

**KAMBALDA WATER AND WASTEWATER FACILITIES
(TRANSFER TO WATER CORPORATION) BILL 2004**

Explanatory Memorandum

PART 1 - PRELIMINARY

Section 1 establishes the short title of the Bill as the *Kambalda Water and Wastewater (Transfer to Water Corporation) Act 2004*.

Section 2 provides that this Act comes into operation on a day fixed by proclamation.

This will enable WMCR and the Water Corporation to finalise a number of water and wastewater agreements prior to the Water Corporation taking over the ownership and management of the facilities.

Section 3 defines the terms used throughout the Bill.

Section 4 defines the Kambalda Area to which the legislation will apply, as shown in Schedule 1 Division 1 of this Bill.

Section 5(1) defines the terms used to describe the Kambalda water and wastewater facilities.

Section 5(2) describes the Kambalda water and wastewater facilities (referred to as the “transferred facilities”) as comprising the water works and sewerage works that were maintained or operated by WMCR to provide water supply and sewerage services within the Kambalda area before the commencement date.

Section 5(3) provides that the transferred facilities do not include the treated wastewater pipeline, as defined in Section 5(1) and shown in Schedule 2 of the Bill. This will be retained by WMCR to service its nickel concentrator operations at Kambalda. The transferred facilities also do not include any water or sewer pipe, or water supply or sewerage fixture or fitting located on a lot in the Kambalda area that services only the lot concerned. This maintains ownership of those sections of the pipes servicing individual lots only with landowners, as in other towns throughout Western Australia.

PART 2 – TRANSFER TO THE WATER CORPORATION

Division 1 – Transfer of facilities and certain rights

Section 6(a) provides for the ownership of the Kambalda water and wastewater facilities, as defined in Section 5, to be transferred to the Water Corporation on the commencement day.

Section 6(b) extinguishes any claim, right, title or interest of any other person in respect of the transferred facilities. This was considered necessary since sections of the mains pipe infrastructure were inadvertently transferred to individual landowners with the sale of properties.

Section 7 states that any outstanding payments owed to WMCR for water supply or wastewater services provided by it in the Kambalda area before the commencement date are transferred to the Water Corporation. This right applies whether or not an account for the service has been issued.

Section 8 provides that the right of WMCR to any remedy or redress, other than a right to receive outstanding payment referred to in Section 7, against any person in relation to the transferred facilities is transferred to the Water Corporation as at the commencement day.

Section 9(2) ensures that any liability, as defined in subsection (1), of WMCR as at the commencement day does not become a liability of the Water Corporation.

Division 2 – Incidental and Related Matters

Section 10(2) enables the provisions of Section 84(1), (2) and (3) of the *Water Agencies (Powers) Act 1984* to apply to all pipes, works and other things that form part of the transferred facilities as if they were placed on, in, over or under the land by the Water Corporation.

This section provides for the lawful placement of any pipes, maintains ongoing ownership with the Water Corporation, provides access rights to the land for the purpose of operating and maintaining the water supply and wastewater facilities and enables the removal or demolition of any plant, building, roads or other works placed on the land by the Water Corporation.

Section 11(1) states that no compensation is payable to any person as the result of any loss suffered due to the transfer of the facilities to the Water Corporation under Section 6 or as a result of the operation of Section 10.

Compensation to landowners for transferring the ownership of the pipes to the Water Corporation is not proposed to be paid since it was never intended that sections of an essential community service would pass to individual landowners. No residents in urban areas in other parts of the State own the equivalent pipe infrastructure in their lots.

Section 11(2) enables the provisions of Section 81(1) and (2) of the *Water Agencies (Powers) Act 1984* to apply to any works or other things that form part of the transferred facilities.

This ensures that the Water Corporation is not liable to pay compensation as a result of the placement of any works or loss of amenity value as a result of the transfer of the facilities to it.

Section 12(1) allows the Water Corporation to take any necessary action to recovery any amounts to which it is entitled by virtue of Section 7 for water supply or sewerage services provided to the Kambalda area by WMCR.

Section 12(2) provides that any amount required by virtue of Section 7 to be paid to the Water Corporation may be recovered by the Water Corporation from a person under Part VII of the *Country Areas Water Supply Act 1947* for water supply services and under Part VII of the *Country Towns Sewerage Act 1948* for sewerage services.

Division 3 – Transitional Provisions

Section 13 provides that any authority issued or granted to WMCR before the commencement day, that is of a kind which the Water Corporation is required to hold, continues to have effect as if it had been issued or granted to the Water Corporation, and applies until the Water Corporation is granted the authority or for a period of 3 years or other period as determined by the relevant Minister.

This section is to enable any licenses or other authorities to be transferred to the Water Corporation from WMCR.

Section 14 allows the Water Corporation, subject to Section 9, to complete anything commenced by WMCR before the commencement day in relation to the transferred facilities.

PART 3 – NOTIFICATIONS ON THE TITLE AS TO LOCATION OF PIPES AND WORKS

Section 15 defines the terms used in Part 3 of this Bill.

Sections 16 to 22 outline the process and steps to be taken for the recording of a “Notification” on lots within the Kambalda area, the deposit of relevant plans for the water and wastewater works, the wording of Notifications with reference to deposited plans and for the payment of the prescribed fees for the placement, amendment and removal of notifications.

Section 22 requires WMCR to pay to the Water Corporation the amount of any cost reasonably incurred by the Water Corporation in depositing plans and recording the notifications required under Section 16(1) and (2). WMCR has agreed to pay all reasonable costs associated with the recording of the initial notifications and the preparation of the deposited plans.

The purpose of the Notifications is to provide information to existing landowners and anyone who searches the Land Titles of the location of water and wastewater pipes, with reference to a plan.

PART 4 - GENERAL

Section 23 ensures that this Bill does not limit the ability of WMCR and the Water Corporation to enter into and give effect to an agreement on any matter incidental or supplementary to this Bill, and such agreements must be consistent with this Bill.

Section 24 deals with Savings, which cover contractual matters.

Section 25 allows 'Regulations' to be made by the Governor to address any anomalies which may arise in carrying out the provisions of the Bill to transfer ownership of the facilities to the Water Corporation, if there are no sufficient provisions in the Bill to do so and if it cannot be dealt with through agreement as provided in Section 23.

It was considered prudent that such provisions be included in the Bill to provide a means of addressing any unforeseen matters not adequately dealt with in the Bill.