regarding WSC topics and issues. In addition, SEPP (Waters of Victoria) anticipates broad stakeholder engagement in relation to 'water saving practices and measures' facilitated through the EPA and municipal councils.

#### Regulatory tools

- 3.76 The regulatory framework contains a number of tools that could potentially be employed to undertake research into WSC initiatives and/or to raise awareness of WSC issues.
- 3.77 In particular, the Minister for Water has power under the Water Act to develop public education programs for promoting broad community awareness of the role of waterway management authorities in relation to resource conservation and development in Victoria.<sup>133</sup>
- 3.78 In addition, the water authorities have statutory power under the Water Act to investigate, promote and conduct research and to educate the community about their functions.<sup>134</sup> This would support water authorities undertaking research into and raising awareness of WSC initiatives including, for example, conservation and sustainable use of and environmental protection of water resources. Indeed, the Water Act provides that, in performing their functions, exercising powers and carrying on duties, each water corporation must have regard to principles including:

<sup>133</sup> s.213 Water Act.

<sup>134</sup> s.92 Water Act.

- the need to ensure that water resources are conserved and properly managed for sustainable use and for the benefit of present and future generations.
- the need to integrate both long term and short term economic, environmental, social and equitable considerations
- the need for the conservation of biological diversity and ecological integrity to be a fundamental consideration
- if there are threats of serious or irreversible environmental damage, lack of full scientific certainty as to measures to address the threat should not be used as a reason for postponing such measures.<sup>135</sup>

3.79 Where a water authority has drainage functions (that is, Melbourne Water in the case of the Victorian metropolitan regime), it also has the power to investigate, promote and conduct research into any matter related to its functions, powers and duties in relation to drainage. Additionally, Melbourne Water has power to educate the public about any aspect of drainage.<sup>136</sup> These broad powers could be used to support research and public communication programs in relation to alternative water source projects that involve drainage – particularly, for stormwater harvesting and re-use projects.

3.80 The SEPP (Waters of Victoria) supplements the provisions of the Water Act by providing that water protection agencies, particularly water authorities and municipal councils, need to work with communities and businesses to implement water saving practices and measures, particularly for new developments. In addition, the SEPP (Waters of Victoria) provides that the EPA needs to work with protection agencies, communities and businesses to ensure that re-use and recycling of wastewater is maximised.<sup>137</sup>

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## 4. Overall assessment of legislative framework

- 4.1 The legislative framework supports some important elements that are necessary to establish a WSC. In particular, the framework provides significant support for initiatives that seek to ensure conservation and sustainable use of water resources and environmental protection of water resources. There is a wide range of tools that exist across the legislative framework that could be employed to ensure that these two important WSC objectives are achieved. Nevertheless, the legislative framework could benefit from a more streamlined and coherent approach towards both of these issues across the entire regulatory framework.
- 4.2 Notably, the legislative framework appears to provide limited support for alternative water sources, which will be critical to the achievement of a WSC. While there are some supportive references throughout the regulatory framework

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<sup>135</sup> s.93 Water Act.

<sup>136</sup> s.199 Water Act.

<sup>137</sup> Clause 40 SEPP (Waters of Victoria).

to these types of projects and the water sources upon which they rely, the regulatory framework appears to focus predominantly on the risks associated with these types of projects. Indeed, the regulatory framework treats risks to health as a paramount consideration, which could pose an additional obstacle to attainment of a WSC. In particular, the legislative framework emphasises the need to identify, assess and manage risks to health in relation to a broad range of water projects, including those involving potable water sources and others involving non-potable water sources. The legislative framework also contains a range of provisions that are aimed at addressing risks arising from water resources. These provisions could be particularly relevant for alternative water source projects. It is possible that the uptake of such projects could be deterred if the risks associated with these projects are assessed to be too high under the regulatory framework compared to the benefits of alternative water source projects.

- 4.3 The pursuit of alternative water source projects could be further undermined through the treatment of a range of issues in the regulatory framework. The provisions dealing with access and use of water resources do not readily accommodate projects that involve taking and using water resources for the purposes of developing and providing alternative water sources for end-users. In addition, the water supply provisions contained in the regulatory framework do not appear to encompass and provide for the broad range of alternative water sources that could be supplied by water authorities. The frame of reference in evaluating and pricing water in the regulatory framework appears to be quite limited and does not explicitly accommodate WSC objectives and principles. When considered as a whole, the various regulatory obstacles could deter the uptake of alternative water source projects.

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## 5. Historical and practical context for assessment of legislative framework

- 5.1 As mentioned earlier in this report, the assessment of the legislative framework – and particular elements thereof – to determine whether it facilitates or hinders the establishment of a WSC has been based on the text of the relevant legislative instrument.
- 5.2 The assessment does not account for the historical evolution of that instrument. Nor does it consider the practical context in which the provisions may be applied, including the existence or absence of infrastructure and the mindset of relevant decision-makers. These factors may convert a provision that is, on its face, facilitative into one that is a hindrance and vice versa.
- 5.3 These factors could be considered through, for example, input from stakeholders in order to ‘reality check’ the desktop risk assessment of the legislative framework, the results of which are contained in this report.

## APPENDIX

## STOCK-TAKE OF RELEVANT LEGISLATIVE INSTRUMENTS AND PROVISIONS THAT MAY FACILITATE OR HINDER WSC PRINCIPLES, OBJECTIVES AND INITIATIVES

## VICTORIA

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
1.	Water Act 1989	The Water Act is the central legislative instrument for the Victorian water industry. Among other things, the Act establishes a framework for the allocation of the State's water resources. It also sets out the functions, rights and obligations of the State's metropolitan, urban, regional and rural water authorities. Notably, the Act is currently undergoing a review. It is likely that the Act will be replaced with new legislation in 2014.					
		PART 1 – PRELIMINARY					
		s.1(d)	Purposes: One purpose of the Act is "to make sure that water resources are conserved and properly managed for sustainable use for the benefit of present and future Victorians".	Conservation and sustainable use of water resources	✓		This purpose underlying the Act could be construed as supporting WSC. In particular, this purpose could support projects and initiatives to conserve and ensure the sustainable use of water.
		s.1(h)	Purposes: Another purpose of the Act is "to foster the provision of responsible and efficient water services suited to various needs and various consumers".	Alternative water source projects Conservation and sustainable use of water resources	✓		This purpose underlying the Act could be construed as supporting WSC principles and objectives. In particular, this purpose could support projects and initiatives to enhance the range of options available to consumers, while at the same time ensuring that the supply of water is responsible and efficient. It could also be used to support water efficiency projects, which help to ensure conservation and sustainable use of water resources.
		ss.4A & 4B	Environmental Water Reserve: The Act establishes the notion of an "environmental water reserve", which comprises water that is set aside for the environment. The "environmental water reserve objective" is the objective that the environmental water reserve be maintained so as to preserve the	Environmental protection Conservation and sustainable use of water resources	✓		Environmental water may be water that is intentionally left in a waterway for the environment, water that is remaining in a water resource after consumptive needs have been met, or water that is released (e.g. from dams) into a waterway to achieve environmental

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			environmental values and health of water ecosystems, including their biodiversity, ecological functioning and quality of water and the other uses that depend on environmental condition.				outcomes. The environmental water reserve could be used to support WSC initiatives and objectives, including environmental protection and the conservation and sustainable use of water resources.
		PART 2- RIGHTS AND LIABILITIES					
		s.7	Continuation of the Crown's rights to water: The Crown has the right to the use, flow and control all water in a waterway and all groundwater	Access to and use of water resources		✓	This section (as well as counterparts in other jurisdictions) has triggered a debate as to whether or not this section vests absolute ownership of water resources in the Crown. The current consensus appears to be that the section reflects state sovereignty, rather than ownership, over water resources and that this implies the Crown's right to control, regulate and appropriate water resources. Based on this interpretation, this section entitles the Crown to determine rights to take and use water resources, although the Crown must not limit certain rights to water conferred under the Act (see below). Depending on how this right is exercised by the Crown and the mechanisms established to enable access to water resources, the ability of third parties to take and use water for WSC projects could be limited.
		s.8(1)	Continuation of private rights to water: A person has the right to "take" water, free of charge, for that person's domestic and stock use from a waterway or bore to which that person has access.  'Stock and domestic use' is defined in s. 3(1) to mean use of water for:  (a) household purposes;  (b) watering of animals kept as pets;	Access to and use of water resources		✓	This section vests a statutory right to take water for domestic and stock use. This right arises as a result of occupation of land that is proximate to a water resource.  Notably, the section refers to the right to "take" water, but not the right to use or deal with the water (e.g. on-selling).  The unlimited right to take water under this section could, in some cases, impact adversely on WSC projects which rely upon the waterway

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			<p>(c) watering of cattle or other stock;</p> <p>(ca) in the case of the curtilage of a house and any outbuilding, watering an area not exceeding 1.2 hectares for fire prevention purposes with water obtained from a spring or soak or water from a dam; or</p> <p>(d) irrigation of a kitchen garden</p> <p>but does not include use for dairies, piggeries, feed lots, poultry or any other intensive or commercial use.</p> <p>'Waterway' is defined in section 3(1) as:</p> <p>(a) a river, creek, stream or watercourse; or</p> <p>(b) a natural channel in which water regularly flows, whether or not the flow is continuous; or</p> <p>(c) a channel formed wholly or partly by the alteration or relocation of a waterway as described in paragraph (a) or (b); or</p> <p>(d) a lake, lagoon, swamp or marsh, being—</p> <p>(i) a natural collection of water (other than water collected and contained in a private dam or a natural depression on private land) into or through or out of which a current that forms the whole or part of the flow of a river, creek, stream or watercourse passes, whether or not the flow is continuous; or</p> <p>(ii) a collection of water (other than water collected and contained in a private dam or a natural depression on private land) that the Governor in Council declares under s.3A(i) to be a lake, lagoon, swamp or marsh; or</p> <p>(e) land on which, as a result of works constructed</p>				in respect of which a right to take water exists under this section.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			<p>on a waterway as described in paragraph (a), (b) or (c), water collects regularly, whether or not the collection is continuous; or</p> <p>(f) land which is regularly covered by water from a waterway as described in paragraph (a), (b), (c), (d) or (e) but does not include any artificial channel or work which diverts water away from such a waterway; or</p> <p>(g) if any land described in paragraph (f) forms part of a slope rising from the waterway to a definite lip, the land up to that lip.</p>				
		s.8(4)	<p>Continuation of private rights to water: A person has the right to "use":</p> <ul style="list-style-type: none"> <li>- water taken or received in accordance with a licence or authority issued under the Act</li> <li>- water lawfully taken or received from a Water Authority's works</li> <li>- rainwater or other water that occurs or flows (otherwise than in a waterway or bore) on land occupied by that person or, with the permission of the other person, on land occupied by another person.</li> </ul>	<p>Access to and use of water resources</p> <p>Alternative water source projects</p>		✓	<p>This section vests a statutory right to use water. Notably, the section refers to the right to "use" water, but not the right to otherwise deal with the water (e.g. on-selling).</p> <p>This section also refers to the right to use water lawfully taken or received from works of a Water Authority. However, the section does not apply to water taken from local council's stormwater works (i.e. public drains).</p> <p>These aspects could limit access to alternative water source projects involving rainwater collected on private land (see below) as well as those involving harvesting of stormwater from council drains.</p>
		ss.8(4)(c), (5) and (5A)	<p>Continuation of private rights to water: A person who has the right to use rainwater or other water that occurs or flows on land pursuant to s.8(4)(c) may use that water for any purpose and on any land. However, these provisions do not apply to the use of water (other than for domestic or stock use) from a spring or soak or water from a private dam to the extent that it is not rainwater supplied</p>	<p>Access to and use of water resources</p>		✓	<p>The fact that the right to "use" rainwater on private land may not extend to other dealings with the water, including for on-selling, may limit the scope for development of some alternative water resource projects – e.g. harvesting and selling stormwater. In addition, the right to use rainwater is based on an interest in land – that is occupation of the land. The ability to deal with water in the context of</p>



ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			to the dam from the roof of a building.				alternative water source projects may be limited if this interest in land cannot be demonstrated.
		ss.9(1) and (2)	Authority rights to water: A Water Authority has the right to take water in accordance with a bulk entitlement or any other entitlement, licence or other right bestowed under the Act and may use that water for any purpose connected with the exercise of its functions under the Water Act or the Local Government Act 1989.	Access to and use of water resources  Alternative water source projects		✓	<p>A bulk entitlement is the legal instrument that gives a Water Authority the right to harvest water.</p> <p>It is necessary to assess the functions of Water Authorities under the Water Act and the Local Government Act to determine whether or not the right to take water in accordance with a bulk entitlement is broad enough to accommodate the spectrum of WSC projects and initiatives.</p> <p>In relation to the Water Act, s. 42 entitles the Minister for Water to issue a bulk entitlement allowing an Authority to use and supply water in a waterway, groundwater, water in storage or any other water to which the Authority has access. Pursuant to s. 36 (discussed below), bulk entitlements are not available for recycled water. Therefore, this section (when read in conjunction with s. 36) may limit the scope for supply of recycled water by Water Authorities through bulk entitlements.</p> <p>The Local Government Act 1989 (discussed below) vests broad powers and functions on councils which could, in theory, empower councils to pursue WSC projects.</p>
		s. 10 (1)(b)	Right to construct or operate works: A Water Authority or any other person has the power to construct or operate works for the "collection, storage, taking, use or distribution of any water".	Alternative water source projects	✓		This section does not expressly limit the kinds of works that may be constructed or operated. Therefore, in theory, this section may accommodate development of alternative water source projects. However, s. 10 needs to be read in conjunction with other provisions in the Act, which may limit the use of works to supply alternative water sources (see, e.g. s. 36, which prohibits the supply of recycled water based on



ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
							a bulk entitlement).
		s.12(1)	<p>Authorisation regarding drainage regime may be conditional: A Water Authority or other public statutory authority that has power to authorise or permit any activity or change in the use of land that may affect an existing "drainage regime" (that is, all physical and hydrological circumstances that may affect drainage in a catchment) :</p> <ul style="list-style-type: none"> <li>- must make the authorisation or permission subject to any conditions that are required to ensure the conservation of waterways, wetlands and aquifers; and</li> <li>- may withhold the authorisation or permission until any works are carried out or any measures undertaken that are required for avoiding or lessening any possible adverse effect of the granting of the authorisation or permission.</li> </ul>	<p>Alternative water source projects</p> <p>Conservation and sustainable use of water resources</p>	✓		Water Authorities and other authorities that have jurisdiction over drainage regimes (e.g. this may include planning authorities) could ensure WSC objectives are furthered through the conditions that are imposed pursuant to this section in relation to drainage regimes. For example, conditions imposed in relation to aquifers could help preserve this water source and/or limit their use for managed aquifer recharge projects.
		PART 3 – ASSESSMENT OF AND ACCOUNTING FOR WATER					
		s. 22(1)(ab) and (c)	<p>Role of Minister: The Minister for Water must, among other things, ensure that a program of sustainable water strategies is undertaken for the State in accordance with the Act. The Minister may also require an assessment of the environmental water reserve to be carried out.</p>	<p>Conservation and sustainable use of water resources</p>	✓		The roles performed by the Minister pursuant to s. 22(1) could further WSC objectives, provided that the assessments regarding environmental water and any programs regarding sustainable water strategies are properly implemented.
		ss.22B and 22C	<p>Sustainable Water Strategies: The Minister may cause a Sustainable Water Strategy to be prepared for a region of the State. The Sustainable Water Strategy must provide for the strategic planning of the use of water resources in the relevant region to, among other things:</p> <ul style="list-style-type: none"> <li>- identify ways to improve and set priorities for</li> </ul>	<p>Conservation and sustainable use of water resources</p> <p>Alternative water source projects</p> <p>Environmental protection</p>	✓		<p>A Sustainable Water Strategy is designed to provide for the strategic planning of the use of water resources in the region to which it applies, to identify threats to the water supply and quality of water, and to identify ways to improve the management and use of water resources.</p> <p>Notably, these strategies are developed in</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			<p>improving the reliability of supply and quality of water, including managing demand for water and investing in infrastructure for the supply of recycled water; and</p> <p>- identify ways to increase and set priorities for increasing the volume of water in the environmental water reserve to improve the environmental values and health of water ecosystems.</p>	Risks to/associated with water resources			<p>relation to regional areas and, therefore, are not directly relevant to WSC initiatives in an urban context. Nevertheless, a regional Sustainable Water Strategy may have implications for downstream WSC projects in an urban context.</p> <p>Moreover, if broadened to an urban context, a Sustainable Water Strategy could be used to identify WSC amongst its priorities and WSC projects that could be undertaken. The Strategy may need to be complemented with mechanisms to ensure that these priorities and projects are implemented in practice.</p>
		ss.22K and 22L	<p>Long-term water resources assessments: The Minister must cause a program for the preparation of long-term water resources assessments to be commenced within the time-frames stipulated in the Act (every 15 years after the first report due in 2017). The assessment must identify whether or not either or both of the following has occurred:</p> <p>- there has been any decline in the long-term availability of surface water or groundwater and whether the decline has fallen disproportionately on the environmental water reserve or on the allocation of water for consumptive purposes;</p> <p>- there has been any deterioration in waterway health for reasons related to flow.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		<p>The main objective of the long-term water resources assessment is to identify whether there has been a decline in the long-term availability of surface water or groundwater and whether there has been a deterioration in waterway health for reasons related to flow.</p> <p>The long-term water resources assessment could be used to provide context for WSC priorities and projects identified in the Sustainable Water Strategy. Ideally, the long-term water resources assessment would be prepared more frequently than every 15 years. In addition, the preparation of this assessment should be co-ordinated with the Sustainable Water Strategy to ensure that the documents are consistent and coherent.</p>
		s.27	<p>Declaration of water supply protection area: The Minister may declare an area to be a water supply protection area for the protection of groundwater resources in the area of the surface water resources in the area or both upon application by authorised users of water, a Water Authority or other body that has responsibilities in the area.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		<p>Declaration of an area as a water supply protection area may be used to protect areas where, in the past, water has been used inefficiently and/or in a manner that could compromise the ecosystem. The ability to protect groundwater and surface water through this mechanism, could help to support alternative water source projects that utilise</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
							these sources.
		PART 3AA – VICTORIAN ENVIRONMENTAL WATER HOLDER					
		Part 3AA (ss.33DA – 33DZA)	<p>Victorian Environmental Water Holder: This Part of the Act establishes the Environmental Water Holder, which has responsibility for managing environmental water holdings to:</p> <ul style="list-style-type: none"> <li>- maintain the environmental water reserve in accordance with the environmental water reserve objective; and</li> <li>- improve the environmental values and health of water ecosystems, including their biodiversity, ecological functioning and water quality, and other uses that depend on environmental condition.</li> </ul> <p>The Environmental Water Holder has the power to do all things necessary or convenient in relation to the performance of its functions, powers and duties.</p>	<p>Environmental protection</p> <p>Conservation and sustainable use of water resources</p>	✓		Activities of the Environmental Water Holder in relation to environmental water could further WSC objectives in the relevant areas where there are environmental water holdings.
		PART 4 – ALLOCATION OF WATER					
		s.36	<p>Application for bulk entitlement: A Water Authority may apply to the Minister for the grant of a bulk entitlement to:</p> <ul style="list-style-type: none"> <li>(a) water in a waterway including the Murray</li> <li>(b) groundwater;</li> <li>(c) water, other than recycled water, in any works of another Authority;</li> <li>(e) water, other than recycled water, in any works of a Water Corporation; and</li> </ul>	<p>Supply of water</p> <p>Alternative water source projects</p>		✓	<p>The ability of water authorities to apply for a bulk water entitlement does not extend to recycled water, which may limit the scope for supply of recycled water by Water Authorities through bulk entitlements.</p> <p>At present, Melbourne Water has been granted a bulk entitlement to supply water from the Maribyrnong River, Yarra Basin, Thompson Basin, Tarago Reservoir and Goulburn River. Bulk water entitlements have also been granted to each of the regional water authorities.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			(f) any other water, other than recycled water, to which an Authority has access.				
		s. 40(1)	<p>Matters to be taken into account: Matters to be taken into account in relation to the application for a bulk entitlement include:</p> <ul style="list-style-type: none"> <li>- the existing and projected availability of water in the area;</li> <li>- the permissible consumptive volume, if any, for the area;</li> <li>- the existing and projected quality of water in the area;</li> <li>- any adverse effect that the allocation or use of water under the entitlement is likely to have on existing authorised uses of water; a waterway or an aquifer; a drainage regime; maintenance of the environmental water reserve;</li> <li>- the need to protect the environment, including the riverine and riparian environment;</li> <li>- the conservation policy of the government;</li> <li>- if appropriate, the proper management of the waterway and its surrounds or of the aquifer;</li> <li>- the purposes for which the water is to be used;</li> <li>- the needs of other potential applicants.</li> <li>- any other matter that the Minister thinks fit to have regard to.</li> </ul>	<p>Supply of water</p> <p>Environmental protection</p> <p>Conservation and sustainable use of water</p> <p>Research and raising awareness</p>	✓		Under s. 40, the Minister must not approve an application for a bulk entitlement unless he considers that the allocation of water under the entitlement is not likely to have any significant impact in terms of the matters identified in that section. The matters are broad and could allow consideration of WSC objectives.
		s.43A	Appointment of resource managers and environmental managers: The Minister may appoint a resource manager or an environmental manager in respect of each bulk entitlement on the	<p>Environmental protection</p> <p>Conservation and sustainable</p>	✓		Depending upon whether or not the Minister decides to exercise the discretion to appoint a resource or environment manager and depending on the terms and conditions of

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			terms and conditions specified in the instrument of appointment.	use of water			appointment of the resource manager or environment manager, these managers could help to further WSC objectives, particularly environmental protection and conservation and sustainable use of water.
		s. 44A(1)	Amendment of entitlement where water allocated to environmental entitlement: A bulk entitlement granted to an Authority may be amended by the Minister by removing from the entitlement any water that is set aside for the environment through the operation of a condition on the entitlement.	Environmental protection	✓		Conditions imposed on a bulk entitlement may be used to further WSC objectives – particularly, environmental protection - by excluding environmental water from the scope of a bulk entitlement.
		s.48B(2)	Allocation of environmental entitlement: The Minister may allocate environmental entitlements to the Water Holder for the purpose of: <ul style="list-style-type: none"> <li>- maintaining the environmental water reserve in accordance with the environmental water reserve objective; or</li> <li>- improving the environmental values and health of water ecosystems, including their biodiversity, ecological functioning and water quality, and the other uses that depend on environmental condition.</li> </ul>	Environmental protection Conservation and sustainable use of water resources	✓		The allocation of environmental entitlements to the Water Holder could be used to protect water/areas where WSC objectives might otherwise be compromised, particularly environmental protection and conservation and sustainable use of water resources.
		s.48F(1) and (2)	Matters to be considered: Before making an allocation under section 48B, the Minister must have regard to the following matters including: <ul style="list-style-type: none"> <li>- any adverse effect that the allocation or use of water under the entitlement is likely to have on existing authorised uses of water in the water systems for which the allocation is to be made;</li> <li>- the conservation policy of the government;</li> <li>- government policies concerning the preferred</li> </ul>	Conservation and sustainable use of water resources Environmental protection	✓		Under s. 48F, in deciding whether or not to approve an allocation to the Water Holder, the Minister must have regard to a broad range of matters, which could allow consideration of WSC objectives, particularly conservation and sustainable use of water resources and environmental protection.

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			<p>allocation or use of water resources;</p> <ul style="list-style-type: none"> <li>- the maintenance of the environmental water reserve in accordance with the environmental water reserve objective;</li> <li>- any relevant Sustainable Water Strategy that has been endorsed under section 22G(1);</li> <li>- any other matter that the Minister thinks fit to have regard to.</li> </ul> <p>The Minister must give effect to an approved management plan for any relevant water supply protection area.</p>				
		s.48J	<p>Conditions relating to entitlements: The Minister may impose conditions in relation to the operation and management of an environmental entitlement relating to, among other things:</p> <ul style="list-style-type: none"> <li>- the protection of any waterway or aquifer in that area;</li> <li>- the returning of water in that area to its water system;</li> <li>- the protection of the environment in that area, including the riverine and riparian environment; or</li> <li>- the implementation of conservation policy.</li> </ul>	<p>Environmental protection</p> <p>Conservation and sustainable use of water resources</p>	✓		<p>Conditions attaching to environmental entitlements could be used for further WSC objectives, particularly environmental protection and conservation and sustainable use of water resources.</p>
		51(1)	<p>Licence to take and use: A person may apply to the Minister for a licence to take and use:</p> <ul style="list-style-type: none"> <li>(a) water from a waterway including the Murray;</li> <li>(b) groundwater;</li> <li>(ba) water from a spring or soak or dam (to the extent that it is not rainwater supplied to the dam</li> </ul>	<p>Access to and use of water resources</p> <p>Alternative water source projects</p>		✓	<p>Unless there is an as-of-right entitlement to take and use water (i.e. under s. 8 for stock and domestic purposes or in relation to rainwater or other water that occurs or flows on land occupied by the relevant person), authorisation is required. Section 51 is the primary means of obtaining authorisation to take and use water in relation to 'non-declared systems' (that is</p>



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			<p>from the roof of a building or a waterway or bore) for use other than stock and domestic use;</p> <p>(c) water, other than recycled water from any works of a Water Corporation; or</p> <p>(d) water, other than recycled water from a Water Corporation</p>				<p>systems, where the unbundling of rights to water and land has not occurred). Among other things, a licence obtained under s. 51 entitles the holder to take and use water from a waterway and groundwater. Notably, s. 51 expressly excludes an application for a licence to take an use recycled water.</p> <p>The limitations of s. 51 have been recognised by DEPI. Various options are being considered to facilitate access to stormwater. These options include:</p> <ul style="list-style-type: none"> <li>- Introducing a licensing regime, administered by the Minister for Water to targeted areas, being areas where the taking and use of stormwater from local government drains is likely to have downstream impacts.</li> <li>- Expanding the above option to apply beyond the targeted areas.</li> <li>- Introducing a licensing regime, administered by the Minister for Water applicable to all local government drains in Victoria.</li> </ul>
		s.51(1AA)	<p>Licence to take and use: An application may not be made for a take an use licence in a declared water system under s. 51(1) unless:</p> <ul style="list-style-type: none"> <li>- the water to be taken and used is to be subject to a condition that a proportion of the water so taken and used is to be returned to the water system; or</li> <li>- the water is to be taken and used for a prescribed purpose.</li> </ul>	<p>Environmental protection</p> <p>Conservation and sustainable use of water resources</p>	✓		<p>A take and use licence is only available if certain conditions identified in s. 51(1AA) have been met. These conditions could be used to further WSC objectives, particularly environmental protection and conservation and sustainable use of water resources.</p>
		s.53	<p>Matters to be taken into account: In considering an application under section 51, the Minister must have regard to a range of matters, including the</p>	<p>Conservation and sustainable use of water resources</p>	✓		<p>Under s. 53, in deciding whether or not to grant a take and use licence, the Minister must have regard to a broad range of matters, which could</p>

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			<p>following matters referred to in s, 40 (discussed above) :</p> <ul style="list-style-type: none"> <li>- the existing and projected availability of water in the area;</li> <li>- the permissible consumptive volume, if any, for the area;</li> <li>- the existing and projected quality of water in the area;</li> <li>- any adverse effect that the allocation or use of water under the entitlement is likely to have on existing authorised uses of water; a waterway or an aquifer; a drainage regime; maintenance of the environmental water reserve;</li> <li>- the need to protect the environment, including the riverine and riparian environment;</li> <li>- the conservation policy of the government;</li> <li>- if appropriate, the proper management of the waterway and its surrounds or of the aquifer;</li> <li>- the purposes for which the water is to be used;</li> <li>- the needs of other potential applicants.</li> <li>- any other matter that the Minister thinks fit to have regard to.</li> </ul>	Environmental protection			allow consideration of WSC objectives, particularly conservation and sustainable use of water resources and environmental protection.
		s. 56(1)(a)	<p>Conditions of licence: The Minister can impose a broad range of conditions to a take and use licence, including:</p> <ul style="list-style-type: none"> <li>- the protection of a waterway or an aquifer</li> <li>- the purposes for which the water may be used</li> <li>- the maximum amounts of water which may be</li> </ul>	<p>Environmental protection</p> <p>Conservation and sustainable use of water resources</p>	✓		The conditions to which a take and use licence may be made subject are broad and could allow consideration of WSC objectives, particularly environmental protection and conservation and sustainable use of water resources.



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			<p>taken in particular periods or circumstances</p> <ul style="list-style-type: none"> <li>- the protection of the environment, including the riverine and riparian environment</li> <li>- maintenance of the environmental water reserve in accordance with the environmental water reserve objective</li> <li>- the conservation policy of the Government</li> <li>- the efficient use of water resources</li> <li>- if appropriate, the proper management of the waterway and its surrounds or of the aquifer</li> <li>- any other conditions that the Minister thinks fit and specifies in the licence.</li> </ul>				
		PART 5 - WORKS					
		s. 67(1)	<p>Licence to construct works</p> <p>(1) An Authority or any other person may apply to the Minister for the issue of a licence to construct, alter, operate, remove or decommission—</p> <p>(a) any works on a waterway (including the River Murray), including works to deviate (temporarily or permanently) a waterway; or</p> <p>(b) a bore.</p>	<p>Supply of water</p> <p>Conservation and sustainable use of water resources</p>	?	?	Section 67(1) vests water authorities with broad powers to construct, as well as remove and decommission works on a waterway, water to deviate water from a waterway and a bore. This provision could authorise construction of a dam but it could also be used to decommission works (dams or pipes) that have been used to deviate water from a waterway. Depending upon how this power is exercised, this provision could either support WSC principles or potentially undermine WSC principles.
		s. 67A and B	<p>Application to go to certain bodies</p> <p>The Minister must, without delay, give a copy of an application under section 67 in respect of a dam, whether or not on a waterway, to—</p>	Environmental protection	✓		This section requires consultation with a broad range of bodies in relation applications to construct or decommission works on a waterway and a bore. This consultation process could be used to help further WSC objectives – particularly, environmental protection –

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			(a) the Department Head; and (b) the relevant Catchment Management Authority; and (c) the relevant Council; and (d) Melbourne Water Corporation, if the dam is or will be located in the waterway management district of Melbourne Water Corporation; and (e) any Authority holding a bulk entitlement that may be affected by the approval of the application.  These bodies may advise the Minister whether or not they object to the proposal.				provided that the criteria considered by the relevant bodies encompass WSC considerations.
		s. 68	Matters to be taken into account  In considering an application under section 67, the Minister must have regard to a range of considerations, including —  - have regard to any advice and comments received within the period of 30 days referred to in section 67B(1)  - have regard to any adverse effect that the exercise of rights under the licence is likely to have on matters including — <ul style="list-style-type: none"> <li>• on the aquifer or on the flow of water within the waterway, including effects on the land that forms the waterway or its surrounds; or</li> <li>• on the implementation of the conservation policy of the government</li> </ul> - have regard to the matters mentioned in paragraphs (b) to (n) of section 40(1) (discussed	Environmental protection  Conservation and sustainable use of water resources	✓		Under s. 68, in deciding whether or not to grant a licence for the construction or decommissioning of works, the Minister must have regard to a broad range of matters, which could allow consideration of WSC objectives, particularly environmental protection and conservation and sustainable use of water resources.

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			above) - give effect to an approved management plan for any relevant water supply protection area - have regard to any other matter that the Minister thinks fit.				
		s. 71	Conditions on which licence may be issued A licence issued under section 67 is subject to a range of conditions, including — - the maintenance of the environmental water reserve in accordance with the environmental water reserve objective - the protection of the environment, including the riverine and riparian environment - the implementation of the conservation policy of the government - without derogating from rights to water for domestic and stock use conferred by section 8, any other conditions that the Minister thinks fit and specifies in the licence - the maximum amounts of water which may be taken in particular periods or circumstances from any bore or works to which the licence relates.	Environmental protection Conservation and sustainable use of water resources	✓		The conditions to which a take and use licence may be made subject are broad and could allow consideration of WSC objectives, particularly environmental protection and conservation and sustainable use of water resources.
		PART 6 – WATER CORPORATIONS					
		s.92	Functions, powers and duties of water corporations  (1) Each water corporation has the functions, powers and duties conferred on it by or under this	General Conservation and sustainable use of water resources	✓		Section 92(2) would support water authorities undertaking research into and raising awareness of WSC initiatives, including conservation and sustainable use of water resources and environmental protection.

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			<p>or any other Act.</p> <p>(2) In addition to any other functions conferred on a water corporation by or under this or any other Act, a water corporation has the functions of—</p> <p>(a) investigating, promoting and conducting research into any matter relating to its other functions, its powers and its duties; and</p> <p>(b) educating the community about its functions.</p>	<p>Environmental protection</p> <p>Research and raising awareness</p>			
		s.93	<p>Sustainable management principles for water corporations</p> <p>In performing their functions, exercising powers and carrying on duties, each water corporation must have regard to principles including:</p> <ul style="list-style-type: none"> <li>- the need to ensure that water resources are conserved and properly managed for sustainable use and for the benefit of present and future generations</li> <li>- the need to integrate both long term and short term economic, environmental, social and equitable considerations</li> <li>- the need for the conservation of biological diversity and ecological integrity to be a fundamental consideration</li> <li>- if there are threats of serious or irreversible environmental damage, lack of full scientific certainty as to measures to address the threat should not be used as a reason for postponing such measures</li> </ul>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Research and raising awareness</p>	✓		<p>The principles that must guide water authorities in the exercise of their functions include principles that could support WSC initiatives, including conservation and sustainable use of water resources and environmental protection.</p>
		PART 6A – DISTRICTS AND LAND MANAGEMENT AREAS					

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		ss.122ZA – 122ZB	The Minister may determine land to be an 'environmental area' and the relevant Authority has the functions in relation to such an area, including: <ul style="list-style-type: none"> <li>- to prepare a management strategy as to recreational uses for the area</li> <li>- to improve the area</li> <li>- to control land use in the area</li> </ul>	Environmental protection	✓		It is unclear which areas can be designated as an 'environmental area'. However, the management plan, which must be prepared in relation to an environmental area, could be used to help support WSC principles and objectives in such areas, particularly environmental protection.
		PART 6C – STORAGE MANAGERS					
		S. 122ZL	Appointment of storage managers (2) An Authority that has been appointed to carry out the functions of a 'storage manager' must, in carrying out these functions, have regard to: <ul style="list-style-type: none"> <li>- protecting the ecological values of the water systems relating to the land specified in the instrument of appointment</li> <li>- protecting the reliability and quality of water supply</li> <li>- subject to water supply needs, minimising the impact on the environment of the carrying out of any such function and maximising the benefit to the environment of the carrying out of any such function</li> <li>- developing and implementing strategies to mitigate flooding, where possible</li> </ul>	Environmental protection  Flooding	✓		Melbourne Water, which manages bulk storage and supply of water for Melbourne, is a storage manager. The factors to which water authorities that are storage managers must have regard in the exercise of their functions could support consideration of WSC objectives and issues, including environmental protection and flooding.
		PART 7 – GENERAL POWERS					

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		s. 123	<p>Powers of Authorities</p> <p>An Authority has broad general power 'to do all things necessary or convenient to be done for or in connection with or as incidental to, the performance of its functions, including any function delegated to it'.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		When read in conjunction with the relevant objectives underlying the Act and the more specific powers and functions held by water authorities, it is clear that water authorities have the authority to pursue WSC projects/initiatives/ objectives including conservation and sustainable use of water resources and environmental protection.
		s. 124	<p>Particular powers of Authorities</p> <p>(6) It is a function of an Authority to construct, complete, operate and maintain any works of water supply, drainage or salinity mitigation for which funding is provided to it under any other Act or which, under any other Act, it is authorised or directed to construct, complete, operate or maintain.</p>	<p>Alternative water source projects</p>	✓		This section could be interpreted as vesting a broad power in water authorities to construct and maintain works (for which funding is available). These works could conceivably include alternative water source projects.
		s.125	<p>Accountability of Authorities</p> <p>An Authority must perform its functions and exercise its powers subject to any direction given by the Minister under section 307.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		Ministerial directions could be used to ensure that WSC objectives are furthered through the performance of functions and powers, including conservation and sustainable use of water resources and environmental protection.
		s.141	<p>Authority may reduce, restrict or discontinue water supply</p> <p>(1) An Authority may reduce or restrict the quantity of water supplied to any person, or discontinue the supply of water to any person for a range of reasons, including, if—</p> <p>(a) the Authority is, because of a shortage of water or for any other unavoidable cause, unable to supply the quantity of water which would otherwise be supplied to the person;</p>	<p>Supply of water</p> <p>Conservation and sustainable use of water resources</p> <p>Risks to/associated with water resources</p>	✓		Water authorities could use their power in s. 141 to reduce or restrict supply of water where WSC objectives may be compromised, particularly conservation and sustainable use of water resources and water quality.

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			<p>or</p> <p>(b) the Authority reasonably believes that the reduction, restriction or discontinuance is necessary—</p> <p>(i) to avoid future water shortages; or</p> <p>(ii) because there is insufficient capacity in the distribution works of the Authority for the Authority to meet its obligations under the Act to supply and deliver water to the person; or</p> <p>(c) the quality of water available for supply does not meet the standards for its intended authorised use.</p>				
		PART 8 – WATER SUPPLY					
		s.163(1)(c)	<p>Functions of Authorities</p> <p>An Authority that has a water district has functions including 'to develop and implement programs for the conservation and efficient use of water'.</p>	Conservation and sustainable use of water resources	✓		When read in conjunction with the relevant objectives underlying the Act, it would seem that water authorities with a water district have the authority to pursue WSC objectives, particularly conservation and sustainable use of water resources.
		s.170A	<p>Preparation and adoption of permanent water savings plan</p> <p>(1) An Authority must prepare a permanent water saving plan, which must comply with any directions or guidelines of the Minister</p> <p>(4) Without limiting subsection (2), a plan must contain a Schedule setting out restrictions or prohibitions on the use of water in any area, or a specified part of any area, in respect of which the Authority has the function of providing a water</p>	Conservation and sustainable use of water resources	✓		In addition to setting out restrictions or prohibitions on the use of water in any area, a permanent water saving plan could also be used to identify and implement WSC objectives, specifically – conservation and sustainable use of water resources.



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			supply system.				
		s.171	By-laws An Authority may, in accordance with section 160, make by-laws for or with respect to matters, including —  - regulating, restricting or prohibiting the use of water, either generally or for any specific purpose	Supply of water  Conservation and sustainable use of water resources	✓		Section 171 appears to vest water authorities with a broad power to make by-laws to 'regulate, restrict or prohibit' the use of water. It is possible that by-laws could be used to implement WSC objectives, particularly conservation and sustainable use of water resources.
		PART 9 - SEWERAGE					
		173(1)	Functions of Authorities An Authority that has a sewerage district has the following functions—  (a) to provide, manage and operate systems for the conveyance, treatment and disposal of sewage and, if the Authority so decides, of trade waste;  (b) to identify community needs relating to sewerage services and to plan for the future needs of the community relating to sewerage services;  (c) to develop and implement programs for the recycling and reuse of treated waste water;  (d) to investigate, promote and conduct research into any matter which relates to its functions, powers and duties in relation to sewerage services;  (e) to educate the public about any aspect of sewerage.	Alternative water source projects	✓		Section 173(1) vests broad powers in authorities responsible for sewerage. This section specifically empowers water authorities to develop and implement programs and reuse of treated wastewater, which would accommodate initiatives undertaken by water authorities in relation to alternative water source projects using wastewater. Water authorities also have the power to undertake research and raise public awareness of such projects.
		s.178	Protection of sewers  (1) A person must not cause or permit anything	Alternative water source projects	✓		Trade waste agreements could potentially be used to better manage sewage to facilitate utilisation in the context of alternative water



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			other than— (a) sewage; or (b) trade waste discharged in accordance with a trade waste agreement— to be discharged into the sewerage system of an Authority.				source projects.  While the Water Act does not dictate the contents of such agreements, the ESC has issued the Trade Waste Customer Service Code (discussed below). The Code imposes obligations on water authorities in relation to the provision of trade waste services. See also s. 181 (below) which contains the matters that may be contained in a water authority's by-laws dealing with trade waste.
		s. 180	Septic tank permit applications - A council that receives an application for a permit for a septic tank system in respect of land within an Authority's sewerage district must forward a copy of the application to the Authority, if the Authority has lodged with the council a standing written request for referral of those applications. - The Environment Protection Authority must forward any applications it receives for a permit for a septic tank system in respect of land within an Authority's sewerage district if the Authority has lodged with the Environment Protection Authority a standing written request for referral of those applications. - The council and the Environment Protection Authority must comply with any requirement of the Authority in relation to the application that is notified to the council or the Environment Protection Authority within 21 days after the application is forwarded to the Authority. - The council or the Environment Protection Authority must not make a decision in relation to an application within 21 days after the copy is forwarded to the Authority.	Alternative water source projects	✓		Septic tank systems comprise onsite wastewater treatment systems.  On-site septic tank systems could potentially be used to collect wastewater for re-use. The extent to which these systems could actually be used in this way will depend upon the requirements that are imposed by the relevant water authority, council and EPA in a given case.  Part IXB of the Environment Protection Act 1970 provides that a person must not construct a septic tank system unless that person holds a permit (issued by the relevant municipal council). Part IXB is discussed below.



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		s. 181	<p>By-laws about trade waste</p> <p>(1) An Authority may make by-laws for or with respect to any of the following—</p> <ul style="list-style-type: none"> <li>- regulating or prohibiting the discharge of any trade waste into its sewers</li> <li>- prescribing the terms and conditions to be included in agreements for the receipt and disposal of trade waste by the Authority, including the grounds on which the Authority may disconnect the service.</li> </ul>	Alternative water source projects	✓		By-laws adopted by water authorities about trade waste could potentially be used to better manage sewage to facilitate utilisation in the context of alternative water source projects.
		PART 10 – WATERWAY MANAGEMENT					
		s. 186A	<p>Statement of obligations of Authorities with waterway management functions</p> <p>The Minister may issue a statement of obligations to an Authority with waterway management functions, which may include provisions relating to a range of matters, including the management of the environmental water reserve</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		The statement of obligations for water authorities with waterway management functions could be used to specify WSC principles and objectives, including conservation and sustainable use of water resources and environmental protection. Note that the statement of obligations referred to in s. 186A of the Water Act is distinct from the Statement of Obligations for metropolitan, regional and rural water authorities (discussed below).
		s. 189	<p>Functions of Authorities</p> <p>An Authority that has a waterway management district has the functions in relation to designated waterways, land or works within that district including the following:</p> <ul style="list-style-type: none"> <li>- to identify and plan for State and local community needs relating to the use and to the economic, social and environmental values of land and</li> </ul>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		The broad functions held by a water authority that has a waterway management may be used to further WSC objectives, including conservation and sustainable use of water resources and environmental protection.

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			waterways - to develop and to implement effectively schemes for the use, protection and enhancement of land and waterways - to develop and implement plans and programs and carry out works and activities to maintain the environmental water reserve in accordance with the environmental water reserve objective - to develop and implement plans and programs and carry out works and activities to improve the environmental values and health of water ecosystems, including their biodiversity, ecological functions, quality of water and other uses that depend on environmental condition				
		s. 199(1)	Functions of Authorities An Authority other than Melbourne Water has the following functions— - to provide, operate and protect drainage systems, including the drainage of water into all designated waterways and all designated land or works within its district; - to develop and implement programs for the protection and enhancement of instream uses; - to investigate, promote and conduct research into any matter related to its functions, powers and duties in relation to drainage; - to educate the public about any aspect of drainage. An Authority must perform its functions in an environmentally sound way.	Alternative water source projects Research and raising awareness	✓		The broad powers vested in water authorities (other than Melbourne Water) in relation to drainage under this section could be used to support research, communication programs and the construction of works for stormwater harvesting and re-use projects.



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		s. 199 (1A)	<p>Functions of Authorities</p> <p>Melbourne Water has the following functions—</p> <ul style="list-style-type: none"> <li>- to provide, manage, operate, protect and maintain drainage systems into all designated waterways and all designated land and works within its waterway management district;</li> <li>- to develop and implement plans or schemes, and to take any action necessary—</li> <li>(i) to bring into operation new drainage systems; and</li> <li>(ii) to improve stormwater quality of water in drainage systems;</li> </ul> <p>An Authority must perform its functions in an environmentally sound way.</p>	<p>Alternative water source projects</p> <p>Research and raising awareness</p>	✓		The broad powers vested in Melbourne Water in relation to drainage under this section could be used to support research, communication programs and the construction of works for stormwater harvesting and re-use projects.
		s.202(1)	<p>Floodplain management functions</p> <p>An Authority (other than Melbourne Water Corporation) has functions including</p> <ul style="list-style-type: none"> <li>- to find out how far floodwaters are likely to extend and how high they are likely to rise</li> <li>- to declare flood levels and flood fringe areas</li> <li>- to control developments that have occurred or that may be proposed for land adjoining waterways</li> <li>- to develop and implement plans and to take any action necessary to minimise flooding and flood damage</li> <li>- to provide advice about flooding and controls on development to local councils, the Secretary to the</li> </ul>	Flooding	✓		The broad powers vested in water authorities (other than Melbourne Water) in relation to floodplain management under this section could be used to support a range of measures to mitigate flood risk and damage.

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			Department and the community.				
		s.202(2)	<p>Floodplain management functions</p> <p>Melbourne Water Corporation has functions in relation to its waterway management district including —</p> <ul style="list-style-type: none"> <li>- to find out how far floodwaters are likely to extend and how far they are likely to rise</li> <li>- to declare flood levels and flood fringe levels</li> <li>- to develop and implement plans and to take any action necessary to minimise flooding and flood damage</li> <li>- to control developments that have occurred or that may be proposed for land adjoining waterways</li> <li>- to provide advice about flooding and controls on development to local councils, the Secretary to the Department and the community.</li> </ul>	Flooding	✓		The broad powers vested in Melbourne Water in relation to floodplain management under this section could be used to support a range of measures to mitigate flood risk and damage.
		s. 213	<p>Functions of the Minister</p> <p>The Minister has the following functions in relation to water management schemes throughout the State—</p> <p>(a) to cause assessment and investigations connected with water resources and the environment in connection with waterways to be undertaken;</p> <p>(b) to cause schemes for the improved management of waterways, drainage and floodplains to be prepared and implemented;</p> <p>(c) to develop public education programs for promoting broad community awareness of the role</p>	<p>Environmental protection</p> <p>Conservation and sustainable use of water resources</p> <p>Flooding</p> <p>Research and raising awareness</p> <p>General</p>	✓		The Minister has broad powers to undertake a range of initiatives that could be used to further and/or address WSC objectives and issues.

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			of waterway management authorities in the overall resource conservation and development in Victoria.				
		PART 15 – FINANCE AND ACCOUNTABILITY					
		s. 252	Use of income  Subject to this Act, an Authority may, for or in connection with, or incidental to, the performance of its functions and the achievement of its objects, use any income received by it.	Financial tools	✓		When read in conjunction with the objectives of the Act and the functions of water authorities – which are broad - it is possible that s. 252 could support then the use of water authorities' income for a range of WSC initiatives
		s. 264(1)	Power to charge  An Authority may, by by-law or otherwise, set charges for anything it does in the performance of its functions, including any function delegated to it.	Financial tools	✓		Section 264 could potentially be used to raise income for WSC initiatives.
		s. 268	Authority may require payment  (1) An Authority that intends to provide services which will benefit a property may, by notice in writing, require the owner of the property to meet or contribute to the present day cost of any works that are used or will be able to be used directly or indirectly for the provision of those services, and any fireplugs attached to those works.  (2) If a proposal for the subdivision of land is referred to an Authority under the Planning and Environment Act 1987, the Authority may, by notice in writing, require the owner of the property to meet or contribute to the present day cost of any works that are used or will be able to be used directly or indirectly for the provision of services that will benefit the property, and any fireplugs	Financial tools	✓		Section 268 could potentially be used to raise income for WSC initiatives, particularly in relation to cases where these initiatives benefit a single property or groups of properties (e.g. localised alternative water source projects).

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			attached to those works.  (3) The amount of payment required from an owner must be assessed by the Authority to be fair and reasonable, taking into account the benefit to that property relative to the benefit to other properties.				
2.	Water Industry Act 1994	The Water Industry Act has recently been amended. Up until 1 July 2012, the Act regulated the metropolitan water retailers and provided for the licensing of these entities. However, these entities are now covered by the Water Act 1989 and no longer need to be licensed. Consequently the Act is now quite limited in scope and application. Its stated purpose is to provide for the reform of the water industry. Nevertheless, the Water Industry Act continues to provide the statutory basis for the regulation of the water industry by the Essential Services Commission. The ESC could play a role in supporting WSC through its regulation of the water industry.					
		PART 1A – REGULATION OF REGULATED WATER INDUSTRY					
		s.4C(c)	Objectives of the Commission  The objectives of the Essential Services Commission (ESC) in relation to the regulated water industry include to ensure that regulatory decision making has regard to the health, safety, environmental sustainability (including water conservation) and social obligations of regulated entities	Risks to health  Conservation and sustainable use of water resources	✓		The objectives of the ESC in regulating the water industry are stated in broad terms. Arguably, the ESC is authorised to consider WSC principles in performing its functions.
		s.4D	Water Industry Regulatory Order  Under this section, the Governor in Council may make a Water Industry Regulatory Order (WIRO). The WIRO may specify the parameters for the ESC's regulation of the water sector, including:  - specify which goods or services made, produced or supplied by or within the regulated water industry are to be prescribed goods and services in respect of which the Commission has the power to regulate prices  - specify a price, price-range, factor or term and	Economic evaluation and pricing of water		✓	Section 4D implies that the WIRO may not include matters relating to quality and performance standards of a health, environmental or technical nature. This may limit the ESC's consideration under the WIRO to purely economic matters. The current version of the WIRO is considered below.



ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			<p>condition which is to be a prescribed price in respect of which the Commission has power to regulate</p> <ul style="list-style-type: none"> <li>- require the Commission to adopt a specified approach, principle or methodology in regulating prices</li> <li>- fix regulatory asset values</li> <li>- declare which goods or services made, produced or supplied by or within the regulated water industry are to be declared goods and services in respect of which the Commission has the power to regulate standards and conditions of service and supply</li> <li>- declare which goods or services made, produced or supplied by or within the regulated water industry are to be declared goods and services in respect of which the Commission has the power to regulate market conduct</li> <li>- specify matters relating to quality and performance standards of a health, environmental or technical nature in respect of which the Commission may not exercise any function or power</li> </ul>				
		s. 4F	<p>Codes</p> <p>This section empowers the ESC to make Codes, which may relate to the following matters —</p> <ul style="list-style-type: none"> <li>- requiring a specified regulated entity or a specified class of regulated entity to develop, issue and comply with customer-related standards, procedures, policies and practices (including with respect to the payment of compensation to customers) in accordance with the Code;</li> </ul>	General		✓	In theory, Codes could be a useful mechanism to require recognition and application of WSC principles by water authorities. However, the range of matters that Codes can relate to are, arguably, not broad enough to do so. There is currently a Code relating to treatment of trade waste, which is considered below.



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			<ul style="list-style-type: none"> <li>- specifying minimum customer-related standards, procedures, policies and practices for inclusion by a specified regulated entity or a specified class of regulated entity in a customer charter for specific services;</li> <li>- requiring a specified regulated entity or a specified class of regulated entity to enter into an agreement with another specified regulated entity or another specified class of regulated entity for the purpose of ensuring that obligations relating to customer-related standards can be met;</li> <li>- specifying principles for the negotiation of agreements required under paragraph (c) between regulated entities in relation to standards and conditions of service and supply;</li> <li>- requiring regulated entities to maintain specified accounting records and to prepare accounts according to specified principles;</li> <li>- recovery by regulated entities of amounts persons are liable to pay to regulated entities</li> </ul> <p>A regulated entity must comply with any provision of a Code which applies to the regulated entity.</p>				
		s.4I	<p>Statement of Obligations</p> <p>The Minister may make a Statement of Obligations to a regulated entity specifying obligations of the regulated entity in performing its functions and powers.</p> <p>A regulated entity must comply with a Statement of Obligations which applies to the regulated entity.</p>	General	✓		In theory, the Statement of Obligations could be used to set out WSC principles and obligations. The current version of the Statement of Obligations is considered in more detail below.



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		PART 9 – ENVIRONMENTAL CONTRIBUTIONS					
		ss.193 & 194	Each water supply authority must, for each financial year, pay an environmental contribution for the purposes of funding initiatives that seek to: <ul style="list-style-type: none"> <li>- promote the sustainable management of water; or</li> <li>- address adverse water-related environmental impacts</li> </ul>	Conservation and sustainable use of water resources  Environmental protection  Financial tools	✓		The purpose for the collection of contributions is to promote the sustainable management of water and address adverse water related environmental impacts. It is unclear what the environmental contributions are currently used for. Nevertheless, it is possible that these contributions could be used to fund WSC projects to ensure conservation and sustainable use of water resources and environmental protection.
3.	Statement of Obligations	The Statement of Obligations is made under section 41 of the Water Industry Act 1994. It specifies obligations of the water authorities in relation to the performance of their functions and the exercise of their powers. This current version of the Statement of Obligations commenced on 16 September 2012.					
		1-6	Guiding principles  In performing its functions, exercising its powers and carrying out its duties, the Corporation must have regard to the sustainable management principles in section 93 of the Water Act 1989.  The Corporation must also have regard to the following principles:  (a) the need to undertake continuous review and improvement;  (b) the need to find innovative ways to:  (i) optimise the operation of water and wastewater systems;  (ii) deliver water services that enhance environmental outcomes and amenity in urban and rural landscapes; and	Conservation and sustainable use of water resources  Environmental protection  Alternative water source projects	✓		The guiding principles are general and broad and could support WSC initiatives and objectives, particularly those relating to the conservation and sustainable use of water, environmental protection and alternative water source projects.

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			<p>(iii) be an efficient and cooperative provider of fit for purpose water products;</p> <p>(c) the need to:</p> <p>(i) engage with public authorities and government agencies to develop and implement integrated water cycle management;</p> <p>(ii) engage with other Corporations to drive business efficiencies, develop shared services and sustain and improve industry knowledge through targeted research programs;</p> <p>(iii) take a strategic approach to improving the productivity of the corporation having regard to emerging technology; and</p> <p>(iv) engage with its customers and the community to ensure that the services it provides reflects their needs; and</p> <p>(d) the need to reduce, where the benefits to the community exceed the costs, the detrimental impacts of its activities on the environment, having regard to best industry standards in this respect.</p> <p>In following the principles outlined above, the Corporation needs to manage its business operations to ensure that it continues to:</p> <p>(a) provide for and maintain the financial viability of the Corporation;</p> <p>(b) minimise the overall whole of life costs of assets; and</p> <p>(c) provide its services in an efficient and affordable manner.</p> <p>(applicable to all water corporations)</p>				



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		5-1	<p>Managing Risks</p> <p>The Corporation must develop and implement plans, systems and processes, having regard to ISO31000:2009: Risk Management (or as amended) to ensure that risks associated with functions performed and services provided by the Corporation are identified, assessed, prioritised and managed.</p> <p>The Corporation must also annually monitor and report to the Secretary on its risks.</p> <p>(applicable to all water corporations)</p>	<p>Alternative water source projects</p> <p>Risks to/associated with water resources</p> <p>Risks to health</p>		✓	The requirement to ensure compliance with ISO31000 could deter the uptake of alternative water source projects, depending upon the way in which ISO31000 is applied in practice.
		6-1(1)	<p>Metropolitan Integrated Water Cycle Strategy</p> <p>By 31 March 2017, and within each five yearly period thereafter, the Corporation must work with the Office of Living Victoria to develop, in accordance with any written guidelines issued by the Minister, a Metropolitan Integrated Water Cycle Strategy that identifies the best mix of measures to:</p> <p>(a) maintain a balance between the demand for water and the supply of water in cities and towns;</p> <p>(b) facilitate efficient investment in all water cycle services, including recycling sewage or trade waste, stormwater capture and re-use, and demand management; and</p> <p>(c) improve the resilience of water supply systems (including fit-for purpose) through scenario based planning and adaptive management having regard to risk and uncertainty.</p> <p>In identifying the best mix of measures, the Corporation should consider opportunities that</p>	General	✓		The Metropolitan Integrated Water Cycle Strategy provides an important opportunity to adopt WSC initiatives . The OLV will lead the initiative to develop the Strategy.

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			<p>support liveable and sustainable cities and towns through the delivery of benefits across the urban water cycle, including approaches to align the funding of benefits with the organisation responsible for their delivery.</p> <p>(applicable to metropolitan corporations, Melbourne Water and Western Water only)</p>				
		6-1(2)	<p>In developing a Metropolitan Integrated Water Cycle Strategy, the Corporation must consult with the community and key stakeholders including:</p> <p>(a) Local Government;</p> <p>(b) the Growth Areas Authority;</p> <p>(c) the Department for Planning and Community Development;</p> <p>(d) relevant developers and builders; and</p> <p>(e) other water businesses in the region including Southern Rural Water.</p> <p>(applicable to metropolitan corporations, Melbourne Water and Western Water only)</p>	General	?	?	The requirement to broadly consult with a range of stakeholders will help to ensure that relevant interests and concerns are taken into account in the context of the development of the Metropolitan Integrated Water Cycle Strategy. Nevertheless, it is notable that the EPA and other bodies that may be involved in approving/monitoring alternative water source projects are not identified as stakeholders with whom consultation is required.
		6-3(1)	<p>Waterways and drainage services</p> <p>The Corporation must develop, in accordance with any written guidelines issued by the Minister, a Strategy that sets out the responsibilities, goals, levels of service and programs of work for waterway management, flood management and drainage taking into consideration:</p> <p>(a) the efficient and effective delivery of services where:</p>	<p>Conservation and sustainable use of water resources</p> <p>Alternative water source projects</p> <p>Flooding</p>	✓		The strategy that Melbourne Water must prepare for waterways and drainage services must take into account an Integrated Water Cycle Strategy. To the extent that a relevant Integrated Water Cycle Strategy exists and supports WSC initiatives, this could support the conservation and sustainable use of water, alternative water source projects (particularly those involving access to drainage infrastructure to utilise stormwater) and, potentially other WSC initiatives such as those associated with management of flooding. However, the

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			(i) benefits to the community exceed the costs; (ii) investment levels are prudent; (iii) opportunities for stormwater capture and fit-for-purpose re-use are facilitated; (iv) the principles of integrated water management are taken into account; (v) systematic and transparent processes are used to determine priorities; (vi) scenario planning is adaptive, having regard to risk and uncertainty; and (vii) progress in implementing the Waterways and Drainage Strategy is monitored and reported to the public and the Minister using key performance indicators; (b) any relevant Integrated Water Cycle Strategy; (c) any relevant Integrated Water Cycle Plan; (d) any relevant Victorian Waterway Management Strategy, Regional Catchment Management Strategy, or catchment sub-strategy; (e) and relevant Victorian flood strategy; and (f) any other matter which the Corporation considers necessary or desirable. (Melbourne Water only)				requirement to prepare a Waterways and Drainage Strategy only applies to Melbourne Water.
		6-3(4)	In developing a Waterways and Drainage Strategy, the Corporation must consult with the community and key stakeholders including:	General	?	?	The requirement to broadly consult with a range of stakeholders will help to ensure that relevant interests and concerns are taken into account in the context of the development of a Waterways

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			(a) the Office of Living Victoria; (b) other water corporations operating in the area; (c) the Department of Sustainability and Environment; (d) the Environment Protection Authority; (e) Local Government; (f) the Growth Areas Authority; (g) the Department for Planning and Community Development; and (h) relevant developers and builders. (Melbourne Water only)				and Drainage Strategy.
		6-5	Drought Response Plans for Urban Systems The Corporation must: (a) develop a Drought Response Plan that governs the management of the supply of water by the Corporation in any period of drought or when the supply of water is limited; (b) not rely on the Minister declaring a water shortage and qualifying rights to water under the Water Act 1989 as an option for maintaining supplies as part of a Drought Response Plan; (c) comply with any guidelines issued by the Minister for the purpose of drought response planning; and (d) make its Drought Response Plan available to the public, unless the Minister consents in writing to not making available a Plan or part of a Plan.	Supply of water Conservation and sustainable use of water resources	✓		All urban water corporations must prepare a drought response plan. Such plans may help to encourage conservation and sustainable use of water. They may also help to secure supply of water when water resources are scarce.





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			(urban water corporations only)				
		7-2(3)	<p><b>Bulk Supply Systems</b></p> <p>The Corporation must, where waterways and wetlands are used for the supply of water, develop and implement plans and programs consistent with any guidelines issued by the Secretary, to:</p> <p>(a) seek to enhance ecological benefits where service standards to customers are not compromised;</p> <p>(b) work cooperatively with the Victorian Environmental Water Holder and relevant agencies;</p> <p>(c) have regard to any guidelines issued by the Minister for that purpose; and</p> <p>(d) make available to the public information on its activities to enhance ecological benefits.</p> <p>(applicable to all water corporations)</p>	Environmental protection	✓		Guidelines issued by the Minister could be used to help support WSC principles in the context of bulk water supply systems, particularly environmental protection.
		7-8(1)	<p><b>Trade Waste</b></p> <p>The Corporation must develop policies and practices to manage trade waste to:</p> <p>(a) protect its sewerage systems, including treatment works and processes, and the health and safety of the public and of people working in or operating those systems;</p> <p>(b) minimise environmental impacts consistent with any licence issued under the Environment Protection Act 1970; and</p> <p>(c) facilitate recycling by ensuring that trade waste accepted does not present barriers to recycling or</p>	<p>Alternative water source projects</p> <p>Risks to health</p>	✓		This clause specifically requires the water corporations' trade waste management policies to facilitate recycling. Water corporations must ensure that public health and safety is protected.



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			reuse of wastewater or biosolids. (applicable all water corporations, except rural)				
		7-8(2)	In developing trade waste management policies and practices, the Corporation should be guided by the environmental protection principles set out in section 1 of the Environment Protection Act 1970. (applicable all water corporations, except rural)	Environmental protection	✓		Trade waste management policies must respect environmental protection principles and, therefore, could be used to support WSC principles.
4.	Essential Services Commission Act 2001	The ESC Act provides for the establishment of an economic regulatory framework for regulated industries, including the water industry by virtue of section 4B of the Water Industry Act. Under the ESC Act, the ESC may regulate prescribed prices for, or in respect of, prescribed good and services supplied by or within a regulated industry.					
		PART 1 - PRELIMINARY					
		s.1	Purpose  The purpose of this Act is to enable the Essential Services Commission to perform the regulatory and advisory functions that are conferred on the Commission in a manner that provides incentives for dynamic, productive and allocative efficiency and promotes the long term interests of Victorian consumers.	Economic evaluation and pricing of water		✓	Notably, the stated purpose in s. 1 emphasises allocative efficiency but fails to refer to other broader purposes and objectives that could support WSC initiatives. It is unclear whether the general reference to 'the long term interests of Victorian consumers' is broad enough to allow the ESC to consider and authorise WSC initiatives.
		PART 2 – ESSENTIAL SERVICES COMMISSION					
		s.8	Objectives 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.	Economic evaluation and pricing of water		✓	Section 8 emphasises economic and service parameters (i.e. price, quality and reliability). There is also a general reference to 'the long term interests of Victorian consumers'. However, it is unclear whether this section is broad enough to allow the ESC to consider and



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			(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.				authorise WSC initiatives.
		s.8A	<p>Matters which the Commission must have regard to</p> <p>The Commission must have regard to a range of matters to the extent that they are relevant in any particular case, including:</p> <ul style="list-style-type: none"> <li>- the relevant health, safety, environmental and social legislation applying to the industry;</li> <li>- any matters specified in the empowering instrument</li> </ul>	Economic evaluation and pricing of water	✓		Given that the Water Act 1989 is broad enough to include WSC principles and objectives, it is at least arguable that the ESC is required to have regard to these principles and objectives. However, this interpretation is dependent upon a broad interpretation of the objectives underlying the Water Act.
		s.11	<p>Powers of the Commission</p> <p>(1) Subject to this Act, the Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and to enable it to achieve its objectives under this Act and under relevant legislation.</p> <p>(2) Without derogating from subsection (1), the Commission also has such powers as may be conferred on the Commission by the relevant legislation under which a regulated industry operates.</p>	Economic evaluation and pricing of water	✓		Section 11 confers a broad power on the ESC 'to do all things necessary or convenient to be done for or in connection with the performance of its functions'. When read in conjunction with s. 8A, it is arguable that the ESC is required to have regard to WSC principles and objectives.
		PART 3 – SPECIFIC POWERS					
		s.33	Price determinations	Economic evaluation and	?	?	It is notable that s.33(2) states that, in making a price determination, the ESC must adopt an

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			<p>(1) This section is subject to anything to the contrary in the empowering instrument specifying the prescribed prices or prescribed goods and services in respect of which the Commission is exercising its power of regulation.</p> <p>(2) In making a price determination, the Commission must adopt an approach and methodology which the Commission considers will best meet the objectives specified in this Act and any relevant legislation.</p> <p>(3) In making a determination under this section, the Commission must have regard to—</p> <p>(a) the particular circumstances of the regulated industry and the prescribed goods and services for which the determination is being made;</p> <p>(b) the efficient costs of producing or supplying regulated goods or services and of complying with relevant legislation and relevant health, safety, environmental and social legislation applying to the regulated industry;</p> <p>(c) the return on assets in the regulated industry;</p> <p>(d) any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries;</p> <p>(e) any other factors that the Commission considers relevant.</p> <p>(4) In making a determination under this section, the Commission must ensure that—</p> <p>(a) the expected costs of the proposed regulation do not exceed the expected benefits; and</p> <p>(b) the determination takes into account and clearly articulates any trade-offs between costs and</p>	pricing of water			<p>approach and methodology that best meets the objectives in the ESC Act and any relevant legislation. To the extent that the objectives in the Water Act 1989 support WSC initiatives, it is at least arguable that the ESC is authorised to have regard to WSC principles and objectives when making price determinations for the water sector.</p> <p>Nevertheless, s. 33(3)(b) also states that the ESC must have regard to the efficient costs of producing or supplying regulated goods or services . The ESC might not be authorised to approve prices to account for WSC initiatives if the investment and consequent prices associated with the investment are not considered to be efficient.</p>



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			<p>service standards.</p> <p>(5) A price determination by the Commission may regulate a prescribed price for prescribed goods and services in any manner the Commission considers appropriate.</p>				
		s. 34	<p>Other regulatory powers</p> <p>(1) The Commission may exercise such powers (including the power to make determinations) for or with respect to—</p> <p>(a) standards and conditions of service and supply;</p> <p>(b) licensing;</p> <p>(c) market conduct;</p> <p>(d) other economic regulatory matters—</p> <p>as may be conferred on the Commission by the empowering instrument.</p> <p>(2) In making a determination or other regulatory decision under this section, the Commission must have regard to—</p> <p>(a) any factors specified in the empowering instrument; and</p> <p>(b) any other factors that the Commission considers relevant.</p> <p>(3) This section is subject to anything to the contrary in the empowering instrument.</p>	Alternative water source projects	✓		<p>Section 34(1) vests the ESC with broad regulatory powers, including standards and conditions of service and supply. Standards could be developed for bulk recycled water services or metropolitan drainage services, which could, in turn, facilitate uptake of alternative water source projects.</p> <p>Section 34(1) also refers to licensing. Licensing could, in theory, be used to encourage WSC by, for example, making ongoing licensing conditional on ensuring conservation and sustainable use of water. However, since 1 July 2012, all water authorities are statutory authorities and, therefore, do not need to be licensed.</p>
		PART 3A – THIRD PARTY ACCESS REGIMES					

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s.35A	<p>Object of Part</p> <p>The object of this Part is to promote the economically efficient operation of, use of and investment in, the infrastructure by means of which services are provided, thereby promoting effective competition in upstream and downstream markets.</p>	Alternative water source projects	✓		In theory, encouraging the efficient use and operation of infrastructure by providing upstream and downstream competition could facilitate the uptake of alternative water source projects – particularly, drainage and wastewater infrastructure.
		s. 35B	<p>Application of Part</p> <p>This Part applies to a regulated industry which has an access regime.</p>	Alternative water source projects		✓	<p>Notably, the access framework set out in the ESC Act only applies to those regulated industries that have a specific access regime in place. None currently exists in Victoria, although the ESC undertook an inquiry into an access regime for water and sewerage infrastructure services in 2009.</p> <p>Therefore, the only option to seek access to water and sewerage infrastructure in Victoria exists under Part IIIA of the Competition and Consumer Act 2010. However, in order to invoke Part IIIA, the relevant infrastructure service must be declared. As yet, the supply of water and wastewater services has not been so declared. Therefore, Part IIIA cannot yet be availed of by prospective proponents of alternative water source projects.</p>
		s.35C	<p>Pricing principles applying in respect of regulated access prices</p> <p>The pricing principles relating to the price of access to a service are—</p> <p>(a) that regulated access prices should—</p> <p>(i) be set so as to generate expected revenue for a regulated service or services that is at least sufficient to meet the efficient costs of providing</p>	Alternative water source projects	?	?	The pricing principles in s.35C are broad and non-specific. It is unclear whether or not these pricing principles, when applied in practice, will facilitate or deter uptake of alternative water source projects.



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			access to the regulated service or services; and  (ii) include a return on investment commensurate with the regulatory and commercial risks involved; and  (b) that the access price structures should—  (i) allow multi-part pricing and price discrimination when it aids efficiency;  and  (ii) not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher; and  (c) that access pricing regimes should provide incentives to reduce costs or otherwise improve productivity.				
		PART 6 – CODES OF PRACTICE					
		s.47	Power to make Codes of Practice  (1) The Commission has power to make Codes of Practice for the purpose of performing regulatory functions in respect of a regulated industry.  (3) A Code of Practice may establish principles giving practical guidance in relation to the performance of the functions and the exercise of the powers of the Commission.  (4) A Code of Practice may—  (a) impose a duty on any person;	General	✓		It is possible that a Code of Practice could be implemented to facilitate/encourage WSC initiatives.

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			(b) direct how any matter or thing is to be done; (c) create an enforceable legal right; (d) impose any liability or penalty, including proportionate penalties for failures to comply with requirements imposed by the Code of Practice.				
5.	Water Industry Regulatory Order	The purpose of the Water Industry Regulatory Order (WIRO) is to provide a framework for economic regulation by the ESC for services made, produced or supplied by or within the regulated water industry. The WIRO is made under section 4D of the Water Industry Act 1994. The most recent WIRO was made in 2012.					
		COVERAGE					
		6(a)	<p>Prescribed Services and Declared Services</p> <p>The Essential Services Commission has power to regulate standards and conditions of service and supply in relation to:</p> <ul style="list-style-type: none"> <li>(i) retail water services;</li> <li>(ii) retail recycled water services;</li> <li>(iii) retail sewerage services;</li> <li>(iv) storage operator and bulk water services;</li> <li>(v) bulk sewerage services;</li> <li>(vi) bulk recycled water services;</li> <li>(vii) metropolitan waterways and drainage services;</li> <li>(viii) irrigation drainage services;</li> <li>(ix) connection services;</li> <li>(x) services to which developer charges apply; and</li> </ul>	<p>Supply of water</p> <p>Alternative water source projects</p>	?	?	<p>Clause 6(a) specifically refers to bulk and retail recycled water services. It empowers the ESC to regulate standards and conditions of service and supply for such services. The types of standards and conditions that the ESC may impose may affect whether or not alternative water supply projects – particularly, those involving recycled water – are encouraged or deterred.</p>





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			(xi) diversion services.				
		6(b) and 14(1)	<p>Regulatory principles</p> <p>The Essential Services Commission has power to regulate prices in relation to:</p> <ul style="list-style-type: none"> <li>(i) retail water services;</li> <li>(ii) retail recycled water services;</li> <li>(iii) retail sewerage services;</li> <li>(iv) storage operator and bulk water services;</li> <li>(v) bulk sewerage services;</li> <li>(vi) bulk recycled water services;</li> <li>(vii) metropolitan waterways and drainage services;</li> <li>(viii) irrigation drainage services;</li> <li>(ix) connection services;</li> <li>(x) services to which developer charges apply; and</li> <li>(xi) diversion services.</li> </ul> <p>Prices must be consistent with the Regulatory Principles - that is, the prices must:</p> <ul style="list-style-type: none"> <li>(i) provide for a sustainable revenue stream to the regulated entity that nonetheless does not reflect monopoly rents or inefficient expenditure by the regulated entity;</li> <li>(ii) allow the regulated entity to recover its operational, maintenance and administrative costs;</li> <li>(iii) allow the regulated entity to recover its expenditure on renewing and rehabilitating existing</li> </ul>	<p>Supply of water</p> <p>Economic evaluation and pricing of water</p> <p>Alternative water source projects</p>	✓		<p>Clause 6(b) also specifically refers to bulk and retail recycled water services. It empowers the ESC to regulate prices for such services. The level of prices that the ESC may impose will affect whether or not alternative water supply projects – particularly, those involving recycled water – are encouraged or deterred.</p> <p>Notably, the pricing principles refer to the need to provide appropriate signals to customers about the sustainable use of Victoria’s water resources, which could be used to support WSC objectives/initiatives.</p>



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			assets;  (iv) allow the regulated entity to recover:  (A) a rate of return on assets as at 1 July 2004 that are valued in a manner determined by, or at an amount otherwise specified by, the Minister at any time before 1 July 2004;  (B) a rate of return on investments made after 1 July 2004 to augment existing assets or construct new assets;  (C) in the case of Gippsland and Southern Rural Water Corporation only, all costs associated with existing debt incurred to finance expenditure prior to 1 July 2006 in a manner determined by the Minister at any time before 1 July 2006;  (D) investment in an asset or asset class as at 1 July 2004 using the value calculated in the manner determined by, or the amount otherwise specified by, the Minister for that asset or asset class at any time before 1 July 2004;  and  (E) investment in an asset or asset class made after 1 July 2004 to augment existing assets or construct new assets;  (v) provide appropriate incentives and signals to customers or potential customers about:  (A) the sustainable use of Victoria's water resources by reference to the costs of providing prescribed services to customers (either collectively or to an individual customer or class of customers), including costs associated with balancing supply and demand; and  (B) the costs associated with servicing a new				



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			<p>development in a particular location;</p> <p>(vi) provide the regulated entity with incentives to pursue efficiency improvements and to promote the sustainable use of Victoria's water resources;</p> <p>(vii) enable customers or potential customers of the regulated entity to readily understand the prices charged by the regulated entity for prescribed services, or the manner in which such prices are to be calculated or otherwise determined;</p> <p>(viii) provide for an appropriate adjustment mechanism to minimise the extent of any under or over recovery of revenue for the costs associated with the desalination plant during a regulatory period; and</p> <p>(ix) where appropriate, facilitate choice and innovation in the prescribed services and associated prices offered to customers;</p> <p>(b) be satisfied that the expenditure forecasts contained in the Water Plan reflect the efficient delivery of the proposed outcomes contained in the Water Plan and take into account a planning horizon that extends beyond the term of the Water Plan</p>				
		9	<p>Approval of prices</p> <p>The Commission must give the approval referred to in clause 8(a) if it is satisfied that the prices which the regulated entity may charge for prescribed services or the manner in which they are to be calculated or otherwise determined (as set out in the Water Plan):</p> <p>(a) were developed in accordance with the</p>	<p>Supply of water</p> <p>Economic evaluation and pricing of water</p> <p>Alternative water source projects</p>		✓	<p>The considerations to which the ESC may have regard in determining whether or not to approve prices – including for recycled water services – are limited and do not appear to accommodate consideration of WSC principles.</p>

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			Procedural Requirements; and (b) comply with the relevant Regulatory Principles.				
6.	Trade Waste Customer Service Code	The Trade Waste Customer Service Code imposes obligations on water corporations in relation to the provision of trade waste services. It is made under section 4F of the Water Industry Act 1994 and pursuant to clause 15 of the Water Industry Regulatory Order. Among other things, the Trade Waste Customer Service Code sets out the minimum requirements to be included in a trade waste agreement. The obligations contained in the Trade Waste Customer Service Code are imposed on water corporations.					
		3. RISK IDENTIFICATION AND MITIGATION					
		3.1	Risk identification and mitigation  Risks identified by the water business: A water business must advise the customer of any identified risks associated with accepting a customer's trade waste into its sewer, including any risk mitigation that the customer will be required to implement.	Alternative water source projects  Risks to/associated with water resources	?	?	Depending upon the type of risks identified by the water corporation, this could affect the ability to take and use trade waste for alternative water source projects.
		3.2	Risk identification and mitigation  Risk assessment by the trade waste customer: A water business may:  (a) require a customer to conduct its own risk assessments to identify potential causes of non-compliant trade waste discharge;  (b) require a customer to discuss the findings of the customer's risk assessment with the water business; and  (c) identify further risk mitigation requirements to be implemented by the customer to minimise the impact of its trade waste discharge on the sewerage system and operations of the water business.	Alternative water source projects  Risks to/associated with water resources	?	?	Depending upon the type of risks identified by the customer and the risk mitigation requirements imposed by the water corporation, this could affect the ability to take and use trade waste for alternative water source projects.



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7.	Constitution Act 1975	The Victorian Constitution Act 1975 sets out the powers and functions of the State of Victoria. Part VII of the Act, which was introduced in 2003, relates to delivery of water services by public water authorities.					
		PART VII – DELIVERY OF WATER SERVICES					
		s. 97	<p>Delivery of water services</p> <p>(1) If at any time on or after the commencement of section 5 of the Constitution (Water Authorities) Act 2003 a public authority has responsibility for ensuring the delivery of a water service, that or another public authority must continue to have that responsibility.</p> <p>(2) A public authority that, at any time on or after the commencement of section 5 of the Constitution (Water Authorities) Act 2003, has responsibility for ensuring the delivery of a water service must, while it has that responsibility, be accountable to a responsible Minister of the Crown for ensuring the delivery of that service.</p> <p>(3) Nothing in this section prevents a public authority that has responsibility for ensuring the delivery of a water service entering into an arrangement of any kind with a person or body (including an independent contractor) relating to the delivery of that service while itself retaining that responsibility and remaining accountable to a responsible Minister of the Crown for ensuring the delivery of that service.</p>	<p>Alternative water source projects</p> <p>Supply of water</p>		✓	<p>In s. 97, the term 'public authority' is defined to include a public statutory authority and a council within the meaning of the Local Government Act 1989.</p> <p>The term 'water service' is defined to mean a service relating to water supply, sewerage, irrigation, water collection and storage and sewage treatment.</p> <p>Under s. 97, a public authority retains responsibility for all water services, even if the provision of these services is outsourced to a third party.</p> <p>To the extent that a public authority currently has responsibility for supply of water services in relation to alternative water supply projects, it may be reluctant to outsource the supply to a third party if the risks are considered too high. This could effectively discourage the uptake of alternative water source projects.</p>
8.	Environment Protection Act 1970	The Environment Protection Act 1970 is the primary instrument to protect the environment in Victoria, including Victoria's waters. The Environment Protection Authority (EPA) is the key regulator under the Act. Among other things, the EPA issues works approvals and licences for certain premises for which environmental risks are relatively high. The EPA also has power to recommend State environment protection policies in relation to particular aspects of Victoria's environment.					

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		PART I – INTRODUCTION					
		ss1A – 1L	<p>Purpose and principles</p> <p>The Act creates a legislative framework for the protection of the environment having regard to the principles of environment protection, which include:</p> <ul style="list-style-type: none"> <li>- principle of integration of economic, social and environmental considerations</li> <li>- the precautionary principle</li> <li>- principle of intergenerational equity</li> <li>- principle of conservation of biological diversity and ecological integrity</li> <li>- principle of integrated environmental management</li> </ul>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		The principles underlying this Act are broad enough to accommodate WSC principles and objectives, particularly conservation and sustainable use of water resources and environmental protection.
		PART II - ENVIRONMENT PROTECTION BODIES					
		s. 13(1)(b)	<p>Powers, duties and functions of Authority</p> <p>The EPA is responsible for and must co-ordinate all activities relating to the discharge of wastes into the environment and the generation, storage, treatment, transport and disposal of industrial waste and the emission of noise and for preventing or controlling pollution and noise and protecting and improving the quality of the environment.</p>	<p>Alternative water source projects</p> <p>Environmental protection</p>	?	?	The EPA only has power to control activities involving discharge of waste to the environment, which means that EPA's functions are limited (if not non-existent) in relation to closed loop systems, for which there is no discharge to the environment. This may be the case for self-contained recycled water facilities that are internal to a particular building or development.
		s.13(1)(c)	<p>Powers, duties and functions of Authority</p> <p>The EPA has the power to recommend the adoption of State environment protection policy</p>	<p>Alternative water source projects</p>	✓		State environment protection policies (SEPPs) are subordinate legislation, which are aimed at providing more detailed requirements and guidance in relation to the application of the



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			"for the protection of any portion or portions of the environment or any segment or segments of the environment with respect to the uses and values, whether tangible or intangible, to be protected, the quality to be maintained, the extent to which the discharge of wastes may be permitted without detriment to the quality of the environment, long range development uses and planning and any other factors relating to the protection of the environment".	Environmental protection			Act.  The EPA has already issued two SEPPs which relate to Victoria's waters – State Environment Protection Policy (Waters of Victoria) and State Environment Protection Policy (Groundwaters of Victoria), which are discussed below. The SEPP could be used to indicate:  - acceptable uses and associated values attached to particular types of recycled water  - quality standards applicable to particular types of recycled water
		s.13(1)(cc)	Powers, duties and functions of Authority  The EPA has power to "develop economic measures for the purpose of providing an economic incentive to avoid or minimise harm to the environment or any portion or segment of the environment by a particular activity".	Environmental protection  Risks to/associated with water resources	✓		An emissions trading scheme was contemplated when this provision was inserted into the Act. It is unclear whether it can be applied more broadly than this.  If water sources are at risk, the EPA can use its power to develop economic measures to help mitigate the relevant risks.
		s.13(1)(d)	Powers, duties and functions of Authority  The EPA has power, through the issuance of works approvals, licences, permits, pollution abatement notices, minor works pollution abatement notices, research, development and demonstration approvals and notices under section 28B, to control the environmental impacts of activities which create a state of potential danger to the environment and to control the volume, types, constituents and effects of waste discharges, emissions, deposits, or other sources of pollutants and of substances which are a danger or a potential danger to the quality of the environment or any segment of the environment and the generation, storage, reprocessing, treatment, transport,	Environmental protection  Risks to/associated with water resources	✓		The EPA's various powers could be used to protect discharges to water resources, which could have an impact on use of that water.

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			containment and disposal of waste and to control the volume intensity and quality of noise,				
PART III – ENVIRONMENT PROTECTION							
		16(1C)	<p>State environment protection policy</p> <p>The Governor in Council may declare environment protection policy to be observed.</p> <p>The Governor In Council may declare State environment protection policy with respect to the re-use and recycling of substances.</p>	<p>Alternative water source projects</p> <p>Environmental protection</p>	?	?	<p>Notably, the Governor in Council has power to declare environment protection policy in relation to the re-use and recycling of substances. Presumably, the reference to 'substances' includes water.</p> <p>It is unclear whether or not a State environment protection policy in relation to the re-use or recycling of water would facilitate or hinder the uptake of alternative water source projects.</p>
		s.19AA	<p>Economic measures</p> <p>The Authority may develop economic measures for the purpose of providing an economic incentive to avoid or minimise harm to the environment or any portion or segment of the environment by a particular activity.</p> <p>Economic measures such as tradeable permit schemes and environmental offsets may be used as a means of achieving cost effective environmental protection or regulation.</p> <p>An economic measure must clearly identify-</p> <p>(a) the objectives of the economic measure;</p> <p>(b) the type of economic measure proposed;</p> <p>(c) the particular activity in respect of which the economic measure is proposed to be used;</p> <p>(d) the harm to the environment or any portion or</p>	<p>Environmental protection</p> <p>Risks to/associated with water resources</p>	✓		<p>An emissions trading scheme was contemplated when this provision was inserted into the Act. It is unclear whether it can be applied more broadly than this.</p> <p>If water sources are at risk, the EPA can use its power to develop economic measures to help mitigate the relevant risks.</p>



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			<p>segment of the environment which it is proposed to avoid or minimise by using the economic measure;</p> <p>(e) how the economic measure will be integrated with any relevant policy, approval, permit, licence or other protection measure under this Act.</p>				
		s.19A	<p>Works approval – scheduled premises</p> <p>Occupiers of scheduled premises are prohibited from engaging in particular activities without a 'works approval, licence or requirement' imposed by the EPA.</p> <p>Scheduled premises are prescribed by regulation or belong to class prescribed from regulation as premises from which:</p> <p>(i) waste is, or is likely to be, discharged, emitted or deposited to the environment; or</p> <p>(ii) noise is, or is likely to be, emitted; or</p> <p>(iii) waste is, or substances which are a danger or potential danger to the quality of the environment or any segment of the environment are, reprocessed, treated, stored, contained, disposed of or handled; or</p> <p>(iv) any activity is conducted which creates a state of potential danger to the quality of the environment or any segment of the environment.</p>	Environmental protection	✓		<p>The EPA's licensing function is a powerful tool for controlling environmental pollution. The provisions relating to licences and works approvals depend on the type of premises from which waste is to be discharged and are dependent on the nature of discharges from these premises. Licences may also include monitoring requirements of the receiving environment to measure the extent of the environmental impact of the discharge/emission and to determine whether environmental objectives as set down in the relevant SEPPs are being achieved.</p> <p>In theory, works approvals and other requirements imposed by the EPA could be used to mandate initiatives that support WSC. However, it should be noted that works approvals and other requirements imposed by the EPA pursuant to the Act are not normally used to achieve this kind of objective.</p>
		s. 20	<p>Controls of waste and noise</p> <p>The occupier of a scheduled premises must not undertake at those premises:</p> <p>(a) the discharge, emission or deposit of waste to</p>	Environmental protection	✓		<p>In theory, works approvals and other requirements imposed by the EPA could be used to mandate initiatives that support WSC. However, it should be noted that works approvals and other requirements imposed by the EPA pursuant to the Act are not normally</p>



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			the environment; or (b) the reprocessing, treatment, storage, containment, disposal or handling of waste; or (c) the reprocessing, treatment, storage, containment, disposal or handling of substances which are a danger or potential danger to the quality of the environment or any segment of the environment; or (d) an activity which creates a state of potential danger to the quality of the environment or any segment of the environment— unless licensed to do so under this Act.				used to achieve this kind of objective.
		ss.26H and 26I	Environment and resource efficiency plans Unless an exemption applies, a person who undertakes a scheduled activity must prepare an Environment and Resource Efficiency Plan. Among other things, an Environmental and Resource Efficiency Plan must include: (a) a description of the relevant environmental resource use and disposal of waste off-site of the scheduled activity; (b) a plan of actions to achieve environmental resource efficiency gains and waste disposal reductions; (c) timeframes within which the actions are to be implemented.	Conservation and sustainable use of water resources Environmental protection	✓		The Purpose of these provisions is to reduce wastage of water in relation to activities occurring at scheduled premises. Pursuant to the Environment Protection (Environment and Resource Efficiency Plans) Regulations 2007, the kind of 'environmental resource' prescribed for the purposes of a scheduled activity includes 'water'. However, 'water' in Regulation 5 is defined to exclude recycled water. In theory, an Environmental and Resource Efficiency Plan could be required to include initiatives that support WSC principles, particularly conservation and sustainable use of water and environmental protection of water resources. However, it should be noted that the EREP program is due to expire at the end of 2013.



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		PART V – CLEAN WATER					
		s.38	<p>Discharges etc. to comply with policy</p> <p>The discharge or deposit of wastes into waters of the State of Victoria must be in accordance with declared State environment protection policy or waste management policy specifying acceptable conditions for the discharge or deposit of wastes into waters in the environment and shall comply with any standards under this Act.</p>	Environmental protection	✓		Depending upon the contents of the SEPP applicable to Victoria's waters, they may be used to protect and enhance conservation for water resources.
		s.39(1)	<p>Pollution of waters</p> <p>A person shall not pollute any waters so that the condition of the waters is so changed as to make or be reasonably expected to make those waters—</p> <p>(a) noxious or poisonous;</p> <p>(b) harmful or potentially harmful to the health, welfare, safety or property of human beings;</p> <p>(c) poisonous, harmful or potentially harmful to animals, birds, wildlife, fish or other aquatic life;</p> <p>(d) poisonous, harmful or potentially harmful to plants or other vegetation; or</p> <p>(e) detrimental to any beneficial use made of those waters</p> <p>A person shall not cause or permit waste to be placed or left in any position whereby it could reasonably be expected to gain access to any waters in circumstances where if access was gained the waste would be likely to result in those waters being polluted.</p> <p>A person shall not cause or permit waste to be</p>	Environmental protection	✓		This provision could be used to protect water resources by sanctioning those that pollute water.

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			discharged or deposited onto the dry bed of any waterway in circumstances where if the waterway had contained waters the discharge or deposit would be likely to result in those waters being polluted.				
		PART IXB – SEPTIC TANK SYSTEMS					
		s.53L	A person must not construct a septic tank system unless that person holds a permit (issued by the relevant municipal council)	Alternative water source projects  Environmental protection	✓		<p>As noted above, section 180 of the Water Act 1989 provides that if a municipal council or the EPA receives an application for a permit for a septic tank system in respect of land within a water corporation's sewerage district, it must forward a copy of the application to the relevant water corporation, if the water corporation has lodged with the municipal council and EPA a standing written request for referral of those applications.</p> <p>A water corporation has the capacity to respond by imposing conditions but it is not clear if they have the power to actually refuse the relevant application. However, the Council and the EPA must comply with any requirement of the water corporation.</p> <p>As noted previously, on-site septic tank systems could potentially be used to collect wastewater for re-use. The extent to which these systems could actually be used in this way will depend upon the requirements that are imposed by the relevant water authority, council and EPA in a given case.</p>
9.	State Environment Protection Policy	State environment protection policies are made pursuant to the Environment Protection Act 1970. They constitute subordinate legislation and are aimed at providing more detailed requirements and guidance in relation to the application of the Act. In particular, SEPPS specify standards for protection of beneficial uses and the maintenance of the quality of the environment. This SEPP aims to help protect water environments by providing a framework of agreed environmental outcomes and strategic directions for protecting Victoria's water. The failure to comply with SEPPs is an					

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	(Waters of Victoria)	offence under the EP Act. Nevertheless, the SEPP is not prescriptive. Rather, it offers considerable flexibility in how actions will be implemented to achieve the environmental outcomes specified in the SEPP.					
		PART II – POLICY PURPOSE, PRINCIPLES AND INTENT					
		6	<p>Policy principles</p> <p>Policy principles should be used to guide decisions about the protection and management of Victoria's surface waters. Policy principles include:</p> <ul style="list-style-type: none"> <li>- Principle of integration of economic, social and environmental consideration: Requires the effective integration of economic, social and environmental considerations in decision-making processes with the need to improve community well-being and the benefit of future generations</li> <li>- Principle of intergenerational equity</li> <li>- Principle of conservation of biological diversity and ecological integrity</li> <li>- Principle of improved valuation, pricing and incentive mechanisms – established environmental goals should be pursued in the most cost effective way by establishing incentive structures, including market mechanisms, which enable persons best placed to maximise benefits or minimise costs to develop solutions and responses to environmental problems.</li> <li>- Principle of shared responsibility – producers of goods and services should produce competitively priced goods and services that satisfy human needs and improve quality of life while progressively reducing ecological degradation and resource intensity throughout the full life cycle of the goods and services to a level consistent with the sustainability of biodiversity and ecological</li> </ul>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		The SEPP could be an important vehicle through which WSC objectives are furthered, particularly conservation and sustainable use of water and environmental protection of Victoria's water resources.

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			systems.				
PART IV: BENEFICIAL USES							
		10	<p>A beneficial use is defined in the Environment Protection Act 1970 and includes a current or future environmental value or use of surface waters that communities want to protect. A beneficial use does not prohibit or permit the use of surface waters for any particular purpose, but requires surface waters to be of a suitable quality and quantity to support that use or value. Beneficial uses for each segment of the water environment are listed in the SEPP.</p> <p>Beneficial uses are protected except in circumstances listed in the SEPP, including in artificial stormwater drains. These artificial environments need to be managed for the purposes for which they were constructed and must be designed and managed so that they are not harmful to humans or have unacceptable impacts on animals, and so that their impact on surface waters is minimised. Although beneficial uses are not protected in these artificial environments, it is not acceptable to dump or illegally discharge wastes into them.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	?	?	<p>The SEPP covers a broad range of water environments including aquatic reserves, wetlands and lakes, forests, plains, inlets, coasts and ports.</p> <p>The SEPP also covers a broad range of beneficial uses including recreation, aesthetic enjoyment, cultural and spiritual values, agriculture and irrigation, aquaculture, industrial and commercial use, human consumption.</p> <p>Given the breadth of waters covered and beneficial uses protected (including some which may be at odds with WSC principles), the extent to which the SEPP supports WSC objectives and principles will depend upon the way in which it is applied in practice.</p>
PART V: ENVIRONMENTAL QUALITY OBJECTIVES AND INDICATORS							
		11	<p>Environmental quality objectives and indicators</p> <p>Surface waters and their aquatic ecosystems need to be free of any substance at a level, or human impact, that would pose a risk to beneficial uses. Risks would be manifested, for example, through human health impacts, the increased occurrence of fish kills and algal blooms, excessive growth of</p>	<p>Environmental protection</p> <p>Risks to/associated with water resources</p>	✓		<p>The environmental quality objectives, which must be complied with, help to further WSC objectives furthered, particularly environmental protection of Victoria's water resources.</p> <p>This clause of the SEPP also provides for the identification of risks to beneficial uses, a number of which are consistent with WSC</p>



ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
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			<p>aquatic plants, sedimentation, loss of biodiversity and environmental flows, loss of cultural and spiritual values, objectionable odours, colours, taints, visible floating material, foam, oil or grease or dirty water.</p> <p>The environmental quality objectives describe the level of environmental quality needed, in most surface waters, to avoid risks to beneficial uses and to protect them. If an objective is not attained, the beneficial uses are likely to be at risk. The non-attainment of an objective will trigger further investigation to assess risks to beneficial uses. If a risk is posed to beneficial uses, mitigating actions need to be implemented.</p>				principles.
		PART VI: ATTAINMENT PROGRAM					
		13	<p>General responsibilities for implementing the Policy</p> <p>While the EPA is responsible for ensuring the overall implementation of the Policy, its implementation on a daily basis is the shared responsibility of protection agencies, businesses and communities</p>	<p>Institutional framework and governance</p> <p>Environmental protection</p>	✓		The SEPP establishes a comprehensive institutional framework to ensure a broad range of stakeholders are involved in implementing the environment protection policy for Victoria's waters. This framework could help to support and further WSC principles.
		14 - 23	<p>Identification of bodies that collectively have responsibility for implementing the Policy:</p> <ul style="list-style-type: none"> <li>- EPA</li> <li>- Catchment Management Authorities</li> <li>- Regional Coastal Boards</li> <li>- Municipal councils</li> </ul>	<p>Institutional framework and governance</p> <p>Environmental protection</p>	✓		The SEPP establishes a comprehensive institutional framework to ensure a broad range of stakeholders are involved in implementing the environment protection policy for Victoria's waters. This framework could help to support and further WSC principles.

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			<ul style="list-style-type: none"> <li>- Water authorities</li> <li>- Water authorities</li> <li>- DSE and DPI (Now DEPI)</li> <li>- Parks Victoria</li> <li>- Industry sectors</li> <li>- Communities</li> </ul>				
		WASTE AND WASTEWATER MANAGEMENT					
		31	<p>Management of wastewater re-use and recycling</p> <p>It is important that the re-use and recycling of wastewater is sustainable and does not pose an environmental risk to the beneficial uses of surface waters and groundwaters. To enable this, wastewater re-use and recycling needs to be consistent with guidance from the Environment Protection Authority, including that provided in the Guidelines for Environmental Management – Use of Reclaimed Water (2002) as amended.</p> <p>If the Environment Protection Authority is satisfied that wastewater can be treated and managed to a level that will protect beneficial uses, the discharge of that wastewater to surface waters to provide water for the environment or other uses, is an acceptable form of re-use. The delivery of this water should consider such factors as seasonality, temperature and discharge rate.</p>	<p>Alternative water source projects</p> <p>Environmental protection</p> <p>Risks to/associated with water resources</p>		✓	<p>The SEPP specifically refers to the re-use and recycling of wastewater. It requires that such projects do not pose environmental risks to beneficial uses.</p> <p>It is possible that application of the SEPP could hinder uptake re-use/recycling projects involving wastewater if environmental protection concerns are considered to dominate over the need to invest in alternative water source.</p> <p>The SEPP requires that wastewater re-use and recycling must be consistent with guidance from the Environment Protection Authority, including that provided in the Guidelines for Environmental Management – Use of Reclaimed Water (2002). However, these Guidelines are not legally binding.</p>
		32	<p>On-site domestic wastewater management</p> <p>On-site domestic wastewater need to be managed to prevent the transport of nutrients, pathogens</p>	<p>Alternative water source projects</p> <p>Environmental protection</p>		✓	<p>The SEPP specifically refers to the environmental risks associated with on-site domestic wastewater.</p>





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			<p>and other pollutants to surface waters and to prevent any impacts on groundwater beneficial uses. To enable this:</p> <p>(1) occupiers of premises with an on-site domestic wastewater system need to manage that system in accordance with permit conditions and the Code of Practice – Septic Tanks On-site Domestic Wastewater Management (2003), as amended. Occupiers also need to regularly assess the performance of their system against permit conditions.</p> <p>(2) municipal councils need to:</p> <p>(a) prior to approving a development, assess the suitability of land for on-site domestic wastewater systems. To assist in this, the Environment Protection Authority will provide guidance including that in Land Capability Assessment for Onsite Domestic Wastewater Management (2001), as amended;</p> <p>(b) ensure that sewerage is provided at the time of sub-division, if the use of on-site domestic wastewater systems would result in wastewater being discharged beyond allotment boundaries or would impact on groundwater beneficial uses;</p> <p>(c) ensure that permits are consistent with guidance provided by the Environment Protection Authority, including that provided in the Code of Practice – Septic Tanks On-site Domestic Wastewater Management (2003), as amended;</p> <p>(d) work with the Environment Protection Authority to identify existing unsewered allotments which are not capable of preventing the discharge of wastewater beyond allotment boundaries, or preventing impacts on groundwater beneficial uses; and</p>	Risks to/associated with water resources			<p>The SEPP includes a requirement for occupiers to comply with the Code of Practice – Septic Tanks On-site Domestic Wastewater Management (2003) to help manage these risks. This Code is not legally binding. Moreover, the Code only applies to relatively small scale onsite domestic wastewater systems. The application of the normal environmental protection regime under the Environment Protection Act 1970 could deter uptake of larger scale onsite non-domestic (industrial) wastewater systems.</p> <p>The SEPP also includes a requirement imposed on councils to assess suitability of land for onsite domestic wastewater management according to the Land Capability Assessment for Onsite Domestic Wastewater Management (2001), However, this document is in the form of guidance only and is not legally binding.</p> <p>It is possible that application of the SEPP could hinder uptake of onsite domestic re-use/recycling projects involving wastewater if environmental protection concerns are considered to dominate over the need to invest in alternative water source.</p>





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			(e) where relevant, develop and implement a domestic wastewater management plan, in conjunction with water authorities and communities.				
		40	<p>Water conservation</p> <p>The protection of beneficial uses requires water of adequate quality and quantity. To conserve the use of potable water and ensure a sustainable water supply for all beneficial uses:</p> <p>(1) protection agencies, particularly water authorities and municipal councils, need to work with communities and businesses to implement water saving practices and measures, particularly for new developments; and</p> <p>(2) the Environment Protection Authority needs to work with protection agencies, communities and businesses to ensure that re-use and recycling of wastewater is maximised.</p>	<p>Alternative water source projects</p> <p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Research and raising awareness</p> <p>Institutional framework and governance</p>	✓		This clause of the SEPP supports WSC initiatives, particularly the conservation and sustainable use of water and alternative water source projects. In addition, it suggests establishment of a collaborative framework between the various agencies and entities involved to ensure that water conservation occurs and the re-use and recycling of wastewater is maximised.
		41	<p>Water allocations and environmental flows</p> <p>To protect aquatic ecosystems, adequate environmental flows need to be provided to waterways, wetlands, lakes and estuaries. To enable this:</p> <p>(1) relevant protection agencies, particularly relevant water authorities, DSE and catchment management authorities need to work with other protection agencies, businesses and communities to develop and implement measures to provide environmental flows;</p> <p>(2) no increased allocation from any river, stream, lake, wetland or estuary should be approved unless it is consistent with the Water Act 1989 and is</p>	<p>Environmental protection</p> <p>Institutional framework and governance</p>	✓		This clause of the SEPP supports WSC initiatives, particularly environmental protection of water resources. In addition, it refers to a collaborative framework between the various agencies and entities involved to ensure that environmental protection of water resources occurs.



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			<p>subject to a process which is designed to provide environmental flows;</p> <p>(3) DSE will work with catchment management authorities, relevant water authorities and the Environment Protection Authority to develop a program to review and periodically independently audit the provision of environmental flows and their effectiveness in protecting beneficial uses.</p>				
		45	<p>Groundwater management</p> <p>In accordance with State environment protection policy (Groundwaters of Victoria), catchment activities should not pose an environmental risk to groundwater beneficial uses. Conversely, groundwater managers and those who use groundwater need to ensure that their activities do not pose an environmental risk to surface water beneficial uses, particularly through the excessive extraction of water and the subsequent prevention of surface water environmental flows, and through reducing the quality of adjoining surface water.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Risks to/associated with water resources</p>	✓		<p>This clause of the SEPP supports WSC initiatives, particularly conservation and sustainable use of water, and environmental protection of water resources.</p> <p>This clause of the SEPP also refers to environmental risks posed to Victoria's groundwaters. In this regard, reference is made to the SEPP (Groundwaters of Victoria), which is considered below.</p>
		46	<p>Urban stormwater</p> <p>Artificial stormwater drains and artificial stormwater management wetlands need to be managed for the purposes for which they were constructed (see clause 10). They need to be designed and managed so that their waters are not harmful to humans or have unacceptable impacts on animals, and so that the impacts of flow, sediments, nutrients, toxicants, litter and other pollutants on surface waters are minimised. To enable this, the Environment Protection Authority and relevant protection agencies will:</p> <p>(1) support municipal councils in developing stormwater management plans and in</p>	<p>Alternative water source projects</p> <p>Environmental protection</p>		✓	<p>This clause of the SEPP refers to waters in stormwater drains. The emphasis is on protecting the potential adverse environmental impacts of water in these drains, rather than treating stormwater as a resource. This may deter the uptake of alternative water source projects, particularly those involving harvesting and re-use of stormwater from drains.</p> <p>This clause of the SEPP refers to Best Practice Environmental Management Guidelines for Urban Stormwater (1999). However, these Guidelines are not binding.</p>

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			<p>implementing effective management practices to minimise the generation and transport of pollutants, particularly from new developments and drainage systems;</p> <p>(2) provide guidance on practices to minimise the impacts of urban stormwater including that provided in the Best Practice Environmental Management Guidelines for Urban Stormwater (1999) as amended;</p> <p>(3) work with municipal councils, businesses and communities to prevent wastewater discharges to stormwater drains;</p> <p>(4) assist municipal to monitor and report to the community and relevant stakeholders on the impact of stormwater drains on surface waters, on a priority basis as identified through stormwater management plans;</p> <p>(5) work with municipal councils and the Department of Infrastructure to ensure new developments include effective practices to manage stormwater runoff volumes and minimise runoff of pollutants in stormwater; and</p> <p>(6) assist municipal councils to provide to communities and businesses, education and awareness raising material on stormwater management and pollution avoidance measures.</p>				
10.	State Environment Protection Policy (Groundwaters of Victoria)	State environment protection policies are made pursuant to the Environment Protection Act 1970. They constitute subordinate legislation and are aimed at providing more detailed requirements and guidance in relation to the application of the Act. In particular, SEPPs specify standards for protection of beneficial uses and the maintenance of the quality of the environment. This SEPP aims to help protect groundwater by providing a framework of agreed environmental outcomes and strategic directions for protecting Victoria's water. The failure to comply with SEPPs is an offence under the EP Act. Nevertheless, the SEPP is not prescriptive. Rather, it offers considerable flexibility in how actions will be implemented to achieve the environmental outcomes specified in the SEPP.					
		Part I - PRELIMINARY					



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		5(2)	<p>Policy goal and principles</p> <p>Principles upon which the policy is based are:</p> <p>(a) Groundwater is an undervalued resource and all Victorians share the responsibility to protect groundwater;</p> <p>(b) the protection of groundwater and aquifers is fundamental to the protection of the environmental quality of surface waters</p> <p>(c) groundwater and aquifers should be protected to the greatest extent practicable from serious or irreversible damage arising from human activity; and</p> <p>(d) the principles of environmental policy in the InterGovernmental Agreement on the Environment, including –</p> <p>(i) polluter pays: those who generate pollution and waste should bear the cost of containment, avoidance or abatement;</p> <p>(ii) intergenerational equity: the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations; and</p> <p>(iii) precautionary principle: where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.</p>	<p>Alternative water source projects</p> <p>Environmental protection</p>		✓	<p>Importantly, this clause of the SEPP notes that groundwater is an undervalued resource and refers to the need to protect this resource. However, it is implicit that the emphasis is on environmental protection rather than protection for use of groundwater in the context of alternative water source projects, particularly managed aquifer recharge.</p>
		PART III – BENEFICIAL USES TO BE PROTECTED					

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		9	Beneficial uses for each segment of the water environment are listed in the SEPP.	Alternative water source projects Environmental protection	✓		The beneficial uses listed in the SEPP include maintenance of ecosystems, potable water supply, use for agriculture, parks, gardens, stock, industry and buildings.  These broad beneficial uses could support a variety of alternative water source projects, which utilised managed aquifer recharge.
		10	The levels of groundwater quality required to protect beneficial uses are specified in the SEPP.	Environmental protection	✓		The quality objectives, which must be complied with, help to further WSC objectives, particularly environmental protection of Victoria's water resources.
PART V – ATTAINMENT PROGRAM							
		20	Direct waste discharge to groundwater  There must not be any direct discharge of waste to any aquifer by means of a bore, underground mine workings, infiltration basin, evaporation basin or other similar structures, except for the purpose of –  (1) aquifer recharge, irrigation drainage, backfilling of underground mine workings with tailings, or stormwater disposal, where the relevant protection agency is satisfied that the groundwater quality objectives will be met and that there will be no detriment to any beneficial use of groundwater, land or surface waters; or  (2) groundwater remediation projects involving the injection of uncontaminated water or the re-injection of treated water to the aquifer, where the Authority is satisfied that –  (a) the groundwater quality objectives will be met	Environmental protection	✓		This clause of the SEPP emphasises environmental protection of groundwater, which is supportive of WSC principles.



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			at the completion of the project; and  (b) there will be no detriment to any beneficial use of groundwater, land or surface waters beyond the boundaries of the premises on which the project is being conducted.				
		24	Diffuse Sources  Where an activity has the potential to be or to cause a diffuse source of groundwater pollution, the activity must be consistent with current best practice of with any relevant best practice environmental management guidelines adopted by the Authority.	Environmental protection	✓		This clause of the SEPP emphasises environmental protection of groundwater, which is supportive of WSC principles.
		27	Codes of practice and guidelines  (1) In co-operation with relevant protection agencies, individuals and organisations, the Authority will initiate and participate in the development and review of codes of practice and guidelines aimed at minimising the impact of activities that are detrimental or potentially detrimental to groundwater quality.  (2) The Authority will make publicly available a list and copies of the guidelines and codes of best practice approved by the Authority which are referred to in the SEPP.	Environmental protection	✓		The EPA has power to develop a Code, which could help to promote WSC principles in relation to groundwater. However, as yet, the EPA has not issued a Code in relation to groundwater.
11.	Catchment and Land Protection Act 1994	The Catchment and Land Protection Act 1994 establishes a framework for the integrated management and protection of catchments. Among other things, the Act provides for the development of regional catchment management strategies, which public authorities must have regard to. Regional catchment strategies are prepared upon recommendation of Catchment Management Authorities and may be incorporated into State environment protection policies and planning schemes. These strategies may have an impact on downstream access and use of water resources.					
		PART 1 - PRELIMINARY					

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		s. 4	<p>Objectives of the Act</p> <p>The objectives of the Act are broad and include the following:</p> <ul style="list-style-type: none"> <li>- to establish a framework for the integrated and co-ordinated management of catchments which will—</li> <li>(i) maintain and enhance long-term land productivity while also conserving the environment; and</li> <li>(ii) aim to ensure that the quality of the State's land and water resources and their associated plant and animal life are maintained and enhanced;</li> <li>- to establish processes to encourage and support participation of land holders, resource managers and other members of the community in catchment management and land protection.</li> </ul>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		The objectives of the Act are broad and are consistent with WSC principles, including conservation and sustainable use of water and environmental protection.
		PART 4 – CATCHMENT PLANNING					
		ss.23-24	<p>Contents of a regional catchment strategy</p> <p>A regional catchment strategy is a document that indicates how catchments in a region are to be managed.</p> <p>Among other things, a regional catchment strategy must:</p> <ul style="list-style-type: none"> <li>- assess the land and water resources of the catchments in the region and how they are used</li> <li>- identify objectives for the quality of the land and water resources of the catchments in the region</li> <li>- set a program of measures to promote improved</li> </ul>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		A regional catchment strategy could be an important vehicle to further WSC principles, where there may be downstream impacts.





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			use of land and water resources and to treat land degradation				
		s.25	<p>Status of strategy</p> <p>(1) An Authority that prepares a regional catchment strategy may recommend to a planning authority under the Planning and Environment Act 1987 amendments to a planning scheme to give effect to the strategy.</p> <p>(2) Without limiting the Environment Protection Act 1970, a regional catchment strategy may be incorporated in a State environment protection policy, in whole or in part, and with or without changes.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		A regional catchment strategy could be an important vehicle to further WSC principles, where there may be downstream impacts.
12.	Water Efficiency Labelling and Standards Act 2005	The Water Efficiency Labelling and Standards Scheme (WELS Scheme) is a joint initiative of the Australian, State, and Territory governments. The federal government enacted the Water Efficiency Labelling and Standards (WELS) Act 2004 to provide for water efficiency labelling and to set out water efficiency standards. The States then passed legislation to implement this Act. Section 18 of the Commonwealth Act enables the Commonwealth Minister to determine that water-use or water-saving products are WELS products and set out the WELS standard for the products. Section 19 of the Commonwealth Act states what must be set out in WELS standards and enables WELS standards to require products to be registered, and registered products to be WELS labelled, for the purposes of specified supplies of the product. The Victorian Act needs to be read in conjunction with the Commonwealth Act. The primary aims underlying the Victorian Act are to conserve water supplies by reducing water consumption, to promote the adoption of efficient and effective water-use and water-saving technologies and to provide information for purchasers of water-use and water-saving products.					
		PART 1 - PRELIMINARY					
		s. 3	<p>Objects of the Act are:</p> <ul style="list-style-type: none"> <li>- to conserve water supplies by reducing water consumption;</li> <li>- to provide information for purchasers of water-use and water-saving products;</li> <li>- to promote the adoption of efficient and effective water-use and water-saving technologies.</li> </ul>	Conservation and sustainable use of water resources	✓		The objectives underlying the Victorian Act are clearly in line with WSC principles.



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		PART 7 – OFFENCES RELATING TO THE SUPPLY OF WELS PRODUCTS					
		s. 33	<p>Registration requirement</p> <p>A person commits an offence if—</p> <p>(a) the person supplies a WELS product; and</p> <p>(b) the applicable WELS standard requires the product to be registered for the purposes of the supply; and</p> <p>(c) the product is not registered.</p>	Conservation and sustainable use of water resources	✓		This provision helps to ensure that the objectives underlying the WELS scheme – which are consistent with WSC principles – are upheld.
		s. 34	<p>Labelling registered products</p> <p>A person commits an offence if—</p> <p>(a) the person supplies a WELS product; and</p> <p>(b) the product is registered; and</p> <p>(c) the applicable WELS standard requires registered products to be WELS-labelled for the purposes of the supply; and</p> <p>(d) the product is not WELS-labelled.</p>	Conservation and sustainable use of water resources	✓		This provision helps to ensure that the objectives underlying the WELS scheme – which are consistent with WSC principles – are upheld.
		s.35	<p>Minimum water efficiency—products required to be registered</p> <p>A person commits an offence if—</p> <p>(a) the person supplies a WELS product; and</p> <p>(b) the applicable WELS standard requires the product—</p> <p>(i) to be registered for the purposes of the supply;</p>	Conservation and sustainable use of water resources	✓		This provision helps to ensure that the objectives underlying the WELS scheme – which are consistent with WSC principles – are upheld.



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			and  (ii) to comply with minimum water efficiency requirements for the purposes of the supply; and  (c) the product does not comply with those minimum water efficiency requirements.				
		s.36	Minimum general performance—products required to be registered  A person commits an offence if—  (a) the person supplies a WELS product; and  (b) the applicable WELS standard requires the product—  (i) to be registered for the purposes of the supply; and  ii) to comply with minimum general performance requirements for the purposes of the supply; and  (c) the product does not comply with those minimum general performance requirements.	Conservation and sustainable use of water resources	✓		This provision helps to ensure that the objectives underlying the WELS scheme – which are consistent with WSC principles – are upheld.
		s. 37	Misuse of WELS standards and information  A person commits an offence if the person—  (a) supplies a WELS product; and  (b) uses a WELS standard, or information included in a WELS standard, for, or in relation to, the supply of the product; and  (c) uses the standard, or information, in a manner that is inconsistent with the standard.	Conservation and sustainable use of water resources	✓		This provision helps to ensure that the objectives underlying the WELS scheme – which are consistent with WSC principles – are upheld.

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		s. 38	Information inconsistent with WELS standards A person commits an offence if—  (a) the person uses information for, or in relation to, the supply of a WELS product; and  (b) the information is inconsistent with the information contained in the applicable WELS standard for the product.	Conservation and sustainable use of water resources	✓		This provision helps to ensure that the objectives underlying the WELS scheme – which are consistent with WSC principles – are upheld.
13.	Local Government Act 1989	The Local Government Act 1989 sets out the purpose, functions and powers conferred on local government in Victoria. A council is elected to provide leadership for the good governance of the municipal district and the local community.					
		PART 1A – LOCAL GOVERNMENT CHARTER					
		s.3C	Objectives of a Council  (1) The primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.  (2) In seeking to achieve its primary objective, a Council must have regard to the following facilitating objectives—  (a) to promote the social, economic and environmental viability and sustainability of the municipal district;  (b) to ensure that resources are used efficiently and effectively and services are provided in accordance with the Best Value Principles to best meet the needs of the local community;  (c) to improve the overall quality of life of people in	Conservation and sustainable use of water resources  Alternative water source projects	✓		The objectives of a council are broad, including environmental viability and sustainability, efficient use of resources and accessibility of services and facilities. These objectives could be interpreted as consistent with WSC principles and could provide justification for councils to get involved with conservation of water resources and, potentially, alternative water source projects.



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			<p>the local community;</p> <p>(d) to promote appropriate business and employment opportunities;</p> <p>(e) to ensure that services and facilities provided by the Council are accessible and equitable;</p> <p>(f) to ensure the equitable imposition of rates and charges;</p> <p>(g) to ensure transparency and accountability in Council decision making.</p>				
		PART 9 – SPECIFIC FUNCTIONS, POWERS AND RESTRICTIONS					
		s. 198	<p>Sewers and drains vested in the Council</p> <p>The following are vested in the Council and are under the management and control of the Council—</p> <p>(a) public sewers and drains within the municipal district;</p> <p>(b) sewers and drains in and under roads in the municipal district;</p> <p>(c) Works and materials relating to (a) and (b).</p> <p>This section does not apply to any sewers and drains vested in another Council or a Minister, the Crown or any public body.</p>	Alternative water source projects	✓		Councils can play an important role in supporting alternative water source projects – particularly, involving stormwater – given their management and control of local drains and sewers.
14.	Building Code of Australia	The Building Code of Australia is a national building standards code that has been enacted in all Australian States and Territories. In Victoria, it applies pursuant to the Building Regulations 2006, which are made under the Building Act 1993. The Building Code identifies the standards that apply to the design and construction of buildings depending upon the use or intended use of the building in question. Notably, the Building Code is performance-based. Therefore, there is some flexibility regarding the way in which the Building Code can be applied when the performance requirements are relied upon. The Building Code also contains prescriptive 'deemed-to-satisfy' provisions, which may be relied upon instead of the performance requirements. The Building Commission is the regulator under the Building Act 1993.					

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		PART B1 – STRUCTURAL PROVISIONS (VOLUME 1)					
		B1.6	A Class 2 or 3 building, Class 9a health-care building, Class 9c aged-care building or Class 4 part of a building, in a flood hazard area must comply with the ABCB Standard for Construction of Buildings in Flood Hazard Areas.	Flooding	✓		Notably, this requirement does not apply to all classes of buildings. In addition, for those buildings that are covered by this requirement, the extent to which they are protected from flood risks will depend upon whether the ABCB Standard for Construction of Buildings in Flood Hazard Areas is capable of responding to future flood risks.
15.	Plumbing Code of Australia	The Plumbing Code of Australia is a national plumbing standards code that has been enacted in all Australian States and Territories. It is Volume 3 of the Building Code of Australia. In Victoria, the Plumbing Code applies pursuant to the Plumbing Regulations 2008 made under the Building Act 1993. The Plumbing Code regulates the design, construction and installation of a broad range of water, wastewater and fire services. Notably, the Plumbing Code (like the Building Code) is performance-based. Therefore, there is some flexibility regarding the way in which the Plumbing Code can be applied when the performance requirements are relied upon. The Plumbing Code also contains prescriptive 'deemed-to-satisfy' provisions, which may be relied upon instead of the performance requirements. The Building Commission is the regulator under the Building Act 1993.					
		SECTION B – WATER SERVICES					
		PART B3 – NON-DRINKING WATER SERVICES					
		B3.0	<p>Scope</p> <p>This Part sets out the requirements for the design, construction, installation, replacement, repair, alteration and maintenance of any part of a non-drinking water service of a property from the point of connection to the points of discharge.</p>	Alternative water source projects	?	?	The Plumbing Code is clearly relevant to WSC initiatives, particularly alternative water source projects. However, because the Plumbing Code is performance-based, it is unclear how it will be applied in practice.
		BO3	<p>Objective</p> <p>The Objective of this Part is to-</p> <p>(a) safeguard people from illness, injury or loss (including loss of amenity) due to the failure of a</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Risks to health</p>	?	?	A number of the objectives underlying this aspect of the Plumbing Code are consistent with WSC objectives – particularly, conservation and sustainable use of water and environmental protection. However, the reference to risks to health could deter uptake of alternative water

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
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			non-drinking water installation; and (b) ensure that a non-drinking water installation (including an installation provided for use by people with a disability) is suitable; and (c) conserve water and energy; and (d) safeguard the environment; and (e) safeguard public and private infrastructure; and (f) ensure that a non-drinking water installation throughout its serviceable life will continue to satisfy the requirements of Objectives (a) to (e).				source projects.
		BP3.3	Performance requirement for non-drinking water service installations A non-drinking water service must be designed, constructed and installed in such a manner as to- (a) avoid the likelihood of contamination of drinking water, and (b) provide non-drinking water to fixtures and appliances at flow rates and pressures which are adequate for the correct functioning of those fixtures and appliances under normal conditions and, in a manner that does not create undue noise; and (c) avoid the likelihood of leakage or failure including uncontrolled discharges; and (d) allow adequate access for maintenance of mechanical components and operational controls; and (e) allow the system, appliances and backflow prevention devices to be isolated for testing and	Alternative water source projects Risks to health		✓	This performance requirement emphasises risks to health in the context of non-drinking water installations, which may deter the uptake of alternative water source projects (particularly, those involving recycled water or wastewater).

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			maintenance.				
		B3.2	<p>Deemed-to-Satisfy Provisions</p> <p>(8) The distribution of non-drinking water must be limited to the following uses-</p> <p>(i) garden watering; and</p> <p>(ii) toilet and urinal flushing ; and</p> <p>(iii) clothes washing; and</p> <p>(iv) vehicle washing; and</p> <p>(v) path/wall washing; and</p> <p>(vi) industrial purposes; and</p> <p>(vii) fire-fighting; and</p> <p>(viii) dust suppression; and.</p> <p>(ix) any other use authorised by the authority having jurisdiction.</p> <p>(b) The design, construction, installation, replacement, repair, alteration and maintenance of a non-drinking water service must be in accordance with AS/NZS 3500.1 or Section 2 of AS/NZS 3500.5 as appropriate.</p>	<p>Alternative water source projects</p> <p>Risks to health</p>		✓	<p>This deemed-to-satisfy requirement limits the application of non-drinking water installations, which may deter the uptake of alternative water source projects (particular, those involving recycled water or wastewater).</p> <p>The deemed-to-satisfy requirements require non-drinking water installations to comply with AS/NZS 3500.1 or Section 2 of AS/NZS 3500.5. Reference to these documents may be necessary to assess whether or not these standards may also hinder WSC.</p>
		SECTION D – STORMWATER DRAINAGE SYSTEMS					
		PART D1 – ROOF DRAINAGE SYSTEMS					
		D1.0	<p>Scope</p> <p>This Part sets out the requirements for the design,</p>	<p>Alternative water source projects</p>	?	?	<p>The Plumbing Code is clearly relevant to WSC initiatives, particularly alternative water source projects involving stormwater from roofs.</p>





ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			construction, installation, replacement, repair, alteration and maintenance of any part of a roof drainage system.				However, because the Plumbing Code is performance-based, it is unclear how it will be applied in practice.
		D01	<p>Objectives</p> <p>The Objective of this Part is to-</p> <p>(a) safeguard people from illness, injury or loss (including loss of amenity) due to the failure of a roof drainage installation; and</p> <p>(b) ensure that a roof drainage installation is adequate; and</p> <p>(c) conserve water and energy; and</p> <p>(d) safeguard the environment; and</p> <p>(e) safeguard public and private infrastructure; and</p> <p>(f) ensure that a roof drainage installation is designed and is capable of being maintained so that throughout its serviceable life it will continue to satisfy Objectives (a) to (e).</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Risks to health</p>	?	?	A number of the objectives underlying this aspect of the Plumbing Code are consistent with WSC objectives – particularly, conservation and sustainable use of water and environmental protection. However, the reference to risks to health could deter uptake of alternative water source projects.
		DP1.1	<p>Performance requirement for roof drainage systems</p> <p>Roof drainage systems must dispose of stormwater flows from rainfall events having an average recurrence interval appropriate to the importance of the building and the severity of potential damage to property, loss of amenity, illness or injury that would result from the failure of such a system.</p>	Alternative water source projects	?	?	This aspect of the Plumbing Code emphasises removal of the stormwater to prevent loss and injury. There is no reference to the resource potential of stormwater. Therefore, it is unclear whether or not this provision could be relied upon to support alternative water source projects, particularly those involving harvesting and re-use of stormwater from roofs.
		D1.2	<p>Deemed-to-Satisfy Provisions</p> <p>The design, construction, installation, replacement.</p>	Alternative water source projects	?	?	The deemed-to-satisfy requirements require non-drinking water installations to comply with

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
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			repair, alteration and maintenance of a roof drainage system must be in accordance with AS/NZS 3500.3 or Section 5 of AS/NZS 3500.5 as appropriate.				AS/NZS 3500.3 or Section 5 of AS/NZS 3500.5. Reference to these documents may be necessary to assess whether or not the relevant standards may also hinder WSC.
		PART D2 – SURFACE AND SUBSURFACE DRAINAGE SYSTEMS					
		D2.0	<p>Scope</p> <p>This Part sets out the requirements for the design, construction, installation, replacement, repair, alteration and maintenance of any part of a surface drainage system and subsurface drainage system to the point of connection.</p>	Alternative water source projects	?	?	The Plumbing Code is clearly relevant to WSC initiatives, particularly alternative water source projects involving stormwater in drains. However, because the Plumbing Code is performance-based, it is unclear how it will be applied in practice.
		D02	<p>Objectives</p> <p>The Objective of this Part is to-</p> <p>(a) safeguard people from illness, injury or loss (including loss of amenity) due to the failure of a stormwater drainage installation;</p> <p>(b) ensure that a stormwater drainage installation is adequate; and</p> <p>(c) conserve water and energy; and</p> <p>(d) safeguard the environment; and</p> <p>(e) safeguard public and private infrastructure; and</p> <p>(f) ensure that a stormwater drainage installation is designed and is capable of being maintained so that throughout its serviceable life it will continue to satisfy Objectives (a) to (e).</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Risks to health</p>	?	?	A number of the objectives underlying this aspect of the Plumbing Code are consistent with WSC objectives – particularly, conservation and sustainable use of water and environmental protection. However, the reference to risks to health could deter uptake of alternative water source projects.
		DP2.1	Performance requirement for surface drainage	Alternative water source	?	?	This aspect of the Plumbing Code emphasises removal of the stormwater to prevent loss and

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			systems Surface drainage systems must dispose of stormwater flows from rainfall events having an average recurrence interval appropriate to the importance of the site and the severity of potential damage to property, loss of amenity, illness or injury that would result from the failure of such a system.	projects			injury. There is no reference to the resource potential of stormwater. Therefore, it is unclear whether or not this provision could be relied upon to support alternative water source projects, particularly those involving harvesting and re-use of stormwater from drains.
		D2.2	Deemed-to-Satisfy Provisions The design, construction, installation, replacement, repair, alteration and maintenance of a stormwater drainage system must be in accordance with AS/NZS 3500.3.	Alternative water source projects	?	?	The deemed-to-satisfy requirements require non-drinking water installations to comply with AS/NZS 3500.5. Reference to this document may be necessary to assess whether or not the relevant standards may also hinder WSC.
		SECTION F – ON-SITE WASTEWATER SYSTEMS					
		PART F1 – ON-SITE WASTEWATER MANAGEMENT SYSTEMS					
		F1.0	Scope This Part sets out the requirements for the design, construction, installation, replacement, repair, alteration and maintenance of any part of an on-site wastewater management system.	Alternative water source projects	?	?	The Plumbing Code is clearly relevant to WSC initiatives, particularly alternative water source projects involving onsite wastewater treatment and re-use facilities. However, because the Plumbing Code is performance-based, it is unclear how it will be applied in practice.
		FO1	Objectives The Objective of this Part is to- (a) safeguard people from illness, injury or loss (including loss of amenity) due to the failure of an on-site wastewater management system installation; and (b) ensure that an on-site wastewater management	Conservation and sustainable use of water resources Environmental protection Risks to health	?	?	A number of the objectives underlying this aspect of the Plumbing Code are consistent with WSC objectives – particularly, conservation and sustainable use of water and environmental protection. However, the reference to risks to health could deter uptake of alternative water source projects.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			system installation (including an installation provided for use by people with a disability) is suitable; and  (c) conserve water and energy; and  (d) safeguard the environment; and  (e) safeguard public and private infrastructure; and  (f) ensure that an on-site wastewater management system installation is designed and is capable of being maintained so that throughout its serviceable life it will continue to satisfy Objectives (a) to (e).				
		FP1.1	Performance requirements  On-site wastewater management systems must be designed, constructed, installed and maintained in such a manner as to-  (a) protect public health by ensuring that-  (i) all discharges comply with the requirements of the authority having jurisdiction; and  (ii) risks associated with the discharge of treated wastewater and or the end product from a composting toilet to the environment are minimised; and  (b) protect the environment by ensuring that-  (i) environmental quality objectives set by the authority having jurisdiction are attained; and  (ii) surface and ground water are not polluted; and  (iii) soil productivity is maintained or enhanced; and  (iv) adverse cumulative environmental effects	Alternative water source projects  Environmental protection  Risks to health	?	?	This aspect of the Plumbing Code emphasises risks to health, the environment and public amenity regarding onsite wastewater management systems. Therefore, it is unclear whether or not this provision could be relied upon to support alternative water source projects, particularly those involving wastewater treatment and re-use. However, FP1.4 does refer to the re-use of wastewater when referring to technical design, construction and installation requirements.



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					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			<p>comply with the relevant environmental requirements; and</p> <p>(c) minimise the impacts on and maintain and enhance community amenity by ensuring that-</p> <p>(i) on-site wastewater management systems are managed so as to achieve sustainable long term performance; and</p> <p>(ii) the on-site wastewater management system design and its implementation contribute to improving and sustaining aesthetic values within individual properties and groups of properties; and</p> <p>(iii) the requirements of any community resource utilisation programme for the reuse of resources within wastewater are met; and</p> <p>(d) meet the requirements of the receiving Network Utility Operator for the acceptance of wastewater to sewers, as appropriate.</p>				
		F1.2	<p>Deemed-to-Satisfy Provisions</p> <p>The management of domestic on-site wastewater management systems and domestic land application systems must be in accordance with AS/NZS 1547.</p>	Alternative water source projects	?	?	The deemed-to-satisfy requirements require non-drinking water installations to comply with AS/NZS 1547. Reference to this document may be necessary to assess whether or not the relevant standards may also hinder WSC.
16.	Safe Drinking Water Act 2003	The Safe Drinking Water Act 2003 aims to ensure that all drinking water supplied in Victoria is safe for human consumption. 'Drinking water' is water intended for human consumption or connected with human consumption – for example, the preparation of food. The Act establishes a regulatory framework for drinking water quality, which includes a risk management framework for drinking water 'from catchment to tap' and includes a set of standards for key water quality criteria. The Act is applicable to a range of water suppliers, water storage managers and other statutory organisations that supply drinking water to the public. The Department of Health is currently undertaking a review of the Act. A discussion paper is due to be released in July-August 2013 and the new legislative regime is expected to be in place by 2015.					
		PART 2 – RISK MANAGEMENT PLANS					

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		ss. 1(2)(a), 3, 7, 8 and 9	<p>The Act requires water suppliers and water storage managers to prepare and implement plans to manage risks in relation to drinking water and some types of non-potable water.</p> <p>A 'water supplier' means any of the following that supplies drinking water or regulated water to the public -</p> <ul style="list-style-type: none"> <li>- an authority within the meaning of the Water Act 1989</li> <li>- Parks Victoria established under the Parks Victoria Act 1998</li> <li>- an Alpine Resort Management Board established under the Alpine Resorts (Management) Act 1997</li> <li>- any other person or body declared by the regulations to be a water</li> </ul> <p>A 'water storage manager' means –</p> <ul style="list-style-type: none"> <li>- Melbourne Water Corporation</li> <li>- a water corporation within the meaning of the Water Act 1989 (other than the Melbourne Water Corporation constituted under that Act) that supplies water to a water supplier;</li> <li>- any other person or body declared by the regulations to be a storage manager for the purposes of this Act</li> </ul> <p>A risk management plan:</p> <ul style="list-style-type: none"> <li>- contains a detailed description of the system of supply</li> <li>- identifies the risks to the quality of the water and the risks that may be posed by the quality of the</li> </ul>	<p>Alternative water source projects</p> <p>Risks to/associated with water resources</p> <p>Risks to health</p>		✓	This provision could hinder WSC initiatives (particularly alternative water source projects) depending upon requirements regarding the management of risks.



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					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			<p>water</p> <ul style="list-style-type: none"> <li>- assesses those risks</li> <li>- sets out the steps to be taken to manage those risks (including the development and implementation of preventative strategies)</li> <li>- contains any other matters required by the regulations.</li> </ul>				
		ss. 1(2)(c) and 17	The Act requires water suppliers to ensure that the drinking water they supply meets quality standards specified by the regulations.	<p>Alternative water source projects</p> <p>Risks to/associated with water resources</p> <p>Risks to health</p>		✓	<p>The standards are set out in Regulation 10 of the Safe Drinking Water Regulations (discussed below).</p> <p>This provision could hinder WSC initiatives (particularly alternative water source projects) depending upon requirements regarding the management of risks.</p>
		s. 20	<p>A water supplier may apply to the Minister to be exempted from a water quality standard as it applies to drinking water supplied by the water supplier.</p> <p>The Minister may approve an application for exemption if the Minister is satisfied on reasonable grounds that:</p> <ul style="list-style-type: none"> <li>- adequate measures are proposed to eliminate or minimise any risks to public health that may occur as a result of the approval of the application</li> <li>- the relevant community to which the water supplier supplies drinking water has been adequately consulted about the application</li> <li>- the likely benefits of approving the application outweigh the likely impacts (including the likely</li> </ul>	<p>Alternative water source projects</p> <p>Risks to health</p>	✓		An exemption for alternative water source projects may facilitate alternative water source projects.



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					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			costs).				
17.	Safe Drinking Water Regulations 2005	r.6	<p>For the purposes of s. 9(1)(e) of the Safe Drinking Water Act 2003, a risk management plan must contain matters including the following:</p> <ul style="list-style-type: none"> <li>- details of the activities undertaken, and measures taken, to manage hazards and risks to the quality of the water identified in the risk management plan, including the method by which the effectiveness of these activities and measures is verified</li> <li>- details of the features of the system of supply designed to assist in the management of risks to the quality of the water identified in the risk management plan, including the method by which the effectiveness of these features is verified</li> <li>- in the case of a water supplier, details of the procedures for consultation with water storage managers and other water suppliers for the purpose of achieving agreement on the hazards and risks to quality of the water supplied—                             <ul style="list-style-type: none"> <li>(i) to the water supplier by water storage managers or other water suppliers</li> <li>(ii) by the water supplier to other water suppliers</li> </ul> </li> <li>- details of procedures and management systems for—                             <ul style="list-style-type: none"> <li>(i) ensuring that the amount and purity of chemicals added to drinking water does not adversely affect the quality of that water or pose a risk to human health</li> <li>(ii) controlling any residue or chemical byproducts imparted to drinking water as a result of the addition of chemicals to water supplied for drinking</li> </ul> </li> </ul>	<p>Alternative water source projects</p> <p>Risks to/associated with water resources</p> <p>Risks to health</p>		✓	This provision could hinder WSC initiatives (particularly alternative water source projects) depending upon requirements regarding the management of risks.



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			<p>purposes</p> <ul style="list-style-type: none"> <li>- details of emergency management arrangements and procedures for dealing with an incident, event or emergency that may adversely affect the quality or safety of drinking water, or result in water being supplied that poses a risk to human health</li> </ul> <p>A risk management plan must address the following risks:</p> <ul style="list-style-type: none"> <li>- the risk to human health that arises from the presence in water of—</li> </ul> <ul style="list-style-type: none"> <li>(i) pathogenic micro-organisms</li> <li>(ii) inorganic chemicals, including inorganic disinfection by-products</li> <li>(iii) organic chemicals, including pesticides, pesticide residues and organic disinfection by-products</li> <li>(iv) radiological parameters</li> <li>(v) algal toxins</li> </ul> <ul style="list-style-type: none"> <li>- the risks arising from an incident or event that may cause the organisms, substances and matters referred to in the paragraph above to enter or be present in the system of supply of the water supplier or the water supplied by the water storage manager (as the case requires); and</li> <li>- the risk of transfer of the organisms substances and matters referred to in the paragraph above in water being supplied by the water supplier or water storage manager (as the case requires)</li> </ul>				
		r.10	For the purposes of section 17 of the Safe Drinking Water Act 2003, the quality standards specified for	Alternative water source		✓	This provision could hinder WSC initiatives (particularly alternative water source projects)

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			<p>drinking water supplied within a water sampling locality are—</p> <ul style="list-style-type: none"> <li>- if the drinking water contains a parameter specified in column 1 of the Table in Schedule 2 that the parameter not exceed the standard set out in column 3 of that Table opposite that parameter</li> <li>- if the drinking water contains an algal toxin, or any other pathogen, or any substance or chemical not specified in column 1 of the Table in Schedule 2, that the water not contain that toxin, pathogen, substance or chemical, whether alone or in combination with another toxin, pathogen, substance or chemical, in such amounts that may pose a risk to human health.</li> </ul>	<p>projects</p> <p>Risks to health</p>			depending upon requirements regarding the management of risks.
18.	Food Act 1984	One of the main objectives underlying the Food Act 1984 is to ensure that food for sale is safe and suitable for human consumption. Notably, the definition of 'food' in the Act is broad enough to cover water because the definition in section 4A includes: "Any substance or thing of a kind used or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared)". The Act potentially applies to retailers of water for potable use, including recycled/treated water.					
		PART II – OFFENCES RELATING TO FOOD					
		s.9	<p>Knowingly selling unsafe food</p> <p>A person must not sell food that the person knows is unsafe. A person who contravenes this section is guilty of an indictable offence and is liable to a penalty.</p>	<p>Alternative water source projects</p> <p>Risks to health</p>		✓	<p>s. 4D provides that food is 'unsafe' at a particular time if it would be likely to cause physical harm to a person who might later consume it.</p> <p>This provision could hinder WSC initiatives (particularly alternative water source projects) if the water is destined for human consumption and the risks to health are or could be relatively high.</p>
		s.9A	<p>Sale of unsafe food in other circumstances</p> <p>A person must not sell food that the person ought to reasonably to know is unsafe. A person who</p>	<p>Alternative water source projects</p>		✓	<p>This provision could hinder WSC initiatives (particularly alternative water source projects) if the water is destined for human consumption and the risks to health are or could be relatively</p>



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			contravene this section is guilty of an indictable offence and liable to pay a penalty.	Risks to health			high.
		s.11(2)	Handling and sale of unsafe food A person must not sell food that is unsafe.	Alternative water source projects Risks to health		✓	This provision could hinder WSC initiatives (particularly alternative water source projects) if the water is destined for human consumption and the risks to health are or could be relatively high.
		s.12(2) and (3)	Handling and sale of unsuitable food A person must not sell food that is unsuitable. For the purposes of this section, it is immaterial whether the food concerned is safe	Alternative water source projects Risks to health		✓	s. 4E provides that food is unsuitable if it is food that, among other things, contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food.  However, food is not unsuitable for the purposes of this Act for a number of reasons, including merely because it contains any matter or substance that is permitted by the Food Standards Code.  This provision could hinder WSC initiatives (particularly alternative water source projects) if the water is destined for human consumption and the risks to health are or could be relatively high.
		s.17E	Defence of due diligence  In any proceedings for an offence under this Part, it is a defence if it is proved that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence by the person or by another person under the person's control.  Without limiting the ways in which a person may satisfy the requirements of subsection (1), a person satisfies those requirements if it is proved—	Alternative water source projects Risks to health	✓		The limited defence available under s.17E may provide some encouragement/support for WSC initiatives, particularly alternative water source projects.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
			<p>(a) that the commission of the offence was due to—</p> <p>(i) an act or default of another person; or</p> <p>(ii) reliance on information supplied by another person; and</p> <p>(b) that—</p> <p>(i) the person carried out all such checks of the food concerned as were reasonable in all the circumstances; or</p> <p>(ii) it was reasonable in all the circumstances to rely on checks carried out by the person who supplied the food concerned to the person; and</p> <p>(c) that the person did not import the food into the jurisdiction from another country; and</p> <p>(d) in the case of an offence involving the sale of food, that—</p> <p>(i) the person sold the food in the same condition as when the person purchased it; or</p> <p>(ii) the person sold the food in a different condition to that in which the person purchased it, but that the difference did not result in any contravention of this Act; and</p> <p>(e) that the person did not know and had no reason to suspect at the time of commission of the alleged offence that the person's act or omission would constitute an offence under the relevant section.</p>				





