

19 December 2008

Secretariat to the Independent Review of the EPBC Act
GPO Box 787
CANBERRA ACT 2610

Dear Secretariat,

**Independent review of the *Environment Protection and
Biodiversity Act 1999 (Cth) (EPBC Act)***

Background

South East Water Limited (SE Water) manages and maintains the water and sewerage networks for the south eastern segment of Melbourne. This includes the pipes, pumping stations, valves and some treatment plants.

SE Water buys potable water from the government's water wholesaler, Melbourne Water who manage the water catchments, and dams and treat the water to a high standard.

SE Water manages:

- 8,336 kilometres of water supply mains;
- 7,724 kilometres of sewer mains;
- 78 water pump stations;
- 237 sewage pump stations;
- 8 sewerage treatment plants;
- \$1.3 billion of infrastructure and assets; and
- 397 full-time equivalent employees.

This means that it is involved with land used to treat, transmit, store and distribute potable, treated water and sewage. It is also in charge of both utility installations and minor utility installations as defined in the Victorian planning provisions and the *Planning and Environment Act 1987* (Vic). This sometimes results in potential or adverse impacts to native vegetation or fauna species listed under the EPBC Act and works on land within protected areas specifically RAMSAR sites, Commonwealth land and significant sites of indigenous cultural heritage.

In support of the protection of biodiversity and supporting reduction in carbon emissions SE Water has adopted the following Principles and Strategies and developed a comprehensive procedure aimed at protecting environmental values as prescribed in the scope of the EPBC Act and other Victorian legislative requirements.

Principal	Strategy
Act to avoid environmental damage	<ul style="list-style-type: none"> • Prevent harm to the environment through elimination of adverse impact due to our activities • Do not allow ignorance to be an excuse for causing or perpetuating environmental damage
Expand environmental integrity	<ul style="list-style-type: none"> • Ensure the maintenance of the health, diversity and productivity of the water resources we manage • Enhance the resilience of the natural and human environment
Incorporate short and long term perspectives	<ul style="list-style-type: none"> • Integrate short and long term economic, social and environmental considerations into decision making

Submission on the operation of the EPBC Act generally

SE Water offers the following points for consideration regarding the operation of the Act generally:

- *Duplication of process between State and Federal Acts and Regulations:*

SE Water is required to apply for various statutory approvals under both Victorian and Commonwealth legislation for activities affecting the environment, such as vegetation removal required for establishment of capital works, which are a necessary part of its functions as a water

corporation under the *Water Industry Act 1994* (Vic). In addition, various procedures in relation to the protection of Aboriginal cultural heritage may be required. Often, this results in duplication of approvals processes which impacts significantly upon the economics of the delivery of our Capital Delivery Program (CDP).

SE Water's CDP is in excess of \$70 million per annum and the cost of approvals processes on an average project can exceed 10% of the capital works with significant time delays of up to 12 months. The CDP is delivered by SE Water to support and maintain urban growth in the context of Ecological Sustainable Development (ESD) in Victoria. The duplication of environmental approvals processes at state and Commonwealth levels contributes significantly, therefore, to the burden on the community through increased cost on business.

SE Water acknowledges that a bilateral agreement between the Commonwealth and Victoria is currently under negotiation and that such a bilateral agreement is likely to reduce duplication of processes, at least in part. SE Water urges both the Commonwealth and Victorian governments to conclude these negotiations and to implement the bilateral agreement in a manner most conducive to reducing duplication of Victorian and Commonwealth approvals processes, as soon as possible.

- *Emergency works:*

There are instances when SE Water must undertake immediate emergency action to remediate spills from its water and sewage networks. SE Water notes that the EPBC Act does not have a general exemption for "Emergency Works" as with other environmental legislation, for example the *Environment Protection Act 1970* (Vic). This is of concern to SE Water because such emergency action may impact on matters of national environmental significance under the Act, such as RAMSAR wetlands. For example, a RAMSAR wetland is located at the southern and western boundaries to SE Water's Mt. Martha and Boneo Sewerage Treatment Plants. While SE Water accepts responsibility for maintaining its assets and fulfilling its functions as required under the *Water Industry Act 1994* (Vic), spills do infrequently occur. SE Water is placed in a difficult position in dealing with spills in an environmentally responsible manner if it is prohibited from taking emergency remediation because such action is a controlled action under the EPBC Act, and an approval under the Act is not in place at the time the emergency action is required to be undertaken. Delaying remedial action in order to obtain an approval under the EPBC Act will cause further environmental damage. Action must be taken immediately to reduce the impacts of the spill.

SE Water supports the overall intent of the EPBC Act and seeks amendments to the EPBC Act to clarify management of emergency responses that will support the intention of the EPBC Act but at the same time allow bodies with public functions, such as SE Water, to undertake emergency works without being liable to prosecution under the EPBC Act. For example, the EPBC Act provides that certain actions are not offences where the action "is reasonably necessary to prevent a risk to human health" or "is reasonably necessary to deal with an emergency involving a serious threat to human life or property (see sections 197(f) and (h), 212((f) and (h) and 231 (f) and (h) of the EPBC Act). However, these exemptions are limited in scope and would not generally apply to the situations that SE Water faces. SE Water seeks similar exemptions from prosecution for the type of emergency works it is required to undertake in the circumstances described above. In this respect, SE Water notes section 30B of the *Environment Protection Act 1970* (Vic) which provides a defence to any offence under that Act for actions taken in certain emergency situations as an example of the kind of provision that may be appropriate.

However, SE Water accepts that such emergency action must be regulated and therefore suggests that a provision allowing for the Minister or other official to authorise emergency action on a temporary basis to allow remedial action to be undertaken should be included in the EPBC Act. We refer to section 30A of the *Environment Protection Act 1970* (Vic) as an example. This process would allow for relevant conditions to be placed on the temporary approval to ensure that relevant matters of national environmental significance are best protected in the circumstances.

- *"Best Practice" and "net gain" concepts in environmental regulation:*

SE Water submits that the Review give consideration to the adoption of "best practice" and "net gain" concepts within the EPBC Act framework. "Net gain", as used here, refers to a mitigation process with the following steps:

- Avoiding environmental harm where possible;
- Minimising environmental harm where complete avoidance is not possible; and
- Identifying appropriate offsets or other "best practice" to mitigate loss.

This approach has been adopted in various recent environmental regulation frameworks, for example the Victorian native vegetation management framework.

As part of its Backlog Sewer Program, SE Water connects to its network many urban and peri-urban areas which have failing septic systems. One example is the Shoreham back-log sewer program. In this location we have significantly improved the water quality of local creeks, drainage lines and the foreshore, which is a RAMSAR site.

Further, the adoption of a "Pressure Sewer System" designed and constructed to avoid deleterious effects on all native vegetation has also improved aquatic ecosystems. These "best practice" examples are of significant environmental and social benefit but are not accounted for in the environmental approvals process. SE Water suggests that a "net gain" approach under the EPBC Act would allow such "best practice" to be taken into account and could result in enhanced environmental outcomes and overall gains for the matters protected under the Act.

SE Water encourages the Review to consider whether a "net gain" approach could be incorporated under the EPBC Act.

We appreciate the opportunity to submit our comments on the Review of the EPBC Act. Should you require further information regarding the above points please contact Hamish Reid, Acting General Manager - Corporate Strategy on 03 9552 3395.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Cox', with a stylized flourish at the end.

Shaun Cox
MANAGING DIRECTOR