

Powers of Water Authorities and Service Providers



Powers of Water Authorities

- Subject to powers given or constraints imposed by legislation, a water authority has all the powers of an individual (s.550):
 - Enter into contracts and
 - Acquire, hold, deal with and dispose of property
- A water authority does not represent the State (s.550)



Legislation Impacting on Water Authorities

- *Water Act 2000*
- *Financial Administration and Audit Act 1977*
- *Financial Management Standard 1997*
- *Statutory Bodies Financial Arrangements Act 1982*



Legislation Impacting on Water Authorities

- Other legislation may also be relevant
- For more information, see the “Welcome Aboard” Publication

Powers Under the *Water Act*

- Make and levy rates and charges (ss.572 – 576)
- Take land (ss.577, 578)
- Employ people (s.584)
- Delegate powers (s.579)
- If a registered service provider, the powers in Chapter 3 of the *Water Act* for the provider's registered services

Rates

- Can be imposed if the water authority has an authority area (s.572(2)(b))
- Power to impose rates is subject to the limitation in s.573 about exempt land
- Rates may (but need not) be made and levied on a “property basis” (s.572(5))
- “Property basis” not defined in the *Water Act*



Land That is Exempt From Rates

- Some land is exempt from rates (s.573)
 - Unoccupied State land
 - Unallocated State land reserved for a public purpose
 - Land occupied by the State, other than land leased by the State from a person
 - Prescribed land

Charges

- Water authority can also make and levy charges on its customers or ratepayers (s.572(2)(a))
- A “customer” of a water authority, is a person, other than a ratepayer, for whom the authority carries out water activities
- If there is an authority area, the water authority is not limited to only levying rates on its ratepayers

Charges

- Water authorities may charge for providing connections to works (s.572(3))
- Charges may (but need not) be made on a volumetric basis (s.572(4))
- If using volumetric charging, s.583 may apply (identification and disclosure of cross subsidies)

Appeals Against Rates and Charges

- Chapter 6 of the *Water Act* sets out an internal review and appeal process for people dissatisfied with a category 2 water authority's decision about a rate or charge



Appeals Against Rates and Charges

- First step: the customer or ratepayer can apply to the chief executive officer of the water authority (“the reviewer”) for an “internal review” (s.862)
- Second step: if the applicant is not happy with the review decision, the applicant can appeal against the review decision to the Land Court (see Chapter 6, Part 3)

Internal Review

- Application for an internal review must be (s.862):
 - In the approved form and
 - Supported by enough information to enable the reviewer to decide the application
- Application must usually be made within 30 business days of notice of the decision being given (an extension can be granted) (s.863)

Review Decision

- The “review decision” must generally be made within 20 business days of receiving the application (s.864)
 - Confirm the original decision
 - Amend the original decision
 - Substitute another decision
- A “review notice” must be sent advising of the review decision, within 10 business days of making the review decision (s.864)



Review Notice

- The review notice must state (s.864):
 - The review decision
 - The reasons for the review decision (including findings on material questions of fact and the evidence or other material on which those findings were based)
 - Details of the applicant's appeal rights



Land Court Appeal

- If the applicant is not happy with the review decision, the applicant can appeal against the review decision to the Land Court (see Chapter 6, Part 3)
- A Notice of Appeal must be filed within 30 business days after the day the appellant receives notice of the review decision
- Land Court Rules apply for the appeal

Overdue Rates and Charges

- A water authority can charge interest on overdue rates and charges (s.574)
- The water authority can decide on the rate of interest to charge, provided it does not exceed:
 - 15%
 - Another maximum rate prescribed by regulation

Overdue Rates and Charges

- “Overdue” means the amount not paid when the rate or charge becomes payable, not the total amount originally charged or levied
- Any interest charged must be calculated as simple interest

Discounts for Rates and Charges

- A water authority can allow a discount for payment of a rate or charge (s.575)
- The water authority can decide on the discount amount or rate to allow, provided it does not exceed:
 - 15% of the rate or charge
 - Another percentage or amount prescribed by regulation

Recovering Rates and Charges

- A water authority may recover, as a debt due to the authority (s.576):
 - Overdue rates or charges
 - Interest payable on overdue rates or charges
- The debt can be recovered from the person on whom the rate or charge was made or levied



Power to Take Land

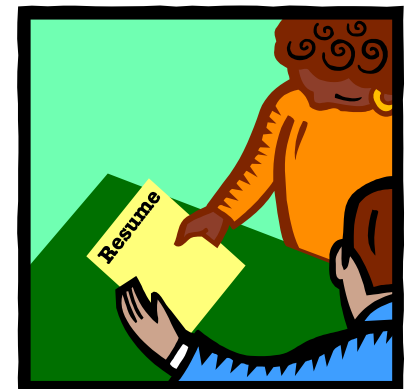
- A water authority may take land for carrying out works, and any other purpose, within the authority's main functions (s.578)
- “Main functions” (s.569):
 - The water activities decided by the authority
 - If the authority has an area, the water activities for the authority area

Power to Take Land

- “Any land” can be taken (s.577) i.e. freehold, leasehold, interests in land such as easements
- *Acquisition of Land Act 1967* applies to the taking of freehold land
- *Land Act 1994* applies to non-freehold land
- Familiarise yourself with the processes and take legal advice if necessary

Employing Staff

- A water authority can employ the people it considers necessary to perform its functions (s.584)
- Can decide employees' terms and conditions, subject to relevant
 - Awards
 - Industrial agreements
 - Certified agreements
 - Enterprise flexibility agreements



Delegation

- A water authority can delegate its powers (s.579)
- Delegations must be:
 - In writing
 - To a director or an appropriately qualified employee of the authority
- “Appropriately qualified” includes having the qualifications, experience or standing appropriate to exercise the power

Delegation

- *Acts Interpretation Act 1954, s.27A* contains provisions relevant to delegations
- Delegates must not exercise powers if they have a direct or indirect financial or personal interest in the matter (s.579(2))
- Breaching this obligation could expose the delegate to a maximum penalty of \$750

Service Providers' Powers

- Before beginning to operate, may need to register as a “service provider” (s.370(b))
 - Check definitions of “water service” and “sewerage service” to find out whether you need to be registered
 - Only owners of infrastructure for supplying water or sewerage services need to register



Service Providers' Powers

- Powers of registered service providers are set out in Chapter 3, Part 2, Divisions 2, 3 and 4, and Part 3, Division 4 of the *Water Act*
- Powers should only be exercised for “registered services”

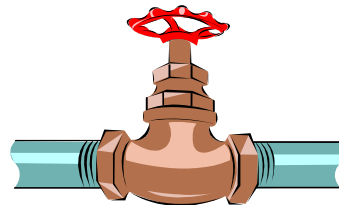
Service Providers' Powers

- Disconnect unauthorised connections (s.381)
- Direct remedial work (s.382)
- Install meters (s.383)



Service Providers' Powers

- Enter places for limited purposes (e.g. inspect, maintain, repair or replace infrastructure) (s.384)
- Recover costs of repairing damage and losses suffered in certain situations (s.387)
- Appoint “authorised persons” (s.391)



Service Providers' Powers

- Limited power for water service providers to impose water restrictions (s.388)
- Limited power for water service providers to temporarily interrupt water supply (s.390)
- Service providers who provide “retail water services” have the power to fix meters to private fire fighting systems (s.432)