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K Woodward
Deputy Chief Parliamentary Counsel
Dated 10 January 2022



TASMANIA

WATER MANAGEMENT ACT 1999

No. 45 of 1999

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
- 3A. Meaning of owner
4. Act binds Crown
5. Application of Act
- 5A. Tidal areas

PART 2 – OBJECTIVES OF ACT

6. Objectives of Act

PART 3 – ADMINISTRATION

7. Abolition and vesting of rights to water

8. Functions and duties of the Minister
9. Minister may establish committees
10. Delegation by Minister
- 10A. Delegation by Secretary
11. Exemption from Act
12. Minister to keep certain registers
- 12A. Application requirements

PART 4 – WATER MANAGEMENT PLANS

Division 1 – Nature of water management plans

13. Water management plans
14. Scope of water management plans
15. Effect of plan on water allocation
16. Changes to allocations
17. Links with other water resources

Division 2 – Preparation of water management plans

18. Notice of plan
- [19. *Repealed*]
20. Consistency with other statutory requirements and consultation
21. Effect of plan on prior rights
22. Compensation for abrogation of prior right
23. Requirement to report particulars of wells
24. Consultation on draft plan
25. Public exhibition of draft plan
26. Consideration of representations
27. Review by Commission
- 27A. Report of Commission
- 27B. Consideration of Commission's report

Division 3 – Adoption and amendment of water management plans

28. Adoption of plan by Minister
29. When do water management plans take effect?

- [30. *Repealed*]
- 31. Interim water management plan
- [32. *Repealed*]
- 33. Availability of water management plans
- 34. Review and amendment of water management plans
- 35. Notice of water management plan

Division 4 – Implementation of water management plans

- 36. Implementation of plans
- 37. Application by water entity or landowners
- 38. Approval of application
- 39. Withdrawal of representation
- 40. Notice of declaration
- 41. Notice of refusal of application
- 42. Notice not required in certain circumstances
- 43. Approval of application by Minister
- 44. Powers of water entities
- 45. Annual reports to Minister
- 46. Powers of Minister
- 47. Revocation of approval

PART 5 – RIGHTS IN RESPECT OF WATER

- 48. Rights to take water
- 49. Hydro-electric generation
- 50. Water management plan may require licence
- 51. Taking not to cause environmental harm
- 52. Taking not to affect owner or occupier
- 53. Exceptions to general rights

PART 6 – LICENSING AND ALLOCATION OF WATER

Division 1 – Licensing

- 54. Licences
- 55. Authority of licence

56. Details of licence
57. Duration of licence
58. Restriction on use of allocation
59. Surety attaching to allocation of licence
60. Licence to be personal property
61. Notification of financial interest
62. Application for licence
63. Approval of application
64. Refusal of application for a licence
65. Notice of application for licence
66. Withdrawal of representation
67. Consideration of application
68. Notification of decision
69. Variation of licences
70. Requirements for application to vary licence
71. Notice of application to vary licence
72. Consideration of application to vary licence
73. Approval of application to vary licence
74. Refusal of application to vary licence
75. Notification of decision
76. Withdrawal of representation
77. Surrender of licences
- [78. *Repealed*]
79. Fees for licences
80. Renewal of licences
81. Granting of licences on adoption of water management plan
82. Offence for breach of licence, &c.

Division 2 – Allocation of water

83. Method of fixing water allocation
84. Allocation of water
85. Payment for allocation

- 86. Requirement for additional information
- 87. Re-allocation of water
- 88. Reduction of water allocations
- 89. Compensation for reduction of water allocation
- 90. Temporary water allocations
- 90A. Short-term water allocations

Division 3 – Restrictions in case of inadequate water

- 91. Inadequate supply or overuse of water
- 92. Notice of water restrictions
- 93. Form of water restrictions
- 94. Restrictions on taking of water

Division 4 – Transfer of licences and water allocations

- 95. Transfer of licences and water allocations
- [96. *Repealed*]
- 97. Application for transfer of licence or water allocation
- 97A. Transfers to or from tributaries
- 98. Refusal of application for transfer
- 99. Notification of decision
- 100. Withdrawal of application
- 101. Power to impose conditions on transfer
- [102. *Repealed*]
- 103. Temporary transfers
- 104. Consent of parties with financial interest
- 105. Endorsement and record of dealings

Division 5 – Breach of licence

- 106. Cancellation, &c., of licence on conviction for offence
- 107. Effect of cancellation of licence on water allocation

Division 6 – Special licences

- 108. Application of Division
- 109. Special licences
- 110. Effect of special licences

- 111. Surety of special licences
- 112. Effect of water management plan on special licence
- 113. Fees for special licences
- 114. Advisory Committee
- 115. Grant of special licences
- 116. Conditions of special licences
- 117. Suspension or cancellation of special licences
- 118. Compensation for liability incurred by special licensee
- 119. Renewal of special licences
- 120. Transfer of special licences
- 121. Transfer of water allocations
- 122. Existing rights of water users to be considered
- 123. Breach of licence

PART 6A – AUTHORITY TO CONVEY WATER VIA WATERCOURSE

- 123A. Watercourse authority
- 123B. Application for watercourse authority
- 123C. Determination of application
- 123D. Issue of watercourse authority
- 123E. Nature of watercourse authority
- 123F. Cancellation or suspension of watercourse authority
- 123G. Exemptions

PART 7 – WELLS

Division 1 – Wells

- 124. Application of Division
- 124A. Appointment of groundwater area
- 124B. Notice of appointment of groundwater area
- [125. *Repealed*]
- 126. Well orders
- 127. Power to carry out works

- 128. Obligations in relation to wells
- 129. Deleterious matter affecting groundwater

Division 2 – Information relating to wells

- 130. Application of Division
- 131. Provision of information relating to construction of wells
- 132. Provision of materials relating to construction of wells
- 133. Failure to provide information or material as to wells
- 134. Examination of materials

Division 3 – Well works

- 135. Causing well works to be undertaken
- 135A. Application for well works permit
- 135B. Determination of application
- 135C. Issue of well works permit
- 135D. Nature of well works permit
- 135E. Permit may enure for benefit of owner
- 135F. Variation of well works permit
- 135G. Cancellation or suspension of well works permit
- 135H. Exemptions

Division 4 – Well driller's licences

- 136. Interpretation of Division
- 136A. Undertaking well works
- 136B. Application for well driller's licence
- 136C. Determination of application
- 136D. Issue of well driller's licence
- 136E. Nature of well driller's licence
- 136F. Renewal of licences
- 136G. Continuation of expiring licence
- 136H. Variation of well driller's licence
- 136I. Cancellation or suspension of well driller's licence
- 136J. Exemptions

PART 8 – DAM WORKS

Division 1 – Preliminary

- 138. Interpretation of Part
- 139. Non-application of Part
- 140. Exemption from operation of Part
- 141. Minister to take certain matters into account
- 142. Approval guidelines
- [137. *Repealed*]

Division 2 – Offence to undertake dam works without authority of permit

- 143. Offence to undertake dam works without permit

Division 3 – Division 3 permits

Subdivision 1 – Applications for Division 3 permits

- [143A. *Repealed*]
- 144. Application for Division 3 permit
- 145. Notice of permit application
- 146. Representations relating to permit application
- [146A. *Repealed*]
- 147. Further notice of permit application
- 148. Referral by Director
- 149. Minister may require further information or action
- 150. Statement of conditional approval
- 151. Amendment of permit application
- 152. Withdrawal of permit application

Subdivision 2 – Determination of applications for Division 3 permits

- 153. Time for determining permit application
- 154. Failure by Minister to determine application
- 155. Consideration of permit application
- [155A - 155B. *Repealed*]
- 156. Determination of permit application
- 157. Notification of determination of permit application
- [157A. *Repealed*]

158. Issue of Division 3 permits

Division 4 – Division 4 permit

159. Entitlement to Division 4 permits

160. Notice of intention to undertake dam works

161. Division 4 permit taken to be issued to person if notice given by person

162. Minister may direct person to apply for Division 3 permit, &c.

Division 5 – Permits generally

163. Authority of permit

164. Conditions of Division 3 permit

164A. Conditions of Division 4 permit

164B. Form of Division 3 permit

164C. When permit takes effect

164D. Term of permit

Division 6 – Amending permits

164E. Extension of term of Division 3 permit

164F. Other amendment of permit on application of permit holder

164G. Determination of application to amend permit

164H. Notification of determination of application to amend permit

164I. Amendment of permit to correct mistakes

164J. Amendment of permit to minimise environmental harm, &c.

164K. Amendment of permit in accordance with conditions of Appeal Tribunal

164L. When amendment takes effect

164M. Issue of amended permit

Division 7 – Transfers of permits

164N. Transfer of permit

Division 8 – Registration of offsets for dam works

164O. Interpretation of Division 8

164P. Offsets register

164Q. Application to register offset

- 164R. Registration of offset
- 164S. Duration of offset
- 164T. Notice of offset to be lodged with Recorder
- 164U. Amendment of registered offset
- 164V. Amendment of offsets register to correct mistakes
- 164W. Minister may direct cancellation of registration of offset
- 164X. Cancellation of registered offset when offset naturally ends
- 164Y. Notice of cancellation of offset to be lodged with Recorder
- 164Z. No fees payable under *Land Titles Act 1980*

Division 9 – Completion of dam works

- 164ZA. Completion of dam works under Division 3 permit
- 164ZB. Completion of dam works under Division 4 permit

Division 10 – Dam operating notices

- 164ZC. Dam operating notice
- 164ZD. Details of dam operating notice
- 164ZE. Period of dam operating notice
- 164ZF. Notification of cessation of duties under dam operating notice
- 164ZG. Transfer of dam operating notice
- 164ZH. Amendment of dam operating notice to correct mistakes

Division 11 – Offences

- 164ZI. Offence to contravene permit conditions
- 164ZJ. Offence to contravene dam operating notice or conditions
- 164ZK. Offence to contravene registered offset
- 164ZL. No defence of authority being given, if threatened species or their nest taken
- 164ZM. Ministerial action following contravention of Part

Division 12 – Miscellaneous

- 164ZN. Minister to prepare annual report
- 165. Review to be conducted

PART 8A – SAFETY OF DAMS

Division 1 – Interpretation

- 165A. Application of Part
- 165B. Interpretation of Part 8A

Division 2 – Functions of Minister

- 165C. Functions of Minister
- 165D. Inquiries as to dam safety
- 165E. Evidence at inquiry

Division 3 – Control of dams

- 165F. Referral of applications under another enactment
- 165G. Duty for safe operation of dam
- 165H. Obtaining and providing information
- 165I. Reporting of incidents
- 165J. Entry, surveillance, testing, &c.
- 165K. Operation and maintenance manuals
- 165L. Directions for maintenance, &c., of dams
- 165M. Surveillance and testing
- 165N. Notices to ensure safety of dam following provision of information
- 165P. Notices to ensure safety of dams in case of imminent danger, &c.

Division 4 – Miscellaneous and supplemental

- 165Q. Obstruction of authorised person
- 165R. Determination of compensation
- 165S. Contracts
- 165T. Arrangements with statutory authorities
- 165U. Form of information provided under this Part
- 165V. No requirement for permit where dam works required by direction or notice
- 165W. Registration of dams
- 165X. Minister may assign, &c., ANCOLD consequence category

PART 9 – WATER DISTRICTS

Division 1 – Establishment of water districts

- 166. Application of Division to water entities
- 167. Establishment of water districts
- 168. Application for water supply district or irrigation district
- 169. Application for riverworks district or drainage district
- 170. Application for hydro-electric district
- 171. Requirements for application
- 172. Operation of agreement
- 173. Joint water districts
- 174. Procedure on receipt of application
- [175. *Repealed*]
- 176. Approval of application
- 177. Withdrawal of application

Division 2 – Administration of water districts

- 178. Amendment of approval
- 179. Effect of water management plan on hydro-electric district
- 180. Alteration of boundaries
- 181. Substitution of water entities
- 182. Annual reports to Minister
- 183. Power to acquire land
- 184. Powers of Minister
- 185. Requirements for permits
- 186. Revocation of approval for water entity to administer a water district
- 187. Effect of revocation of approval
- 188. Revocation of appointment of district

Division 3 – Water supply districts and irrigation districts

- 189. Application of *Waterworks Clauses Act 1952*
- 190. Application of *Irrigation Clauses Act 1973*
- 191. Meaning of undertakers in incorporated Acts

192. Watercourses as water supply channels

Division 4 – Riverworks, hydro-electric and drainage districts

193. Purpose of riverworks district

194. Purpose of hydro-electric district

195. Purposes of drainage district

196. Powers to enter land and undertake works

197. Powers to undertake works near or through highways

198. Compensation

199. Offences in connection with water districts

200. Compensation payable to water entity

Division 5 – Rates for riverworks and drainage districts

201. Power to levy rates

202. Rates on Crown land

203. Procedure for rating

PART 10 – TRUSTS

Division 1 – Establishment of trusts

204. Administration of district or water management plan

205. Application to establish trust

206. Approval of application

206A. Establishment of trust

207. Membership and proceedings of trusts

208. Minister may give directions to trust

209. Protection from liability

210. Incorporation of boards

211. Constitution of trust

211A. Trust elections

Division 2 – Powers and duties of trusts

212. Power to borrow

213. Poll to be taken

214. Effect of poll

- 215. Borrowing on overdraft
- 216. Appointment of employees, &c.
- 217. Duties of trustees
- 218. Application of money
- 219. Trust accounts
- 220. Temporary investment of funds
- [221. *Repealed*]
- 222. Inspection of accounts

Division 3 – Dissolution of trusts

- 223. Dissolution of trusts
- [224 - 225. *Repealed*]
- 226. Effect of dissolution

PART 11 – METERS

- 227. Power of Minister to install meters, &c.
- 228. Interference with meters
- 229. Power to undertake works
- [230. *Repealed*]
- 231. Power of Minister to charge for meters
- [232 - 234. *Repealed*]
- 235. Inspection and removal of meters
- 236. Protection of meters

PART 12 – AUTHORISED OFFICERS

Division 1 – Appointment of authorised officers

- 237. Appointment of authorised officers
- 238. Production of identity card
- 239. Return of identity card

Division 2 – Powers of authorised officers

- 240. General powers of authorised officers
- 241. Powers of authorised officers to enter premises
- 242. Notice of entry to premises

- 243. General powers of authorised officers to enter watercourses, lakes, &c.
- 244. Entry on land for taking measurements
- 245. Authorised officers, &c., may use assistants

Division 3 – Powers to prevent unlawful taking of water

- 246. Circumstances in which Division applies
- 247. Action on contravention of direction
- 248. Authorised officer may affix seals
- 249. Recovery of costs
- 250. Liability for offence not limited

Division 4 – Supplemental

- 251. Manner of giving notices

PART 13 – ENFORCEMENT

Division 1 – Infringement notices

- 252. Infringement notices
- [253 - 256. *Repealed*]

Division 2 – Demerit points

- 256A. Interpretation of Division
- 257. Allocation of demerit points
- 258. Effective period of demerit points
- 259. Suspension or cancellation of licence
- 260. Disqualification from obtaining licence
- 261. Notification of cancellation or suspension
- 262. Transfer of demerit points
- 263. Correction of notation of demerit points

Division 3 – Civil enforcement proceedings

- 264. Application to Appeal Tribunal for order
- [265 - 267. *Repealed*]
- 268. Power of Secretary to carry out work
 - 269. Time limit for commencement of proceedings

PART 14 – REVIEW OF DECISIONS AND APPEALS

Division 1 – Review of decisions

- 270. Interpretation of Division
- 271. Reviewable decisions
- 272. Application for review of decision
- 273. Review of decisions

Division 2 – Appeals to Appeal Tribunal

- 274. Interpretation of Division
- 275. Appealable decisions
- 276. Appeal to Appeal Tribunal
- 277. Constitution of Appeal Tribunal
- 278. Form of appeal to Appeal Tribunal
- 279. Determination of appeal
- 279A. Compensatory orders for gas pipeline safety detriments
- 280. Suspension of decision pending appeal or review

PART 14A – WATER SUPPLY EMERGENCIES

- 280A. Interpretation
- 280B. Declaration of water supply emergency
- 280C. Duration of water supply emergency
- 280D. Ministerial directions to deal with water supply emergency
- 280E. Special powers
- 280F. Compensation

PART 15 – MISCELLANEOUS AND SUPPLEMENTAL

Division 1 – Offences

- 281. Interference with works or other property
- 282. Duty not to damage watercourse or lake
- 283. False or misleading information
- 284. Hindering, &c., persons engaged in administration of Act

Division 2 – Fees and charges

- 285. Imposition of fees and charges

- 286. Variation of fees and charges
- 287. Recovery of unpaid fees and charges
- 288. Payments into Public Account
- 289. Establishment of account

Division 3 – Miscellaneous

- 289A. Confidentiality
- 290. Liability of employers and principals
- 291. Liability of officers of body corporate
- 292. Liability of licence holder
- 293. Evidentiary provision for documents
- 294. Evidentiary provision for meters
- 295. Proceedings for offences
- 295A. Recovery of costs
- 296. Compensation not payable for stopping, &c., flow of water
- 297. Immunity from liability
- 297A. Service of notices and other documents
- 298. Determination of cost and expenses
- 299. Duties of police officers
- 300. Power of Minister to approve forms
- 300A. Replacement of authorisations
- 300B. Calculation of number of days
- 301. Works codes
- 301A. Review of Act

Division 4 – Regulations

- 302. Regulations in general
- 303. Information, assessment of quantity of water, &c.
- 304. Fees and charges
- 304A. Regulations relating to safety of dams and dam works
- 304B. Adoption of code relating to safety of dams and dam works
- 305. Miscellaneous matters
- 306. Adoption of code

Division 5 – Savings and transitional provisions

- 307. Savings and transitional provisions
- 307A. Savings and transitional provisions consequent on *Water Legislation Amendment Act 2008*
- 308. River Clyde Irrigation District
- 309. Transitional water districts

Division 6 – Administration

- [310. *Repealed*]

PART 16 – MISCELLANEOUS AMENDMENTS AND REPEALS

- 311 - 312.
- 313. Acts repealed
- 314. Savings and transitional provisions – *Water Management Amendment (Dam Works) Act 2015*

SCHEDULE 1 – OBJECTIVES OF THE RESOURCE MANAGEMENT AND PLANNING SYSTEM OF TASMANIA

[**SCHEDULE 2 – Repealed**]

SCHEDULE 3 – MEMBERSHIP AND PROCEEDINGS OF TRUSTS

SCHEDULE 4 – SAVINGS AND TRANSITIONAL PROVISIONS

**SCHEDULE 4A – SAVINGS AND TRANSITIONAL PROVISIONS
CONSEQUENT ON WATER LEGISLATION
AMENDMENT ACT 2008**

**SCHEDULE 5 – RIVER CLYDE TRUST AND RIVER CLYDE
IRRIGATION DISTRICT**

SCHEDULE 6 –

SCHEDULE 7 –

SCHEDULE 8 – ACTS REPEALED

**SCHEDULE 9 – SAVINGS AND TRANSITIONAL PROVISIONS –
WATER MANAGEMENT AMENDMENT (DAM WORKS)
ACT 2015**



WATER MANAGEMENT ACT 1999

No. 45 of 1999

**An Act to provide for the management of Tasmania's
water resources and for other purposes**

[Royal Assent 27 October 1999]

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Water Management Act 1999*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

Advisory Committee means the Advisory Committee established under section 114;

Agency has the same meaning as in the *State Service Act 2000*;

ANCOLD consequence category means a consequence category referred to in the *Guidelines on the Consequence Categories for Dams*, published in October 2012 by the Australian National Committee on Large Dams Incorporated, as amended or substituted from time to time;

Appeal Tribunal means the Tasmanian Civil and Administrative Tribunal;

approved form means a form approved under section 300;

authorisation means –

- (a) a licence, permit or transfer; or
- (b) an approval for a water entity to administer a water management plan under Division 4 of Part 4 or a water district under Part 9; or

Water Management Act 1999
Act No. 45 of 1999

Part 1 – Preliminary

s. 3

- (c) any other authority granted under this Act permitting a person to undertake an activity;

authorised officer means an authorised officer appointed under section 237;

best practice environmental management has the same meaning as in the EMPC Act;

channel includes –

- (a) a drain, gutter or pipe; and
- (b) a part of a drain, gutter or pipe;

commencement day means –

- (a) in section 303 and Schedule 4, the day on which section 307 commences; or
- (b) in Schedule 5, the day on which section 308 commences;

Commission means the Tasmanian Planning Commission;

contravene includes fail to comply with;

dam means a permanent or temporary barrier or structure that stores, holds back or impedes the flow of water and includes –

- (a) any spillway or similar works for passing water around or over the barrier or structure; and

Water Management Act 1999
Act No. 45 of 1999

s. 3

Part 1 – Preliminary

- (b) a pipe or other works for passing water through or over the barrier or structure; and
- (c) water stored or held back by the barrier or structure and the area covered by that water; and
- (d) an artificial depression or hole excavated in a watercourse that holds water or impedes the flow of water; and
- (e) an artificial levee or bank that holds back or diverts water in a watercourse –

but does not include –

- (f) associated works and canals used in, or in relation to, the generation of electricity; or
- (g) a tank or reservoir unless –
 - (i) the storage of water involves flooding natural ground; or
 - (ii) the tank or reservoir is on a watercourse; or
- (h) roads, buildings and other ancillary works that are not part of the dam;

dam works means any works for the construction, erection, enlargement,

Water Management Act 1999
Act No. 45 of 1999

Part 1 – Preliminary

s. 3

modification, repair or removal of a dam, or for the conversion of land to a dam or any work on any dam which may significantly increase the dam's safety risk;

Director means the Director, Environment Protection Authority;

Director of Inland Fisheries means the Director of Inland Fisheries appointed under section 11 of the *Inland Fisheries Act 1995*;

dispersed surface water means –

- (a) water flowing over land otherwise than in a watercourse –
 - (i) after having fallen as rain or hail or having precipitated in any other manner; or
 - (ii) after rising to the surface naturally from underground; or
- (b) water as mentioned in paragraph (a) that has been collected in a dam or reservoir;

Division 3 permit has the same meaning as in Part 8;

Division 4 permit has the same meaning as in Part 8;

Water Management Act 1999
Act No. 45 of 1999

s. 3

Part 1 – Preliminary

domestic purpose means personal use for drinking, cooking and washing but does not include taking water to be used in carrying on a business unless it is for the personal use of persons employed in the business;

drilling, in the case of a well, means drilling the well or excavating the well in any other manner and includes deepening or widening an existing well;

electricity entity means a body corporate which uses, or intends to use, water for the generation of electricity as mentioned in section 115;

EMPC Act means the *Environmental Management and Pollution Control Act 1994*;

environmental agreement has the same meaning as in the EMPC Act;

environmental harm has the same meaning as in the EMPC Act;

environmental improvement programme has the same meaning as in the EMPC Act;

environmental nuisance has the same meaning as in the EMPC Act;

environmental objectives means the objectives of a water management plan proposed to further the provisions of section 6(1)(c);

Water Management Act 1999
Act No. 45 of 1999

Part 1 – Preliminary

s. 3

equipment means a pump or meter or valves, pipes or any other device used to take water and includes a part of any such equipment;

functions includes powers, authorities and duties;

groundwater means –

- (a) water occurring naturally below ground level; or
- (b) water pumped, diverted or released into a well for storage underground;

groundwater area means an area of land that is appointed as a groundwater area by an order made by the Minister under section 124A;

highway means –

- (a) a State highway or subsidiary road within the meaning of the *Roads and Jetties Act 1935*; or
- (b) a local highway within the meaning of the *Local Government (Highways) Act 1982*;

hydro-electric district means a hydro-electric district created under Part 9;

incident, in the case of a dam, means any incident or event relating to the structural

Water Management Act 1999
Act No. 45 of 1999

s. 3

Part 1 – Preliminary

integrity or safety of the dam which causes, or has the potential to cause –

- (a) death or injury to a person; or
- (b) damage to, or loss of, property or services; or
- (c) material environmental harm or serious environmental harm;

infrastructure means –

- (a) artificial lakes; or
- (b) dams, weirs or reservoirs; or
- (c) embankments, walls, channels or other works; or
- (d) buildings or structures; or
- (e) pipes, machinery or other equipment;

infringement notice means an infringement notice served under Division 1 of Part 13;

intensive farming means a method of keeping animals in the course of carrying on the business of primary production in which the animals are confined to a small space or area and are usually fed by hand or by mechanical means;

interested person has a meaning given by section 270 or 274;

Water Management Act 1999
Act No. 45 of 1999

Part 1 – Preliminary

s. 3

lake means a natural lake, pond, lagoon, wetland or spring (whether modified or not) and includes –

- (a) part of a lake; and
- (b) a body of water declared by the regulations to be a lake;

land includes –

- (a) buildings and other structures permanently fixed to land; and
- (b) land covered with water; and
- (c) water covering land; and
- (d) any estate, interest, easement, privilege or right in or over land;

licence means a licence granted and in force under Part 6;

local newspaper means a newspaper circulating in the area in which a relevant water resource, dam or well is situated or in which a proposed or existing dam is to be situated;

material environmental harm has the same meaning as in section 5(2) of the EMPC Act;

meter means an instrument that measures and records a flow or level of water and includes any ancillary device attached to or incorporated in the instrument;

Water Management Act 1999
Act No. 45 of 1999

s. 3

Part 1 – Preliminary

natural values means the variety of all life-forms native to land including plants, animals and micro-organisms, the genes that they contain, the ecosystems of which they are a part (including landforms, soils, water) and the processes that sustain them;

nest means –

- (a) a structure or place where a bird lays eggs and shelters its young; and
- (b) an animal's breeding place, den or burrow;

occupier of land means a person who has, or is entitled to, possession or control of the land and includes –

- (a) a person who occupies the land or part of the land jointly or in common with any other person; and
- (b) a person who occupies part of the land;

owner has the meaning given by section 3A;

person includes an Agency, a statutory authority and any emanation of the Crown in right of the Commonwealth;

pipeline licensee means the holder of a licence under the *Gas Industry Act 2019* in

Water Management Act 1999
Act No. 45 of 1999

Part 1 – Preliminary

s. 3

relation to a gas infrastructure planning corridor;

pipeline planning corridor means a gas infrastructure planning corridor declared under the *Gas Industry Act 2019*;

planning scheme means a planning scheme in force under section 29 of the *Land Use Planning and Approvals Act 1993*;

prior right means a right to take water under this Act which was in force immediately before the publication of a notice under section 18;

record means –

- (a) a documentary record; or
- (b) a record made by an electronic, electromagnetic, photographic or optical process; or
- (c) any other kind of record;

register of dams means the register of dams kept under section 12(1A);

register of licences, water allocations and permits means the register of licences, water allocations and permits kept under section 12(1);

regulations means regulations made and in force under this Act;

Water Management Act 1999
Act No. 45 of 1999

s. 3

Part 1 – Preliminary

relevant water management plan means a water management plan for a water resource which may be affected by the exercise of any powers under this Act;

repealed Act means the *Water Act 1957*;

responsible water entity means a water entity responsible for the administration of a water management plan under section 38(1) or the administration of a water district under Part 9;

riparian tenement means land that adjoins a watercourse or through which a watercourse runs, or that adjoins a lake or on which a lake is situated;

Secretary means the Secretary of the Department;

serious environmental harm has the same meaning as in section 5(2) of the EMPC Act;

small claim means a small claim within the meaning of the *Magistrates Court (Small Claims Division) Act 1989*;

special Act – see section 189(b) and section 190(b);

special licence means a licence granted and in force under Division 6 of Part 6;

State policy means a Tasmanian Sustainable Development Policy made under section

Water Management Act 1999
Act No. 45 of 1999

Part 1 – Preliminary

s. 3

11 of the *State Policies and Projects Act 1993*;

statutory authority means a person, body or authority, whether incorporated or unincorporated, constituted by or under an Act, or appointed by the Governor under the authority of an Act, to administer or control a department, office, business or undertaking on behalf of the State;

statutory rule means a statutory rule for the purposes of the *Rules Publication Act 1953*;

stock watering means the provision of water for drinking by livestock and for normal husbandry practices associated with the keeping of livestock, but does not include the provision of water for livestock or animals subject to intensive farming;

surety means the actual or relative probability with which a water allocation is expected to be available in any year having regard to the natural variability of the supply of water;

take, in relation to threatened species, has the same meaning as in the *Threatened Species Protection Act 1995*;

taking, in the case of water from a water resource, includes –

Water Management Act 1999
Act No. 45 of 1999

s. 3

Part 1 – Preliminary

- (a) taking water by pumping or syphoning the water; and
- (b) stopping, impeding or diverting the flow of water over land (whether in a watercourse or not) for the purpose of collecting or storing the water; and
- (c) diverting the flow of water in a watercourse from the watercourse; and
- (d) releasing water from a lake; and
- (e) permitting water to flow under natural pressure from a well, unless the water is flowing from a natural opening in the ground that gives access to groundwater; and
- (f) permitting stock to drink from a watercourse, a natural or artificial lake, a dam or reservoir;

threatened species has the same meaning as in the *Threatened Species Protection Act 1995*;

tidal area means any part of a watercourse that is below the mean high-water mark;

tributary means any watercourse that contributes its flow to a larger watercourse;

Water Management Act 1999
Act No. 45 of 1999

Part 1 – Preliminary

s. 3

trust means a board of trustees holding office under Division 1 of Part 10;

trustee means one of the persons constituting a trust under Division 1 of Part 10;

waste means residue, by-product, surplus or reject material which is to be, or is required to be, disposed of in a manner of which utilisation to commercial or other advantage is not a primary purpose;

water allocation means a quantity of water that a licensee is entitled to take and use under a licence;

water district means a water supply district, irrigation district, riverworks district, hydro-electric district or drainage district created under Part 9;

water entity means –

- (a) a Government Business Enterprise; or
- (b) a council; or
- (c) an authority under Division 4 of Part 3 of the *Local Government Act 1993* or any other statutory authority; or
- (d) a body corporate under the Corporations Act; or
- (da) a body or corporation registered as a co-operative under the Co-

Water Management Act 1999
Act No. 45 of 1999

s. 3

Part 1 – Preliminary

operatives National Law
(Tasmania); or

- (e) a trust established under Part 10;
or
- (f) an electricity entity; or
- (g) a body registered under the
Cooperatives Act 1999; or
- (h) the Corporation within the
meaning of the *Water and
Sewerage Corporation Act
2012* –

and, if the Minister is administering a water management plan under a notice referred to in section 47(3), includes the Minister;

water management plan means a water management plan in force under Part 4 and includes an interim water management plan under section 31;

water regime means –

- (a) in respect of a watercourse, the pattern of flow in the watercourse, which is to be described in terms of the major features of its volumetric and temporal variation and which, in the case of a lake, is to include the fluctuation in the water level of the lake; or

Water Management Act 1999
Act No. 45 of 1999

Part 1 – Preliminary

s. 3

- (b) in respect of groundwater, the pattern of flow or fluctuation in the level of groundwater or pressure which is to be described in terms of the major features of its temporal variation;

water resource means –

- (a) a watercourse, lake or any dispersed surface water or groundwater; or
- (b) a tidal area that a declaration under section 5A relates to;

watercourse means a river, creek or other natural stream of water (whether modified or not) flowing in a defined channel, or between banks, notwithstanding that the flow may be intermittent or seasonal or the banks not clearly or sharply defined, and includes –

- (a) a dam that collects water flowing in any such stream; and
- (b) a lake through which water flows; and
- (c) a channel into which the water of any such stream has been diverted; and
- (d) part of any such stream; and

Water Management Act 1999
Act No. 45 of 1999

s. 3

Part 1 – Preliminary

(da) the floodplain of any such stream –

but does not include –

(e) a channel declared by the regulations to be excluded from this definition; or

(f) a drain or drainage depression in the contours on the land which only serves to relieve upper land of excess water in times of major precipitation;

well means –

(a) an opening in the ground below the surface of the earth excavated or used for the taking of groundwater; or

(b) a natural opening in the ground that gives access to groundwater; or

(c) any other excavation as may be provided by the regulations;

well works means an excavation undertaken to give access to groundwater, any other works undertaken to repair or modify the structure of a well or any works undertaken to plug, backfill, seal or decommission a well;

working day means a day that is not –

Water Management Act 1999
Act No. 45 of 1999

Part 1 – Preliminary

s. 3

-
- (a) a Saturday or Sunday; or
 - (b) a statutory holiday within the meaning of the *Statutory Holidays Act 2000*;

works means a drain, outfall, bridge, culvert, channel, dam (including associated infrastructure), defence or other work of a water entity responsible for administering a water district or a water management plan and includes all machinery and appliances used, or intended to be used, for the purposes of any such district or plan but does not include a bridge over a natural watercourse if the bridge is on, or forms part of, a highway.

(2) In this Act –

- (a) a reference to a watercourse is taken as a reference to either –
 - (i) the bed and banks of the watercourse; or
 - (ii) the water for the time being within the bed and banks of the watercourse –

or both, depending on the context; and

- (b) a reference to a lake is taken as a reference to either –

Water Management Act 1999
Act No. 45 of 1999

s. 3A

Part 1 – Preliminary

- (i) the bed, banks and shores of the lake; or
 - (ii) the water for the time being held by the bed, banks and shores of the lake –
- or both, depending on the context; and
- (c) a reference to varying a licence is taken to include a reference to varying a water allocation of the licence or the conditions attached to the licence; and
 - (d) a reference to a water allocation is taken to include a reference to a part of the water allocation; and
 - (e) a reference to a condition of a licence is taken to include a reference to a water allocation of the licence.

3A. Meaning of owner

- (1) In this Act, owner, in relation to land, means each of the following persons:
 - (a) in the case of a fee simple estate in land – the person in whom that estate is vested;
 - (b) in the case of land not registered under the *Land Titles Act 1980* and subject to a mortgage – the equity of redemption in that mortgage;

Water Management Act 1999
Act No. 45 of 1999

Part 1 – Preliminary

s. 3A

- (c) in the case of land held under a tenancy for life – the person who is the life tenant;
 - (d) in the case of land held under a lease –
 - (i) for a term of not less than 99 years – the lessee; or
 - (ii) if another period is prescribed by the regulations, for a term of not less than that period – the lessee;
 - (e) in the case of land in respect of which a person has a prescribed interest – that person;
 - (f) in the case of land that is unalienated from the Crown – the Crown.
- (2) In this Act, owner, in relation to –
- (a) a dam that has been constructed, means each of the following persons:
 - (i) the person who owns the dam;
 - (ii) any person who owns land that may be covered by water when the dam is at maximum operating level (other than because of flood discharge) or, if there is a controlled spillway in relation to the dam, when water is at the spillway crest level; or
 - (b) a dam under construction, means each of the following persons:

Water Management Act 1999
Act No. 45 of 1999

s. 4

Part 1 – Preliminary

- (i) the holder of a Division 3 permit or a Division 4 permit under which the dam is being constructed;
- (ii) any person who is the owner of the land on which dam works in relation to the dam are being, or are to be, undertaken.

4. Act binds Crown

- (1) This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.
- (2) No criminal liability attaches to the Crown itself (as distinct from its agents, instrumentalities, officers and employees) under this Act.

5. Application of Act

- (1) This Act prevails over any other Act which confers a right to take water unless the other Act is expressed to apply notwithstanding this Act.
- (2) Except as provided by section 5A, nothing in this Act affects the taking of water from a tidal area.
- (3) Nothing in this Act is taken to imply that any water taken or used under an authorisation or as permitted by this Act is fit or sufficient for the purposes for which it is taken or used.

Water Management Act 1999
Act No. 45 of 1999

Part 1 – Preliminary

s. 5A

5A. Tidal areas

- (1) The Minister may, by order, declare that the taking of water in any tidal area is subject to this Act.
- (2) The order is a statutory rule.

PART 2 – OBJECTIVES OF ACT

6. Objectives of Act

- (1) The objectives of this Act are to further the objectives of the resource management and planning system of Tasmania as specified in Schedule 1 and in particular to provide for the use and management of the freshwater resources of Tasmania having regard to the need to –
 - (a) promote sustainable use and facilitate economic development of water resources; and
 - (b) recognise and foster the significant social and economic benefits resulting from the sustainable use and development of water resources for the generation of hydro-electricity and for the supply of water for human consumption and commercial activities dependent on water; and
 - (c) maintain ecological processes and genetic diversity for aquatic and riparian ecosystems; and
 - (d) provide for the fair, orderly and efficient allocation of water resources to meet the community's needs; and
 - (e) increase the community's understanding of aquatic ecosystems and the need to use and manage water in a sustainable and cost-efficient manner; and

Water Management Act 1999
Act No. 45 of 1999

Part 2 – Objectives of Act

s. 6

- (f) encourage community involvement in water resource management.
- (2) It is the obligation of the Minister, the Secretary, a water entity and any other person on whom a function is imposed or a power is conferred under this Act to perform the function or exercise the power in such a manner as to further the objectives specified in subsection (1) and in Schedule 1.

PART 3 – ADMINISTRATION

7. Abolition and vesting of rights to water

- (1) All rights existing at common law immediately before the commencement of this section to the flow of, or for the taking of, naturally occurring water are abolished.
- (2) Except as provided by this Act, all rights to the taking of water from the water resources of Tasmania are vested in the Crown to be administered in accordance with this Act.
- (3) This section does not derogate from any rights conferred under Part 5.

8. Functions and duties of the Minister

- (1) The functions and duties of the Minister under this Act are –
 - (a) to manage the water resources of Tasmania in accordance with the objectives of this Act; and
 - (b) to develop and coordinate policies relating to the sustainable use and development of those water resources; and
 - (c) to allocate the water available from watercourses, lakes and wells and dispersed surface water in a manner consistent with the objectives of this Act; and

Water Management Act 1999
Act No. 45 of 1999

Part 3 – Administration

s. 8

- (d) to compile, maintain and update information in respect of the water resources of Tasmania; and
 - (e) to promote public awareness of the importance of Tasmania's water resources and to encourage the conservation of those resources; and
 - (f) to encourage community involvement in water resource management; and
 - (g) any other functions and duties imposed on the Minister by this Act, including, but not limited to, functions and duties imposed under Part 8 in relation to dam works.
- (2) When making a decision under this Act that is based wholly or partly on an assessment of the quantity of water available or the period or periods during which water is available from a water resource, the Minister must take into account –
- (a) the needs of the major ecosystems that depend on that water resource for water; and
 - (b) any effect that the decision may have on the commercial operations of major users of water from that water resource.

Water Management Act 1999
Act No. 45 of 1999

s. 9

Part 3 – Administration

9. Minister may establish committees

- (1) The Minister may establish committees to provide information and advice to the Minister on matters related to the administration of this Act.
- (2) The Minister may appoint any person who has expertise, knowledge or skills relevant to the functions of a committee as a member of that committee on any terms and conditions that the Minister determines.

10. Delegation by Minister

- (1) Subject to subsection (5), the Minister may delegate any of his or her functions or powers under this Act (except this power of delegation) to any other person.
- (2) A delegation under this section –
 - (a) is to be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the Minister to act in any matter; and
 - (d) is revocable by the Minister.
- (3) Where a function or power is delegated under subsection (1) to a water entity, the Minister may make an agreement with that water entity for the reimbursement of the costs incurred by it in performing that function or exercising that power.

Water Management Act 1999
Act No. 45 of 1999

Part 3 – Administration

s. 10A

- (4) Where the performance of a function or the exercise of a power is dependent on the opinion or belief of the Minister, a delegate may act on his own opinion or belief in performing that function or exercising that power.
- (5) The Minister may not delegate –
 - (a) the function of making recommendations to the Governor in respect of the making of proclamations; or
 - (b) any power conferred under section 11, 28, 34(4)(c) or 47, Division 6 of Part 6, section 165L(5), 176(2), 178(1), 183(1), 186(1), 188(1), 192, 206, 225 or 259(6); or
 - (c) the power to authorise a person to enter on land under section 46, 94(3), 127(1), 147(5), 165J(2), 165L(7), 165M(1), 165N(4), 229(1), 282(4) or 164ZM; or
 - (d)
 - (e) any power under Part 14A.
- (6) The Minister may not delegate the power to hold a review under Division 1 of Part 14 to a person who has made the decision which is the subject of the review.

10A. Delegation by Secretary

The Secretary may delegate any of his or her functions or powers under this Act, other than this power of delegation, to any person.

Water Management Act 1999
Act No. 45 of 1999

s. 11

Part 3 – Administration

11. Exemption from Act

(1) Subject to subsection (5), the Minister may, by order published in the *Gazette*, exempt a person from any provision of this Act subject to any conditions that the Minister determines.

(1A) The order is not a statutory rule.

(2) The Minister may not grant an exemption if –

(a) there would be a likely material adverse effect on any licensee or the holder of a permit under this Act or prior right; or

(b) it would be inconsistent with the objectives of this Act to do so; or

(c) the effect of the exemption would, or be likely to, cause material environmental harm or serious environmental harm; or

(d) the Minister having the administration of the *Public Health Act 1997* has advised that the exemption would be inconsistent with that Act or any guidelines in force under that Act.

(3) An exemption may have effect notwithstanding a provision of a water management plan.

(4) An exemption remains in force until –

(a) it is revoked; or

(b) the date specified in the order as the date on which the exemption ceases to be in force –

Water Management Act 1999
Act No. 45 of 1999

Part 3 – Administration

s. 12

whichever first occurs, but the exemption may be renewed in accordance with this section.

- (5) The Minister may not exempt a person from any requirement not to cause material environmental harm or serious environmental harm under this Act.

12. Minister to keep certain registers

- (1) The Minister must keep a register of all licences, water allocations and permits granted or issued under any Part of this Act in such form and containing such information as the Minister thinks fit.
- (1A) The Minister must keep a register of dams for the purposes of this Act.
- (2) Where a licence is transferred, or a water allocation of a licence is transferred, the Minister must record in the register such particulars as he or she thinks fit relating to the transfer.
- (3) A person may inspect the register without charge, excluding any information as to demerit points allocated to the licence of any other person, during normal business hours at such places as the Minister may direct.
- (4) Where any demerit points are allocated to a licence under Division 2 of Part 13, the register is to include a notation to that effect.
- (5) A person may, on payment of the prescribed fee, obtain a copy of, or an extract from, an entry in

Water Management Act 1999
Act No. 45 of 1999

s. 12A

Part 3 – Administration

the register but is not entitled to any information as to demerit points allocated to the licence of any other person.

- (6) A person may, on payment of the prescribed fee, inspect any notation in the register of demerit points allocated to his or her licence or, with the authority in writing of another licensee, to the licence held by that licensee.
- (7) The Minister may –
 - (a) of his or her own motion; or
 - (b) on application by a person in respect of whom an entry has been made in the register –

amend the entry if satisfied that the entry is incorrect owing to an accidental or inadvertent error, omission or misstatement or a change of address or change of name by a licensee.

- (8) The Minister may, of his or her own motion, amend the register of dams to add, amend or remove any particulars, in relation to a dam, relating to dam safety.

12A. Application requirements

An application to the Minister or Secretary on any matter under this Act is to be in an approved form and must –

- (a) be accompanied by the prescribed fee, if any; and

Water Management Act 1999
Act No. 45 of 1999

Part 3 – Administration

s. 12A

- (b) be supported by such evidence or information as the Minister or Secretary may require, either at the time of lodgment or subsequently, in order to consider the application; and
- (c) comply with such additional requirements under this Act, if any, as relate specifically to the application.

PART 4 – WATER MANAGEMENT PLANS

Division 1 – Nature of water management plans

13. Water management plans

- (1) The Minister may determine that a water management plan is to be prepared in respect of a water resource or water resources in Tasmania.
- (2) A water management plan may, in whole or in part, rescind, replace or alter any water management plan previously approved under this Act.

14. Scope of water management plans

- (1) A water management plan may be prepared for –
 - (a) a watercourse, several joined watercourses or part of a watercourse, including a water supply channel declared under section 192(1); or
 - (b) a lake; or
 - (c) one or more groundwater resources; or
 - (ca) a tidal area that a declaration under section 5A relates to; or
 - (d) any combination of paragraphs (a), (b), (c) and (ca), whether the water resources are joined naturally or artificially –

Water Management Act 1999
Act No. 45 of 1999

Part 4 – Water Management Plans

s. 14

and may include dispersed surface water that normally flows into or replenishes the water resource or water resources in the plan.

- (2) A water management plan is to include –
- (a) a statement of the objectives of the plan, including the environmental objectives; and
 - (b) a description of the water regime that best gives effect to the environmental objectives and other relevant objectives of the plan; and
 - (c) an assessment of the ability of that water regime to achieve the environmental objectives and other relevant objectives of the plan; and
 - (d) an assessment of likely detrimental effects of the plan on the quality of water.
- (3) A water management plan may –
- (a) provide for the allocation and use of water having regard to the objectives stated under subsection (2)(a); and
 - (b) provide for the licensing of all or specified classes of persons taking water from the relevant water resource, including persons who under Part 5 would otherwise have a right to take water without a licence; and

Water Management Act 1999
Act No. 45 of 1999

s. 15

Part 4 – Water Management Plans

- (c) provide for the transfer of, and other dealings with, water allocations, including the imposition of conditions under which those transfers or dealings may take place; and
- (d)
- (e) specify a date on which the plan will take effect; and
- (f) provide for the administration of the plan by a responsible water entity in accordance with section 38(1); and
- (g) include such other information or material as may be required for the administration of this Act.

15. Effect of plan on water allocation

Where a water management plan provides for the allocation and use of water under section 14(3)(a), the plan must –

- (a) include an assessment of the capacity of the relevant resource to meet the likely demands for water by existing and future users; and
- (b) take into account the needs of existing and future users and state the likely effect of the plan on those users, including any effect on businesses carried on by those users.

16. Changes to allocations

- (1) A water management plan may, in order to improve the management of a water resource, change the basis on which water is allocated from the resource notwithstanding that a consequential variation of a licence to maintain consistency with the plan results in a reduction or increase in a water allocation of the licence.
- (2) Where a change to the basis of allocating water from a water resource requires a reduction in the water allocations of licences to take water from the resource –
 - (a) the water management plan must provide an equitable procedure for effecting the reduction; and
 - (b) the procedure must give effect to the various sureties attaching to the licences or to the components of water allocations of the licences.

17. Links with other water resources

- (1) Where the taking, or the taking and use, of water from a water resource has, or is likely to have, a detrimental effect on the quantity or quality of water that is available from another water resource, the water management plan for the first-mentioned resource –
 - (a) must take into account the needs of persons and ecosystems using water from the other resource as well as the needs of

Water Management Act 1999
Act No. 45 of 1999

s. 18

Part 4 – Water Management Plans

persons and ecosystems using water from its own resource; and

- (b) may, to achieve an equitable balance between competing interests, include provisions designed to prevent or reduce any such detrimental effect.

- (2) Where the taking or use of water from a water resource affects, or is likely to affect, the management of water in another water resource, the water management plan for the second-mentioned water resource may include provisions relating to the taking or use of water from the first-mentioned water resource.

Division 2 – Preparation of water management plans

18. Notice of plan

As soon as practicable after the Minister determines that a water management plan is to be prepared, the Secretary must –

- (a) by notice in a local newspaper, notify the public that a water management plan is to be prepared; and

- (b) prepare a draft water management plan.

19.

20. Consistency with other statutory requirements and consultation

- (1) When preparing a draft water management plan, the Secretary must have regard to the consistency of the plan with –
- (a) any relevant State policy; and
 - (b) relevant environmental agreements and environmental improvement programmes; and
 - (c) relevant planning schemes; and
 - (d) Part 6 of the *Public Health Act 1997* and guidelines issued under Part 8 of that Act; and
 - (e) such other plans, policies or guidelines as are prescribed by the regulations; and
 - (f) the objectives of this Act –

and for that purpose must consult with –

- (g) the Director, Environment Protection Authority; and
- (h) the Director of Public Health; and
- (i) any council within the municipal area of which a relevant water resource is situated; and
- (j) such other persons as the Minister may direct.

Water Management Act 1999
Act No. 45 of 1999

s. 21

Part 4 – Water Management Plans

- (2) The Secretary must also consult with –
- (a) any Agency that has a direct interest in the draft water management plan; and
 - (b) any relevant water entity or relevant licensee –

so far as may be practicable and may also consult generally with such other persons as he or she thinks fit.

21. Effect of plan on prior rights

- (1) In preparing a draft water management plan, the Secretary must ensure that any user of water with a prior right to take water from a water resource to which the plan relates continues to enjoy that right unless it is abrogated as provided by subsection (2).
- (2) Where –
- (a) the total allocations of water available to the holders of prior rights to take water from a water resource to which the plan relates prevent the achievement of the water regime that best gives effect to the environmental objectives referred to in section 14(2)(a); or
 - (b) the total allocations of water available to the holders of those rights or the conditions of use attached to those rights may not enable the relevant water

Water Management Act 1999
Act No. 45 of 1999

Part 4 – Water Management Plans

s. 22

resource to be managed consistently with the objectives of this Act –

the draft water management plan may provide for the abrogation of any such prior right but only to the extent necessary to ensure that requirements can be met as to –

- (c) providing the water regime that best gives effect to the environmental objectives referred to in section 14(2)(a); and
 - (d) management of the resource consistently with the objectives of this Act.
- (3) Where a draft water management plan abrogates rights under this section, the Secretary must in accordance with section 24 give notice of the plan to persons holding those rights.

22. Compensation for abrogation of prior right

- (1) The holder of a prior right that is abrogated under section 21 is entitled to compensation for any liability incurred or loss sustained unless –
 - (a) the abrogation is necessary to ensure that the total quantity of water permitted to be taken from the relevant water resource does not prevent the achievement of the water regime that best gives effect to the environmental objectives referred to in section 14(2)(a); or

Water Management Act 1999
Act No. 45 of 1999

s. 23

Part 4 – Water Management Plans

- (b) the holder consents to the abrogation or reduction.
- (2) In default of an agreement between the Minister and the holder of the prior right, the amount of compensation is to be determined in accordance with the *Commercial Arbitration Act 2011*.
- (3) For the purposes of this section, any compensation is to be paid out of the Public Account without further or other appropriation than this section.
- (4) In determining the amount of compensation under subsection (1), any benefit to the holder of the prior right arising from the abrogation is to be taken into account.

23. Requirement to report particulars of wells

A notice under section 18 may require that the owner or occupier of land on which a well is situated in a specified area must, within such time as is specified in the notice –

- (a) notify the Secretary, in the approved form, of the existence of the well; and
- (b) describe the location of the well on that land and provide such other information as may be specified in the notice.

Penalty: Fine not exceeding 10 penalty units.

24. Consultation on draft plan

- (1) When the draft water management plan is completed, the Secretary must serve written notice of it stating the particulars required by section 25 on –
 - (a) the persons and bodies referred to in section 20(1); and
 - (b)
 - (c) any licensees who may take water from a water resource to which the draft plan relates; and
 - (d) any holders of prior rights abrogated under section 21; and
 - (e) any licensee who may take water from a water resource that may be affected under section 17 by the draft plan; and
 - (f) such other persons as the Secretary considers appropriate.
- (2) The notice must contain the same particulars as a notice under section 25(1).

25. Public exhibition of draft plan

- (1) As soon as possible after a draft water management plan has been prepared, the Secretary must, by notice in the *Gazette* and in a local newspaper, state –
 - (a) that a draft plan has been prepared; and

Water Management Act 1999
Act No. 45 of 1999

s. 25

Part 4 – Water Management Plans

- (b) the water resource or water resources to which the draft plan relates; and
 - (c) that a person may submit written representations on the draft plan; and
 - (d) the period during which representations may be made; and
 - (e) the address to which representations may be sent; and
 - (f) the place at which a copy of the draft plan may be obtained; and
 - (g) the cost, if any, of obtaining a copy of the draft plan; and
 - (h) the place at which the draft plan is exhibited; and
 - (i) the period during which the draft plan is to be exhibited; and
 - (j) the time and place at which a public meeting will be held to discuss the draft plan.
- (2) The period during which representations may be made and the period during which the draft water management plan is to be exhibited are to be each at least 60 days after the date on which the notice is first published.
- (3) Unless the Minister determines otherwise, the public meeting referred to in subsection (1)(j) must be held within 30 days after the date on which the notice is first published.

26. Consideration of representations

After considering the written representations on a draft water management plan, the Secretary is to forward to the Commission –

- (a) a copy of those representations; and
- (b) a report containing –
 - (i) a summary of the representations; and
 - (ii) the Secretary's opinion on the merits of the representations, including a statement as to whether he or she believes that the representations are of sufficient merit to warrant modification of the draft water management plan; and
 - (iii) a summary of any proposed modification to the draft water management plan; and
 - (iv) any additional information that the Secretary considers relevant.

27. Review by Commission

- (1) The Commission, on the direction of the Minister, is to review the representations and the report of the Secretary forwarded under section 26 on the draft water management plan.

Water Management Act 1999
Act No. 45 of 1999

s. 27

Part 4 – Water Management Plans

- (2) Within 21 days after receipt of the copies of the representations and the report of the Secretary, or within any further period that the Minister allows, the Commission is to decide whether or not to hold a hearing to assist in its review of the representations and the report.
- (3) If the Commission decides to hold a hearing, the Commission is to notify the Minister of that decision.
- (4) If the Commission decides not to hold a hearing, the Commission, within 14 days after making that decision, is to give written notice of that decision to –
 - (a) the Minister; and
 - (b) the Secretary; and
 - (c) any person who has submitted a representation under section 25(1)(c).
- (5) A hearing is to be conducted in accordance with Part 3 of the *Tasmanian Planning Commission Act 1997*.
- (6) The Commission, as soon as practicable after receipt of the copies of the representations and the report of the Secretary forwarded under section 26, is to notify by public notification –
 - (a) the places at which copies of the representations and report are to be exhibited; and

Water Management Act 1999
Act No. 45 of 1999

Part 4 – Water Management Plans

s. 27A

- (b) the period during which they are to be exhibited; and
 - (c) any other information that the Commission considers relevant.
- (7) At least one of the places referred to in subsection (6)(a) is to be near the area where the relevant water resource is located.

27A. Report of Commission

- (1) The Commission, within a period determined by the Minister, is to provide the Minister with –
- (a) a report of its review under section 27; and
 - (b) copies of the representations and the report of the Secretary forwarded under section 26.
- (2) As soon as practicable after the period referred to in subsection (1), the Commission is to publish in the *Gazette* notice of –
- (a) the making of its report; and
 - (b) the place where copies of its report are available for inspection by the public.

27B. Consideration of Commission's report

- (1) In considering the matters referred to in section 27A(1)(a) and (b), the Minister is to have regard to the objectives of this Act.

Water Management Act 1999
Act No. 45 of 1999

s. 28

Part 4 – Water Management Plans

- (2) The Minister may request the Secretary to submit for final approval –
- (a) an unaltered draft water management plan; or
 - (b) a draft water management plan containing any alterations that the Minister thinks appropriate having regard to the matters specified in section 27A(1)(a) and (b).

Division 3 – Adoption and amendment of water management plans

28. Adoption of plan by Minister

The Minister adopts a draft water management plan or amended draft water management plan by signing a certificate endorsed on the plan that he or she has adopted that plan and, on adoption, the draft water management plan or amended draft water management plan becomes a water management plan.

29. When do water management plans take effect?

A water management plan or amended water management plan takes effect on the publication of a notice in the *Gazette* that the Minister has adopted the plan or amended plan.

30.

31. Interim water management plan

(1) The Minister, by notice published in the *Gazette*, may declare that a draft water management plan referred to in a notice under section 25(1) is to have effect as an interim water management plan.

(1A) The notice is not a statutory rule.

(2) A notice under subsection (1) is to state the date on which the interim plan is to take effect.

(3) An interim plan has the same effect as a plan adopted under section 28.

(4) An interim plan ceases to have effect on –

(a) a date specified in a notice under subsection (1) for that purpose or, if no such date is specified, 12 months after the date on which it took effect; or

(b) the date on which a water management plan in respect of the relevant water resource takes effect –

whichever first occurs.

32.

33. Availability of water management plans

The Secretary must make a water management plan prepared under this Division available for inspection and purchase.

34. Review and amendment of water management plans

- (1) After adoption by the Minister of a water management plan, the Secretary must review the plan, in accordance with the requirements specified in the plan, if any, or a direction under subsection (1A) or where it is necessary to do so to ensure the consistency of the plan with any relevant State policy.
- (1A) The Minister may direct the Secretary to review a water management plan if satisfied that it is necessary or desirable to do so owing to environmental, economic or other reasons relating to the water resource to which the water management plan relates.
- (2) In reviewing the plan, the Secretary –
 - (a) must propose amendments (if any) that are required for the consistency of the plan with any relevant State policy; and
 - (b) may propose such other amendments to the plan that the Secretary considers to be necessary or desirable to give effect to the objectives of this Act.

Water Management Act 1999
Act No. 45 of 1999

Part 4 – Water Management Plans

s. 34

- (3) Subject to subsections (4) and (5), the procedures provided by Division 2 for the preparation and adoption of a water management plan are to be followed when the plan is amended.
- (4) Where the only amendments to the plan are those referred to in subsection (2)(a), it is not necessary to follow the procedures referred to in subsection (3) if –
- (a) the Secretary publishes a copy of the proposed amendments in a local newspaper together with a notice inviting members of the public to provide written representations on the proposed amendments within one month after publication of the notice; and
 - (b) the Secretary considers all written representations received in accordance with the notice and makes a recommendation to the Minister on the proposed amendments; and
 - (c) the Minister has regard to that recommendation before adopting the amendments.
- (5) The Minister may amend a water management plan in order to –
- (a) correct an error in the plan; or
 - (b) make a change of form, not involving a change of substance, in the plan; or

Water Management Act 1999
Act No. 45 of 1999

s. 35

Part 4 – Water Management Plans

- (c) give effect to amendments to the plan for the purposes of the consistency of the plan with a State policy or an order under section 26(6) or (8), 26A or 26B of the *State Policies and Projects Act 1993* –

without following the procedures for amendment required by this Part.

35. Notice of water management plan

- (1) Within 14 days after a water management plan or amended water management plan takes effect, the Minister is to give written notice of that fact to –
 - (a) the council of each municipal area with a relevant water resource; and
 - (b) the persons, if any, who made representations on the plan or the relevant amendments.
- (2) The notice is to include details of any alteration made under section 27B(2)(b).

Division 4 – Implementation of water management plans

36. Implementation of plans

- (1) A water management plan has no effect unless it has been adopted by the Minister.
- (2) On the adoption of a water management plan by the Minister, the Minister must act consistently

Water Management Act 1999
Act No. 45 of 1999

Part 4 – Water Management Plans

s. 37

with the plan in undertaking duties under Parts 6 and 7.

- (3) An Agency or water entity must act consistently with a water management plan in performing, under this or any other Act, functions that affect or may affect water resources to which the plan relates.

37. Application by water entity or landowners

- (1) Where a water management plan has been adopted under section 28 or an interim water management plan is in force, a water entity or a group of landowners may apply to the Minister for an order that the water entity or a proposed water entity is to be responsible for the administration of the whole or a part of the plan.
- (2) The application –
- (a) must be in accordance with section 12A; and
 - (b) is to be made jointly by persons who hold the majority of licences granted to take water from the water resource or water resources to which the plan relates; and
 - (c) must recite an agreement by those persons to create a water entity; and
 - (d) must include particulars of –
 - (i) the water entity or proposed water entity; and

Water Management Act 1999
Act No. 45 of 1999

s. 37

Part 4 – Water Management Plans

- (ii) the functions for which the water entity would be responsible; and
 - (iii) the proposed arrangements for funding the water entity's administration.
- (3)
- (4) The Minister must give notice of the application –
 - (a) in the *Gazette* and at least once in a local newspaper; and
 - (b) to all licensees who may take water from the water resource or water resources to which the relevant water management plan relates.
- (5) The notice is to –
 - (a) include full details of the application; and
 - (b) invite written representations from any persons who may be affected by the application; and
 - (c) state a period of at least 28 days from the publication of the notice in the *Gazette*, during which the representations may be made and the address to which they are to be sent.

38. Approval of application

(1) Where, on an application under section 37, the Minister is satisfied that approval of the application will assist in giving effect to the water management plan or in furthering the objectives of this Act, the Minister may, by order published in the *Gazette*, declare that the water entity or the proposed water entity is to be responsible for the administration of the whole or a part of the relevant water management plan.

(1A) The order is not a statutory rule.

(2) The declaration may be subject to conditions consistent with the plan or may be without conditions and, where the application is made by landowners, the declaration is to be conditional on the creation of the proposed water entity.

(3) Approval of an application under section 37(1) that relates to a water resource in a hydro-electric district may be given only with the agreement of the relevant electricity entity and that agreement –

(a) may not be unreasonably withheld; and

(b) may be subject to reasonable conditions imposed by the electricity entity.

(4) If the agreement is subject to any such conditions, the Minister must include those conditions in any declaration that he or she makes under this section.

Water Management Act 1999
Act No. 45 of 1999

s. 39

Part 4 – Water Management Plans

39. Withdrawal of representation

- (1) A representation made under section 24, 25 or 34 may be withdrawn, by notice in writing to the Secretary by the person who made it, at any time before the Secretary –
 - (a) forwards a copy of the representation to the Commission under section 26; or
 - (b) if applicable, makes a recommendation to the Minister under section 34(4)(b).
- (2) A representation made under section 37 may be withdrawn by notice in writing to the Secretary by the person who made it at any time before the Minister makes a declaration under section 38(1).
- (3) A person who withdraws a representation under this section is taken, for the purposes of this Act, as having not made the representation.

40. Notice of declaration

Within 14 days after making a declaration under section 38, the Minister must give written notice of the declaration and of any rights of review or appeal under Part 14 to –

- (a) the applicant; and
- (b) the council or councils in the municipal area or areas of which a relevant water resource is situated; and

- (c) if representations have been made in relation to the draft plan, any person who made them; and
- (d) any relevant electricity entity referred to in section 38(3).

41. Notice of refusal of application

Within 14 days after refusing an application under section 37, the Minister must give written notice of the refusal and of any rights of review or appeal under Part 14 to the applicant.

42. Notice not required in certain circumstances

Where –

- (a) a water management plan includes arrangements for a water entity to be responsible for the administration of the whole or a part of the plan; and
- (b) the arrangements proposed in an application under section 37(1) are consistent with the plan –

a notice under section 37(4) is not required.

43. Approval of application by Minister

Before making a decision on an application under section 37(1), the Minister –

- (a) must consider any written representations made under section 37(5); and

Water Management Act 1999
Act No. 45 of 1999

s. 44

Part 4 – Water Management Plans

- (b) may consult with any persons on the application.

44. Powers of water entities

- (1) For the purpose of the administration of a water management plan by a responsible water entity –
 - (a) the entity may exercise any powers delegated under section 10 in accordance with any conditions imposed under section 38(2); and
 - (b) the entity may, with the approval of the Minister, impose fees on the licensees affected by the plan so as to recover the cost of its administration of the plan.
- (2) The fees may include separate components for the various activities arising from the administration of the plan and the water entity may differentiate between licensees in charging for the different components.

45. Annual reports to Minister

- (1) During August in each year and at any other time when so required by the Minister, a responsible water entity must provide the Minister with a written report on its administration of a water management plan during the preceding period of 12 months.
- (2) The report is to include –

Water Management Act 1999
Act No. 45 of 1999

Part 4 – Water Management Plans

s. 46

-
- (a) a full financial statement of all matters relating to the water entity's administration; and
 - (b) details of all activities undertaken in discharging its responsibilities; and
 - (c) such other information as the Minister may require for the purpose of ensuring the due administration of the water management plan.
- (3) The Minister may require that a prescribed fee is to be paid by a responsible water entity on providing the report.

46. Powers of Minister

For the purpose of ensuring the due administration of a water management plan, the Minister may –

- (a) authorise the undertaking of surveys; and
- (b) authorise the taking of measurements and samples of water and any other material which may affect the quality of water; and
- (c) authorise the entry on land by persons approved by the Minister for any such purpose; and
- (d) require the responsible water entity to provide the Minister with information relating to any activity arising from, or for the purpose of, the plan.

47. Revocation of approval

(1) In this section,

transfer day means the day on which a notice under subsection (2) takes effect.

(2) Where a responsible water entity –

(a) fails to comply with a requirement to provide the Minister with the information relating to any activity arising from, or for the purpose of, a water management plan; or

(b) contravenes a condition to which its administration of the plan is subject; or

(c) otherwise fails to discharge its obligations under the plan –

the Minister may, by notice published in the *Gazette*, revoke the approval for the water entity to administer the plan.

(2A) The notice is not a statutory rule.

(3) The notice may provide for the substitution of the Minister or any suitable water entity as the authority to administer the relevant water management plan, but without otherwise affecting the plan.

(4) On the revocation, the Minister may recover from the responsible water entity as a debt due to the Crown any expense actually and reasonably incurred by the Minister in –

Water Management Act 1999
Act No. 45 of 1999

Part 4 – Water Management Plans

s. 47

- (a) administering the plan as a result of the failure or contravention; or
 - (b) making good any damage done by the water entity.
- (5) A notice under subsection (2) may provide that –
- (a) the property of the responsible water entity used in the administration of the water management plan vests in any other substituted water entity; and
 - (b) the functions, powers and obligations of the responsible water entity relating to that administration are transferred to the other water entity; and
 - (c) any legal proceedings relating to that administration pending immediately before the transfer day and which were instituted by, or against, the responsible water entity may be continued by or against the other water entity; and
 - (d) any legal proceedings relating to that administration by, or against, the responsible water entity to enforce a right that had accrued, and was in existence, immediately before the transfer day may be commenced by or against the other water entity; and
 - (e) a judgment or order of a court relating to that administration obtained before the transfer day by or against the responsible

Water Management Act 1999
Act No. 45 of 1999

s. 47

Part 4 – Water Management Plans

water entity may be enforced by or against the other water entity; and

- (f) a document relating to that administration addressed to the responsible water entity may be served on the other water entity; and
- (g) a contract relating to that administration made or entered into by the responsible water entity before the transfer day but not performed or discharged before that day is taken to have been made or entered into by the other water entity.

PART 5 – RIGHTS IN RESPECT OF WATER

48. Rights to take water

(1) In this section –

casual use of land means lawful use by persons or stock not normally resident on land which adjoins a watercourse or lake from which water is taken and includes camping, recreational use and use by travelling livestock;

specified purpose means –

- (a) a domestic purpose; or
- (b) irrigation of a household garden; or
- (c) stock watering; or
- (d) firefighting; or
- (e) drilling under section 168 of the *Mineral Resources Development Act 1995*;

tenement to which this section applies means –

- (a) a riparian tenement; and
- (b) land that would be a riparian tenement but for the existence of a Crown reserve not exceeding 20

Water Management Act 1999
Act No. 45 of 1999

s. 48

Part 5 – Rights in respect of Water

metres in width between it and a watercourse or lake; and

- (c) land that would be a riparian tenement but for the existence of a Crown reserve exceeding 20 metres in width between it and a watercourse or lake where the Secretary of the responsible department in relation to the *Crown Lands Act 1976* has, in writing, permitted the occupier of the land to take water across the reserve.

(2) Subject to this Act –

- (a) a person who is an occupier of a tenement to which this section applies may take water from a watercourse or lake on, or adjoining, that tenement for a specified purpose; and
- (b) a person may, in casual use of land, take water from a watercourse or lake on, or adjoining, that land for a specified purpose.

(3) Subsection (2) does not confer any rights over a riparian Crown reserve but the Secretary of the responsible department in relation to the *Crown Lands Act 1976* may grant an easement or licence over the reserve for taking water to the land to which a right conferred under this Part attaches.

Water Management Act 1999
Act No. 45 of 1999

Part 5 – Rights in respect of Water

s. 49

- (4) An owner or occupier of land may take dispersed surface water from the land for any purpose.
- (4A) An owner or occupier of land may take groundwater from the land for any purpose.
- (5) The amount of water which can be taken under subsection (2) or from a well under subsection (4A) and the methods of taking any such water may be prescribed by the regulations.
- (6) Nothing in this section is taken to affect any interest in land held by any person or any rights or obligations of an owner or occupier of land which exist otherwise than under this Part.

49. Hydro-electric generation

Subject to this Act, a person who has lawful access to a watercourse or lake may use water from the watercourse or lake for the purpose of generating electricity if the use does not –

- (a) cause material environmental harm or serious environmental harm or significant detrimental effects to other users; and
- (b) contravene any other Act.

50. Water management plan may require licence

A licence may be required to take water in accordance with this Part if a water management plan provides that a licence is required.

Water Management Act 1999
Act No. 45 of 1999

s. 51

Part 5 – Rights in respect of Water

51. Taking not to cause environmental harm

Nothing in this Part entitles a person to take water from a watercourse, lake or well if the taking would cause, either directly or indirectly, material environmental harm or serious environmental harm.

52. Taking not to affect owner or occupier

A person who is not an owner or occupier of a tenement to which section 48 applies must not take water from a watercourse or lake if to do so would detrimentally affect the ability of any other such owner or occupier to exercise a right under subsection (2) of that section to take water from the watercourse or lake.

Penalty: Fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

53. Exceptions to general rights

Nothing in this Part entitles a person to take water –

- (a) contrary to –
 - (i) a water management plan; or
 - (ii) a licence; or
 - (iii) a permission under section 90; or

Water Management Act 1999
Act No. 45 of 1999

Part 5 – Rights in respect of Water

s. 53

- (iv) an authorisation under section 90A; or
 - (v) a notice under section 92(1); or
 - (vi) a temporary transfer under section 103; or
 - (vii) an authorisation under section 123A; or
 - (viii) an order under section 124A; or
 - (ix) a permit under section 135C; or
 - (x) a direction under section 280D; or
- (b) in excess of the person's reasonable requirements.

PART 6 – LICENSING AND ALLOCATION OF WATER

Division 1 – Licensing

54. Licences

- (1) A person must not, without a licence, take –
- (a) water from a watercourse, lake or well;
or
 - (b) dispersed surface water; or
 - (c) water from a tidal area that a declaration under section 5A relates to.

Penalty: Fine not exceeding 500 penalty units and, in the case of a continuing offence, a further fine not exceeding 50 penalty units for each day during which the offence continues.

- (2) However, subsection (1) does not apply to the taking of water under and in accordance with –
- (a) Part 5; or
 - (b) an exemption under section 11; or
 - (c) a permission under section 90; or
 - (d) an authorisation under section 90A; or
 - (e) a direction under section 280D; or
 - (f) an irrigation or other right under the *Irrigation Clauses Act 1973*.

Water Management Act 1999
Act No. 45 of 1999

- (3) Also, subsection (1) does not apply to the taking of water directly from a dam or other works if the water in the dam or works has previously been taken under and in accordance with this Act.
- (4) A person may apply for a licence under section 62 or a special licence under Division 6.

55. Authority of licence

A licence authorises the holder of the licence to take water in accordance with the licence and is subject to –

- (a) any relevant water management plan; and
- (b) any condition specified in the licence.

56. Details of licence

- (1) A licence –
 - (aa) is to specify the name and address of the licensee; and
 - (a) may specify the water resource from which the water is to be taken; and
 - (b) may be endorsed with a water allocation or water allocations expressed as provided by section 83 notwithstanding that all or part of the water allocation or water allocations may be temporarily transferred to another licensee under Division 4; and

Water Management Act 1999
Act No. 45 of 1999

s. 57

Part 6 – Licensing and Allocation of Water

- (c) may, where the Minister considers it to be appropriate, specify the surety with which a water allocation can be expected to be available for taking; and
 - (d) may specify conditions under which the licensee may take water or the licence or a water allocation of the licence may be transferred under Division 4; and
 - (da) may specify conditions under which the licensee may undertake well works; and
 - (e) may specify when the Minister may vary the conditions of the licence; and
 - (f) may specify such other conditions and matters as the Minister thinks fit.
- (2) Where a licence is endorsed with more than one water allocation, subsection (1) may apply in respect of each allocation separately.

57. Duration of licence

- (1) Unless revoked earlier, a licence remains in force for such period as the Minister determines and specifies in the licence.
- (2) A water allocation of a licence ceases to have effect on the expiration of the licence or on any earlier date specified in the licence.

Water Management Act 1999
Act No. 45 of 1999

58. Restriction on use of allocation

- (1) Without limiting section 56, the Minister may determine that a water allocation of a licence may be –
 - (a) taken from, or used on, only a specified area of land; or
 - (b) used only for a specified purpose; or
 - (c) used only to allow the taking of water into a specified dam or proposed dam; or
 - (d) used only in accordance with conditions for the avoidance, minimisation or management of associated environmental risks.

- (2) Where a water allocation is determined under subsection (1)(c) to be used for the taking of water into a proposed dam or to increase the quantity of water to be taken into an existing dam, the allocation may be made conditional on the completion of –
 - (a) the construction of the proposed dam; or
 - (b) the dam works increasing the existing dam's capacity.

- (3) In this section –

environmental risk means a material risk that a water allocation may, in respect of any water resource or land, cause –

Water Management Act 1999
Act No. 45 of 1999

s. 59

Part 6 – Licensing and Allocation of Water

- (a) a rise in underground water levels; or
- (b) soil waterlogging; or
- (c) increased salination; or
- (d) increased soil erosion; or
- (e) the destabilisation of the bank or bed of a watercourse; or
- (f) the degradation of a riverine or estuarine environment; or
- (g) a deterioration of water quality.

59. Surety attaching to allocation of licence

For the purposes of section 56(1)(c), the surety or sureties may be specified as a class or classes of surety common to all allocations of similar surety.

60. Licence to be personal property

A licence, including the right to a water allocation endorsed on it, is the personal property of the licensee and is alienable in accordance with Division 4 or 6 and any other law relating to the passing of property.

61. Notification of financial interest

- (1) A licensee must, within 10 days after becoming aware of any financial interest of another person

Water Management Act 1999
Act No. 45 of 1999

in the licence or in a water allocation endorsed on the licence, provide the Minister in writing with details of the interest.

- (2) A person is not taken to have a financial interest for the purposes of subsection (1) by reason only of the fact that he or she is a shareholder in, or a member of, a body corporate that holds the licence.
- (3) On receipt of notification under subsection (1), the Minister must make a notation in the register of licences, water allocations and permits to that effect.
- (4) If the Minister is satisfied, on notification in writing by a person, that he or she has a financial interest in a licence or water allocation, the Minister must make a notation in the register of licences, water allocations and permits to that effect.
- (5) Where the register of licences, water allocations and permits includes a notation made under subsection (3) that a specified person has a financial interest in a licence or a water allocation of a licence, the Minister must, on written notification by that person that that interest no longer exists, remove that notation from the register.
- (6) Where the register of licences, water allocations and permits includes a notation made under subsection (3) that a specified person has a financial interest in a licence or a water allocation of a licence, the Minister must, on

Water Management Act 1999
Act No. 45 of 1999

s. 62

Part 6 – Licensing and Allocation of Water

written notification by that person that that interest has been varied, amend that notation in the register accordingly.

- (7)
- (8) A licensee who fails to provide the Minister with details of a financial interest as required by subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

62. Application for licence

- (1) An application for a licence is to be made to the Minister.
- (2) The application must –
 - (a) be in accordance with section 12A; and
 - (b) where a water allocation of the licence is to be comprised wholly or partly of a water allocation purchased under section 85, be accompanied by the amount agreed to be paid for the allocation.

63. Approval of application

- (1) Except as provided by section 64, the Minister must approve an application for a licence that –
 - (a) is in accordance with section 62; and

Water Management Act 1999
Act No. 45 of 1999

-
- (b) is consistent with the objectives of this Act and any relevant water management plan; and
 - (c) could not reasonably be expected to lead to material environmental harm or serious environmental harm; and
 - (d) will not have a significant adverse impact on other persons taking water from the relevant water resource or on the commercial operations of a major user of water from that water resource.
- (2) An approval under subsection (1) takes effect on such day as is specified for that purpose in the notice of the approval given under section 68.

64. Refusal of application for a licence

The Minister may refuse an application for a licence if –

- (a) it is not possible to endorse a water allocation on the licence consistently with the objectives of this Act or any relevant water management plan; or
- (b) the Minister is satisfied –
 - (i) that the licence would have a significant adverse impact on any existing licensee or a person taking water under Part 5 or on the commercial operations of a

Water Management Act 1999
Act No. 45 of 1999

s. 64

Part 6 – Licensing and Allocation of Water

- major user of water from the relevant water resource; or
- (ii) after consultation with the Director of Public Health, that the water to be taken under the licence is so contaminated that its use would create a risk to the health of people or that the taking or use of the water would contravene the *Public Health Act 1997* or any guidelines in force under that Act; or
 - (iii) that the water to be taken under the licence is so contaminated that its use would create a risk to the health of animals; or
 - (iv) after consultation with the Director, Environment Protection Authority, that the proposed taking or use of the water would contravene the EMPC Act; or
- (c) the applicant –
- (i) has been convicted of an offence under this Act; or
 - (ii) has accepted an infringement notice.

Water Management Act 1999
Act No. 45 of 1999

65. Notice of application for licence

- (1) This section applies to an application for a licence –
- (a) where there is no water management plan for the water resource from which a water allocation of the licence is proposed to be taken; or
 - (b) where a relevant water management plan does not provide for the allocation of water under section 14(3)(a); or
 - (c) where the relevant water management plan requires that the application be advertised –

but does not apply to an application where the proposed water allocation is a water allocation of another licence.

- (2) The Minister must give notice of the application in a local newspaper and the notice is to –
- (a) include details of the application, the relevant water resource, each proposed allocation, the purpose for which each proposed allocation will be used and such other information as the Minister may determine; and
 - (b) invite written representations from any person who may be affected by the application; and

Water Management Act 1999
Act No. 45 of 1999

s. 66

Part 6 – Licensing and Allocation of Water

- (c) state a period of at least 14 days from the publication of the notice during which representations may be made and the address to which they are to be sent.
- (3) However, the Minister, in his or her discretion, need not comply with subsection (2) if satisfied that –
- (a) the water allocation to which the proposed licence relates would be solely for stock or domestic use, or a combination of those uses; and
 - (b) the maximum daily quantity of water taken under the proposed licence would be less than 0.01 megalitres; and
 - (c) the taking of the water allocation would not have a significant effect on other users of water or the environment.

66. Withdrawal of representation

- (1) A representation made under section 65(2) may, by notice in writing to the Minister, be withdrawn at any time before the Minister approves an application under section 63 or refuses an application under section 64.
- (2) A person who withdraws a representation under subsection (1) is taken, for the purposes of this Act, as having not made the representation.

Water Management Act 1999
Act No. 45 of 1999

67. Consideration of application

Before making a decision on an application to which section 65 applies, the Minister must have regard to any representations made in accordance with a notice under section 65(2).

68. Notification of decision

Within 7 days after approving an application under section 63 or refusing an application under section 64, the Minister must give written notice of the approval or refusal and of any rights of review or appeal under Part 14 to –

- (a) the applicant; and
- (b) any person who has made a representation under section 65(2).

69. Variation of licences

- (1) The Minister may vary a licence as provided by this section.
- (2) The licence may be varied –
 - (a) with the written consent of the licensee and of any other person as required by subsection (3); or
 - (b) subject to subsection (3), on application by the licensee; or
 - (c) where the licence specifies when the conditions of the licence may be varied,

Water Management Act 1999
Act No. 45 of 1999

s. 69

Part 6 – Licensing and Allocation of Water

- at or within the times so specified if the Minister reasonably determines that the variation is necessary or desirable to further the objectives of this Act; or
- (d) if so provided by a water management plan; or
 - (e) if the Minister is authorised to do so under section 106; or
 - (f) to give effect to a reduction in a water allocation of the licence by the Minister under section 88; or
 - (fa) if a water allocation endorsed on a licence is for the taking of water into a dam to which a Division 3 permit or a Division 4 permit relates and either –
 - (i) those dam works are not completed in accordance with that permit; or
 - (ii) conditions in relation to the operation, in accordance with the objectives of this Act, of the dam, when constructed, are to be placed on the licence; or
 - (g) on a transfer under Division 4; or
 - (h) to give effect to an order under section 192.
- (3) If, in the case of a variation under subsection (2)(a) or (b), the register of licences,

Water Management Act 1999
Act No. 45 of 1999

water allocations and permits includes a notation that a person has a financial interest in the licence or a water allocation of the licence, the written consent of that person to the variation is required unless the effect of the variation is to increase the water allocation.

70. Requirements for application to vary licence

An application under section 69(2)(b) must –

- (a) be in accordance with section 12A; and
- (b) where the variation consists of a variation of a water allocation of the licence, be accompanied by the amount required to be paid for the water allocation or the amount agreed to be paid for it under section 85.

71. Notice of application to vary licence

- (1) This section applies to an application for the variation of a licence if the effect of the variation would be to increase the amount of water that may be taken from a water resource under a licence and if –
 - (a) the relevant water management plan requires that the application be advertised; or
 - (b) the Minister is of the opinion that the variation may have a significant effect on other users of water or the environment.

Water Management Act 1999
Act No. 45 of 1999

s. 71

Part 6 – Licensing and Allocation of Water

- (2) When considering an application to which this section applies, the Minister must, by notice published in a local newspaper, invite affected persons to make written representations to the Minister on the application.
- (3) A notice under subsection (2) is to state –
 - (a) details of the application, the relevant water resource, each water allocation, the purpose for which each proposed allocation will be used and such other information relating to the application as the Minister may require for the purposes of this Part; and
 - (b) the name and address of the person to whom representations may be sent and the time by which they are to be received.
- (4) However, a notice under subsection (2) is not required where –
 - (a) notification is given in a local newspaper of a public meeting to be held of persons holding licences for irrigation to discuss their requirements for water for irrigation and the Minister’s intention to conduct a survey of the usage of water for irrigation; and
 - (b) the Minister is satisfied from evidence produced by those persons and the survey that the variation of a licence is necessary or desirable having regard to –

Water Management Act 1999
Act No. 45 of 1999

- (i) the survey referred to in paragraph (a); and
 - (ii) the amount of water required to maintain any existing commercial enterprise at a specific time.
- (5) Also, the Minister, in his or her discretion, need not comply with subsection (2) if satisfied that –
- (a) the water allocation to which the proposed variation relates would be solely for stock or domestic use, or a combination of those uses; and
 - (b) the maximum daily quantity of water taken under the proposed variation would be less than 0.01 megalitres; and
 - (c) the taking of the water allocation would not have a significant effect on other users of water or the environment.

72. Consideration of application to vary licence

Before making a decision on an application to which section 70 applies, the Minister must have regard to any representations made in accordance with a notice under section 71.

73. Approval of application to vary licence

- (1) Except as provided in section 74, the Minister must approve an application for variation of a licence if satisfied that the variation –

Water Management Act 1999
Act No. 45 of 1999

s. 74

Part 6 – Licensing and Allocation of Water

- (a) is in accordance with section 70; and
 - (b) is consistent with the objectives of this Act and any relevant water management plan; and
 - (c) could not be expected to lead to material environmental harm or serious environmental harm; and
 - (d) will not have a significant adverse impact on other persons taking water from the relevant water resource or on the commercial operations of a major user of water from that water resource.
- (2) An approval under subsection (1) takes effect on such day as is specified for that purpose in the notice of the approval given under section 75.

74. Refusal of application to vary licence

The Minister may refuse to approve the variation of a licence –

- (a) on any ground specified in section 64; or
- (b)
- (c) if the licensee has not paid any fees payable under this Act.

75. Notification of decision

Within 7 days after approving an application under section 73 or refusing it under section 74,

Water Management Act 1999
Act No. 45 of 1999

the Minister must give written notice of the approval or refusal and of any rights of review or appeal under Part 14 to –

- (a) the applicant; and
- (b) any person who has made a representation under section 71(2).

76. Withdrawal of representation

- (1) A representation made under section 71(2) may be withdrawn by notice in writing to the Minister at any time before the Minister approves the application under section 73 or refuses it under section 74.
- (2) A person who withdraws a representation under subsection (1) is taken, for the purposes of this Act, as having not made the representation.

77. Surrender of licences

- (1) Subject to subsection (2), a licensee may surrender his or her licence at any time by giving the Minister written notice to that effect.
- (2) However, if the register of licences, water allocations and permits includes a notation that a person has a financial interest in the licence or a water allocation of the licence, the surrender is not effective unless it has the written consent of that person.
- (3) On the surrender, a water allocation of the licence vests in the Minister.

Water Management Act 1999
Act No. 45 of 1999

s. 78

Part 6 – Licensing and Allocation of Water

78.

79. Fees for licences

- (1) The Minister may charge a fee for the granting, holding, administration or management of licences by a lump sum or periodical payments as may be prescribed by the regulations, which may differentiate between licensees in respect of –
 - (a) the place from which the water is taken; and
 - (b) the purpose for which the water is taken; and
 - (c) the time of the year at which the water is taken; and
 - (d) the surety of the licence; and
 - (e) the method by which the water is taken; and
 - (f) a water allocation of a licence; and
 - (g) such other matters as may be provided by the regulations.
- (2) The fees may include separate components for the various activities arising from the administration of the licence and the Minister may differentiate between licensees in charging for the different components.

Water Management Act 1999
Act No. 45 of 1999

80. Renewal of licences

- (1) The Minister must renew a licence that is otherwise about to expire if satisfied that –
 - (a) the licensee has paid the prescribed licence renewal fee, if any; and
 - (b) the licensee has paid all previous fees and charges payable in respect of the licence; and
 - (c) the licensee has complied with the conditions of the licence during its current term; and
 - (d) the licensee is not disqualified from holding the licence; and
 - (e) the renewal is not inconsistent with the objectives of this Act or any relevant water management plan.
- (2) If the Minister is not satisfied as required under subsection (1), the Minister may –
 - (a) renew the licence subject to any conditions the Minister thinks fit; or
 - (b) refuse to renew the licence.
- (3) If subsection (2)(b) applies, the Minister is to notify the licensee as soon as practicable of –
 - (a) the refusal; and
 - (b) the reasons for the refusal.

Water Management Act 1999
Act No. 45 of 1999

s. 81

Part 6 – Licensing and Allocation of Water

81. Granting of licences on adoption of water management plan

- (1) This section applies to a person who before the adoption of a water management plan held a right to take water under Part 5 if the plan requires him or her to hold a licence for the taking of that water.
- (2) A person to whom this section applies –
 - (a) may, subject to a restriction or prohibition under section 92, continue to take water without a licence –
 - (i) for a period of 3 months after the date of adoption of the relevant water management plan; or
 - (ii) if he or she applies for a licence within that period, until the application is granted or refused; and
 - (b) is entitled to have endorsed on the licence, without payment of a fee, a water allocation determined by the Minister in accordance with the relevant water management plan.

82. Offence for breach of licence, &c.

- (1) A licensee must not –
 - (a) take water in excess of a relevant allocation endorsed on the licence; or

Water Management Act 1999
Act No. 45 of 1999

- (b) contravene a condition of the licence; or
 - (c) use water taken under the licence for a purpose that is not specified in the licence.
- (2) A licensee who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 500 penalty units and, in the case of a continuing offence, a further fine not exceeding 50 penalty units for each day during which the offence continues.

Division 2 – Allocation of water

83. Method of fixing water allocation

For the purposes of this Act –

- (a) a water allocation may be fixed by specifying the volume of water that may be taken and used or by reference to the purpose for which the water may be taken and used or in any other manner; and
- (b) a water allocation may be specified as being a water allocation of another licence.

84. Allocation of water

- (1) A water allocation, or a component of a water allocation, of a licence may be granted by the Minister in accordance with subsection (2).

Water Management Act 1999
Act No. 45 of 1999

s. 85

Part 6 – Licensing and Allocation of Water

- (2) The Minister must allocate water in accordance with any relevant water management plan or, where there is no relevant water management plan, so as to give effect to the objectives of this Act.
- (3) The Minister may allocate water subject to conditions and those conditions, or such of them as the Minister specifies, are taken to be conditions of the licence to which a water allocation is for the time being attached.
- (3A) If a water allocation is granted for the taking of water into a dam to which relates a Division 3 permit, or a Division 4 permit, that authorises dam works but those dam works are not completed in accordance with that permit, the Minister, by written notice, may –
 - (a) cancel the water allocation; or
 - (b) vary the water allocation as provided by section 69(2)(fa).
- (4) A water allocation, or a component of a water allocation, of a licence may be transferred, if the licence so provides and the Minister approves –
 - (a) in the case of a special licence, under Division 6; or
 - (b) in any other case, under Division 4.

85. Payment for allocation

- (1) The Minister may charge a fee for the granting of a water allocation.

Water Management Act 1999
Act No. 45 of 1999

- (2) The Minister may sell a water allocation by public auction or tender to any person who holds a licence.
- (3) The purchaser of a water allocation under subsection (2) must hold a licence before he or she is entitled to the allocation.
- (4) The Minister may refuse to accept a bid or tender for a water allocation under subsection (2) from a person who has been convicted of an offence against this Act.

86. Requirement for additional information

- (1) Before allocating water, the Minister may, by notice in writing served on the applicant, direct that an assessment of the effect of allocating the water be made by a person approved by the Minister.
- (1A) A notice under subsection (1) may require that –
 - (a) the assessment is to be verified by a person approved by the Minister or by a person or class of persons holding specified qualifications; or
 - (b) the assessment is to be provided in a specified form; or
 - (c) the assessment includes a statement as to how the water is intended to be used so as to meet the relevant objectives of this Act.

Water Management Act 1999
Act No. 45 of 1999

s. 87

Part 6 – Licensing and Allocation of Water

- (2) The Minister may require that all or part of the cost of providing the assessment is to be included in the fee charged for the granting of a water allocation under section 85(1).

87. Re-allocation of water

- (1) The Minister may re-allocate all or part of a water allocation that –
- (a) has been forfeited to the Minister on cancellation of the licence on which it was endorsed; or
 - (ab) has vested in the Minister on the surrender of the licence on which it was endorsed; or
 - (b) is an allocation of a licence which has been suspended, in which case the re-allocation may not be for a period longer than the period of suspension.
- (2) Any money received by the Minister following the re-allocation is to be applied as follows:
- (a) firstly, in paying the costs of the re-allocation and any other costs incurred in any cancellation or suspension referred to in subsection (1);
 - (b) secondly, in discharging any liability of the former licensee under this Act to the Minister or a water entity;
 - (c) thirdly, in discharging any liability of the former licensee that is secured by a

Water Management Act 1999
Act No. 45 of 1999

financial interest in the licence, or the water allocation, noted in the register;

- (d) fourthly, in payment to the former licensee.
- (3) If the former licensee cannot be found after reasonable enquiries as to his or her whereabouts, any amount payable to him or her is to be dealt with as unclaimed money under the *Unclaimed Money Act 2015*.

88. Reduction of water allocations

- (1) Where necessary to give effect to a water management plan, the Minister may reduce a water allocation of a licence, by notice in writing given to the licensee and, where the register of licences, water allocations and permits includes a notation that a person has a financial interest in the licence or a water allocation of that licence, to that person.
- (2) A reduction under subsection (1) is to be made in accordance with a relevant water management plan.
- (3) A notice under subsection (1) must include notification of any rights of review or appeal under Part 14.
- (4) The reduction is to take effect on the day specified in the notice under subsection (1).

Water Management Act 1999
Act No. 45 of 1999

s. 89

Part 6 – Licensing and Allocation of Water

89. Compensation for reduction of water allocation

- (1) A licensee whose water allocation is reduced under section 88(1) is entitled to compensation for any liability incurred or loss sustained unless –
 - (a) the reduction is necessary to ensure that the total quantity of water permitted to be taken from the relevant water resource does not prevent the achievement of the water regime that best gives effect to the environmental objectives referred to in section 14(2)(a); or
 - (b) the licensee consents to the reduction.
- (2) In default of an agreement between the Minister and the licensee, the amount of compensation is to be determined in accordance with the *Commercial Arbitration Act 2011*.
- (3) For the purposes of this section, any compensation is to be paid out of the Public Account without further or other appropriation than this section.
- (4) In determining the amount of compensation under subsection (1), any benefit to the licensee arising from the abrogation or reduction is to be taken into account.

90. Temporary water allocations

- (1) An authorised officer may, subject to this section –

Water Management Act 1999
Act No. 45 of 1999

Part 6 – Licensing and Allocation of Water

s. 90

- (a) permit a person to take water from a water resource for a limited period; or
 - (b) permit a class of persons to take water from a water resource in a particular way.
- (2) The permission may be granted unconditionally or on such conditions as the authorised officer thinks fit having regard to the objectives of this Act.
- (3) However, the permission may only be granted if the authorised officer is satisfied that the taking of the water would –
- (a) be consistent with any relevant water management plan; and
 - (b) not adversely affect the taking of water by other persons with a right to take water from the water resource; and
 - (c) not cause material environmental harm or serious environmental harm.
- (4) Also, in the case of water from a water resource within a hydro-electric district, the permission may only be granted with the agreement of the relevant electricity entity, which agreement –
- (a) may be given subject to reasonable conditions; but
 - (b) is not to be unreasonably withheld.

Water Management Act 1999
Act No. 45 of 1999

s. 90

Part 6 – Licensing and Allocation of Water

- (5) If subsection (4)(a) applies, the electricity entity's conditions are to be made conditions of the permission.
- (6) The permission is to be granted –
 - (a) for subsection (1)(a), by individual notice in writing; and
 - (b) for subsection (1)(b), by general notice published in a local newspaper or such other means as the authorised officer thinks fit.
- (7) The Minister may give an authorised officer directions as to the exercise of powers under this section and the authorised officer must comply with those directions.
- (8) If a fee is prescribed for the purposes of subsection (1)(a), a person is not eligible to be granted a permission under that subsection unless that fee has been paid.
- (9) A person who has permission to take water from a water resource for a limited period under this section may, without further authority, take that water under and in accordance with the conditions, if any, of that permission.
- (10) A person belonging to a class of persons that has permission to take water from a water resource in a particular way under this section may, without further authority, take that water under and in accordance with the conditions, if any, of that permission.

Water Management Act 1999
Act No. 45 of 1999

Part 6 – Licensing and Allocation of Water

s. 90A

(11) A person must not –

- (a) take water from a water resource in contravention of a permission under this section; or
- (b) contravene any condition of a permission under this section.

Penalty: Fine not exceeding 500 penalty units and, in the case of a continuing offence, a further fine not exceeding 50 penalty units for each day during which the offence continues.

(12) In this section –

limited period means a period not exceeding 6 months.

90A. Short-term water allocations

- (1) To alleviate a significant but temporary water shortage, the Minister may authorise either or both of the following things:
 - (a) the short-term taking of water by any person adversely affected by the shortage;
 - (b) the short-term transfer of a water allocation from any person to a person adversely affected by the shortage.
- (2) The authorisation may be granted on such conditions as the Minister thinks fit having

Water Management Act 1999
Act No. 45 of 1999

s. 91

Part 6 – Licensing and Allocation of Water

regard to the objectives of this Act and any relevant water management plan.

- (3) Without limiting the Minister's discretion under subsection (1), the conditions may impose time restrictions on the granting of any subsequent authorisation.
- (4) In this section –

short-term means for a period not exceeding 7 days.

Division 3 – Restrictions in case of inadequate water

91. Inadequate supply or overuse of water

- (1) This Division applies in the following circumstances:
 - (a) if the rate at which water is taken from a watercourse, lake, groundwater area or well –
 - (i) is such that the quantity of water available can no longer meet the demand or there is a risk that the available water will not be sufficient to meet future demand; or
 - (ii) is adversely affecting, or is likely to adversely affect, the quality of the water in the watercourse, lake, groundwater area or well; or

Water Management Act 1999
Act No. 45 of 1999

- (iii) is having a serious effect on another watercourse, lake or groundwater area that depends on water from the first-mentioned watercourse, lake or groundwater area for replenishment;
 - (b) if the rate at which water is taken from a well or groundwater area is such that an underground aquifer is likely to collapse or suffer any other damage;
 - (c) if the rate at which dispersed surface water is taken –
 - (i) is such that the dispersed surface water available can no longer meet the demand; or
 - (ii) is having a serious effect on a watercourse or lake, or the level of water in an underground aquifer, that depends on the dispersed surface water for replenishment;
 - (d) if the rate at which, or the manner in which, water is taken from a water resource is causing, or is likely to cause, damage to ecosystems that depend on water from the water resource.
- (2) In determining the demands on available water for the purposes of subsection (1), the need for water on the part of the ecosystems that depend on water from the water resource concerned must be taken into account.

Water Management Act 1999
Act No. 45 of 1999

s. 92

Part 6 – Licensing and Allocation of Water

92. Notice of water restrictions

- (1) Where a circumstance mentioned in section 91 occurs, the Minister may, by notice published in a local newspaper or by notice served personally or by post on a person, prohibit or restrict the taking of water from a water resource.
- (2) The notice –
 - (a) takes effect at a time that is specified in the notice for that purpose; and
 - (b) remains in force for such period not exceeding 12 months as is specified in the notice unless it is revoked under section 94(4).
- (3) If a case of urgent necessity arises from a circumstance mentioned in section 91, a notice under subsection (1) may be given by radio, television or telephone but a further notice must then be given in accordance with that subsection as soon as practicable.
- (4) A person who contravenes a notice under this section is guilty of an offence.

Penalty: For breach of this subsection, fine not exceeding 500 penalty units and, in the case of a continuing offence, a further fine not exceeding 50 penalty units for each day during which the offence continues.

Water Management Act 1999
Act No. 45 of 1999

93. Form of water restrictions

A notice under section 92(1) may, without limitation –

- (a) require the removal or modification of the means by which water can be taken from a watercourse, lake or well; or
- (b) specify conditions subject to which water may be taken from a watercourse, lake or well; or
- (c) specify any action to be taken to remove or reduce the damage or the risk of damage mentioned in section 91(1)(d).

94. Restrictions on taking of water

- (1) Where a notice under section 92(1) reduces or restricts the quantity of water that may be taken by a person, the Minister must reduce or restrict that taking –
 - (a) in accordance with any relevant water management plan; and
 - (b) in the case of water being taken under a special licence, only after –
 - (i) consulting with the special licensee; and
 - (ii) taking into account any submissions made by the special licensee; and

Water Management Act 1999
Act No. 45 of 1999

s. 94

Part 6 – Licensing and Allocation of Water

- (iii) first reducing the taking of water by persons having rights of lesser surety than that of the special licence.
- (2) Except as may be otherwise provided by a relevant water management plan, the Minister must, in reducing or restricting the taking of water –
 - (a) give first preference to –
 - (i) rights under Part 5 for the taking of water for domestic purposes, public health purposes, consumption by livestock or firefighting; and
 - (ii) rights of licensees for the taking of water for domestic purposes or for consumption by livestock where the licence is endorsed with a condition that this subsection applies to the licence; and
 - (iii) the rights mentioned in clause 12(4)(a) of Schedule 4; and
 - (iv) other allocations, where the surety attaching to those allocations in accordance with section 59 is of the highest class; and

Water Management Act 1999
Act No. 45 of 1999

Part 6 – Licensing and Allocation of Water

s. 94

- (b) give second preference to the needs of ecosystems dependent on the water resource; and
 - (c) give third preference to rights of licensees granted a licence by way of replacement under clause 10 of Schedule 4; and
 - (d) give fourth preference to rights of special licensees; and
 - (e) give fifth preference to rights under Part 5 for the taking of water otherwise than for domestic purposes, consumption by livestock or firefighting; and
 - (f) reduce or restrict the taking of water under authorisations that are not referred to in paragraph (a), (b), (c), (d) or (e), having regard to the relative sureties of the water allocations of any relevant licences and the purposes for which the water is taken.
- (3) If the owner or occupier of land contravenes a requirement of a notice under section 92 –
- (a) the Minister may authorise a person to enter on the land and take the action specified in the notice and such other action as the Minister may require for the purposes of this Act; and
 - (b) the Minister's costs actually and reasonably incurred in so doing are a

Water Management Act 1999
Act No. 45 of 1999

s. 95

Part 6 – Licensing and Allocation of Water

debt due by the owner or occupier to the Minister.

- (4) Where a notice has been published under section 92, the Minister may vary or revoke the notice by another notice published in a local newspaper.
- (5) Where the Minister has served notice on a person under section 92, the Minister may vary or revoke the notice by a subsequent notice served on that person.

Division 4 – Transfer of licences and water allocations

95. Transfer of licences and water allocations

- (1) The holder of a licence or a person entitled under section 106(7) may, subject to this Division and the conditions of the licence, transfer –
 - (a) the licence (including any water allocation of the licence); or
 - (b) a water allocation of the licence.
- (1A) However, a transfer under subsection (1) requires and is ineffective without the Minister's approval unless, in the case of subsection (1)(b), the Minister is the transferee.
- (2) A transfer of a licence or water allocation may be made only under this section, section 103, 120 or 121.

Water Management Act 1999
Act No. 45 of 1999

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- (3) The transfer of a licence or water allocation under subsection (1) may be conditional and may also be absolute or for a limited period.
 - (4) A person who does not hold a licence and who proposes to receive a water allocation by a transfer under subsection (1)(b) must, on applying for the transfer, also apply to the Minister for a licence and, on approval by the Minister, the transferred allocation becomes an allocation specified on that licence.
 - (5) Where a transfer under this section is for a limited period, the transfer is to be effected by a Ministerial endorsement on the transferring and receiving licences.
 - (6)
 - (7) Where a transfer under this section is for a limited period –
 - (a) a licence that has been transferred is taken to revert to the transferor when the period expires; and
 - (b) a water allocation that has been transferred is taken to revert to the transferor's licence when the period expires.

96.

Water Management Act 1999
Act No. 45 of 1999

s. 97

Part 6 – Licensing and Allocation of Water

97. Application for transfer of licence or water allocation

- (1) An application to the Minister for approval of the transfer of a licence or for the variation of a licence on the transfer of a water allocation must be in accordance with section 12A.
- (2) Except as provided in section 98, the Minister must approve an application for transfer that –
 - (a) is in accordance with subsection (1); and
 - (b) is consistent with the objectives of this Act and any relevant water management plan; and
 - (c) could not reasonably be expected to lead to material environmental harm or serious environmental harm; and
 - (d) will not have a significant adverse impact on other persons taking water from the relevant water resource; and
 - (e) if so required, is accompanied by the evidence referred to in section 104.

97A. Transfers to or from tributaries

When a water allocation is transferred, the Minister may approve the variation or transfer of a licence if –

- (a) the water resource specified in the licence is a watercourse; and

Water Management Act 1999
Act No. 45 of 1999

- (b) the transfer of the water allocation will result in –
 - (i) water being transferred from that watercourse to one of its tributaries; or
 - (ii) water being transferred to that watercourse from one of its tributaries.

98. Refusal of application for transfer

- (1) The Minister may refuse an application for the transfer of a licence or water allocation of a licence if reasonably satisfied that –
 - (a) the transfer would be inconsistent with the objectives of this Act or any relevant water management plan; or
 - (b) the transfer would have a significant adverse impact on any licensee or a person taking water under Part 5; or
 - (c) the proposed taking or use of water would or might contravene the EMPC Act.
- (2) The Minister may also refuse an application for the transfer of a licence or water allocation of a licence if the proposed transferor or transferee –
 - (a) has been convicted of an offence against this Act; or
 - (b) has accepted an infringement notice; or

Water Management Act 1999
Act No. 45 of 1999

s. 99

Part 6 – Licensing and Allocation of Water

- (c) has not paid any fee or other amount payable under this Act.

99. Notification of decision

- (1) Within 7 days after approving an application under section 97(2) or refusing an application under section 98, the Minister must give written notice of the decision and of any rights of review or appeal under Part 14 to the applicant.
- (2) Where an application is approved subject to conditions under section 101, the notice is to state those conditions.

100. Withdrawal of application

- (1) In addition to the rights to withdraw an application under this Division, an applicant for a transfer may, on giving 7 days' notice in writing to the Minister, withdraw the application at any time before it is approved.
- (2) On receipt of the notice, the Minister must repay any fee received from the applicant under section 12A, less any expenses incurred by the Minister in dealing with the application until receipt of the notice.

101. Power to impose conditions on transfer

- (1) The Minister may approve a transfer subject to conditions if satisfied that they are required to give effect to section 97(2).

Water Management Act 1999
Act No. 45 of 1999

- (2) Without limitation, the conditions may include –
- (a) a reduction in a water allocation of the transferred licensee; and
 - (b) in the case of an application for the transfer of part of a water allocation of a licence to another licensee, a requirement that a water allocation of the receiving licence be a quantity fixed by the Minister that is less than the allocation of the transferring licensee; and
 - (c) a variation of any condition of either or both of the licences.
- (3) Where, following the transfer of a licence or part of the water allocation of a licence, it is intended that the water will be taken from a different part of the water resource, the Minister may exercise his or her powers under this section –
- (a) to ensure that the demand for water from the part of the water resource from which the water is to be taken does not prejudice other licensees by exceeding the availability of water in that part of the water resource; or
 - (b) to reflect the loss to the water resource of part of the water to which the transferred licence or water allocation relates by reason of evaporation or any other cause as the water flows to the part of the resource from which it is to be taken.

Water Management Act 1999
Act No. 45 of 1999

s. 102

Part 6 – Licensing and Allocation of Water

- (4) Where the Minister has notified the applicant in writing that he or she intends to vary a water allocation or the conditions of a licence under this section, the applicant may withdraw the application within 7 days by giving a notice in writing to the Minister to that effect.

102.

103. Temporary transfers

- (1) A person who is not a licensee may apply to the Minister for a temporary transfer of a water allocation of a licence.
- (2) The application must be in accordance with section 12A.
- (2A) Section 95(4) does not apply to the application.
- (3) Where the Minister is satisfied that a temporary transfer of a water allocation is necessary to relieve a serious water shortage, the Minister may, in writing, approve the transfer for a period not exceeding 21 days.
- (4) The approval may be granted subject to such conditions as the Minister thinks fit having regard to the objectives of this Act and any relevant water management plan and, without limitation, a condition may limit the period before which a second or subsequent temporary transfer may be made to the applicant.

Water Management Act 1999
Act No. 45 of 1999

Part 6 – Licensing and Allocation of Water

s. 104

- (5) A transfer under this section may be refused for the same reasons that a transfer may be refused under section 98.
- (5A) If subsection (5) applies, the Minister is to notify the applicant as soon as practicable of –
 - (a) the refusal; and
 - (b) the reasons for the refusal.
- (6) A temporary transfer of a water allocation is taken to revert to the transferor's licence on the expiration of the period of the transfer.

104. Consent of parties with financial interest

- (1) Where the register of licences, water allocations and permits includes a notation that a person has a financial interest in a licence or a water allocation of a licence, the holder of the licence must provide written evidence to the Minister that that person consents to the transfer of the licence or all or part of a water allocation of that licence under this Division.
- (2) However, subsection (1) does not apply to –
 - (a) a temporary transfer under section 103; or
 - (b) a transfer under section 95 for a period of less than 12 months if, after that period, the licence or, as the case may be, the full or partial water allocation is intended to be transferred back to the licensee who, but for this subsection, would be required

Water Management Act 1999
Act No. 45 of 1999

s. 105

Part 6 – Licensing and Allocation of Water

to provide the written evidence of consent to the Minister; or

- (c) a transfer where the transferor and the transferee are the same person.

105. Endorsement and record of dealings

On a transfer under this Division, the Minister must –

- (a) endorse on a licence the name and address of a person to whom the licence has been transferred; and
- (b) in the case of the transfer of a water allocation of a licence, endorse on both relevant licences such particulars as he or she thinks fit relating to the transfer.

Division 5 – Breach of licence

106. Cancellation, &c., of licence on conviction for offence

- (1) On conviction of a licensee for an offence against section 82 or section 92(4) which has resulted in a significant adverse impact on any other person or material environmental harm or serious environmental harm, a court may cancel the licence or suspend it for such period as it thinks fit.
- (2) If the demerit points allocated to a licence under Division 2 of Part 13 exceed the prescribed number, the Minister may, on giving 7 days'

Water Management Act 1999
Act No. 45 of 1999

notice to the licensee of his or her intention to do so, cancel or suspend the licence in accordance with the regulations.

(3) If –

- (a) a licensee has been convicted of an offence under the EMPC Act; and
- (b) the Minister is satisfied that the environment of the water resource to which the licence relates has been detrimentally affected by the offence –

the Minister may cancel, suspend or vary the licence on giving 7 days' notice to the licensee of his or her intention to do so.

(4) The Minister may –

- (a) suspend a licence where the licence fee payable under section 79 is not paid within 60 days after the due date; or
- (b) cancel a licence where the licence fee payable under section 79 is not paid within 120 days after the due date –

on giving 7 days' notice to the licensee of his or her intention to do so.

(5) Where the register of licences, water allocations and permits includes a notation that a person has a financial interest in a licence that has been cancelled, suspended or varied, the Minister must notify that person of the cancellation,

Water Management Act 1999
Act No. 45 of 1999

s. 106

Part 6 – Licensing and Allocation of Water

variation or suspension at least 7 days before it takes effect.

- (6) Where a suspension or cancellation is proposed under subsection (4), the notice is to specify a period of 30 days during which a person having a financial interest in the licence may pay the outstanding licence fee, in which case the proposed suspension or cancellation will have no effect.
- (7) Where a cancellation or suspension for a period exceeding 30 days –
- (a) has been imposed under subsection (1);
or
 - (b) is proposed under subsection (2) or (3) –
- the notice is to specify a period of 30 days during which a person having a financial interest in the licence or a water allocation of the licence may apply to the Minister for approval to transfer the licence or the relevant water allocation under Division 4 on such conditions as the Minister may require for the purposes of this Part.
- (8) A notice required to be given to a person under subsection (2), (3), (4) or (5) may be given to the person in writing or, if the person's whereabouts are unknown, given by means of a notice in the *Gazette* or a local newspaper, or both.

107. Effect of cancellation of licence on water allocation

Except as provided by section 106(7), a water allocation of a licence that has been cancelled under this Division or any other provision of this Act is forfeited to the Minister.

Division 6 – Special licences

108. Application of Division

If a provision of this Division is inconsistent with any other provision of this Act, the provision of this Division prevails.

109. Special licences

- (1) A special licence may be granted in accordance with this Division with an endorsement that this Division applies to the licence.
- (2) Except as provided by this Division, a special licensee is subject to this Act.

110. Effect of special licences

A special licence is to specify the water allocation applicable to it and –

- (a) the licence is to be used for the purposes referred to in section 115; and
- (b) the licence is for a specified term not exceeding 99 years; and

Water Management Act 1999
Act No. 45 of 1999

s. 111

Part 6 – Licensing and Allocation of Water

- (c) except in accordance with section 116(3), the licence may not be varied and the water allocation of the licence may not be reduced; and
- (d) the licence may not be suspended or cancelled except in accordance with section 117; and
- (e) an application for renewal of the licence may be made at any time within 10 years before the expiry of that licence.

111. Surety of special licences

- (1) A special licence confers a paramount surety against all persons except for –
 - (a) rights under Part 5 for the taking of water for domestic purposes, consumption by livestock or firefighting; and
 - (b) rights of licensees for the taking of water for domestic purposes or for the consumption by livestock where the licence is endorsed with a condition that section 94(2)(a)(ii) applies to the licence; and
 - (c) the rights mentioned in clause 12(4)(a) of Schedule 4; and
 - (d) the essential needs of ecosystems dependent on the relevant water resource; and

Water Management Act 1999
Act No. 45 of 1999

- (e) the rights of licensees granted a replacement licence under clause 10 of Schedule 4.
- (2) Where more than one special licence confers a right to take water from a particular water resource, the licences may contain conditions relating to the relative sureties of the water allocations of the licences.
- (3) For the purposes of sections 88(1) and 94(2), the Minister must consult with the special licensees and take account of the relative sureties of the water allocations of the special licences.
- (4) Where –
 - (a) the relative sureties of the water allocations of the special licences are not specified in the licences; and
 - (b) the exercise of powers under section 88 or 94 may have an adverse effect on one or more of the special licensees –

the Minister must consult with the licensees and obtain the approval of the Advisory Committee before exercising any of those powers.

112. Effect of water management plan on special licence

Where –

- (a) a water management plan relates to, affects or purports to relate to or affect any of the rights of a special licensee; and

Water Management Act 1999
Act No. 45 of 1999

s. 113

Part 6 – Licensing and Allocation of Water

- (b) the implementation of any provision of the plan would require a variation of the special licence –

the special licensee is not bound by that provision unless the licence is specifically varied under section 116.

113. Fees for special licences

The Minister may charge a fee for the granting and holding of a special licence by a lump sum or periodical payment but, except as may be agreed between the special licensee and the Minister, the fee is to be limited to the recouping of the costs actually and reasonably incurred by the Minister in administering the special licence.

114. Advisory Committee

For the purposes of this Division, an Advisory Committee is established comprising –

- (a) the Minister having the administration of this Act; and
- (b) the Treasurer; and
- (c) the Minister administering the *Electricity Supply Industry Act 1995*; and
- (d) the Minister administering the EMPC Act; and
- (e) the Minister administering the *Hydro-Electric Corporation Act 1995*; and

(f) the Minister administering the *Inland Fisheries Act 1995*; and

(g) the Minister administering the *Tasmanian Development Act 1983*.

115. Grant of special licences

(1) Where a body corporate –

(a) intends to use water for the purpose of the generation of an annual average of at least 400 gigawatt hours of electricity or for purposes reasonably incidental to that purpose; and

(b) has demonstrated its capacity to do so –

the body corporate may apply to the Minister for the grant of a special licence under this Division.

(2) A special licence must be granted on an application under subsection (1) if the Advisory Committee is satisfied that it would be consistent with the objectives of this Act to do so.

(3) For the purposes of this section, the Advisory Committee must determine any conditions to be imposed –

(a) in order to protect the rights of existing users of water from the relevant water resource; and

(b) in order to meet the needs for water of ecosystems that depend on the relevant water resource, having particular regard

Water Management Act 1999
Act No. 45 of 1999

s. 116

Part 6 – Licensing and Allocation of Water

to the quantity of water needed and the times at which, or the periods during which, those ecosystems will need that water.

- (4) A special licence may also be granted for a specified purpose on application in writing by a proposed licensee where the Advisory Committee is satisfied that it would be consistent with the objectives of this Act to do so and the licence is to be subject to such conditions as the Committee may determine.
- (5) An application under this section must be in accordance with section 12A.

116. Conditions of special licences

- (1) Except as provided by this Division and without derogating from a condition imposed under section 115, a special licence is subject to such conditions as may be agreed by the Minister and the special licensee.
- (2) The conditions of a special licence may be varied only in accordance with this Division.
- (3) Subject to subsection (4), the Minister may, by notice in writing given to a special licensee, vary a condition to which the licence is subject –
 - (a) with the agreement of the special licensee; or
 - (b) without that agreement, if the Advisory Committee so recommends –

Water Management Act 1999
Act No. 45 of 1999

but the variation is not to take effect until there is an agreement as to any compensation payable or the amount of compensation is referred to arbitration in accordance with the *Commercial Arbitration Act 2011*.

- (4) Where a variation proposed under subsection (3) may have an adverse effect on another special licence, the Minister must consult with the other special licensee before making the variation.
- (5) If the Minister varies a condition of a special licence that requires a consequential variation to another special licence or results in a variation of a condition of that other licence, the resultant variation is taken to be a variation under subsection (3).

117. Suspension or cancellation of special licences

- (1) The Minister may not suspend or cancel a special licence except with the approval of a resolution passed by both Houses of Parliament.
- (2) For the purpose of subsection (1), a House of Parliament is taken to have approved the resolution if a copy of it has been laid on the table of that House and –
 - (a) the resolution is approved by that House;
or
 - (b) at the expiration of 10 sitting days of that House after the copy was laid on the table of that House, no motion to disallow the resolution has been passed.

Water Management Act 1999
Act No. 45 of 1999

s. 118

Part 6 – Licensing and Allocation of Water

- (3) For the purposes of this section, where a motion to disallow a provision of a resolution is passed by a House of Parliament –
- (a) the motion has the effect of annulling only that provision; and
 - (b) the remainder of the resolution is taken to be approved by that House.

118. Compensation for liability incurred by special licensee

- (1) If –
- (a) a special licensee suffers damage, is required to pay compensation or otherwise incurs a liability by reason of –
 - (i) a variation under section 116(3)(b); or
 - (ii) a cancellation or suspension under section 117 where the licensee is not in material default of a condition of the licence; or
 - (b) the water allocation of a special licence is reduced without the consent of the special licensee –

the special licensee is entitled to compensation to be paid by the Minister and, in default of agreement, the amount of compensation is to be determined in accordance with the *Commercial Arbitration Act 2011*.

Water Management Act 1999
Act No. 45 of 1999

- (2) For the purposes of subsection (1) –
- (a) compensation is to be paid from the Public Account without further or other appropriation than this section; and
 - (b) in default of agreement by the Minister and the special licensee, the arbitral tribunal is to be nominated by the president for the time being of the Australian Centre for International Commercial Arbitration.

119. Renewal of special licences

- (1) The Minister must renew a special licence granted under section 115(2) within one year after receiving an application for renewal and in any event not later than the expiry of the special licence.
- (2) The Minister may, with the approval of the Advisory Committee and in accordance with section 116, impose conditions on a renewal under subsection (1) in addition to any conditions to which the special licence is subject.
- (3) On receiving an application for renewal of a special licence granted under section 115(4), the Minister may –
 - (a) with the approval of the Advisory Committee, renew the special licence; and

Water Management Act 1999
Act No. 45 of 1999

s. 120

Part 6 – Licensing and Allocation of Water

- (b) after consulting with the Committee, vary or impose conditions on the licence in addition to any conditions to which it is subject.
- (4) A variation or imposition of conditions under subsection (3) is not a variation under section 116.

120. Transfer of special licences

- (1) The holder of a special licence may apply to the Minister for the transfer of the licence to another person to whom a special licence may be granted under section 115.
- (2) The Minister must consult with the Advisory Committee before considering the application.
- (3) The Minister must approve the transfer unless it would be contrary to the objectives of this Act to do so.

121. Transfer of water allocations

- (1) A special licensee may transfer the water allocation of the special licence to any person without any approval being required if –
 - (a) the licence is endorsed with a statement that this section applies to the licence; and
 - (b) the water allocation is to be taken from a water resource specified in the licence for the purposes of this section or from a

Water Management Act 1999
Act No. 45 of 1999

water resource situated in an area so specified.

- (2) Except as provided in subsection (1), Division 4, other than section 95(6), applies to the transfer of a water allocation of a special licence.
- (3) Where a transfer of a water allocation of a special licence is absolute, the relevant licences are taken to be varied accordingly.
- (4) A person who does not hold a licence and who receives a water allocation by a transfer under subsection (1) must, before using the allocation, obtain a licence in which the water allocation is specified.
- (5) The Minister may issue a licence in which a water allocation transferred under subsection (1) is the only water allocation specified.
- (6) On a transfer under subsection (1), a special licensee must provide the Minister, within 14 days and in writing, with full particulars of the transfer.

Penalty: Fine not exceeding 10 penalty units.

- (7) This section does not apply to the transfer of a water allocation by the Hydro-Electric Corporation where the transferred water is to be taken for irrigation unless the Advisory Committee, by notice published in the *Gazette*, determines otherwise.
- (8) The Advisory Committee may make a determination in respect of a particular water

Water Management Act 1999
Act No. 45 of 1999

s. 122

Part 6 – Licensing and Allocation of Water

allocation or water allocations of a particular type.

- (9) A notice under subsection (7) is not a statutory rule.

122. Existing rights of water users to be considered

For the purposes of determining whether section 121 is to apply to a special licence or of the exercise of any other powers under this Division, the Minister and the Advisory Committee must have regard to any right or rights of a person to take or use water as conferred by this Act in respect of any relevant water resource.

123. Breach of licence

A special licensee must not –

- (a) take water in excess of the water allocation endorsed on the special licence; or
- (b) fail to comply with any condition of that licence.

Penalty: Fine not exceeding 2 500 penalty units and, in the case of a continuing offence, a further fine not exceeding 50 penalty units for each day during which the offence continues.

Water Management Act 1999
Act No. 45 of 1999

Part 6A – Authority to convey water via watercourse

s. 123A

**PART 6A – AUTHORITY TO CONVEY WATER VIA
WATERCOURSE**

123A. Watercourse authority

A person must not convey, via a watercourse, water that has been taken and stored pursuant to this Act or the special Act unless –

- (a) the person holds an authority (in this Part referred to as a “watercourse authority”) authorising the person to convey that water via that watercourse; and
- (b) that water is conveyed in accordance with that watercourse authority.

Penalty: Fine not exceeding 500 penalty units and, in the case of a continuing offence, a further fine not exceeding 50 penalty units for each day during which the offence continues.

123B. Application for watercourse authority

- (1) An application for a watercourse authority is to be made to the Minister.
- (2) The application must be in accordance with section 12A.
- (3) The Minister, by notice, may require the applicant to take or arrange for the taking of a specified action at the applicant’s expense if the Minister reasonably considers that the action is

Water Management Act 1999
Act No. 45 of 1999

s. 123C

Part 6A – Authority to convey water via watercourse

critical to a proper consideration of the application.

123C. Determination of application

- (1) Subject to subsection (2), after considering an application for a watercourse authority the Minister may –
 - (a) approve the application; or
 - (b) refuse the application.
- (2) The application must be approved if the Minister is reasonably satisfied that issuing the watercourse authority –
 - (a) would be consistent with the objectives of this Act and any relevant water management plan; and
 - (b) would not result in material or serious environmental harm or environmental nuisance; and
 - (c) would not have a significant adverse impact on other persons taking water from the relevant water resource or on the commercial operations of a major user of water from that water resource; and
 - (d) would not adversely impact on public safety.
- (3) If subsection (1)(b) applies, the Minister is to notify the applicant as soon as practicable of –

Water Management Act 1999
Act No. 45 of 1999

Part 6A – Authority to convey water via watercourse

s. 123D

- (a) the refusal; and
- (b) the reasons for the refusal.

123D. Issue of watercourse authority

- (1) Within 7 days after approving an application for a watercourse authority, the Minister is to –
 - (a) notify the applicant of the approval; and
 - (b) issue the applicant with the authority.
- (2) The watercourse authority is to be in an approved form and may be issued on such conditions as the Minister thinks fit.
- (3) Without limiting the Minister’s discretion, the conditions of the watercourse authority may include conditions to –
 - (a) ensure that water demand under the watercourse authority does not exceed the availability of water in the relevant water resource; and
 - (b) reflect expected losses to the relevant water resource from evaporation or other causes as water is conveyed under the watercourse authority; and
 - (c) reflect the terms on which water is to be released and taken under the watercourse authority or any other authorisation; and

Water Management Act 1999
Act No. 45 of 1999

s. 123E

Part 6A – Authority to convey water via watercourse

- (d) ensure that the watercourse authority does not have a significant adverse impact on other water users; and
- (e) ensure that the watercourse authority does not cause material or serious environmental harm; and
- (f) provide for the variation of the watercourse authority (including the circumstances in which it may occur and the procedures for effecting it).

123E. Nature of watercourse authority

- (1) A watercourse authority –
 - (a) authorises the person to whom it is issued to convey via a watercourse, in accordance with the conditions of the watercourse authority, water that has been taken and stored under and pursuant to this Act or the special Act; and
 - (b) unless sooner cancelled or surrendered and subject to the payment of any prescribed fees, continues in force for the period specified in the watercourse authority; and
 - (c) is not renewable or transferable.
- (2) To avoid doubt, a watercourse authority may be issued to and held by –
 - (a) a corporation; or

Water Management Act 1999
Act No. 45 of 1999

Part 6A – Authority to convey water via watercourse

s. 123F

- (b) an individual; or
 - (c) a group of individuals in common; or
 - (d) a water entity.
- (3) If subsection (2)(c) applies, the liability of the individuals under the watercourse authority is joint and several.
- (4) The holder of a watercourse authority may surrender it at any time by giving the Minister written notice to that effect.
- (5) A watercourse authority has no surrender value.
- (6) The holder of a watercourse authority must produce the authority for inspection if required to do so by an authorised officer.

Penalty: Fine not exceeding 10 penalty units.

123F. Cancellation or suspension of watercourse authority

- (1) The Minister may cancel or suspend a watercourse authority if satisfied that –
- (a) the holder of the watercourse authority has contravened the conditions of the watercourse authority in a material way or has caused or allowed another person to do so; or
 - (b) where the holder of the watercourse authority has been convicted of an offence under section 123A, the offence resulted in material environmental harm

Water Management Act 1999
Act No. 45 of 1999

s. 123F

Part 6A – Authority to convey water via watercourse

- or serious environmental harm or had a significant adverse impact on other water users; or
- (c) the holder of the watercourse authority has committed, or caused or allowed another person to commit, an offence under the EMPC Act that is in any way related to the watercourse authority; or
 - (d) the watercourse authority has been shown, in practice, to be having a significant adverse impact on other water users or the environment; or
 - (e) the relevant watercourse has become, for any reason, unsuitable for conveying water; or
 - (f) no use is being made of the watercourse authority; or
 - (g) the holder of the watercourse authority has failed to pay, when required to do so, a fee prescribed pursuant to section 123E(1)(b); or
 - (h) the holder of the watercourse authority has committed, or caused or allowed another person to commit, an offence under section 283 that is in any way related to the watercourse authority.
- (2) The cancellation or suspension takes effect when the holder of the watercourse authority is given notice of it by the Minister or on such later date as the Minister, by the notice, specifies.

Water Management Act 1999
Act No. 45 of 1999

Part 6A – Authority to convey water via watercourse

s. 123G

- (3) The notice of cancellation or suspension is to –
 - (a) specify the reasons for the cancellation or suspension; and
 - (b) specify, for a suspension, the term of suspension.
- (4) The Minister may revoke the suspension of a watercourse authority at any time.
- (5) A watercourse authority is of no effect while it is suspended.
- (6) In this section –
 - allow* includes –
 - (a) consciously or carelessly ignore;
and
 - (b) knowingly acquiesce.

123G. Exemptions

- (1) The Minister may, by order, declare that this Part does not apply to a water entity specified in the order.
- (2) The order is a statutory rule.

PART 7 – WELLS

Division 1 – Wells

124. Application of Division

- (1) The Minister may, by order, declare that this Division does not apply to a well or well works, or to a class of wells or well works, specified in the order.
- (2) The order is a statutory rule.

124A. Appointment of groundwater area

- (1) The Minister may, by order, appoint, name and define a groundwater area.
- (1A) The order is a statutory rule.
- (2) The order may provide that groundwater may not be taken from that groundwater area without the authority of a licence and the order may have effect either generally or by reference to –
 - (a) a class of persons seeking to take groundwater; or
 - (b) the amount of groundwater taken; or
 - (c) the purpose for which it is taken; or
 - (d) such other matters as the Minister thinks fit.

Water Management Act 1999
Act No. 45 of 1999

Part 7 – Wells

s. 124B

- (3) The order may provide that the whole or specified provisions of the order will not come into operation until a date specified in the order.

124B. Notice of appointment of groundwater area

- (1) Before appointing a groundwater area, the Minister must, by notice published in a local newspaper, invite written representations from any person who may be affected by the appointment.
- (2) The notice is to state –
 - (a) details of the appointment, the relevant water resource and such other information as the Minister thinks fit; and
 - (b) the name and address of a person to whom representations may be sent and the time before which they are to be received.
- (3) Before making an appointment under this section, the Minister must have regard to any representations received.

125.

126. Well orders

- (1) Notwithstanding any other provision of this Part, where the Minister is satisfied that any act or

Water Management Act 1999
Act No. 45 of 1999

s. 126

Part 7 – Wells

omission by a person in respect of a well may result, directly or indirectly, in the pollution or deterioration, inequitable distribution, loss, wastage or undue depletion of any waters, the Minister may, by order served on the owner or occupier of the land on which the well is situated, direct that owner or occupier to do any one or more of the following:

- (a) to close and shut off the supply of groundwater from the well in the manner specified in the order;
- (b) to restrict or limit the amount of water taken from the well to the extent specified in the order;
- (c) to install and maintain a suitable meter to record the amount of water taken from the well;
- (d) to discontinue the use of the well, either permanently or for a period specified in the order;
- (e) to take any action specified in the order to prevent any waste from gaining access to the well or to prevent any pollution of the water in it;
- (f) to close, or partly or entirely to block or backfill, the well in the manner specified in the order;
- (g) to use the water withdrawn from the well for such purposes as are specified in the order;

Water Management Act 1999
Act No. 45 of 1999

Part 7 – Wells

s. 127

- (h) to carry out such repairs or modifications to the well as are specified in the order;
 - (i) to discontinue any well works, either permanently or for a period specified in the order.
- (2) Unless the Minister otherwise directs in the order, a permit under the *Land Use Planning and Approvals Act 1993* is not required to undertake any action specified in the order.
- (3) An order under subsection (1) –
 - (a) is to include notification of any rights of review or appeal under Part 14; and
 - (b) is not a statutory rule; and
 - (c) prevails, to the extent of any inconsistency, over any authorisation.
- (4) A person must not contravene a provision of an order in force under this section.

Penalty: Fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

127. Power to carry out works

- (1) Where an order under section 126 has been contravened in whole or in part within the period specified in the order, the Minister may authorise a person to enter any land on which the well to

Water Management Act 1999
Act No. 45 of 1999

s. 128

Part 7 – Wells

which the order relates is situated and cause such works as are necessary to be carried out to ensure compliance with the order.

- (2) The Minister may recover in any court of competent jurisdiction as a debt due to the Crown from the person on whom the order was served any expense actually and reasonably incurred in carrying out the works to which the order relates.

128. Obligations in relation to wells

- (1) An occupier of land on which a well is situated must ensure that the well, including the casing, lining and screen of the well and the mechanism (if any) used to cap the well, is properly maintained.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

- (2) A person must not drill, plug, backfill or seal a well in contravention of a water management plan.

Penalty: Fine not exceeding 100 penalty units.

129. Deleterious matter affecting groundwater

- (1) A person must not, by any act or omission, introduce, or suffer or permit any person to introduce, into a well any waste or other matter

Water Management Act 1999
Act No. 45 of 1999

Part 7 – Wells

s. 130

that, on being so introduced, causes, or is likely to cause, the pollution of groundwater.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

- (2) Subsection (1) does not apply to, or in respect of, the carrying out of any work or operation that is carried out –
 - (a) in order to comply with this Act; or
 - (b) with the approval in writing of the Minister.
- (3) Before giving approval under subsection (2)(b), the Minister must consult with the Director.

Division 2 – Information relating to wells

130. Application of Division

- (1) The Minister may, by order, declare that this Division or a provision of this Division does not apply to a well or well works, or to class of wells or well works, specified in the order.
- (2) The order is a statutory rule.

131. Provision of information relating to construction of wells

- (1) Where water is struck in the construction of a well, the person constructing the well must, as soon as practicable after the water is struck, inform the Minister in writing in an approved form of the fact and of the location of the well and of the depth of the well at which the water was so struck.
- (2) A person who constructs a well must, as soon as practicable after completion of that construction, inform the Minister in writing in an approved form of the level of the water, if any, in the well and provide the Minister with such particulars relating to the well and water, cuttings and other materials obtained during the construction of the well as the Minister may require.
- (3) Where a person who constructs a well receives a report of an analysis of any water obtained from the well, he or she must, as soon as practicable after receipt of the report, provide the Minister with a copy.

132. Provision of materials relating to construction of wells

- (1) The Minister may give directions to a person constructing a well to provide such information as the Minister may reasonably require to assist in assessing the groundwater resources of Tasmania or require that any water, cuttings or other materials obtained in the construction of a well be preserved for such period, in such place

Water Management Act 1999
Act No. 45 of 1999

Part 7 – Wells

s. 133

and in such manner as may be specified in the directions, and the person constructing that well must ensure that those directions are complied with.

- (2) The directions must be given in writing and may be given to any person who is constructing the well or to any person who has provided information to the Minister under section 131.
- (3) Nothing in subsection (1) requires the preservation of any material that is required for assay or, subject to subsection (4), the preservation of any water, cuttings or other materials for a period longer than 3 months.
- (4) It is sufficient compliance with any directions given under subsection (1) requiring any water, cuttings or other materials to be preserved if the water, cuttings or other materials are delivered to the Minister.

133. Failure to provide information or material as to wells

A person who fails to provide information to the Minister as required by section 131 or who contravenes a direction under section 132 is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.

134. Examination of materials

Where any water, cuttings or other materials are required to be preserved under section 132, the Minister may examine that water or those cuttings or other materials and take specimens of it or them for the purposes of assay or treatment.

Division 3 – Well works

135. Causing well works to be undertaken

- (1) A person must not cause any well works to be undertaken unless –
- (a) the person holds a permit (in this Division called a “well works permit”) authorising the well works; or
 - (b) by virtue of an order under section 135H, the well works do not require a well works permit.

Penalty: Fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

- (2) A person who is causing any well works to be undertaken under the authority of a well works permit must ensure that the well works are undertaken in accordance with that permit.

Penalty: Fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding

Water Management Act 1999
Act No. 45 of 1999

Part 7 – Wells

s. 135A

20 penalty units for each day during which the offence continues.

135A. Application for well works permit

- (1) An application for a well works permit is to be made to the Minister.
- (2) The application must –
 - (a) be in accordance with section 12A; and
 - (b) if the applicant is not the owner of the land on which the well works would be undertaken, be supported by evidence that the owner consents to the making of the application.

135B. Determination of application

- (1) Subject to subsection (2), after considering an application for a well works permit the Minister may –
 - (a) approve the application; or
 - (b) refuse the application.
- (2) The application must be approved if the Minister is reasonably satisfied that the proposed well works –
 - (a) would be consistent with the objectives of this Act, any relevant water management plan and any relevant order under section 124A; and

Water Management Act 1999
Act No. 45 of 1999

s. 135C

Part 7 – Wells

- (b) would not result in material or serious environmental harm or environmental nuisance; and
 - (c) would not adversely impact on a groundwater monitoring bore; and
 - (d) would not damage or adversely impact on property owned by a third party; and
 - (e) would not adversely impact on public safety; and
 - (f) would not adversely impact on other persons taking water from the relevant water resource or any hydrologically linked water resource.
- (3) If subsection (1)(b) applies, the Minister is to notify the applicant as soon as practicable of –
- (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) any rights of review or appeal under Part 14.

135C. Issue of well works permit

- (1) Within 7 days after approving an application for a well works permit, the Minister is to –
 - (a) notify the applicant of the approval; and
 - (b) issue the applicant with the permit.
- (2) The well works permit –

Water Management Act 1999
Act No. 45 of 1999

Part 7 – Wells

s. 135D

- (a) is to be in an approved form; and
 - (b) may be issued on such conditions as the Minister thinks fit having regard to the objectives of this Act.
- (3) If the well works permit is issued on conditions, the notice under subsection (1)(a) is to advise of any rights of review or appeal under Part 14.
- (4) The holder of a well works permit must not contravene a condition of the permit.

Penalty: Fine not exceeding 50 penalty units.

135D. Nature of well works permit

- (1) A well works permit authorises its holder to cause the well works specified in the permit to be undertaken in accordance with the permit.
- (2) A well works permit –
 - (a) takes effect on such day as the Minister specifies in the permit; and
 - (b) unless sooner cancelled or surrendered, remains in force for a 2-year period commencing on that day; and
 - (c) is not renewable but may, at the written request of the permit holder made no later than 30 days before the permit expires, be extended by the Minister for one further period not exceeding 12 months if the Minister is still satisfied as

Water Management Act 1999
Act No. 45 of 1999

s. 135E

Part 7 – Wells

to the matters set out in section 135B(2)
in respect of the relevant well works.

- (3) The holder of a well works permit may surrender it at any time by giving the Minister written notice to that effect.
- (4) A well works permit has no surrender value.
- (5) The holder of a well works permit must produce the permit for inspection if required to do so by an authorised officer.

Penalty: Fine not exceeding 10 penalty units.

135E. Permit may enure for benefit of owner

A well works permit may be assigned so as to enure for the benefit of the owner of the relevant land from time to time.

135F. Variation of well works permit

- (1) The Minister may vary a well works permit on his or her own motion at any time if, after consulting the permit holder, the Minister is reasonably satisfied that the variation is necessary to ensure that the permit –
 - (a) is consistent with the objectives of this Act, any relevant water management plan and any relevant order under section 124A; or

Water Management Act 1999
Act No. 45 of 1999

Part 7 – Wells

s. 135F

- (b) will not result in material or serious environmental harm or environmental nuisance; or
 - (c) will not adversely impact on a groundwater monitoring bore; or
 - (d) will not damage or adversely impact on property owned by a third party; or
 - (e) will not adversely impact on public safety; or
 - (f) will not adversely impact on other persons taking water from the relevant water resource or any hydrologically linked water resource.
- (2) The Minister may also vary a well works permit consequent on an application made by the permit holder –
- (a) in accordance with section 12A; and
 - (b) with the consent of the owner of the relevant land (if the owner is a person other than the permit holder).
- (3) Subject to subsection (4), the Minister may –
- (a) approve the application; or
 - (b) refuse the application.
- (4) The application must be approved if the Minister is reasonably satisfied that the permit as proposed to be varied –

Water Management Act 1999
Act No. 45 of 1999

s. 135F

Part 7 – Wells

- (a) would be consistent with the objectives of this Act, any relevant water management plan and any relevant order under section 124A; and
 - (b) would not result in material or serious environmental harm or environmental nuisance; and
 - (c) would not adversely impact on a groundwater monitoring bore; and
 - (d) would not damage or adversely impact on property owned by a third party; and
 - (e) would not adversely impact on public safety; and
 - (f) would not adversely impact on other persons taking water from the relevant water resource or any hydrologically linked water resource.
- (5) The variation of a well works permit under this section takes effect when the holder of the permit is given notice of it or on such later date as the Minister, by the notice, specifies.
- (6) If the variations are substantially different to those that the holder of the permit has agreed to in consultations under subsection (1) or applied for under subsection (2), the notice of variation is to advise of any rights of review or appeal under Part 14.

Water Management Act 1999
Act No. 45 of 1999

Part 7 – Wells

s. 135G

- (7) The Minister, on varying a well works permit may issue a fresh form of the permit to reflect the variation.
- (8) If subsection (3)(b) applies, the Minister is to notify the applicant as soon as practicable of –
 - (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) any rights of review or appeal under Part 14.

135G. Cancellation or suspension of well works permit

- (1) The Minister may cancel or suspend a well works permit if satisfied that –
 - (a) the holder of the permit has contravened the conditions of the permit in a material or repeated way; or
 - (b) the holder of the permit has committed an offence against section 135 or Division 2; or
 - (c) the holder of the permit has caused or allowed the specified well works to be physically undertaken by a person who is not authorised by or under this Act to undertake those works; or
 - (d) the holder of the permit has committed an offence against section 283 in any way related to the permit; or

Water Management Act 1999
Act No. 45 of 1999

s. 135H

Part 7 – Wells

- (e) the holder of the permit has committed an offence under the EMPC Act in any way related to the permit; or
 - (f) work undertaken in accordance with the permit has been shown, in practice, to be having a significant adverse impact on other water users or the environment.
- (2) The cancellation or suspension takes effect on such date as is specified for that purpose in the notice required to be served under section 271(2) on the holder of the permit.
- (3) The notice of cancellation or suspension is to –
- (a) specify the reasons for the cancellation or suspension; and
 - (b) specify, for a suspension, the term of suspension and what needs to be done to revoke the suspension; and
 - (c) advise of any rights of review or appeal under Part 14.
- (4) The Minister may revoke the suspension of a well works permit at any time.
- (5) A well works permit is of no effect while it is suspended.

135H. Exemptions

- (1) The Minister may, by order, declare that a well works permit is not required for well works or a class of well works specified in the order.

- (2) The order is a statutory rule.
- (3) For the purposes of subsection (1), and without limiting the Minister's discretion, well works may be classified by reference to any or any combination of the following criteria:
 - (a) their purpose;
 - (b) their location;
 - (c) the amount of groundwater to be taken;
 - (d) their scale, design or method or time of construction;
 - (e) their undertaker.

Division 4 – Well driller's licences

136. Interpretation of Division

In this Division –

class, of well driller's licence, means a class prescribed by the regulations;

employee includes a contractor, whether independent or otherwise;

endorsement, on a well driller's licence, means an endorsement prescribed by the regulations;

on-site supervision, of well works, means close regular personal supervision at the site of those works;

Water Management Act 1999
Act No. 45 of 1999

s. 136A

Part 7 – Wells

qualified means qualified by education, training or experience (or any combination thereof).

136A. Undertaking well works

- (1) A person must not physically undertake well works unless the person –
- (a) holds a licence (in this Division called a “well driller’s licence”); or
 - (b) is an employee of, and working under the on-site supervision of, a person referred to in paragraph (a).

Penalty: Fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

- (2) The holder of a well driller’s licence must not undertake well works of any kind unless –
- (a) the licence is of a class that authorises its holder to undertake well works of that kind; or
 - (b) undertaking those well works of that kind is authorised by an endorsement on the licence.

Penalty: Fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding

Water Management Act 1999
Act No. 45 of 1999

Part 7 – Wells

s. 136B

20 penalty units for each day during which the offence continues.

- (3) This section does not apply to or in respect of well works to which section 136J applies.

136B. Application for well driller's licence

- (1) An application for a well driller's licence is to be made to the Minister.
- (2) The application –
- (a) may only be made by an individual; and
 - (b) must be in accordance with section 12A; and
 - (c) may specify which class of licence is sought; and
 - (d) may specify which endorsements are sought.

136C. Determination of application

- (1) After considering an application for a well driller's licence, the Minister may –
- (a) approve the application as submitted; or
 - (b) if the applicant agrees, approve the application as if it were for a licence of a class lower than that actually applied for; or
 - (c) refuse the application.

Water Management Act 1999
Act No. 45 of 1999

s. 136C

Part 7 – Wells

- (2) However, the Minister must not approve the application unless satisfied that –
- (a) the applicant is qualified to physically undertake well works of the relevant class; and
 - (b) any endorsements sought by the applicant are appropriate for the class of licence and that the applicant is qualified to employ the drilling methods to which the endorsements relate; and
 - (c) the applicant has no convictions for offences of a serious kind against this Part or for offences against section 283; and
 - (d) the applicant has or satisfies any prescribed competencies; and
 - (e) if the applicant has held another well driller's licence, no more than the prescribed number of demerit points were allocated to it under Division 2 of Part 13.
- (3) If subsection (1)(c) applies, the Minister is to notify the applicant as soon as practicable of –
- (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) any rights of review or appeal under Part 14.

Water Management Act 1999
Act No. 45 of 1999

Part 7 – Wells

s. 136D

136D. Issue of well driller’s licence

- (1) Within 7 days after approving an application for a well driller’s licence, the Minister is to –
 - (a) notify the applicant of the approval; and
 - (b) issue the applicant with the licence.
- (2) The well driller’s licence –
 - (a) is to be in an approved form; and
 - (b) may be issued on such conditions and with such endorsements as the Minister thinks fit having regard to any prescribed matters.
- (3) If the well driller’s licence is issued on conditions, the notice under subsection (1)(a) is to advise of any rights of review or appeal under Part 14.
- (4) The holder of a well driller’s licence must not contravene a condition of the licence.

Penalty: Fine not exceeding 50 penalty units.

136E. Nature of well driller’s licence

- (1) A well driller’s licence of any class –
 - (a) authorises its holder to physically undertake well works in accordance with the licence; and
 - (b) unless sooner cancelled or surrendered, remains in force for a 5-year period

Water Management Act 1999
Act No. 45 of 1999

s. 136F

Part 7 – Wells

commencing on the day on which it is issued and is renewable; and

- (c) is not transferable.
- (2) The holder of a well driller's licence may surrender it at any time by giving the Minister written notice to that effect.
- (3) A well driller's licence has no surrender value.
- (4) The holder of a well driller's licence must produce the licence for inspection if required to do so by an authorised officer.

Penalty: Fine not exceeding 10 penalty units.

136F. Renewal of licences

- (1) The Minister must renew a well driller's licence that is otherwise about to expire if satisfied that the licensee –
 - (a) has paid a prescribed licence renewal fee; and
 - (b) has paid all fees and charges payable under the licence; and
 - (c) has complied with the licence during the expiring term; and
 - (d) has or satisfies any prescribed competencies.
- (2) If the Minister is not satisfied as required under subsection (1), the Minister may –

Water Management Act 1999
Act No. 45 of 1999

Part 7 – Wells

s. 136G

- (a) refuse to renew the licence; or
 - (b) renew the licence subject to conditions.
- (3) If the licence is renewed, with or without conditions, the Minister is to notify the licensee accordingly.
- (4) If the licence is renewed, it must be renewed for a 5-year period unless –
- (a) the licensee requests a shorter term; or
 - (b) by reason of special or changed circumstances, the Minister determines that the renewal should be for a shorter term.
- (5) If subsection (2)(a) applies, the Minister is to notify the licensee as soon as practicable of –
- (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) any rights of review or appeal under Part 14.

136G. Continuation of expiring licence

- (1) This section applies if, immediately before a well driller's licence is due to expire (that licence being referred to in this section as "the expiring licence") –
- (a) the licensee has paid the prescribed licence renewal fee; and

Water Management Act 1999
Act No. 45 of 1999

s. 136H

Part 7 – Wells

- (b) the licensee has not been given notice under section 136F that the Minister has renewed or refused to renew the expiring licence.
- (2) The expiring licence continues in force until such time as the licensee is so notified.

136H. Variation of well driller’s licence

- (1) The Minister may vary a well driller’s licence at any time.
- (2) The variation may be effected –
 - (a) on the Minister’s own motion after consulting the licensee; or
 - (b) consequent on an application made by the licensee.
- (3) For the purposes of subsection (2)(b), the application must –
 - (a) be in accordance with section 12A; and
 - (b) specify, if applicable, any other class of licence sought; and
 - (c) specify, if applicable, any additional endorsements sought.
- (4) The Minister may –
 - (a) approve the application; or
 - (b) if the applicant agrees, approve the application as if it were for variations of

Water Management Act 1999
Act No. 45 of 1999

Part 7 – Wells

s. 136H

- a more limited kind than those actually applied for; or
- (c) refuse the application.
- (5) However, the Minister must not approve the application unless he or she is reasonably satisfied that –
- (a) the applicant is, if applicable, qualified to physically undertake well works of the relevant class; and
 - (b) any additional endorsements are appropriate for the class of licence and the applicant is qualified to employ the drilling methods to which the endorsements relate; and
 - (c) the applicant has no convictions for offences of a serious kind against this Part or for offences against section 283; and
 - (d) the applicant has or satisfies any prescribed competencies; and
 - (e) under Division 2 of Part 13, no more than the prescribed number of demerit points have been allocated to the licence.
- (6) If subsection (4)(c) applies, the Minister is to notify the licensee as soon as practicable of –
- (a) the refusal; and
 - (b) the reasons for the refusal; and

Water Management Act 1999
Act No. 45 of 1999

s. 136I

Part 7 – Wells

- (c) any rights of review or appeal under Part 14.
- (7) The variation of a well driller's licence under this section takes effect when the licensee is given notice of it or on such later date as the Minister, by the notice, specifies.
- (8) The Minister, on varying a well driller's licence may issue a fresh form of the licence to reflect the variations.

136I. Cancellation or suspension of well driller's licence

- (1) The Minister may cancel or suspend a well driller's licence if –
 - (a) the Minister is satisfied that the licensee has contravened the conditions of the licence in a material or repeated way; or
 - (b) the licensee has been convicted of an offence against section 136A or Division 2; or
 - (c) the licensee has knowingly undertaken well works that are in contravention of section 135; or
 - (d) the licensee has been convicted of an offence against section 283 in any way related with the licence; or
 - (e) under Division 2 of Part 13, more than the prescribed number of demerit points have been allocated to the licence.

Water Management Act 1999
Act No. 45 of 1999

Part 7 – Wells

s. 136J

- (2) The cancellation or suspension takes effect on such date as is specified for that purpose in the notice required to be served under section 271(2) on the licensee.
- (3) The notice of cancellation or suspension is to –
 - (a) specify the reasons for the cancellation or suspension; and
 - (b) specify, for a suspension, the term of suspension.
- (4) The Minister may revoke the suspension of a well driller's licence at any time.
- (5) Except for the purposes of renewal, a well driller's licence is of no effect while it is suspended.
- (6) A person whose well driller's licence has been cancelled under this section must return it to the Minister within 30 days after being given notice of the cancellation.

Penalty: Fine not exceeding 5 penalty units.

136J. Exemptions

- (1) The Minister, by order, may exempt specific well works or any category of well works from the operation of this Division.
- (2) The order is a statutory rule.
- (3) For the purposes of subsection (1), and without limiting the Minister's discretion, a category of

Water Management Act 1999
Act No. 45 of 1999

s. 136J

Part 7 – Wells

well works may be exempted by reference to any or any combination of the following criteria:

- (a) their purpose;
- (b) their location;
- (c) the amount of groundwater to be taken;
- (d) their scale, design or method or time of construction;
- (e) their undertaker.

PART 8 – DAM WORKS

Division 1 – Preliminary

138. Interpretation of Part

In this Part –

affected permit holder means the holder of a permit who is required by a condition of that permit to register an offset in the offsets register;

approval guidelines means guidelines issued under section 142, as those guidelines are amended or substituted from time to time;

authorised operator means a person authorised by the owner of a dam to operate part, or all, of the dam or any infrastructure of the dam;

dam operating notice means a notice issued under section 164ZC;

Division 3 permit means a permit issued under section 158;

Division 4 permit means a permit taken under section 161 to have been issued;

EPA Board means the Board of the Environment Protection Authority established under section 13 of the EMPC Act;

Water Management Act 1999
Act No. 45 of 1999

s. 138

Part 8 – Dam Works

holder of a permit means a person who holds a Division 3 permit or a Division 4 permit;

notice of offset means a notice of offset referred to in section 164T;

offset means any activity, mitigation measure, or action, that –

- (a) may result from dam works or is a kind of activity, mitigation measure, or action, that is prescribed; and
- (b) is taken to compensate for adverse impact that endures beyond the duration of the permit to which the activity, mitigation measure or action relates;

offsets register means the register of offsets established and maintained under section 164P;

permit means a Division 3 permit or a Division 4 permit;

permit application means an application for a Division 3 permit;

registered offset means –

- (a) an offset that is entered on the offsets register; and
- (b) any condition in relation to the offset that is entered under

section 164R(3) on the offsets register.

139. Non-application of Part

This Part does not apply to dam works that –

- (a) are undertaken for the primary purpose of storing waste; or
- (b) consist of the construction, erection, enlargement or modification of a levee or bank, in preparation for or during a flood, that is a levee or bank that is entirely removed within 4 weeks after the day on which the levee or bank was constructed or the flood ceases; or
- (c) are exempted from the operation of this Part under section 140.

140. Exemption from operation of Part

- (1) The Minister, by order, may exempt from the operation of this Part specific dam works or a category of dam works.
- (2) Without limiting the categories of dam works the Minister may exempt or the manner in which the exemption is expressed, the Minister may exempt a category of dam works by reference to any one or more of the following criteria:
 - (a) the purpose of the dam works;
 - (b) the location of the dam works;

Water Management Act 1999
Act No. 45 of 1999

s. 141

Part 8 – Dam Works

- (c) the capacity or height of the dam;
 - (d) the ANCOLD consequence category of the dam works;
 - (e) the design specifications for, or methods of construction of, the dam works;
 - (f) the type of dam works.
- (3) Without limiting the categories of dam works the Minister may exempt or the manner in which the exemption is expressed, the Minister may exempt specific dam works, or a category of dam works, that consist of the decommissioning of a dam in accordance with a relevant works code under section 301.
- (4) The order may include requirements relating to reporting with respect to the undertaking and completion of the dam works.
- (5) An order under this section is a statutory rule.

141. Minister to take certain matters into account

When making a decision under this Part in relation to the determination of an application for a Division 3 permit, or of any conditions to which such a permit is to be subject, the Minister must take into account –

- (a) the objectives of this Act; and
- (b) any prescribed requirements for the design, construction, erection, enlargement, modification, maintenance,

repair, surveillance, decommissioning and removal of dams, for the conversion of land to a dam or for carrying out dam works and related matters; and

- (c) any relevant codes issued under section 301 or adopted under section 304B; and
- (d) any relevant approval guidelines.

142. Approval guidelines

- (1) The Minister, by order published in the *Gazette*, may issue guidelines in relation to –
 - (a) the consideration and determination of applications for Division 3 permits; and
 - (b) the determination of any conditions to which a Division 3 permit is to be subject; and
 - (c) any matter related to a matter referred to in paragraph (a) or (b).
- (2) The guidelines may include or adopt standards and codes.
- (3) The Minister, by order published in the *Gazette*, may –
 - (a) amend the guidelines; or
 - (b) repeal the guidelines and substitute new guidelines.

Water Management Act 1999
Act No. 45 of 1999

s. 137

Part 8 – Dam Works

- (4) In issuing guidelines, amending guidelines or substituting guidelines, the Minister may consult with the persons he or she considers appropriate.
- (5) The Minister is to ensure that the guidelines, as in force, are published on the website of the Department and made available to the public in any other manner the Minister considers appropriate.
- (6) An order under subsection (1) or (3) is not a statutory rule.

137.

Division 2 – Offence to undertake dam works without authority of permit

143. Offence to undertake dam works without permit

- (1) A person must not undertake, or cause or permit to be undertaken, any dam works unless –
 - (a) the person is the holder of a permit, or is undertaking the dam works for another person who is the holder of a permit, which relates to those dam works; and
 - (b) those dam works are undertaken in accordance with that permit and its conditions.

Penalty: Fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 143A

20 penalty units for each day during which the offence continues.

- (2) It is a defence in proceedings for an offence against subsection (1) in relation to dam works on an existing dam if the defendant –
- (a) establishes that it was necessary to undertake the dam works in order to maintain the structural integrity of the dam; and
 - (b) establishes that the dam works were limited to such works as were necessary for that purpose; and
 - (c) establishes that, within 2 working days after the dam works were commenced, notice of the works was given to the Minister or an authorised officer.

Division 3 – Division 3 permits

Subdivision 1 – Applications for Division 3 permits

143A.

144. Application for Division 3 permit

- (1) A person may apply to the Minister for a Division 3 permit to undertake dam works in respect of –
- (a) a single dam; or

Water Management Act 1999
Act No. 45 of 1999

s. 144

Part 8 – Dam Works

- (b) a group of dams that collectively store, hold back or impede the flow of a single body of water.
- (2) An application –
 - (a) must comply with section 12A; and
 - (b) if the applicant is not the owner of the land on which the proposed dam works would be undertaken – must include a declaration that the applicant has notified the owner of the land, in writing, of the intention to make the application.
- (3) If the Minister determines that an application does not comply with section 12A and the requirements of this section, and accordingly does not constitute an application under this section, the Minister must notify the applicant of that fact.
- (4) A notice under subsection (3) –
 - (a) is to be in writing; and
 - (b) is to be given within 10 days after the Minister receives the application; and
 - (c) is to include information concerning the applicant’s rights of review or appeal under Part 14.
- (5) If –
 - (a) an applicant lodges an application for review under Part 14 in relation to the Minister’s determination that the

application does not comply with section 12A and the requirements of this section; and

- (b) the review determines that the application does so comply –

the application is taken, for the purposes of this Act, to have been made on the day on which the review so determines.

145. Notice of permit application

- (1) Within 14 days after receiving a permit application, the Minister is to –
- (a) publish notice of the permit application in a local newspaper; and
 - (b) if the proposed dam works are wholly or partly within a pipeline planning corridor – notify, in writing, the person licensed under the *Gas Pipelines Act 2000* to operate the pipeline in that corridor of the permit application; and
 - (c) if the applicant is not the owner of the land on which the proposed dam works would be undertaken – notify the owner of the land, in writing, of the permit application; and
 - (d) if the Minister is of the opinion that the proposed dam works may have an impact on any land adjoining the land on which the proposed dam works would be

Water Management Act 1999
Act No. 45 of 1999

s. 145

Part 8 – Dam Works

undertaken – notify the owner of the adjoining land; and

- (e) if the Minister is of the opinion that it is in the public interest to do so – notify any other person the Minister thinks fit.

(2) A notice under subsection (1) is to –

- (a) specify the name of the applicant, details of the application and any other information that the Minister considers appropriate; and
- (b) specify that a copy of the permit application, and of all plans and other documents lodged with the application, is available for inspection by the public for the period during which representations may be made under section 146(1); and
- (c) specify the place at which, and the hours during which, those copies are available for inspection by the public; and
- (d) state –
 - (i) that written representations may be made to the Minister by any person who may be affected by the dam works if the permit application is granted or who is a person to whom notice is given under subsection (1)(d) or (e); and

- (ii) the period during which the representations may be made; and
 - (iii) the manner in which, and the address at which, the representations may be lodged with the Minister.
- (3) The period in which representations may be lodged under subsection (2)(d) is to be a period of not less than 14 days commencing on the day notice of the application is published in a local newspaper under subsection (1)(a).

146. Representations relating to permit application

- (1) If a notice of a permit application is published under section 145(1)(a), any person who may be affected by the proposed dam works if the application is granted may make written representations to the Minister in relation to the permit application –
- (a) within the period specified in the notice; and
 - (b) in the manner specified in the notice; and
 - (c) by lodging the representations at the address specified in the notice.
- (2) A person who has lodged a representation may withdraw it by written notice to the Minister lodged –

Water Management Act 1999
Act No. 45 of 1999

s. 146A

Part 8 – Dam Works

- (a) at any time before the Minister grants or refuses to grant the permit application to which the representation relates; and
 - (b) at the address stated, in accordance with section 145(2)(d), in the notice published under section 145(1)(a).
- (3) If a representation has been withdrawn, it is taken never to have been made.

146A.

147. Further notice of permit application

- (1) Within 14 days after receiving a permit application, the Minister is to notify the following persons of the details of the application:
 - (a) the Director;
 - (b) the Director of Inland Fisheries.
- (2) Despite subsection (1), the Minister is not required to notify –
 - (a) the Director, if the dam works proposed in the permit application are of a type the Director determines under subsection (3)(a) do not require such a notice; or
 - (b) the Director of Inland Fisheries, if the dam works proposed in the permit

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 148

application are of a type the Director of Inland Fisheries determines under subsection (3)(b) do not require such a notice.

- (3) By notice provided to the Minister –
- (a) the Director may determine that notice under subsection (1)(a) is not required to be provided if the dam works proposed in the permit application are of a type specified in the determination; and
 - (b) the Director of Inland Fisheries may determine that notice under subsection (1)(b) is not required to be provided if the dam works proposed in the permit application are of a type specified in the determination.

148. Referral by Director

- (1) The Director, on receiving a notice of a permit application under section 147(1), may, under section 27(2) of the EMPC Act and within 14 days after receiving the application, direct the applicant to refer details of the proposed dam works to the EPA Board for assessment.
- (2) Within 7 days after directing, in accordance with subsection (1), the applicant in a permit application to refer details of the proposed dam works to the EPA Board for assessment, the Director is to notify the Minister of that direction.

Water Management Act 1999
Act No. 45 of 1999

s. 149

Part 8 – Dam Works

- (3) Within 7 days after the EPA Board, on the referral to it, for assessment, of the details of the proposed dam works under a permit application –
- (a) completes an assessment under section 27(3) of the EMPC Act in relation those dam works; or
 - (b) gives notice under section 27(4) of the EMPC Act that such an assessment in relation to those dam works is not required –

the EPA Board must cause the Director to inform the Minister of that assessment or determination.

149. Minister may require further information or action

- (1) After the period within which representations relating to a permit application may be made under section 146(1)(a) has ended, the Minister, by notice to the applicant, may require the applicant to provide to the Minister the further information, or take the action, specified in the notice, or both, to assist the Minister in determining the permit application.
- (2) A notice –
- (a) is to be in writing; and
 - (b) is to specify the rights of the permit applicant, if aggrieved by the notice, to

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 149

- apply for a review or appeal under Part 14; and
- (c) may require the applicant to cause additional information that is to be provided to be verified by the person specified in the notice; and
 - (d) may require that the additional information to be provided is to be in the format specified in the notice and is to be provided within the period, of not more than 2 years, specified in the notice; and
 - (e) may specify that an action to be taken is to be taken in accordance with the instructions set out in the notice within the period, of not more than 2 years, specified in the notice.
- (3) An applicant is to comply with a requirement of a notice issued to the applicant under subsection (1) within –
- (a) the period specified, in relation to the requirement, in the notice; or
 - (b) a longer period, if any, specified in an extension under subsection (4) in relation to the requirement.
- (4) On the written request, of an applicant to whom a notice is given under subsection (1), that is received by the Minister before the end of the period specified, in relation to a requirement, in the notice, the Minister may extend, for a further

Water Management Act 1999
Act No. 45 of 1999

s. 150

Part 8 – Dam Works

period not exceeding one year, the period specified in relation to the requirement.

- (5) The period in relation to a requirement may only be extended under subsection (4) once, and only if the Minister considers that the circumstances under which the notice under subsection (1) was issued have not significantly changed.

150. Statement of conditional approval

- (1) If the Minister has issued a notice under section 149(1) requiring an applicant in a permit application to provide further information or take action, or both, the Minister may issue to the applicant a statement that the permit application is likely to be granted, and the Division 3 permit issued, if the requirements specified in the statement are met.
- (2) A statement under subsection (1) –
- (a) does not authorise the undertaking or commencement of the dam works proposed in the permit application; and
 - (b) does not prevent the Minister from refusing to grant the permit application, whether or not the requirements specified in the statement are met.

151. Amendment of permit application

- (1) An applicant in a permit application may, in writing, request the Minister to amend the permit application in respect of a particular relating to

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 151

the design, type, size, location or purpose of the proposed dam works.

- (2) Section 12A applies to the request as if it were an application.
- (3) The Minister may grant the request and amend the permit application or refuse to grant the request.
- (4) The Minister may only grant the request and amend the permit application if satisfied that the amendment does not significantly alter the permit application.
- (5) The Minister is to notify the following persons of his or her determination of the request and, if the request is granted, of the details of the amendment to the permit application:
 - (a) the applicant in the permit application;
 - (b) each person who has made a representation under section 146(1) in relation to the permit application;
 - (c) the owner of the land in relation to which the permit application is made, if the owner of that land is not the applicant;
 - (d) if notice has been given under section 145(1)(d) of the permit application to the owner of land adjoining the land in relation to which the permit application is made – that owner;

Water Management Act 1999
Act No. 45 of 1999

s. 152

Part 8 – Dam Works

- (e) if notice has been given under section 145(1)(e) of the permit application to a person – that person;
- (f) if notice has been given under section 147(1) of the permit application to the Director – the Director;
- (g) if notice of the permit application has been given under section 147(1) to the Director of Inland Fisheries – the Director of Inland Fisheries.

152. Withdrawal of permit application

A permit application is taken to have been withdrawn when –

- (a) the Minister receives notice, in writing, from the applicant that he or she is withdrawing the permit application; or
- (b) the applicant has failed to comply with a notice under section 149(1) within the period allowed under section 149(3).

Subdivision 2 – Determination of applications for Division 3 permits

153. Time for determining permit application

- (1) The Minister is to determine a permit application –
 - (a) within 12 weeks after the day on which the application is made; or

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 153

- (b) within such longer period as the Minister and applicant, before the end of that 12-week period, agree.
- (2) For the purposes of calculating the 12-week period or longer period referred to in subsection (1), the following periods are not to be taken into account:
- (a) if the Director under section 27(2) of the EMPC Act directs that the details of the proposed dam works under the permit application be referred to the EPA Board – the period commencing on the day on which the Minister receives notification under section 148(2) that the Director has so directed the referral and ending –
 - (i) if an appeal to the Appeal Tribunal is not lodged under section 27(7) of the EMPC Act – on the day on which the period within which such an appeal may be lodged expires; or
 - (ii) if an appeal to the Appeal Tribunal is lodged under section 27(7) of the EMPC Act – on the day on which the Minister receives notice of the determination of the appeal;
 - (b) if the Minister has, under section 149(1), required the applicant to provide further information or take action, or both – the

Water Management Act 1999
Act No. 45 of 1999

s. 154

Part 8 – Dam Works

period commencing on the day on which the Minister makes that requirement and ending –

- (i) on the day on which the Minister is satisfied that he or she has received all further information, and that all actions have been taken, in accordance with a requirement of a notice under section 149(1); or
- (ii) if a review under Part 14 is lodged against the requirement and the review is determined in favour of the applicant – on the day on which the applicant receives notice of the determination of the review;
- (c) if the applicant has, under section 151(1), requested the Minister to amend the permit application – the period commencing on the day the Minister receives the request and ending on the day the Minister grants or refuses to grant the request.

154. Failure by Minister to determine application

If the Minister fails to determine a permit application within the relevant period referred to in section 153(1), the Minister must –

- (a) grant the permit application; and

- (b) issue under section 158 to the applicant, within 28 days after failing to determine the permit application, a permit on the conditions the Minister thinks fit and specifies in the permit in accordance with section 164.

155. Consideration of permit application

- (1) In considering a permit application, the Minister is to take into consideration –
 - (a) the matters referred to in section 141; and
 - (b) any representations made under section 146(1) in relation to the permit application; and
 - (c) any advice and comments received from the Director or Director of Inland Fisheries; and
 - (d) any advice and comments received from a committee established under section 9 for the purposes of this Part; and
 - (e) any information provided, or actions taken, by the applicant in compliance with a notice issued to the applicant under section 149(1); and
 - (f) any matters relating to the potential impact of the dam works, including but not limited to –
 - (i) the potential impact of the dam works on, or matters that are

Water Management Act 1999
Act No. 45 of 1999

s. 155

Part 8 – Dam Works

- relevant to, water resources and hydrology; and
- (ii) the potential impact of the dam works on, or matters that are relevant to, conservation and protection of natural values; and
 - (iii) the mitigation or offsetting of any adverse impact that may result from the dam works; and
 - (iv) the potential impact of the dam works on the conservation and protection of cultural heritage; and
 - (v) the potential impact of the dam works on inland fisheries; and
 - (vi) the potential impact of the dam works on the persons who take water from a water resource affected by the proposed dam works; and
 - (vii) the potential impact of the dam works on the impoundment area of the dam or proposed dam; and
 - (viii) the potential impact of the dam works on the chemical nature and stability of the material contained, or to be contained, in the dam or proposed dam.

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

- (2) In considering a permit application, the Minister may consult any person who the Minister considers has expertise, knowledge or skills that are relevant to the determination of the permit application.

155A - 155B.

156. Determination of permit application

- (1) In this section –

previous Part 8 means Part 8 of this Act as in force before the commencement of the *Water Management Amendment (Dam Works) Act 2015*.

- (2) In determining a permit application, the Minister is to –
- (a) seek to further the objectives of this Act; and
 - (b) act consistently with –
 - (i) any relevant State policy; and
 - (ii) any relevant approval guidelines.
- (3) After considering a permit application, the Minister may –
- (a) grant the permit application; or
 - (b) if the applicant agrees, grant the permit application subject to the amendments to

Water Management Act 1999
Act No. 45 of 1999

s. 156

Part 8 – Dam Works

the permit application that the Minister considers appropriate; or

- (c) refuse to grant the permit application.
- (4) The Minister must grant a permit application if reasonably satisfied that the proposed dam works –
- (a) are consistent with –
 - (i) the objectives of this Act; and
 - (ii) any relevant State policy; and
 - (iii) any relevant approval guidelines; and
 - (b) will not result in material environmental harm, serious environmental harm or environmental nuisance; and
 - (c) will not have a significant adverse impact on other persons who take water from a water resource affected by the proposed dam works; and
 - (d) will not adversely impact on public safety.
- (5) Despite subsection (4), the Minister may refuse to grant a permit application –
- (a) if the Minister considers that the proposed dam works are not, or that it is not possible for the proposed dam works to be, consistent with –

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 156

- (i) the objectives of this Act; and
 - (ii) any relevant State policy; and
 - (iii) any relevant approval guidelines;
or
 - (b) if the Minister considers that the proposed dam works may –
 - (i) result in material environmental harm, serious environmental harm or environmental nuisance;
or
 - (ii) have a significantly adverse impact on other persons who take water from a water resource affected by the proposed dam works; or
 - (iii) adversely impact on public safety; or
 - (c) if the proposed dam works are wholly or partly within a pipeline planning corridor and the Minister considers they are likely to compromise the safety or safe operation of the pipeline in that corridor;
or
 - (d) if the applicant has been convicted of an offence under this Part, the previous Part 8 or Part 8A.
- (6) Despite subsection (4), the Minister is to refuse to grant a permit application if the EPA Board

Water Management Act 1999
Act No. 45 of 1999

s. 157

Part 8 – Dam Works

has assessed the proposed dam works under section 27(3) of the EMPC Act and determined that they must not proceed.

- (7) If, within 14 days after the permit application is made, the Minister determines it by refusing to grant it, the Minister is not required to publish or provide notice under sections 145 and 147.

157. Notification of determination of permit application

- (1) Within 14 days after determining a permit application, the Minister is to notify the following persons, in writing, of the determination:
- (a) the applicant;
 - (b) the owner of the land in relation to which the proposed dam works are proposed in the permit application;
 - (c) each person who has lodged a representation in relation to the permit application under section 146(1).
- (2) The notice is to include –
- (a) if the Minister has refused under section 156 to grant the permit application – the reasons for that refusal; and
 - (b) if the Minister has made a determination under section 156(3)(a) or (b) and the notice is to the owner of the land in relation to which the proposed dam

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 157A

works are proposed in the permit application – a statement of the dam safety obligations that apply to the owner as an owner of the dam; and

- (c) any rights of the person receiving the notice to apply for a review or appeal under Part 14; and
- (d) the details of any relevant dam operating notice; and
- (e) details of any relevant variation to a water licence that is to be made in accordance with section 69(2)(fa)(ii).

157A.

158. Issue of Division 3 permits

On granting a permit application, the Minister is to issue the applicant with a Division 3 permit.

Division 4 – Division 4 permit

159. Entitlement to Division 4 permits

- (1) In this section –

clearance and conversion, of a threatened native vegetation community, has the same meaning as in the *Forest Practices Act 1985*;

Water Management Act 1999
Act No. 45 of 1999

s. 159

Part 8 – Dam Works

clearing of trees has the same meaning as in the *Forest Practices Act 1985*;

conservation covenant has the same meaning as in Part 5 of the *Nature Conservation Act 2002*;

declared works means specific dam works, or dam works of a class, declared by the Minister under subsection (4) to be works which require a Division 3 permit;

harvest has the same meaning as in the *Forest Practices Act 1985*;

heritage area has the same meaning as in the *Historic Cultural Heritage Act 1995*;

Heritage Register has the same meaning as in the *Historic Cultural Heritage Act 1995*;

threatened native vegetation community has the same meaning as in the *Nature Conservation Act 2002*.

- (2) A person who proposes to undertake dam works is entitled to a Division 4 permit if the proposed dam works –
- (a) are not on a watercourse; and
 - (b) relate to a single dam and not to a group of dams that collectively store, hold back or impede the flow of a single body of water; and
 - (c) are on land that –

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 159

- (i) is unvegetated land; or
 - (ii) is vegetated land on which the harvest of timber, or the clearing of trees, that would be required as part of the dam works is a circumstance that is prescribed for the purposes of section 17(6) of the *Forest Practices Act 1985*; and
- (d) do not constitute in whole or in part the clearance and conversion of a threatened native vegetation community unless in a circumstance that is prescribed for the purposes of section 17(6) of the *Forest Practices Act 1985*; and
- (e) will not take threatened species or destroy or damage nests of threatened species; and
- (f) are not wholly or partly within a pipeline planning corridor; and
- (g) are not wholly or partly within a heritage area entered in the Heritage Register; and
- (h) are not subject to a conservation covenant; and
- (i) are not subject to an agreement under Part 5 of the *Land Use Planning and Approvals Act 1993*; and
- (j) are on land in relation to which the person is the owner or, if the person is

Water Management Act 1999
Act No. 45 of 1999

s. 160

Part 8 – Dam Works

not the owner in respect of the land, if the owner of land has given his or her consent, in writing, to the proposed dam works; and

- (k) will not inundate land owned by another person, unless the owner of land has given his or her consent, in writing, to the proposed dam works or any inundation; and
 - (l) are not declared works.
- (3) If a person is uncertain as to whether he or she is entitled under subsection (2) to a Division 4 permit, he or she may apply for a Division 3 permit.
 - (4) The Minister, by order, may declare specific dam works, or a class of dam works, to be dam works that require a Division 3 permit.
 - (5) An order under subsection (4) is a statutory rule.

160. Notice of intention to undertake dam works

- (1) A person who, in relation to proposed dam works, is entitled to a Division 4 permit under section 159(2) is to notify the Minister, in writing, of the intention to undertake those dam works.
- (2) A notice –
 - (a) must be in the approved form; and
 - (b) must include the following information:

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 161

- (i) the name, address and contact information of the person giving the notice;
 - (ii) the geographical location of the proposed dam works;
 - (iii) a photograph of the location of the proposed dam works;
 - (iv) a description of the dam in relation to which the dam works are proposed, including the height, storage capacity and the ANCOLD consequence category;
 - (v) a declaration that the proposed dam works meet the requirements for entitlement to a Division 4 permit set out in section 159(2); and
- (c) is to be accompanied by the prescribed fee.

161. Division 4 permit taken to be issued to person if notice given by person

A person is taken to have been issued with a Division 4 permit if –

- (a) the person is entitled to a Division 4 permit under section 159; and
- (b) a notice under section 160 of the person's intention to undertake dam works, and the fee prescribed for the

Water Management Act 1999
Act No. 45 of 1999

s. 162

Part 8 – Dam Works

purposes of that section, are received by the Minister from that person; and

- (c) the Minister has not issued a notice under section 162 to the person.

162. Minister may direct person to apply for Division 3 permit, &c.

- (1) If the Minister has received from a person a notice under section 160 of the person's intention to undertake dam works, the Minister may issue to the person a notice directing the person to cease the dam works and to –
 - (a) apply for a Division 3 permit before undertaking the dam works; or
 - (b) undertake to the satisfaction of the Minister, within the periods specified in the notice or a longer period allowed by the Minister, work, or activities, specified in the notice.
- (2) A person to whom a notice has been issued under subsection (1) must comply with the notice.

Penalty: Fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

Division 5 – Permits generally

163. Authority of permit

- (1) A permit authorises the undertaking, in accordance with the permit, of the dam works –
 - (a) specified in the permit; or
 - (b) if the permit is a Division 4 permit – specified in the notice given under section 160 in relation to the dam works.
- (2) Despite subsection (1), a permit does not authorise the undertaking of the dam works specified in the permit, or, if the permit is a Division 4 permit, specified in a notice given under section 160 in relation to the dam works, without –
 - (a) the further authority of a licence, permit, approval or other authorisation, if another Act requires such a licence, permit, approval or other authorisation for the undertaking of the dam works; or
 - (b) the consent of the owner of the land on which those dam works are to be undertaken.

164. Conditions of Division 3 permit

- (1) A Division 3 permit is subject to the conditions determined by the Minister and specified in the permit.

Water Management Act 1999
Act No. 45 of 1999

s. 164

Part 8 – Dam Works

- (2) The Minister may impose under subsection (1) conditions relating to any of the following matters:
- (a) the time before which any activity that the permit authorises to be carried out must be commenced;
 - (b) the time by which any activity that the permit authorises to be carried out must be completed;
 - (c) the actions and activities that must be undertaken before the construction of any dam works that are to be undertaken under the permit;
 - (d) the investigation, or design specifications, of the dam works;
 - (e) the undertaking of the dam works;
 - (f) the conservation or protection of cultural heritage and natural values;
 - (g) the mitigation of the impact of the dam works on the free passage of fish;
 - (h) the type of, and the timing of the development and provision of, dam safety plans required for the dam works;
 - (i) reporting requirements relating to the dam works;
 - (j) offset measures and the requirements associated with offsets, including the consent by the owner of land to which

- the permit does not relate to the entry of an offset on the offsets register;
- (k) the undertaking by a person, or a person of a class, specified in the conditions, of the work so specified;
 - (l) any matter prescribed in the regulations;
 - (m) any other matter the Minister considers appropriate.

164A. Conditions of Division 4 permit

- (1) A Division 4 permit is subject to the conditions determined by the Minister under subsection (2).
- (2) The Minister, by order, may determine the conditions to which Division 4 permits are subject in relation to –
 - (a) engineering and construction; and
 - (b) dam safety; and
 - (c) sediment and erosion control; and
 - (d) any matter prescribed in the regulations; and
 - (e) the taking, destruction or disturbance of any wildlife, or wildlife products, that is or are within the meaning of the *Nature Conservation Act 2002*; and

Water Management Act 1999
Act No. 45 of 1999

s. 164B

Part 8 – Dam Works

- (f) any other matter the Minister considers appropriate having regard to the objectives of this Act.
- (3) The Minister may amend or revoke an order.
- (4) An order –
 - (a) is a statutory rule; and
 - (b) may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the order.
- (5) For the avoidance of doubt, if the Minister makes, amends or revokes an order, that order, amendment or revocation applies to the holder of a Division 4 permit when that order, amendment or revocation takes effect.

164B. Form of Division 3 permit

A Division 3 permit –

- (a) is to be in an approved form; and
- (b) is to specify the term of the permit and may specify the day on which, subject to section 164C(2)(c), it is to take effect; and
- (c) is to specify the conditions to which the permit is subject.

164C. When permit takes effect

(1) In this section –

appeal, in relation to a Division 3 permit, means an appeal under Part 14 in relation to the granting of the relevant permit application, with or without amendment;

review, in relation to a Division 3 permit, means a review under Part 14 in relation to the granting of the relevant permit application, with or without amendment.

(2) A Division 3 permit takes effect –

(a) at the expiration of 14 days after the day on which the last of the notices under section 157(1) in relation to the permit has been issued, unless paragraph (b) or (c) applies to the permit; or

(b) if the permit specifies a day on which it is to take effect – on the day so specified, unless paragraph (c) applies to the permit; or

(c) if an appeal or review has been instituted in relation to the permit, on the day on which the appeal is determined or abandoned.

(3) A Division 4 permit takes effect 14 days after the day on which the permit is taken under section 161 to have been issued.

164D. Term of permit

(1) In this section –

notice of completion has –

- (a) in the case of a Division 3 permit, the same meaning as in section 164ZA; or
 - (b) in the case of a Division 4 permit, the same meaning as in section 164ZB.
- (2) A Division 3 permit has effect for the term commencing on the day on which it takes effect and ending –
- (a) if the permit specifies a day, not less than 2 years after the date on which it is issued, on which it will expire – on that expiry or at the end of the period as extended, if at all, under section 164E; or
 - (b) on the day on which the Minister, under section 164ZA(5), notifies the permit holder that the notice of completion has been accepted –

whichever first occurs.

- (3) A Division 4 permit has effect for the term commencing on the day on which it is taken to be issued and ending –
- (a) on the expiry of the period of 2 years commencing on that day; or

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 164E

- (b) on the day on which the Minister, under section 164ZB(6), notifies the permit holder that the notice of completion has been accepted; or
- (c) on the day on which a notice is issued under section 162 to the holder of the permit –

whichever first occurs.

Division 6 – Amending permits

164E. Extension of term of Division 3 permit

- (1) Not later than one month before the expiry of a Division 3 permit, the permit holder may apply to the Minister for an extension of the term of the permit.
- (2) Section 12A applies to the application.
- (3) On receiving an application –
 - (a) the Minister may extend, once only, the term of the Division 3 permit for a period not exceeding 2 years; or
 - (b) refuse to extend the term of the Division 3 permit, if the Minister considers that the dam works will not be completed within the period so extended.

Water Management Act 1999
Act No. 45 of 1999

s. 164F

Part 8 – Dam Works

164F. Other amendment of permit on application of permit holder

- (1) This section does not apply to an amendment of a permit by extending its term.
- (2) The holder of a Division 3 permit may apply to the Minister for an amendment of his or her permit.
- (3) An application –
 - (a) is to be in accordance with section 12A; and
 - (b) if the permit holder is not the owner of the land to which the permit relates – is to include a declaration that the applicant has notified the owner of the land of the intention to make the application.

164G. Determination of application to amend permit

- (1) In considering an application to amend a Division 3 permit made under section 164F the Minister –
 - (a) is to take into consideration the matters specified in section 155; and
 - (b) is to comply with section 156(2).
- (2) After considering an application to amend a Division 3 permit made under section 164F, the Minister may –

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 164H

- (a) grant the application and amend the permit accordingly; or
 - (b) if the applicant agrees, grant the application subject to the amendments to the application that the Minister considers appropriate and amend the permit accordingly; or
 - (c) refuse to grant the application.
- (3) Despite subsection (2), the Minister may only grant the application under subsection (2)(a) or (b) if satisfied that the proposed amendment of the permit –
- (a) does not substantially alter the dam works to which the permit applies; and
 - (b) does not increase the risk of an event that may affect dam safety arising from those dam works.
- (4) When granting an application under subsection (2)(a) or (b) and amending the permit, the Minister may determine under section 164 conditions to which the permit is subject.

164H. Notification of determination of application to amend permit

- (1) Within 14 days after determining an application to amend a permit made under section 164F, the Minister is to notify the following persons, in writing, of the determination:
- (a) the applicant;

Water Management Act 1999
Act No. 45 of 1999

s. 164I

Part 8 – Dam Works

- (b) if the applicant is not the owner of the land to which the permit relates – the owner.
- (2) If the Minister has refused to grant the application, or has granted the application under section 164G(2)(a) or (b) and imposed conditions on the permit, the notice is to include –
- (a) the reasons for that decision; and
 - (b) any rights of the person who receives the notice to apply for a review or appeal under Part 14.

164I. Amendment of permit to correct mistakes

On his or her own motion, the Minister may amend a Division 3 permit –

- (a) to correct a mistake that is a clerical mistake or an error arising from an accidental slip or omission; or
- (b) to correct an evident miscalculation of figures or an evident mistake in the description of land, other property or a person; or
- (c) to change the name or address of the person to whom the permit applies or another name or address specified in the permit.

164J. Amendment of permit to minimise environmental harm, &c.

If the Minister considers that the undertaking of dam works in accordance with a permit may be, or is, causing material environmental harm or serious environmental harm, the Minister may –

- (a) if it is a Division 3 permit, amend the permit, including by varying or adding conditions under section 164; or
- (b) take action under section 164ZM as if a person had been found guilty of an offence under this Part; or
- (c) take action under Part 8A.

164K. Amendment of permit in accordance with conditions of Appeal Tribunal

If –

- (a) the Appeal Tribunal, on an appeal in relation to the issue of a dam operating notice, amends that notice by varying its conditions or in any other manner; and
- (b) the Minister considers that the relevant Division 3 permit needs to be amended so as to be consistent with that notice as so amended –

the Minister may so amend the permit.

164L. When amendment takes effect

The amendment of a Division 3 permit takes effect –

- (a) if the Minister specifies in the amended permit that the amendment, or the permit as amended, takes effect on a day that is later than the day on which the amendment is made – on that specified day; or
- (b) if no such day is specified in the amended permit – on the day on which the Minister amends the permit.

164M. Issue of amended permit

If the Minister amends a Division 3 permit, the Minister is to re-issue the permit, with the amendment incorporated into it, to the permit holder.

Division 7 – Transfers of permits

164N. Transfer of permit

- (1) The holder of a Division 3 permit may apply to the Minister to transfer the permit to another person.
- (2) An application must –
 - (a) comply with section 12A; and

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 164N

- (b) if the applicant is not the owner of the land on which the dam works specified in the permit are being, or are to be, undertaken – be accompanied by the written permission of the owner of the land to the making of the application.
- (3) On receiving an application, the Minister may approve it or refuse to approve it.
- (4) The Minister must approve an application if –
 - (a) the application meets the requirements of section 12A; and
 - (b) the person to whom the permit is to be transferred has not been convicted of an offence, including by accepting an infringement notice in respect of an offence, under this Part or Part 8A.
- (5) If the Minister refuses to grant an application, the Minister is to notify the applicant, in writing and as soon as reasonably practicable, of the refusal and the reasons for it.
- (6) On granting an application, the Minister is to –
 - (a) notify in writing the applicant that the application has been granted and that he or she is required to surrender his or her permit to the Minister; and
 - (b) notify in writing the person to whom the permit is transferred that the application has been granted and re-issue the permit, in the person's name, to him or her.

Water Management Act 1999
Act No. 45 of 1999

s. 164O

Part 8 – Dam Works

- (7) The transfer of a permit takes effect –
- (a) when notice of the granting of the application is given to the applicant and the person to whom the permit is transferred; or
 - (b) on a later day, determined by the Minister, that is specified in that notice.

Division 8 – Registration of offsets for dam works

164O. Interpretation of Division 8

In this Division –

notice of amendment of offset means a notice of amendment of offset referred to in section 164U;

notice of cancellation of offset means a notice of cancellation of offset referred to in section 164Y;

Recorder means the Recorder of Titles appointed under section 4(1) of the *Land Titles Act 1980*;

Register has the same meaning as in the *Land Titles Act 1980*;

registered land has the same meaning as in the *Land Titles Act 1980*.

164P. Offsets register

- (1) The Secretary is to establish and maintain a register of offsets.
- (2) The offsets register is to be in the form, and contain the information relating to offsets, that the Secretary determines appropriate.
- (3) The Secretary may determine what information contained in the offsets register may be made available to the public and what information is not to be so available.
- (4) The Secretary is to publish on the website of the Department the information contained in the offsets register that he or she has determined may be made available to the public.

164Q. Application to register offset

- (1) An affected permit holder may apply to the Secretary to register an offset in the offsets register.
- (2) An application must –
 - (a) comply with section 12A; and
 - (b) if the offset relates to land not owned by the applicant – be accompanied by the written approval, of the owner of the land, to the registration of the offset; and
 - (c) be accompanied by the prescribed fee, if any.

Water Management Act 1999
Act No. 45 of 1999

s. 164R

Part 8 – Dam Works

164R. Registration of offset

- (1) Subject to subsection (4), after considering an application to register an offset, the Secretary may –
 - (a) approve the application; or
 - (b) refuse to approve the application.
- (2) The Secretary is to register in the offsets register an offset to which an application for registration relates, unless subsection (4) applies in relation to the application.
- (3) The registration of an offset in the register is to include any conditions, required to ensure the offset is carried out, that the Secretary determines and specifies in the registration.
- (4) The Secretary must not approve an application for registration if –
 - (a) the Secretary considers that the offset does not meet the requirements in relation to an offset that are required, by a condition of the permit to which the offset relates, to be met; or
 - (b) approval to register the offset has not been obtained in accordance with section 164Q(2)(b).
- (5) The Secretary is to notify the affected permit holder, in writing, of the decision of the Secretary under subsection (1) in relation to an

application to register an offset, as soon as reasonably practicable after making the decision.

164S. Duration of offset

A registered offset remains in effect until the first of the following occurs:

- (a) the activity, measure or action constituting the offset comes to its natural end;
- (b) the Secretary cancels the registration of the offset on the direction of the Minister under section 164W.

164T. Notice of offset to be lodged with Recorder

- (1) If the Secretary considers that a registered offset affects land, the Secretary is to lodge with the Recorder a notice of offset, relating to that offset, that includes the title reference (volume and folio) or the other particulars of title for the land.
- (2) Subsection (1) does not apply to an offset if the offset is included in –
 - (a) a conservation covenant, within the meaning of Part 5 of the *Nature Conservation Act 2002*; or
 - (b) an agreement under Part 5 of the *Land Use Planning and Approvals Act 1993*.
- (3) A notice of offset –

Water Management Act 1999
Act No. 45 of 1999

s. 164T

Part 8 – Dam Works

- (a) is to be in a form approved by the Recorder; and
 - (b) is to be lodged with the Recorder, as soon as practicable after the relevant offset is entered on the offsets register, in a manner approved by the Recorder.
- (4) As soon as practicable after a notice of offset is lodged with the Recorder, the Recorder must ensure that the notice of offset is available for viewing by a person when the person views the relevant folio of the Register.
- (5) If the land to which a notice of offset relates is not registered land, the Recorder, as soon as reasonably practicable after receiving the notice, is to register a copy of the notice in the Registry of Deeds in accordance with the *Registration of Deeds Act 1935*.
- (6) A notice of offset available for viewing by a person when the person views the relevant folio of the Register is not affected by a subsequent disposition of the land to which that folio relates or another subsequent dealing in that land.
- (7) For the purposes of proceeding under this section, the Recorder is entitled to assume that all necessary pre-requisites and procedures in respect of the notice have been complied with.

164U. Amendment of registered offset

- (1) Any of the following persons may apply to the Secretary for an amendment of the registration of a registered offset:
 - (a) if the registered offset relates to land – the owner of the land;
 - (b) if the registered offset relates to water – the owner of the dam to which the registered offset relates.
- (2) An application must comply with section 12A and be accompanied by the prescribed fee, if any.
- (3) The Secretary is to grant an application lodged with the Secretary and amend the offsets register by amending the relevant registered offset –
 - (a) after having regard to the conservation or protection of natural values and cultural heritage, if the Secretary is satisfied that the amendment will not result in a new, significant adverse impact or a significant increase in an adverse impact, on the environment; and
 - (b) where the applicant is not an owner of land to which the registered offset relates and the registration of the offset is amended as requested in the application – if the Secretary is satisfied that all such owners have consented to the making of the requested amendment of the registered offset.

Water Management Act 1999
Act No. 45 of 1999

s. 164U

Part 8 – Dam Works

- (4) The Secretary is to refuse to grant an application lodged with the Secretary if not satisfied as to the matters specified in subsection (3).
- (5) If the Secretary grants an application –
 - (a) the Secretary is to amend the offsets register by amending the registered offset in accordance with the request in the application; and
 - (b) the Secretary is to lodge with the Recorder a notice of amendment of offset, if the application relates to a registered offset referred to in a notice of offset that has been lodged with the Recorder in accordance with section 164T.
- (6) A notice of amendment of offset –
 - (a) is to include the title reference (folio and volume) to the land affected by the offset; and
 - (b) is to be in a form approved by the Recorder; and
 - (c) is to be lodged with the Recorder, as soon as practicable after the amendment of the relevant offset is entered on the offsets register, in a manner approved by the Recorder.
- (7) As soon as practicable after a notice of amendment of offset is lodged with the Recorder, the Recorder must ensure that the

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 164V

notice of offset as so amended is available for viewing by a person when the person views the relevant folio of the Register.

- (8) An amendment of the registration of an offset takes effect when the Secretary amends the offsets register.

164V. Amendment of offsets register to correct mistakes

- (1) On his or her own motion, the Secretary may amend an entry in the offsets register –
- (a) to correct a mistake that is a clerical mistake or an error arising from an accidental slip or omission; or
 - (b) to correct an evident miscalculation of figures or an evident mistake in the description of land, other property or a person.
- (2) If the Secretary amends an entry in the offsets register and the entry relates to an offset referred to in a notice of offset that has been lodged with the Recorder in accordance with section 164T, the Secretary is to lodge with the Recorder a notice of amendment of offset.
- (3) Section 164U(6), (7) and (8) apply to a notice of amendment of offset under this section.

164W. Minister may direct cancellation of registration of offset

- (1) The Minister –

Water Management Act 1999
Act No. 45 of 1999

s. 164X

Part 8 – Dam Works

- (a) after having regard to the conservation or protection of natural values and cultural heritage; and
- (b) if of the opinion that an offset is no longer required –

may direct the Secretary to cancel the registration of the offset.

- (2) On receipt of a direction under subsection (1), the Secretary is to –
 - (a) cancel the registration of the relevant offset by removing it from the offsets register; and
 - (b) notify the following persons, in writing, of the cancellation of the registration of the registered offset:
 - (i) if the registered offset relates to land – the owner of the land;
 - (ii) if the registered offset relates to water – the owner of the dam to which the registered offset relates.

164X. Cancellation of registered offset when offset naturally ends

- (1) As soon as practicable after the activity, mitigation, measure or action constituting a registered offset comes to its natural end –

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 164Y

- (a) if the registered offset relates to land – the owner of the land; or
- (b) if the registered offset relates to water – the owner of the dam to which the registered offset relates –

must notify the Secretary, in writing, of that fact.

- (2) On receiving a notice under subsection (1), the Secretary is to cancel the registration of the relevant offset by removing it from the offsets register.

164Y. Notice of cancellation of offset to be lodged with Recorder

- (1) On cancelling the registration of an offset by removing it from the offsets register, the Secretary is to lodge with the Recorder a notice of cancellation of offset.
- (2) A notice of cancellation of offset –
 - (a) is to include the title reference (folio and volume) to the land that was affected by the offset; and
 - (b) is to be in a form approved by the Recorder; and
 - (c) is to be lodged with the Recorder, as soon as practicable after the relevant offset is removed from the offsets register, in a manner approved by the Recorder.

Water Management Act 1999
Act No. 45 of 1999

s. 164Z

Part 8 – Dam Works

- (3) On receiving a notice of cancellation of offset, the Recorder of Titles is to remove from the Register any notice of offset, and any notice of amendment of offset, available for viewing by a person when the person views the relevant folio of the Register.

164Z. No fees payable under *Land Titles Act 1980*

No fee is payable under the *Land Titles Act 1980* in relation to the lodgement of a notice of offset, notice of amendment of offset or notice of cancellation of offset.

Division 9 – Completion of dam works

164ZA. Completion of dam works under Division 3 permit

- (1) Before the expiration of a Division 3 permit and as soon as practicable after the dam works to which the permit relates have been completed, the holder of the permit must give to the Minister a notice (the ***notice of completion***), in writing, of the completion of the dam works.

Penalty: Fine not exceeding 100 penalty units.

- (2) On receiving a notice of completion, the Minister may require the permit holder, in writing, to do one or more of the following:
- (a) provide further information within the time specified in the request;
 - (b) take further action, within the time specified in the requirement;

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 164ZB

- (c) notify the Minister, in writing, of the completion of the further action the permit holder is required to take under paragraph (b).
- (3) A permit holder must comply with a requirement under subsection (2).
- Penalty: Fine not exceeding 100 penalty units.
- (4) On receiving a notice of completion, or any further information or notice required under subsection (2)(a) or (c), the Minister may accept the notice of completion.
- (5) On accepting a notice of completion, the Minister is to –
- (a) if the relevant dam works consisted of –
- (i) the construction or erection of a dam – register the dam on the register of dams; or
- (ii) the enlargement, modification, repair or removal of the dam – amend any existing registration of the dam on the register of dams; and
- (b) notify the permit holder, in writing, of that acceptance.

164ZB. Completion of dam works under Division 4 permit

- (1) Within 30 days after the dam works under a Division 4 permit have been completed, the

Water Management Act 1999
Act No. 45 of 1999

s. 164ZB

Part 8 – Dam Works

permit holder must give to the Minister a notice (the *notice of completion*), in writing, of the completion of the dam works.

Penalty: Fine not exceeding 200 penalty units.

- (2) The notice of completion is to –
 - (a) be in the approved form; and
 - (b) include a declaration that the dam works were undertaken and completed in accordance with the Division 4 permit and its conditions; and
 - (c) include any other information the Minister requires for the purposes of Part 8A.
- (3) On receiving a notice of completion, the Minister may, in writing, require the permit holder to do one or more of the following:
 - (a) provide further information within the time specified in the request;
 - (b) take further action, within the time specified in the requirement;
 - (c) notify the Minister, in writing and within the time specified in the requirement (if any), of the completion of the further action the permit holder is required to take under paragraph (b).
- (4) A permit holder must comply with a requirement under subsection (3).

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 164ZB

Penalty: Fine not exceeding 200 penalty units.

- (5) On receiving a notice of completion or any further information or notice required under subsection (3)(a) or (c), or on being notified that further action specified in a requirement under subsection (3)(b) has been taken, the Minister may –
- (a) accept the notice of completion; or
 - (b) notify the permit holder, in writing, that the dam works have not met the requirements for entitlement to a Division 4 permit set out in section 159(2).
- (6) On accepting a notice of completion, the Minister is to –
- (a) if the relevant dam works consisted of –
 - (i) the construction or erection of a dam – register the dam on the register of dams; or
 - (ii) the enlargement, modification, repair or removal of a dam – amend any existing registration of the dam on the register of dams; and
 - (b) notify the permit holder, in writing, of that acceptance.

Division 10 – Dam operating notices

164ZC. Dam operating notice

- (1) The Minister may issue a dam operating notice in relation to the operation of a dam for any one or more of the following purposes:
 - (a) to ensure that there is no significant adverse impact on other water users;
 - (b) to prevent pollution of water;
 - (c) to protect the environment, including the riverine and riparian environments;
 - (d) to prevent the inundation of land not owned by the owner of the dam.
- (2) A dam operating notice may be issued –
 - (a) at the time an application for a Division 3 permit is granted and the permit issued or at any other time and whether or not a Division 3 permit is in force; and
 - (b) to the owners of the dam or one or more authorised operators of the dam.
- (3) If a dam operating notice is issued to a person at the same time that an application for a Division 3 permit is granted and the permit is issued to that person, that person may combine an application for a review of, or an appeal against, the notice and an application for a review of, or appeal against, the permit or its conditions into a

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 164ZD

single application for a review or an appeal under Part 14.

- (4) If there is more than one owner of a dam, or more than one authorised operator of a dam, on whom the same dam operating notice is issued, the owners, or the authorised operators, are jointly and severally liable for compliance with the notice.
- (5) If a dam operating notice and an authorisation are inconsistent, the dam operating notice prevails over the authorisation to the extent of the inconsistency.
- (6) The Minister, by notice in writing served on a person to whom a dam operating notice has been issued, may do one or more of the following:
 - (a) amend the dam operating notice by extending the period for which it is in force;
 - (b) amend the dam operating notice by adding a new requirement or condition or varying or omitting an existing requirement or condition;
 - (c) revoke the dam operating notice.
- (7) A dam operating notice and a notice under subsection (6) take effect on the day specified in the notice.

164ZD. Details of dam operating notice

A dam operating notice –

Water Management Act 1999
Act No. 45 of 1999

s. 164ZE

Part 8 – Dam Works

- (a) is to specify the person to whom it is issued by name or by a description of the person sufficient to identify him or her; and
- (b) is to specify the reasons for its issue; and
- (c) may require the person to whom it is issued to take the measures specified in it for one or more of the following purposes:
 - (i) to ensure that the operation of the dam will not have a significant adverse impact on other water users or cause material environmental harm or serious environmental harm;
 - (ii) to prevent the inundation of land not owned by the owner of the dam; and
- (d) may contain the conditions, determined by the Minister, to which it is subject.

164ZE. Period of dam operating notice

A dam operating notice has effect until the first of the following occurs:

- (a) the period for which the dam operating notice specifies that it has effect expires;
- (b) the dam operating notice is revoked.

164ZF. Notification of cessation of duties under dam operating notice

(1) In this section –

responsible person means a person –

- (a) who is responsible for an activity, measure or action specified in a dam operating notice; or
 - (b) who was responsible as specified in paragraph (a) but has ceased to be so responsible.
- (2) Either before, when, or not later than 30 days after, a responsible person to whom a dam operating notice has been issued ceases to be the responsible person, he or she must notify the Minister, in writing, of –
- (a) the cessation and the date of the cessation; and
 - (b) if another person is to become, or has become, a responsible person in his or her stead – the name and contact details of the other person.

Penalty: Fine not exceeding 10 penalty units.

164ZG. Transfer of dam operating notice

(1) On receiving a notice from a person (the *original responsible person*) under section 164ZF(2) –

Water Management Act 1999
Act No. 45 of 1999

s. 164ZH

Part 8 – Dam Works

- (a) that the person is ceasing, or has ceased, to be responsible for an activity, measure or action specified in a dam operating notice issued to him or her; and
- (b) of the name and contact details of another person who is assuming, or has assumed, responsibility for that activity, measure or action (the *new responsible person*) –

the Minister may amend the dam operating notice by substituting the name of the new responsible person for the name of the original responsible person.

- (2) On the amendment of the dam operating notice –
 - (a) the Minister is to issue the dam operating notice, with the amendment incorporated, to the new responsible person; and
 - (b) the original operating person ceases to be bound by the dam operating notice.
- (3) A new responsible person is not entitled under Part 14 to apply for a review in relation to, or appeal against, the issue of a dam operating notice to him or her under this section.

164ZH. Amendment of dam operating notice to correct mistakes

On his or her own motion, the Minister may amend a dam operating notice –

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 164ZI

- (a) to correct a mistake, if the mistake is a clerical mistake or an error arising from an accidental slip or omission; or
- (b) to correct a mistake, if the mistake is an evident miscalculation of figures or an evident mistake in the description of land, other property or a person; or
- (c) to change the name or address of the person to whom the notice relates.

Division 11 – Offences

164ZI. Offence to contravene permit conditions

The holder of a permit must not contravene a condition to which the permit is subject.

Penalty: Fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

164ZJ. Offence to contravene dam operating notice or conditions

- (1) A person who has been issued with a dam operating notice must not contravene –
 - (a) the notice; or
 - (b) a condition to which the notice is subject.

Water Management Act 1999
Act No. 45 of 1999

s. 164ZK

Part 8 – Dam Works

Penalty: Fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

- (2) If a dam operating notice, or a condition to which the notice is subject, is contravened by a person to whom the notice is issued, each other person to whom the notice is issued is jointly and severally liable in relation to the contravention.

164ZK. Offence to contravene registered offset

- (1) If a registered offset relates to land, the owner of the land must comply with the registered offset.

Penalty: Fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

- (2) If a registered offset relates to water, the owner of the dam to which the registered offset relates must comply with the registered offset.

Penalty: Fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

164ZL. No defence of authority being given, if threatened species or their nest taken

It is not a defence, in any proceedings for an offence under this Act or any Act in relation to the taking by a person of a threatened species, or of a nest of a threatened species, that the person was the holder of a Division 3 permit or a Division 4 permit.

164ZM. Ministerial action following contravention of Part

- (1) If a person is found guilty of an offence under this Part in relation to dam works or a dam operating notice, the Minister may require, in writing, any one or more of the following persons to take the action specified in the requirement, whether or not the person so required to take action is the person who is found guilty of the offence:
 - (a) the person who is or was the relevant permit holder;
 - (b) the owner of the relevant dam or an authorised operator of the dam;
 - (c) the owner or occupier of land on which the dam or dam works is or was situated or undertaken.
- (2) The requirement –
 - (a) is to specify the person's rights to apply for a review of, or appeal against, the requirement under Part 14; and

Water Management Act 1999
Act No. 45 of 1999

s. 164ZM

Part 8 – Dam Works

(b) may require –

- (i) the emptying, breaching, modification or removal of the relevant dam; or
- (ii) the undertaking of work to repair damage to the site of the relevant dam works; or
- (iii) the undertaking of actions to ensure compliance with a dam operating notice or its conditions; or
- (iv) in the case of dam works being undertaken under a Division 4 permit – the cessation of the dam works and the making under section 144 of an application for a Division 3 permit; or
- (v) any other action the Minister considers appropriate in the circumstances.

(3) A person must comply with a requirement.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(4) If a person fails to comply with a requirement –

Water Management Act 1999
Act No. 45 of 1999

Part 8 – Dam Works

s. 164ZN

- (a) the Minister may authorise a person, in writing, to enter on the relevant land and take any action specified in the requirement and such other action as may be necessary or desirable to make good any damage caused by the failure to comply with the requirement; and
 - (b) the expenses reasonably incurred by the Crown in the taking of action by the person authorised under paragraph (a) –
 - (i) are a debt due and owing by the person who failed to comply with the requirement; and
 - (ii) may be recovered in a court of competent jurisdiction.
- (5) A person authorised under subsection (1) or subsection (4)(a) to take action as stated in that subsection is not required to obtain a permit unless the Minister, in the authorisation, so specifies.

Division 12 – Miscellaneous

164ZN. Minister to prepare annual report

- (1) The Minister, on or before 1 October in a year, is to prepare a report in relation to the performance and exercise of his or her functions and powers under this Part in relation to the immediately preceding financial year.

Water Management Act 1999
Act No. 45 of 1999

s. 165

Part 8 – Dam Works

- (2) A report prepared under subsection (1) is to be published on the website of the Department for a period of not less than 12 months.

165. Review to be conducted

- (1) The Minister is to conduct, in accordance with the terms of review that are prescribed, an annual review of the operation of administrative processes under this Part.
- (2) The Minister may consult with any persons he or she thinks fit for the purposes of conducting the annual review.
- (3) This section ceases to apply in the year after the sixth year from the date on which this section commences.

PART 8A – SAFETY OF DAMS

Division 1 – Interpretation

165A. Application of Part

This Part applies to all dams except a dam that holds less than one megalitre of water or waste and is not on a watercourse.

165B. Interpretation of Part 8A

In this Part –

appurtenant works means all ancillary structures of a dam that may affect a dam's safety including, but not limited to, spillways, inlet and outlet works, tunnels, pipelines, penstocks, power stations and watercourse diversions;

dam means a permanent or temporary barrier or structure that stores water or other liquids, silt, debris, mine tailings or other liquid-borne material or holds back or impedes the flow of water or other material and includes –

- (a) water or other material stored or held back by the barrier or structure and the area covered by that water or other material; and
- (b) an artificial depression or hole excavated in a watercourse that

Water Management Act 1999
Act No. 45 of 1999

s. 165C

Part 8A – Safety of dams

holds water or impedes the flow of water; and

(c) an artificial levee or bank that holds back or diverts water in a watercourse; and

(d) any appurtenant works;

dam works includes any appurtenant works;

inquirer means the Minister or other person conducting an inquiry or examination under section 165D.

Division 2 – Functions of Minister

165C. Functions of Minister

For the purposes of this Part, the Minister has the following functions:

- (a) to develop specifications for the purposes of the regulations relating to dams;
- (b)
- (c) to develop prescribed standards required for the design, construction, maintenance, surveillance and decommissioning of dams or classes of dams;
- (d) to ensure compliance with those standards;

Water Management Act 1999
Act No. 45 of 1999

Part 8A – Safety of dams

s. 165D

- (e) to develop prescribed standards for the competency of persons undertaking design, construction, maintenance, surveillance and decommissioning of dams or classes of dams;
- (f) to formulate measures to ensure the safety of dams and, in particular, plans to remove or minimise risks to persons or property or the natural environment arising from an incident;
- (g) to obtain information and keep records on matters relating to the safety of dams.

165D. Inquiries as to dam safety

- (1) The Minister may conduct an inquiry into any matter relating to the safety of a dam.
- (2) The Minister may, by instrument in writing, authorise, on such terms and conditions as are specified in that instrument, any other person to conduct an inquiry or to examine, and report on, any matter in connection with an inquiry.
- (3) Nothing in this section is to be construed as limiting the power of the Minister to conduct an examination in connection with an inquiry under this section and the Minister may conduct such an examination notwithstanding that he or she has authorised another body or person to do so.

Water Management Act 1999
Act No. 45 of 1999

s. 165E

Part 8A – Safety of dams

165E. Evidence at inquiry

- (1) An inquirer may require a person, by notice in writing –
 - (a) within such reasonable time as may be specified in the notice, to provide the inquirer with such information and to produce to the inquirer such books, plans, documents or other papers and such films, tape recordings or other records in the person's possession or under the person's control as may be required for the purpose of the inquiry or examination, as the case may be, and as may be specified in the notice, whether generally or otherwise; or
 - (b) to attend, at a time and place specified in the notice, before the inquirer and then, from time to time as required by the inquirer, to give evidence concerning any matter the subject of the inquiry or examination, as the case may be, and to produce to the inquirer any of the articles referred to in paragraph (a).
- (2) An inquirer may require any evidence referred to in subsection (1)(b) to be given on oath, either in writing or orally, and, for that purpose, the inquirer may administer the oath.
- (3) A person must not neglect or refuse to comply with the requirements of a notice served on the person under this section.

Penalty: Fine not exceeding 100 penalty units.

Water Management Act 1999
Act No. 45 of 1999

Part 8A – Safety of dams

s. 165F

- (4) A person must not –
- (a) furnish any information referred to in subsection (1)(a) required of him or her by a notice served on him or her under subsection (1) that is false or misleading in a material particular; or
 - (b) give any evidence referred to in subsection (1)(b) that is false or misleading in a material particular.

Penalty: Fine not exceeding 100 penalty units.

- (5) It is a defence to a prosecution under subsection (4) if the defendant proves that he or she believed the truth of the information or evidence given by him or her and that it was given in good faith.
- (6) A person who is required to attend an inquiry under this section is entitled to be paid an allowance specified in the regulations in respect of that attendance.

Division 3 – Control of dams

165F. Referral of applications under another enactment

- (1) Where a person who proposes to undertake dam works is required under any other enactment to apply for any approval or permit before those works are undertaken, the relevant authority must refer the application to the Minister before granting the approval or issuing the permit.

Water Management Act 1999
Act No. 45 of 1999

s. 165F

Part 8A – Safety of dams

- (2) Where an application is referred to the Minister –
- (a) the Minister may require the imposition on the approval or permit of such terms and conditions as the he or she considers necessary or desirable to ensure the safety of the dam works, including a condition consisting of a requirement that the person report to the Minister in relation to the person's compliance with any condition of the approval or permit; and
 - (b) the relevant authority must include those terms and conditions on the approval or permit.
- (3) An application referred to the Minister under subsection (1) is taken to be an application for a Division 3 permit except that –
- (a) it is exempt from the provisions of sections 146, 147 and 148; and
 - (b) the provisions of section 156 relating to the granting or refusal of an application for a Division 3 permit do not apply; and
 - (c) the Minister may impose terms and conditions as mentioned in subsection (2) of this section.
- (4) Division 2 of Part 14 does not apply to any terms or conditions imposed by the Minister under subsection (2) but this subsection does not affect any right of appeal against those terms and

Water Management Act 1999
Act No. 45 of 1999

Part 8A – Safety of dams

s. 165G

conditions which may lie under any enactment under which the relevant application is made.

- (5) Where a referral is made under subsection (1) and the referral would result in the relevant authority not being able to meet any statutory restrictions as to time on the period within which the relevant authority must consider the application, those restrictions are suspended until such time as the Minister makes a final decision on the referral.

165G. Duty for safe operation of dam

An owner of a dam must, so far as is reasonably practicable, maintain and operate the dam so as not to cause, or be likely to cause, material environmental harm or serious environmental harm or danger to any person or property.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units and a daily fine not exceeding 50 penalty units for each day during which the offence continues; and
- (b) a natural person, a fine not exceeding 200 penalty units and a daily fine not exceeding 20 penalty units for each day during which the offence continues.

Water Management Act 1999
Act No. 45 of 1999

s. 165H

Part 8A – Safety of dams

165H. Obtaining and providing information

(1) In order to satisfy himself or herself that a dam is in a safe condition, the Minister may, by notice in writing, require the owner of a dam specified in the notice to do or arrange for either or both of the following actions:

(a) to make such observations, take such measurements, undertake such engineering studies and keep such records of or in respect of the dam, the environs over, under and surrounding the dam and the water or other material impounded by the dam as may be specified in the notice;

(b) to provide the Minister with such information in respect of the dam, and with such books, plans, documents or other papers and such films, tape recordings or other records as may be specified or described in the notice.

(1A) A notice under subsection (1)(a) may require that the actions are to be undertaken by a person or persons with prescribed competencies.

(2) An owner must comply with a requirement under subsection (1).

Penalty: Fine not exceeding 100 penalty units.

(3) Where an owner of a dam fails to comply with a requirement under subsection (1), the Minister may –

Water Management Act 1999
Act No. 45 of 1999

Part 8A – Safety of dams

s. 165I

- (a) undertake the activities referred to in subsection (1)(a) in respect of the dam; and
- (b) recover the costs and expenses arising from, or incidental to, undertaking those activities from the owner as a debt due to the Crown in any court of competent jurisdiction.

165I. Reporting of incidents

An owner of a dam must, as soon as practicable after an incident occurs in respect of the dam, report that incident to the Secretary in writing.

Penalty: Fine not exceeding 100 penalty units.

165J. Entry, surveillance, testing, &c.

- (1) In this section, a reference to land comprising a dam includes a reference to the water or other material impounded by the dam.
- (2) The Minister may, in writing, authorise a person to carry out a surveillance of any dam for the purposes of this Part.
- (3) A person authorised under subsection (2) may enter on any land or any place on any land comprising any dam or the environs over, under or surrounding any dam and may –
 - (a) carry out such surveillance, tests, investigations, surveys, experiments, boring, drilling and exploration; and

Water Management Act 1999
Act No. 45 of 1999

s. 165J

Part 8A – Safety of dams

(b) take such samples and such photographs –

as the person considers necessary in connection with the administration of this Part.

- (4) A person authorised under subsection (2) must not exercise any of the powers conferred by subsection (3) in respect of any land or any place on any land unless –
- (a) reasonable notice has been given to the owner or occupier of the land or place of the intention to exercise those powers; or
 - (b) the person believes, on reasonable grounds, that the circumstances require immediate action to be taken.
- (5) In the exercise of a power conferred by subsection (3) –
- (a) the person must ensure that no more damage than is necessary in the circumstances is done; and
 - (b) the Minister must fully compensate any person who sustains damage in the course of the exercise of that power.
- (6) A person authorised under subsection (2), in exercising a power conferred by subsection (3) in the case of any land or any place on any land, must, if so required by a person apparently in charge of that land or place, produce the instrument of his or her authority to that person.

Water Management Act 1999
Act No. 45 of 1999

Part 8A – Safety of dams

s. 165K

- (7) A person who contravenes subsection (6) is guilty of an offence and is liable on summary conviction to a fine not exceeding 3 penalty units.

165K. Operation and maintenance manuals

- (1) An owner of a dam may demonstrate the safe operation and maintenance of the dam by demonstrating compliance with an operation and maintenance manual submitted by the owner to the Minister.
- (a - b)
- (2) An operation and maintenance manual –
- (a) is to be in writing; and
- (b) is to be in accordance with the regulations.
- (3) The Minister must accept an operation and maintenance manual if satisfied that it has been prepared in accordance with the regulations.

165L. Directions for maintenance, &c., of dams

- (1) In order to satisfy himself or herself that a dam is in a safe condition, the Minister may give an owner of a dam a written direction –
- (a) relating to the undertaking of works and carrying out investigations, in accordance with the regulations, for the maintenance,

Water Management Act 1999
Act No. 45 of 1999

s. 165L

Part 8A – Safety of dams

surveillance or decommissioning of a dam;and

- (b) requiring the owner to keep such records relating to the maintenance, surveillance or decommissioning of the dam as the Minister may reasonably require in order to ensure its safety; and
 - (c) requiring the owner to prepare and submit to the Minister when so directed a plan of action proposed to be taken in case the dam is, or is likely to become, a danger to any person or property or to the environment.
- (2) Where an operation and maintenance manual has been accepted under section 165K(3), the Minister may only give a direction under subsection (1) of this section if the Minister is satisfied that the owner of the dam has not complied with the manual.
- (3) An owner of a dam must comply with a direction under subsection (1).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units and a daily fine not exceeding 50 penalty units for each day during which the offence continues; and
- (b) a natural person, a fine not exceeding 200 penalty units

Water Management Act 1999
Act No. 45 of 1999

Part 8A – Safety of dams

s. 165L

and a daily fine not exceeding
20 penalty units for each day
during which the offence
continues.

- (4) The Minister must not give a written direction under subsection (1)(a) that is inconsistent with –
 - (a)
 - (b) a relevant determination of an appeal under section 279.
- (5) If an owner fails to comply with a direction under subsection (1)(a) or (c), the Minister may undertake or carry out any work or investigation required to be undertaken or carried out or may prepare any plan required to be prepared and may, in any court of competent jurisdiction, recover from the owner, as a debt due to the Crown, any cost reasonably incurred in so doing.
- (6) If an owner fails to comply with a direction under subsection (1)(b), the Minister may, in any court of competent jurisdiction, recover from him or her, as a debt due to the Crown, any cost reasonably incurred in obtaining the required information.
- (7) If an owner fails to comply with a direction under subsection (1), the Minister may authorise any person to enter on the owner's land for the purpose of performing any work or investigation required, preparing the required plan or obtaining the required information.

Water Management Act 1999
Act No. 45 of 1999

s. 165M

Part 8A – Safety of dams

- (8) If works that are needed to make a dam permanently safe have the effect of rendering it unsuitable for its intended purpose, any permit issued in respect of the dam under this or any other Act is of no effect.

165M. Surveillance and testing

- (1) If an owner of a dam fails to carry out such testing and surveillance as required by a direction of the Minister under this Part, the Minister may authorise a person –
- (a) to enter on the owner's land; and
 - (b) carry out surveillance of the dam and any other land or works as may be necessary to ensure the safety of the dam.
- (2) For the purposes of subsection (1), the authorised person may carry out boring and drilling operations, make surveys and take measurements.
- (3) Unless the Minister is satisfied that there is imminent danger to any person or property or to the environment, the authorised person must give the owner at least 14 days' notice in writing of any action proposed under this section.
- (4) In the exercise of powers under this section –
- (a) the authorised person must ensure that no more damage than is necessary is done to the land; and

Water Management Act 1999
Act No. 45 of 1999

Part 8A – Safety of dams

s. 165N

- (b) the Minister must compensate the owner for any damage done to the land.

165N. Notices to ensure safety of dam following provision of information

- (1) Where as a result of information provided under section 165H, 165J, 165L or 165M the Minister determines that, in order to ensure the safety of a dam, it is necessary to modify the dam –
 - (a) as a result of the review of the spillway and its design flood; or
 - (b) as a result of a change to the hazard category of the dam subsequent to its construction; or
 - (c) to meet prescribed safety requirements –the Minister may, by notice in writing, require the owner of the dam to carry out modifications specified or described in the notice as may be reasonably necessary to ensure the ongoing safety of the dam.
- (2) The Minister may specify in the notice a period, not exceeding 10 years, within which the owner must comply with the notice.
- (3) An owner must comply with a notice under subsection (1) within the time specified in the notice.

Penalty: In the case of –

Water Management Act 1999
Act No. 45 of 1999

s. 165N

Part 8A – Safety of dams

- (a) a body corporate, a fine not exceeding 500 penalty units and a daily fine not exceeding 50 penalty units for each day during which the offence continues; and
 - (b) a natural person, a fine not exceeding 200 penalty units and a daily fine not exceeding 20 penalty units for each day during which the offence continues.
- (4) If an owner of a dam fails to comply with a notice under this section –
 - (a) the Minister may authorise a person to enter on the owner's land and take the action specified in the notice and such other action as may be necessary or desirable to make good any damage caused; and
 - (b) any expense actually and reasonably incurred by the Minister in so doing is a debt due by the owner to the Minister and recoverable as such in any court of competent jurisdiction.
- (5) Nothing in this section prevents the Minister from issuing a notice under section 165P.

Water Management Act 1999
Act No. 45 of 1999

Part 8A – Safety of dams

s. 165P

165P. Notices to ensure safety of dams in case of imminent danger, &c.

- (1) Where it appears to the Minister that a dam is unsafe or is in imminent danger of becoming unsafe or there is a high risk of an incident, the Minister may, by notice in writing, require the owner of the dam or the person in control of the dam at the relevant time to do such things as are specified or described in the notice as may be reasonably necessary to ensure the safety of the dam.
- (2) A person must comply with a notice under subsection (1).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units and a daily fine not exceeding 50 penalty units for each day during which the offence continues; and
 - (b) a natural person, a fine not exceeding 200 penalty units and a daily fine not exceeding 20 penalty units for each day during which the offence continues.
- (3) Where it appears to the Minister that anything done or proposed to be done to, or in respect of, a dam or in the vicinity of a dam by its owner or any other person may increase the dam's safety risk, the Minister may, by notice in writing,

Water Management Act 1999
Act No. 45 of 1999

s. 165P

Part 8A – Safety of dams

require the owner or other person, as the case may be, to do such things as are specified or described in the notice as may be reasonably necessary to ensure the safety of the dam.

- (4) A person must comply with a notice under subsection (3).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units and a daily fine not exceeding 50 penalty units for each day during which the offence continues; and
 - (b) a natural person, a fine not exceeding 200 penalty units and a daily fine not exceeding 20 penalty units for each day during which the offence continues.
- (5) If a person fails to comply with a notice under this section–
- (a) the Minister may authorise another person to enter on the land on which the dam is situated and take the action specified in the notice and such other action as may be necessary or desirable to ensure the safety of persons or the relevant dam or other property; and
 - (b) any costs reasonably incurred by or on the Minister's behalf pursuant to

Water Management Act 1999
Act No. 45 of 1999

Part 8A – Safety of dams

s. 165P

paragraph (a) are recoverable in a court of competent jurisdiction as a debt due to the Crown from the person failing to comply with the notice.

- (5A) If the Minister considers that a person will be unable to execute an authorisation under subsection (5) without entering on land other than that on which the dam is situated, the authorisation may authorise that entry.
- (5B) A person entering on any land pursuant to an authorisation under subsection (5) must –
- (a) make reasonable attempts to notify the owner or occupier of the entry; and
 - (b) cause as little disruption as possible consistent with the actions required to be taken; and
 - (c) do whatever can be practicably done in the circumstances by way of temporary measures to maintain the owner's or occupier's level of protection as regards trespass and, if applicable, loss of stock; and
 - (d) to such extent as may be practicable without jeopardising the safety of any persons, dams or property, make good any damage.
- (6) If, as a result of taking any action specified or described in a notice under this section, a dam becomes unsuitable for its intended purpose and is rendered permanently safe, any permit or

Water Management Act 1999
Act No. 45 of 1999

s. 165Q

Part 8A – Safety of dams

licence granted in respect of the dam under this
or any other Act is of no effect.

Division 4 – Miscellaneous and supplemental

165Q. Obstruction of authorised person

A person must not obstruct, hinder or interfere
with –

- (a) a person authorised under subsection (2)
of section 165J in the exercise of his or
her powers under that section; or
- (b) a person authorised under subsection (7)
of section 165L in the exercise of his or
her powers under that subsection; or
- (c) a person authorised under subsection (1)
of section 165M in the exercise of his or
her powers under that section; or
- (d) a person authorised under subsection (4)
of section 165N in the exercise of his or
her powers under that subsection; or
- (e) a person authorised under subsection (5)
of section 165P in the exercise of his or
her powers under that subsection.

Penalty: Fine not exceeding 100 penalty units.

165R. Determination of compensation

- (1) The amount of compensation payable under section 165J(5)(b) or section 165M(4)(b) is to be determined –
 - (a) if the amount is a small claim for the purposes of the *Magistrates Court (Small Claims Division) Act 1989*, by the small claims division of the Magistrates Court; or
 - (b) in any other case, as if it were a disputed claim for compensation under the *Land Acquisition Act 1993*.
- (2) In determining the amount of compensation payable under section 165J(5)(b) or section 165M(4)(b), the court must have regard to any benefits accruing to a relevant person from the action which is the subject of the determination and reduce the amount of the compensation payable accordingly.

165S. Contracts

The Minister may make a contract with any person for the carrying out of works, the performance of services or the supply of goods or materials in connection with the exercise by the Minister of his or her functions under this Part.

165T. Arrangements with statutory authorities

- (1) The Minister may enter into an arrangement with any statutory authority that –
 - (a) the statutory authority will act as agent of the Minister for the purposes of this Part; or
 - (b) the Minister will act as agent of the statutory authority for the purposes of this Part –

on such terms and conditions as may be agreed between the Minister and the statutory authority.

- (2) Notwithstanding anything in any other Act, a statutory authority is empowered to enter into arrangements referred to in subsection (1) and may do or suffer anything necessary or expedient for carrying out any such arrangements.

165U. Form of information provided under this Part

Any information or report submitted in fulfilment of an obligation under this Part is to be submitted in a form approved by the Minister.

165V. No requirement for permit where dam works required by direction or notice

A person required by direction or notice under section 165L, 165N or 165P to undertake dam works is not required to obtain a permit under Part 8 in relation to those dam works.

165W. Registration of dams

- (1) The Minister, by order, may declare that a dam of a height, storage capacity, ANCOLD consequence category, location or type be registered with the Secretary within the period, if any, specified in the order as the period within which the dam must be registered.
- (2) An order under subsection (1) is not a statutory rule.
- (3) The owner of a dam that is required under subsection (1) to be registered with the Secretary must give to the Secretary a notice, in the approved form, that –
 - (a) states his or her name, address and contact information; and
 - (b) states the name, address and contact information of any other owner of the dam; and
 - (c) specifies the geographical location of the dam; and
 - (d) includes a description of the dam, including its height, storage capacity, ANCOLD consequence category and type.

Penalty: Fine not exceeding 100 penalty units.

- (4) For the purposes of subsection (3), if an owner of a dam has given the notice required by that

Water Management Act 1999
Act No. 45 of 1999

s. 165X

Part 8A – Safety of dams

subsection, all other owners of the dam are taken to have given notice under that subsection.

- (5) On receiving a notice, the Secretary, in writing, may require the owner who gave that notice to provide the Secretary with the further information specified in the requirement for the purposes of allowing the Minister to obtain information and keep records on matters relating to the safety of dams under Part 8A.
- (6) An owner who receives a requirement under subsection (5) must comply with that requirement.

Penalty: Fine not exceeding 100 penalty units.

165X. Minister may assign, &c., ANCOLD consequence category

- (1) The Minister may –
 - (a) assign an ANCOLD consequence category to a dam; or
 - (b) review or alter the assignment to a dam of an ANCOLD consequence category.
- (2) The Minister must give notice to the owner of land on which is situated a dam –
 - (a) to which an ANCOLD consequence category is assigned under subsection (1); or

Water Management Act 1999
Act No. 45 of 1999

Part 8A – Safety of dams

s. 165X

- (b) to which an alteration of the assignment to a dam of an ANCOLD consequence category relates.
- (3) If an ANCOLD consequence category is assigned, or altered, under subsection (1), in relation to a dam, the dam is to be taken to be a dam to which that ANCOLD consequence category is assigned.

PART 9 – WATER DISTRICTS

Division 1 – Establishment of water districts

166. Application of Division to water entities

- (1) This Division applies to –
- (a) a council if it is proposed to appoint the whole or a part of its municipal area as a water district other than a water supply district; and
 - (b) a water entity that owns or occupies land in a proposed water district; and
 - (c) a body corporate that is incorporated under the Corporations Act if at least one-third of the members of the body corporate own or occupy land in a proposed water district; and
 - (ca) a trust established under Part 10 or a body that is registered under the *Cooperatives Act 1999* if at least one-third of the members of the trust or body own or occupy land in a proposed water district; and
 - (d) an electricity entity; and
 - (e) a water entity that is declared by the Minister, by notice published in the *Gazette*, to be a water entity to which this Division applies; and

(f) the Corporation within the meaning of the *Water and Sewerage Corporation Act 2012*.

(2)

167. Establishment of water districts

(1) On the application of a water entity to which this Division applies or a group of landowners in accordance with this Division, the Minister may appoint, name and define –

- (a) a water supply district; or
- (b) an irrigation district; or
- (c) a riverworks district; or
- (d) a drainage district –

so as to give a water entity administrative control of, and responsibility for, that water district.

(2) A water district referred to in subsection (1) may be defined as –

- (a) the whole or part of a catchment area of a certain watercourse or lake; or
- (b) a specified area of land.

(3) A riverworks district may not include –

- (a) permanent timber production zone land within the meaning of the *Forest Management Act 2013*; or

Water Management Act 1999
Act No. 45 of 1999

s. 168

Part 9 – Water Districts

- (b) Crown land subject to a forest permit under the *Forest Management Act 2013*; or
- (c) land acquired by the Crown for the purposes of forestry –

unless the notice is expressed to be made with the agreement of the Minister having the administration of the *Forest Management Act 2013*.

- (4) If a proposed water district is wholly or partly within an existing water district, the Minister –
 - (a) must consult with the water entity administering the existing district on the application for the establishment of the water district; and
 - (b) must not establish the water district if it would have a material adverse effect on the administration of the existing district.

168. Application for water supply district or irrigation district

An application may be made to the Minister under this Division –

- (a) by the owners of at least two-thirds of the land comprised in any area specified in the application which can be irrigated or watered from a common source of supply, requesting that that area be

Water Management Act 1999
Act No. 45 of 1999

Part 9 – Water Districts

s. 169

constituted a water supply district or an irrigation district; or

- (b) by a water entity to which this Division applies where an area specified in the application can be irrigated or watered from a common source of supply, requesting that that area be constituted a water supply district or an irrigation district.

169. Application for riverworks district or drainage district

- (1) Where it is considered that the undertaking of works mentioned in section 193 is desirable for the benefit of persons residing in a particular area, an application may be made to the Minister under subsection (3) requesting the establishment of a riverworks district.
- (2) Where any considerable area of land is so situated that, owing to any permanent or recurrent cause, water accumulates and lies on the land to the detriment of the land by reason of insufficient drainage, an application may be made to the Minister under subsection (3) requesting the establishment of a drainage district.
- (3) An application under this section may be made –
 - (a) by the owners of at least two-thirds of the land comprised in an area specified in the application; or

- (b) by a water entity to which this Division applies in respect of an area specified in the application.

170. Application for hydro-electric district

- (1) An application may be made to the Minister by an electricity entity which holds a special licence under section 115(2) requesting the establishment of a hydro-electric district.
- (2) The hydro-electric district may be defined as –
 - (a) the whole or part of a catchment area of a certain watercourse or lake; or
 - (b) a specified area of land.

171. Requirements for application

An application under section 168, 169 or 170 –

- (a) must be in accordance with section 12A; and
- (b) where the application is made by a water entity, is to provide full details of the water entity and specify the proposed arrangements for the administration of the proposed district by the water entity; and
- (c) where the application is made by a group of landowners, is to recite an agreement by those persons to create a water entity; and

Water Management Act 1999
Act No. 45 of 1999

-
- (d) unless the application is made by a council, is to specify the names and addresses of all landowners in the area concerned; and
 - (e) is to state the purpose for which the appointment of the district is required; and
 - (f)
 - (g) is to provide details of any works proposed to be undertaken following the establishment of the district; and
 - (h) is to provide a plan to the satisfaction of the Minister stating full details of the operation of the proposed water entity, relating to its financial structure and the proposed administration of the district.
 - (i)

172. Operation of agreement

An agreement mentioned in section 171(c) takes effect on the appointment of the proposed water district.

173. Joint water districts

On receipt of an application under section 168 or 169, the Minister may –

- (a) if the application is made by a council, require the council to join with other

Water Management Act 1999
Act No. 45 of 1999

s. 174

Part 9 – Water Districts

councils whose municipalities are part of, or adjacent to, the area of land specified in the application, in proposing the establishment of the district; or

- (b) if the application is made by any other water entity or by landowners, require the water entity or those landowners to prepare a joint application with other relevant water entities or landowners.

174. Procedure on receipt of application

- (1) On receipt of an application under section 168, 169 or 170, the Minister must give notice of the application in the *Gazette* and at least once in a local newspaper.
- (2) The notice –
 - (a) is to include full details of the application; and
 - (b) is to state the place and times at which the proposal application, including a map of the proposed district and information relating to any proposed works, may be inspected by members of the public; and
 - (c) is to invite written representations from any persons who may be affected by the application; and
 - (d) is to state a period of at least 28 days from the publication of the notice in the *Gazette* during which the representations

Water Management Act 1999
Act No. 45 of 1999

may be made and the address to which they are to be sent.

- (3) For the purposes of subsection (2)(b) –
 - (a) the specified place is to be readily accessible to persons residing in the area which is the subject of the application; and
 - (b) the specified times are to allow the proposal to be inspected during normal business hours during the period for which submissions are invited under subsection (2)(d).
- (4) If the application affects Crown land, the Minister must give notice in writing of the application to the Minister having the administration of the *Crown Lands Act 1976* and, where the application is not made by a council, to councils owning land in the proposed district.
- (5) The Minister must not appoint a riverworks district or a drainage district unless he or she first consults with the Director.

175.

176. Approval of application

- (1) The Minister must, in considering the application, take account of any representations or advice received under section 174.

Water Management Act 1999
Act No. 45 of 1999

s. 176

Part 9 – Water Districts

- (2) Where the Minister is satisfied that approval of the application will assist in furthering the objectives of this Act, the Minister may approve the application and, by notice published in the *Gazette*, appoint, name and define a water district.
- (2A) The notice is not a statutory rule.
- (3) The Minister may amend a proposal in an application before approval if considered desirable after taking into account any representations or advice received under section 174.
- (4) If the amendment is substantial –
 - (a) the Minister must notify the applicant, give an explanation of the amendment and consult with the applicant with respect to the amendment; and
 - (b) the applicant must amend the application; and
 - (c) the amended application is to be treated as a new application under section 168, 169 or 170.
- (5) An approval under subsection (2) may be subject to conditions or without conditions and, where the application is made by landowners, the approval is to be conditional on the establishment of the proposed water entity.
- (6) An approval under this section is to be consistent with any relevant water management plan.

Water Management Act 1999
Act No. 45 of 1999

Part 9 – Water Districts

s. 177

- (7) The Minister must, within 14 days after publication of the notice in the *Gazette*, give notice of the appointment of a water district under subsection (2) in a local newspaper.

177. Withdrawal of application

A group of landowners or a water entity to which this Division applies may withdraw an application at any time after the Minister receives it and before he or she approves it.

Division 2 – Administration of water districts

178. Amendment of approval

- (1) Subject to subsection (5), the Minister may, at the request of a responsible water entity or where the Minister considers it necessary to ensure the due administration of a water district, impose conditions on, or vary the conditions of, an approval under section 176.
- (2) Where, in the case of a responsible water entity that is not an electricity entity, the Minister has exercised his or her powers under subsection (1) without the agreement of the water entity, the Minister must give written notice of the conditions or variation of conditions and of any rights of review or appeal under Part 14 to the water entity.
- (3) Where, in the case of a responsible water entity that is an electricity entity –

Water Management Act 1999
Act No. 45 of 1999

s. 178

Part 9 – Water Districts

- (a) the Minister has exercised his or her powers under subsection (1) without the agreement of the electricity entity; and
- (b) the electricity entity suffers damage, is required to pay compensation or otherwise incurs a liability arising from the exercise of those powers –

the electricity entity is entitled to compensation to be paid by the Minister.

- (4) For the purposes of subsection (3) –
 - (a) compensation is to be paid from the Public Account without further or other appropriation than this section; and
 - (b) in default of agreement between the Minister and the electricity entity, the arbitral tribunal is to be nominated by the president for the time being of the Australian Centre for International Commercial Arbitration; and
 - (c) the amount of compensation is to be determined in accordance with the *Commercial Arbitration Act 2011*.
- (5) If any condition or variation proposed would have a significant effect on the administration of a water district that is not a hydro-electric district or a material adverse impact on an owner or occupier of land in the district, the Minister must give notice of the proposed condition or variation and invite written representations in accordance with section 174(2).

Water Management Act 1999
Act No. 45 of 1999

Part 9 – Water Districts

s. 179

- (6) The Minister must take into account any representations received following the notice in considering the proposal to impose or vary a condition.

179. Effect of water management plan on hydro-electric district

Where –

- (a) a water management plan relates to, affects or purports to relate to or affect the administration of a hydro-electric district by an electricity entity; and
- (b) any provision of the plan would require the imposition of conditions on, or a variation of the conditions of, the approval of the hydro-electric district under section 176 –

the electricity entity is not bound by that provision unless the approval is amended under section 178.

180. Alteration of boundaries

- (1) The Minister may, at the request of a responsible water entity and by notice published in the *Gazette*, alter the boundaries of its water district so as to extend or reduce the district.
- (1A) The notice is not a statutory rule.
- (2) Where an extension of a water district under subsection (1) would result in an increase in the

Water Management Act 1999
Act No. 45 of 1999

s. 181

Part 9 – Water Districts

area of land included in the district by more than 10 per cent, the Minister must treat the request as an application under section 168, 169 or 170.

- (3) An alteration of the boundaries of a water district is to be consistent with any relevant water management plan.
- (4) An extension of a water district under this section may not include any part of another water district without the agreement of the responsible water entity for that other district which agreement –
 - (a) may not be unreasonably withheld; and
 - (b) may be subject to reasonable conditions imposed by that other water entity.
- (5) If the extension of the water district is subject to any such conditions, the Minister must include those conditions in the notice made under subsection (1).

181. Substitution of water entities

- (1) At the joint request of 2 water entities or the owners of at least two-thirds of the land in a water district, the Minister may approve the substitution of a responsible water entity by another water entity.
- (2) The request may be on the ground of an agreement to establish a water entity.
- (3) The Minister may agree to the request if there is no significant change to the administration of the

Water Management Act 1999
Act No. 45 of 1999

Part 9 – Water Districts

s. 181

relevant water district, except for changes arising from the substitution of water entities.

- (4) An approval under subsection (3) may be subject to conditions or without conditions and, where the request includes a recited agreement under subsection (2), the approval is to be conditional on the establishment of the proposed water entity.
- (5) Conditions imposed under subsection (4) may, without limitation, relate to arrangements for dealing with part or all of the assets of the water entity being replaced as the responsible water entity and for dealing with maintenance or management of works in the district.
- (6) If the Minister is of the opinion that the proposed substitution would result in significant changes to the administration of the relevant water district, he or she may require the request to be treated as an application under section 168, 169 or 170.
- (6A) On the substitution of a responsible water entity by another water entity under this section, any by-laws made by the former water entity and in force immediately before the substitution are, subject to subsection (6B), to continue in force until they are rescinded or amended by the substituted water entity.
- (6B) The Minister may, by notice published in the *Gazette*, direct that the by-laws are to cease to have effect or are to continue in force subject to any amendments specified in the notice.

Water Management Act 1999
Act No. 45 of 1999

s. 182

Part 9 – Water Districts

- (6C) The notice is not a statutory rule.
- (7) Nothing in this section permits the administration of a hydro-electric district by a water entity that is not an electricity entity.

182. Annual reports to Minister

- (1) During September in each year and at any other time when so required by the Minister, a responsible water entity must provide the Minister with a written report on its administration of a water district during the preceding period of 12 months.
- (2) The report is to include –
 - (a) a full financial statement of all matters relating to the water entity's administration of its water district; and
 - (b) details of all activities undertaken in discharging its responsibilities as a responsible water entity; and
 - (c) such other information as the Minister may require for the purpose of ensuring the due administration of the water district.
- (3) Where a responsible water entity is required to provide an annual report under any other Act, the Minister may direct that the provision of that report is sufficient compliance with this section.
- (4) The Minister may give a responsible water entity that has failed to comply with this section a

notice directing it to provide the Minister with the required report by or within such time as the Minister, by the notice, specifies.

- (5) A responsible water entity that is given a Ministerial direction under subsection (4) must comply with that direction.

Penalty: Fine not exceeding 50 penalty units.

183. Power to acquire land

- (1) Subject to subsection (3), a responsible water entity may, with the approval of the Minister, acquire land for the purposes of this Part in accordance with the *Land Acquisition Act 1993*.
- (2) Subject to subsection (3), a responsible water entity may, with the approval of the Minister, sell or otherwise dispose of any land belonging to it that is no longer required for the purposes of this Part.
- (3) This section does not derogate from the application of any other Act relating to the acquisition, sale or disposal of land by a water entity.

184. Powers of Minister

For the purpose of ensuring the due administration of a water district, the Minister may –

- (a) undertake surveys and inspections; and

Water Management Act 1999
Act No. 45 of 1999

s. 185

Part 9 – Water Districts

- (b) take measurements and samples of water and any other material which may affect the quality of water; and
- (c) enter on land for any such purpose; and
- (d) require the responsible water entity to provide the Minister with information relating to any activity arising from, or for the purpose of, the administration of the district or the construction or operation of any related works.

185. Requirements for permits

Nothing in this Division operates to exempt a water entity responsible for the administration of a district from any requirement to hold a permit under Part 8 or a relevant permit under the *Land Use Planning and Approvals Act 1993*.

186. Revocation of approval for water entity to administer a water district

- (1) Where a water entity –
 - (a) fails to comply with a requirement to provide the Minister with any information relating to any activity arising from, or for the purpose of, the administration of a water district; or
 - (b) does or omits to do any act that is a material contravention of a condition to which its administration of the district is subject; or

Water Management Act 1999
Act No. 45 of 1999

Part 9 – Water Districts

s. 186

- (c) has contravened this Act and in the Minister's opinion the contravention is so serious as to warrant action under this section –

the Minister may, by notice published in the *Gazette* and in accordance with this section, revoke the approval for the water entity to administer the district.

- (2) The Minister may serve on the water entity a notice in writing affording the entity an opportunity to show cause within 60 days why the Minister should not take action under this section for revocation of approval.
- (3) The water entity, within the period allowed by the notice, may arrange with the Minister for the making of submissions to the Minister as to why any such action should not be taken and the Minister must consider any submissions so made.
- (4) The Minister may, after that period, take action against the water entity as the Minister thinks fit by giving written notice to the entity –
- (a) of the revocation of approval for the entity to administer the relevant water district or the variation of the terms on which the approval was granted; or
 - (b) in the form of a letter of censure.
- (5) A revocation of approval under this section takes effect when the notice is given or on a later date specified in the notice.

Water Management Act 1999
Act No. 45 of 1999

s. 187

Part 9 – Water Districts

- (6) A letter of censure may censure the water entity in respect of any matter arising from the administration of the water district and may include a direction to the entity to rectify within a specified time any matter giving rise to the letter of censure.
- (7) If the direction is not complied with in the specified time, the Minister may, by notice published in the *Gazette*, revoke the approval of the water entity to administer the water district without affording it a further opportunity to be heard.
- (8) A notice under this section is not a statutory rule.

187. Effect of revocation of approval

- (1) On a revocation of approval under section 186 –
 - (a) the notice published in the *Gazette* may provide for the substitution of the Minister or any suitable water entity as the authority to administer the water district but without otherwise affecting the administration of the district; and
 - (b) the notice may authorise the new water entity to maintain and manage the works of the former water entity relating to the administration of the water district.
- (2) For the purposes of subsection (1), the application of section 47(4) and (5) extends to the water entity in respect of its property, functions, powers and obligations arising from

its administration of the relevant water district and any legal proceedings, documents and contracts relating to that administration.

188. Revocation of appointment of district

- (1) On application by a responsible water entity or where the Minister is satisfied that the continuation of a water district is not appropriate for the purpose for which the district was appointed, the Minister may, by notice published in the *Gazette*, revoke the appointment of the district.
- (1A) The notice is not a statutory rule.
- (2) Where a responsible water entity is an electricity entity, the Minister may not exercise his or her powers under subsection (1) except with the consent of the electricity entity or on payment of compensation as provided by section 178.
- (3) On the revocation, the responsible water entity must, as may be agreed with the Minister, sell or otherwise dispose of its works used in the administration of the district or, failing agreement, within 90 days after the revocation, sell or otherwise dispose of those works as the Minister may direct.
- (4) For the purposes of subsection (3), the Minister must have regard to the objectives of this Act, the purpose for which the district was appointed, the source of all funds contributed to the water entity and any representations from the water

Water Management Act 1999
Act No. 45 of 1999

s. 189

Part 9 – Water Districts

entity or from owners or occupiers of land in the water district.

- (5) On the revocation, the Minister may recover from the water entity in any court of competent jurisdiction as a debt due to the Crown any expense actually and reasonably incurred by the Minister in making the revocation.

Division 3 – Water supply districts and irrigation districts

189. Application of *Waterworks Clauses Act 1952*

For the purposes of the application of this Act to water supply districts –

- (a) the *Waterworks Clauses Act 1952* is incorporated with this Act; and
- (b) this Act is taken to be the special Act.

190. Application of *Irrigation Clauses Act 1973*

For the purposes of the application of this Act to irrigation districts –

- (a) the *Irrigation Clauses Act 1973* is incorporated with this Act; and
- (b) this Act is taken to be the special Act.

191. Meaning of undertakers in incorporated Acts

A responsible water entity in respect of a water supply district or an irrigation district is taken to be the undertakers for the purposes of the

Waterworks Clauses Act 1952 and the Irrigation Clauses Act 1973, as the case may be.

192. Watercourses as water supply channels

- (1) The Minister may, by order published in the *Gazette*, declare a specified part of a watercourse to be a water supply channel for a specified water supply district or irrigation district.
- (1AA) The order is not a statutory rule.
- (1A) The declaration of a water supply channel may be made subject to any conditions that the Minister thinks fit to further the objectives of this Act.
- (2) On the making of the order, the specified part of a watercourse is taken to be a water supply district or irrigation district, as the case may be.
- (3) If the declaration relates to a watercourse in a hydro-electric district, it may be made only with the agreement of the relevant electricity entity which agreement –
 - (a) may not be unreasonably withheld; and
 - (b) may be subject to reasonable conditions imposed by the electricity entity.
- (4) If the agreement is subject to any such conditions, the Minister must include those conditions in the order made under subsection (1).

Water Management Act 1999
Act No. 45 of 1999

s. 192

Part 9 – Water Districts

- (5) The order may provide that any authorisation, or any water allocation of a licence, under which water may be taken out of the specified part of the watercourse –
- (a) ceases to have effect and, if the Minister so directs, is to be replaced by arrangements for the supply of water by a water entity; or
 - (b) continues to have effect but subject to such conditions as the Minister may specify –

but, if it is proposed to make such an order, the Minister must publish notification of his or her intention to do so in the *Gazette* and in a local newspaper, inviting any persons who would be affected by the order to make representations, within a period of 14 days, as to why the order should not be made.

- (5A) If subsection (5)(a) applies to the order, the Minister may further direct, by the same order, that any registered financial interests in the relevant authorisation, or the relevant water allocation, are to attach to the irrigation right.
- (6) A right to take water which ceases to have effect under subsection (5) is to be converted into a claim for compensation to be paid by the relevant water entity and to be determined as if it were a disputed claim for compensation under the *Land Acquisition Act 1993*.

Water Management Act 1999
Act No. 45 of 1999

Part 9 – Water Districts

s. 192

- (7) The Minister must not make an order under this section if it would be inconsistent with any relevant water management plan.
- (8) Where part of a watercourse has become a water supply channel –
 - (a) the water entity responsible for the channel must –
 - (i) receive into it all water flowing into it from the upper part of the watercourse or from side watercourses; or
 - (ii) divert that water into the lower part of the watercourse or another watercourse by appropriate works; and
 - (b) the flow of water out of the channel into the lower part of the watercourse, so far as it does not exceed the flow into the channel from the upper part of the watercourse and side watercourses, if any, is taken to be the natural flow of the watercourse.
- (9) Where, in place of a right affected by subsection (6) –
 - (a) the Minister grants an authorisation to take water under this Act; or
 - (b) a water entity grants an irrigation right or domestic purposes right under the *Irrigation Clauses Act 1973* –

the value of the replacement authorisation or right is to be taken into account in assessing the amount of any compensation under that subsection.

Division 4 – Riverworks, hydro-electric and drainage districts

193. Purpose of riverworks district

A riverworks district may be established so as to enable a water entity to undertake and manage works or do any act, matter or thing for any or all of the following purposes:

- (a) removing, cutting and trimming vegetation and other matter in or on the bed and banks of watercourses and lakes, overhanging them or likely to fall into them and cause environmental harm or pose a risk to public safety or property;
- (b) undertaking works in channels so as to stabilise streambeds and streambanks and mitigating against the adverse effects of flooding;
- (c) protecting the banks of watercourses and lakes by the use of vegetation, riparian fencing and appropriate river engineering techniques;
- (d) removing obstructions where appropriate technical advice has identified that those obstructions are contributing to flooding or streambank damage;

Water Management Act 1999
Act No. 45 of 1999

Part 9 – Water Districts

s. 194

- (e) changing the course of watercourses;
- (f) controlling or regulating the flow of water in watercourses;
- (g) raising or lowering the level of lakes;
- (h) planting trees and other vegetation for the purpose of slowing down water running into watercourses and lakes and of protecting banks of watercourses and lakes;
- (i) protecting areas of important natural values, such as native vegetation, threatened species, sites of geo-conservation significance, significant habitat and sites of historic, cultural or Aboriginal significance;
- (j) the maintenance, repair, control and management of watercourses and lakes, or of any works specified in this section or of the places where they are, or have been, carried out;
- (k) any other similar activity which may assist in giving effect to the objectives of this Act or in carrying out a water management plan.

194. Purpose of hydro-electric district

A hydro-electric district may be established so as to enable a water entity to undertake and manage works for a purpose referred to in section 193 or

Water Management Act 1999
Act No. 45 of 1999

s. 195

Part 9 – Water Districts

do any act, matter or thing for any such purpose or for any or all of the following purposes:

- (a) measuring the flow or levels of water in, or the quantity of water taken by any person from, any watercourse or lake in the district;
- (b) conserving and regulating water in watercourses and lakes and purifying and protecting that water from pollution;
- (c) any purpose referred to in, or incidental to, a special licence relating to the hydro-electric district –

but only to the extent that that Act, matter or thing is consistent with the objectives of this Act.

195. Purposes of drainage district

A drainage district may be established so as to enable a water entity to undertake and manage works or do any act, matter or thing for all or any of the following purposes:

- (a) deepening, widening, straightening, diverting or otherwise improving any existing drain or outfall for water, within the drainage district, and removing obstructions to drains or outfalls for water, and raising, widening or otherwise altering any existing defence against water;

Water Management Act 1999
Act No. 45 of 1999

Part 9 – Water Districts

s. 196

- (b) making any new drain or new outfall for water, erecting any new defence against water, erecting any machinery and doing any other act required for the drainage of the drainage district;
- (c) making, maintaining, altering or discontinuing all such works of any kind or description and erecting such buildings and machinery within the drainage district as may be necessary to carry out its responsibilities;
- (d) erecting and maintaining fences on the boundaries of any drain and providing, constructing and maintaining bridges over any drain;
- (e) erecting, constructing and maintaining dams, tanks and other means of storing and conserving water as may be necessary to carry out its responsibilities.

196. Powers to enter land and undertake works

- (1) Where necessary to carry out its responsibilities in the administration of a riverworks district, hydro-electric district or drainage district, a responsible water entity may, in addition to its powers under any other Act –
 - (a) on giving notice in accordance with section 242(1) to an occupier of land, enter and pass over the land with persons, vehicles and machinery; and

Water Management Act 1999
Act No. 45 of 1999

s. 197

Part 9 – Water Districts

(b) on giving 14 days' notice by post to –

(i) an occupier of land; or

(ii) if the land appears to be unoccupied, to the person shown in the valuation list or assessment roll of the relevant council as the owner at his or her address shown in the list or roll –

undertake any activities required to maintain any of its works.

(2) If the entry on land is required urgently by reason of imminent danger to human or animal life or to protect any works of the water entity or the environment, notice under subsection (1) is not required.

197. Powers to undertake works near or through highways

(1) In this section,

Secretary means the Secretary of the responsible department in relation to the *Roads and Jetties Act 1935*.

(2) A responsible water entity may make, break and open such ditches, gutters, tunnels, drains and watercourses in, through or along any highway as it thinks advisable for, or in connection with, its works and may scour, cleanse and keep open all such ditches, gutters, tunnels, drains and watercourses.

Water Management Act 1999
Act No. 45 of 1999

Part 9 – Water Districts

s. 197

- (3) If the exercise of a power under subsection (2) is required urgently by reason of imminent danger to human or animal life or to protect any works of the water entity or the environment, notice under subsection (4) is not required.
- (4) A responsible water entity, before exercising its power to break or open up a highway, must give to the council controlling the highway or to the Secretary at least 21 days' notice in writing of its intention so to do.
- (5) On receipt of notice under subsection (4), the Secretary or council may, by written notice to the water entity, require that the work be carried out under the supervision of an inspector or other officer appointed by the Secretary or council for that purpose.
- (6) If the person so appointed fails to attend for the purpose at the agreed time, the responsible water entity may proceed notwithstanding subsection (5).
- (7) On receipt of a notice under subsection (4) –
 - (a) the Secretary or council may require the observance and provision of such conditions and safeguards as may be necessary for ensuring public safety or for the protection of the highway; and
 - (b) the responsible water entity must comply with any such requirement to the satisfaction of the Secretary or council.

Water Management Act 1999
Act No. 45 of 1999

s. 198

Part 9 – Water Districts

- (8) A responsible water entity must pay compensation to the council or to the Secretary for any damage suffered by the council or Secretary by reason of any work executed by the water entity under this section.
- (9) If a dispute arises as to the amount of any damage so suffered, it may be determined by a magistrate, on complaint by the Secretary or council, under the *Justices Act 1959*.
- (10) If a dispute arises between a council and a responsible water entity over –
 - (a) the construction or maintenance of bridges or culverts under a highway repairable by the council; or
 - (b) the responsibility for the maintenance of works of, or used by, a trust along or under any such highway –

either party to the dispute may refer it to the Minister having the administration of the *Roads and Jetties Act 1935* whose decision is to be final and binding on the parties.

198. Compensation

- (1) In carrying out its responsibilities for the administration of a riverworks district, hydro-electric district or drainage district, a responsible water entity must do as little damage as possible and must pay compensation for the damage.

Water Management Act 1999
Act No. 45 of 1999

Part 9 – Water Districts

s. 199

- (2) If a claimant and the responsible water entity do not agree on the amount of compensation payable under subsection (1), the claim for compensation is to be determined –
- (a) if it is a small claim, by the small claims division of the Magistrates Court; or
 - (b) in any other case, as if it were a disputed claim under the *Land Acquisition Act 1993*.

199. Offences in connection with water districts

A person must not –

- (a) destroy, damage or interfere with any structure, appliance or other work or installation constructed, managed or maintained by a responsible water entity in order to meet its responsibility for administering a riverworks district, hydro-electric district or drainage district; or
- (b) without the consent of the responsible water entity, make any drain which empties, either directly or indirectly, into any watercourse or drain where it is part of a riverworks district, hydro-electric district or drainage district; or
- (c)
- (d) destroy, damage or tamper with any work of a responsible water entity; or

Water Management Act 1999
Act No. 45 of 1999

s. 200

Part 9 – Water Districts

- (e) permit an animal to cause damage to a drain or watercourse of a responsible water entity; or
- (f) draw any log, tree or timber, or drive any vehicle, across a drain of a responsible water entity, except over a bridge provided for the purpose; or
- (g) remove soil, sand, gravel or shingle from land owned or occupied by a responsible water entity.

Penalty: Fine not exceeding 50 penalty units.

200. Compensation payable to water entity

- (1) A court by which a person is convicted of an offence against section 199 may, where the complaint contains a claim for damages arising from the commission of the offence, order the defendant to pay to the responsible water entity damages representing the actual or expected cost of restoring its works or repairing damage.
- (2) For the purposes of subsection (1) –
 - (a) the responsible water entity is taken to be the complainant in the proceedings; and
 - (b) an amount of damages ordered to be paid is recoverable in a court of competent jurisdiction as if it were a debt owing to the responsible water entity.

Division 5 – Rates for riverworks and drainage districts

201. Power to levy rates

- (1) A responsible water entity may, with the approval of the Minister, determine and levy rates in order to provide for the costs necessarily incurred –
 - (a) in the administration of a riverworks district or drainage district; and
 - (b) in constructing, maintaining and operating works necessary for the purpose for which the district was appointed.
- (2) In determining and levying rates for the purposes of a riverworks district or drainage district, a responsible water entity may impose different rates in different areas according to different benefits for owners or occupiers of land in those areas.

202. Rates on Crown land

All rates made in respect of unoccupied Crown land subject to the district are to be paid to the responsible water entity by the Treasurer out of the Public Account.

Water Management Act 1999
Act No. 45 of 1999

s. 203

Part 9 – Water Districts

203. Procedure for rating

- (1) The amount of rates is to be determined by the responsible water entity and is to be levied annually.
- (2) The rates are to be levied on, and are payable by, the owners of properties within the area, and are to be levied by the responsible water entity in the same manner as service rates in respect of those properties under the *Local Government Act 1993*.
- (3) Rates levied under this Division are not subject to a remission under the *Local Government (Rates and Charges Remissions) Act 1991*.
- (4) The responsible water entity may, with the Minister's approval, remit any rate, wholly or in part, where it is of opinion that to levy it would cause serious financial hardship to the person liable to pay.

PART 10 – TRUSTS

Division 1 – Establishment of trusts

204. Administration of district or water management plan

This Part has effect where an application presented to the Minister under section 37, 168 or 169 proposes that a responsible water entity is to be a trust.

205. Application to establish trust

- (1) An application for the establishment of a trust may be made to the Minister by –
 - (a) the holders of licences to take water from a water resource or part of a water resource to which a water management plan relates; or
 - (b) the owners of at least two-thirds of the land in a water district.
- (2) The application –
 - (a) must be in accordance with section 12A; and
 - (b) must include a copy of the rules of the proposed trust conforming to the prescribed requirements, if any.

206. Approval of application

- (1) The Minister must, in considering an application under section 205, ensure that the rules of the trust submitted with the application conform to the prescribed requirements, if any.
- (2) The Minister may, in approving the application, impose any condition that he or she considers necessary to give effect to the objectives of this Act or any relevant water management plan.

206A. Establishment of trust

- (1) On approving an application under section 205, the Minister –
 - (a) must approve the rules of the trust; and
 - (b) must, by notice published in the *Gazette*, establish and name the trust and state the water district in respect of which it is established; and
 - (c) may give notice of the establishment of the trust in any newspaper.
- (2) The notice under subsection (1)(b) –
 - (a) is to include particulars of any determinations or requirements under section 211; and
 - (b) is not a statutory rule.
- (3) The Minister, at the written request of a trust, may approve an alteration in the rules of the trust

if satisfied that the alteration is consistent with this Act and in accordance with the prescribed requirements, if any.

207. Membership and proceedings of trusts

Schedule 3 has effect in respect of the membership and proceedings of trusts.

208. Minister may give directions to trust

- (1) The Minister may give directions to a trust with respect to the performance of its functions and, in performing its functions, the trust must comply with any directions so given.
- (2) The power conferred on the Minister by subsection (1) is not to be exercised so as –
 - (a) to require a trust to do anything that it is not empowered to do by this Act; or
 - (b) to prevent a trust from performing any function that it is required by this Act to perform, whether conditionally or unconditionally; or
 - (c) to interfere with the formation by a trust of any opinion or belief relating to any matter that has to be determined as a prerequisite to the performance or exercise by the trust of any of its functions or powers under this Act.

209. Protection from liability

- (1) A member of a trust does not incur any personal liability in respect of any act done or omitted to be done by the member in good faith in the performance or exercise, or purported performance or exercise, of any function or power of the trust or in the administration or execution, or purported administration or execution, of this Act.
- (2) Subsection (1) does not preclude a trust from incurring liability that a member of the trust would, but for that subsection, incur.

210. Incorporation of boards

A trust is a body corporate under a name assigned by the Minister, with perpetual succession and a common seal.

211. Constitution of trust

- (1) A trust is to consist of a board of such number of trustees as the Minister, by instrument in writing, determines –
 - (a) on its establishment; or
 - (b) from time to time subsequent to its establishment.
- (2) In approving the establishment of a trust, the following provisions apply (according to circumstance):

Water Management Act 1999
Act No. 45 of 1999

Part 10 – Trusts

s. 211

- (a) the Minister may require that one or more of the trustees are to be elected;
 - (b) if the trust is to be the responsible water entity for an irrigation district in which a water entity administering a water supply district has a right, under this Act or a special Act, to take water for domestic purposes from any watercourse, or from any water supply channel declared under section 192, the Minister may require that one or more of the trustees be a nominee of that water entity appointed by the Minister;
 - (c) if the trust is to be the responsible water entity for a water district containing Crown land or it is to manage works owned by the Crown, the Minister may, with the agreement of the Minister administering that land or those works, require that one or more of the trustees be appointed by that Minister.
- (3) The Minister, by order published in the *Gazette*, may give such directions as are necessary to reconstitute a trust following a change in its constitution and, in particular, may provide for the retirement, election and term of office of the trustees and the dates on which provisions of the order are to take effect.
- (4) The order is not a statutory rule.
- (5) Nothing in this section affects the operation of section 308.

Water Management Act 1999
Act No. 45 of 1999

s. 211A

Part 10 – Trusts

211A. Trust elections

- (1) An election to elect members of the board of a trust is to be conducted by a Returning Officer appointed for the purpose by –
 - (a) for the initial election, the Minister in consultation with the Electoral Commissioner; or
 - (b) for any subsequent election, the trust in consultation with the Electoral Commissioner.
- (2) The Returning Officer must be a person who –
 - (a) has attained the age of 18 years; and
 - (b) appears to the Minister or trust to be capable of discharging the functions of that office fairly and responsibly; and
 - (c) is not eligible to vote in the election in any capacity.
- (3) The regulations may make provision for and in relation to such elections and, without limiting the generality of this, may –
 - (a) specify which persons or classes of persons are eligible to stand as candidates, and to vote; and
 - (b) authorise the Minister to appoint persons to fill casual vacancies; and
 - (c) provide for the payment, repayment and recovery of electoral costs; and

Water Management Act 1999
Act No. 45 of 1999

Part 10 – Trusts

s. 212

- (d) provide for disputed returns and for the resolution of such disputes; and
 - (e) stipulate when the terms of office of elected persons begin or end; and
 - (f) confer functions on the Electoral Commissioner or Returning Officer.
- (4) In this section –

Electoral Commissioner means the Electoral Commissioner appointed under section 14 of the *Electoral Act 2004*.

Division 2 – Powers and duties of trusts

212. Power to borrow

- (1) A trust may borrow money not exceeding the estimated revenue of the trust for 10 years, on the security of all the rates, funds, revenues and property of, or at the disposal of, the trust, for such purposes as the Minister may authorise.
- (2) Any such money is to be borrowed by the trust under Part III of the *Statutory Authorities Act 1962*.

213. Poll to be taken

- (1) Before proceeding to borrow money, a trust must take a poll of its electors.
- (2) Before taking the poll, the trust must give public notification of the proposed borrowing twice in a

Water Management Act 1999
Act No. 45 of 1999

s. 214

Part 10 – Trusts

local newspaper and the later notice is to be published not more than one week before the taking of the poll.

- (3) The notification is to contain the following particulars:
 - (a) the hours during which, and the place at which, the poll will be taken;
 - (b) the amount proposed to be borrowed;
 - (c) the purposes for which the proposed loan is to be applied.
- (4) The poll is to be taken as prescribed by the regulations.

214. Effect of poll

The trust must not proceed to borrow the money in respect of which a poll is taken unless the votes cast at the poll in favour of the proposal comprise two-thirds of the total number of valid votes recorded at the poll, but, where the votes cast comprise less than that proportion, the trust may take another poll after the expiration of 12 months from the date of the previous poll on the proposal.

215. Borrowing on overdraft

- (1) A trust may, with the approval of the Minister and for the purposes of temporary financial accommodation, obtain advances from any bank,

Water Management Act 1999
Act No. 45 of 1999

Part 10 – Trusts

s. 216

building society or credit union by overdraft on the current account of the trust.

- (2) An advance obtained by a trust under this section –
 - (a) is not at any time to exceed one-half of the revenue of the trust for the financial year preceding that in which the trust obtains the advance; and
 - (b) is not subject to the requirements of this Division.

216. Appointment of employees, &c.

- (1) A trust may appoint such employees or contractors as it may think necessary for carrying out its responsibilities under this Division, on such terms as it may think fit.
- (2) A trust, with the approval of the Minister, may pay to the chairperson such remuneration as it may think desirable and such a payment is taken as not constituting his or her office as an office of profit.

217. Duties of trustees

- (1) A trust must keep proper accounts and records in respect of all its operations and must do all things necessary to ensure that –
 - (a) all payments made by it are correctly made and properly authorised; and

Water Management Act 1999
Act No. 45 of 1999

s. 218

Part 10 – Trusts

(b) adequate control is maintained over the property of, or in the custody of, the trust and over the incurring of liabilities by the trust.

(2) The accounts and records kept under subsection (1) are at all reasonable times to be open to inspection by the Minister or any trustee, who may take extracts from them.

218. Application of money

Any money received by a trust is to be applied in the payment or discharge of the expenses, charges and obligations incurred or undertaken by the trust in the performance of its functions and the exercise of its powers.

219. Trust accounts

(1) A trust must open and maintain at least one account in an authorised deposit-taking institution in Tasmania.

(2) A trust must pay any money received by it into an account referred to in subsection (1).

220. Temporary investment of funds

A trust may invest any money that it is holding and for which it has no immediate use in any manner in which the investment of trust funds is authorised under the *Trustee Act 1898*.

221.

222. Inspection of accounts

A person having the custody of any accounts of a trust must, on demand by the Minister or an elector of the trust, permit the Minister or that elector to –

- (a) inspect the accounts; or
- (b) make copies of the accounts; or
- (c) take extracts from the accounts.

Penalty: Fine not exceeding 5 penalty units.

Division 3 – Dissolution of trusts

223. Dissolution of trusts

- (1) The Minister may, by order published in the *Gazette*, dissolve a trust if the Minister –
 - (a) has, under section 47 or 186, revoked approval for the trust to be a responsible water entity for administering a water management plan or water district; or
 - (b) is satisfied that the trust has contravened the conditions to which its administration of a water management plan or water district is subject; or
 - (c) is satisfied that the trust has been guilty of serious neglect, mismanagement or

Water Management Act 1999
Act No. 45 of 1999

Part 10 – Trusts

incompetence in the discharge of its responsibilities; or

- (d) is satisfied that the trust’s administration of a water management plan or water district does not further the objectives of this Act; or
- (e) has received a written application from the trust requesting its dissolution.

(2) The order is not a statutory rule.

(3) Before dissolving a trust pursuant to subsection (1)(e), the Minister is to –

- (a) give notice of the trust’s application in the *Gazette* and in a local newspaper; and
- (b) by the notice, specify that any persons who may be affected by the proposed dissolution may make written representations to the Minister in the matter within such period of not less than 30 days as is specified in the notice; and
- (c) consider the representations, if any, received in response to the notice.

224 - 225.

226. Effect of dissolution

(1) In this section,

Water Management Act 1999
Act No. 45 of 1999

Part 10 – Trusts

s. 226

transfer day means the day on which a notice published in the *Gazette* under this Division takes effect.

- (2) The Minister may, by order published in the *Gazette*, appoint another water entity to administer a water management plan under section 47 or a water district under section 176 in place of a trust that is dissolved under this Division.
- (2A) The order is not a statutory rule.
- (3) The order may provide that –
 - (a) the property of the trust vests in the other water entity; and
 - (b) the functions, powers and obligations of the trust are transferred to the other water entity; and
 - (c) any legal proceedings pending immediately before the transfer day and which were instituted by, or against, the trust may be continued by or against the other water entity; and
 - (d) any legal proceedings by, or against, the trust to enforce a right that had accrued, and was in existence, immediately before the transfer day may be commenced by or against the other water entity; and
 - (e) a judgment or order of a court obtained before the transfer day by or against the

Water Management Act 1999
Act No. 45 of 1999

s. 226

Part 10 – Trusts

trust may be enforced by or against the other water entity; and

- (f) a document addressed to the trust may be served on the other water entity; and
- (g) a contract made or entered into by the trust before the transfer day but not performed or discharged before that day is taken to have been made or entered into by the other water entity.

PART 11 – METERS

227. Power of Minister to install meters, &c.

- (1) To monitor the level, flow, quality or use of water in a water resource, the Minister may –
 - (a) install a meter; or
 - (b) by notice in writing, direct a person taking water from the water resource to install a meter; or
 - (c) notwithstanding any other provision of this Act, impose metering conditions on any authorisation in respect of the water resource.
- (2) A direction or condition under subsection (1)(b) or (c) may –
 - (a) require that a meter be of a certain type or standard; and
 - (b) impose requirements in respect of the installation process; and
 - (c) impose meter maintenance, monitoring and security requirements; and
 - (d) impose data recording and reporting requirements; and
 - (e) impose such other requirements as the Minister reasonably thinks fit.

Water Management Act 1999
Act No. 45 of 1999

s. 228

Part 11 – Meters

- (3) A person who is given a direction under subsection (1)(b) must comply with that direction.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

- (4) In this section –

authorisation includes a water allocation on a licence.

228. Interference with meters

- (1) A person must not, without the permission of the Minister, interfere with or injure a meter that has been installed in respect of a water resource under section 227.

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

- (2) The Minister may recover any cost incurred in repairing or replacing a meter as a result of interference or injury to that meter from the person responsible for that interference or injury and that cost is a debt due to the Minister payable by that person and recoverable as such in a court of competent jurisdiction.

229. Power to undertake works

- (1) If a person contravenes a direction by the Minister under section 227(2), the Minister may authorise a person to enter on the relevant land and carry out any work necessary to install the meter or to ensure the accurate operation of the meter.
- (2) The cost of work undertaken under subsection (1) is a debt due to the Minister payable by the first-mentioned person and recoverable as such in a court of competent jurisdiction.

230.

231. Power of Minister to charge for meters

- (1) The Minister may charge a person for the use of a meter installed under section 227(1).
- (2) Any such charge is payable by the person and is recoverable as a debt due to the Crown by the person in a court of competent jurisdiction.

232 - 234.

235. Inspection and removal of meters

- (1) Where a meter is installed under this Part, an authorised officer or authorised person may, at

Water Management Act 1999
Act No. 45 of 1999

s. 236

Part 11 – Meters

any reasonable times, enter any building or land to, through or into which water is taken for the purpose of inspecting or reading the meter or of removing any meter or associated apparatus.

- (2) A person who hinders any such person from entering or making any such inspection or reading or effecting any such removal, as the case may be, is guilty of an offence and is liable on summary conviction to a penalty not exceeding 5 penalty units.
- (3) In this section –

authorised person has the same meaning as in section 244.

236. Protection of meters

The occupier of land on which a meter is installed pursuant to this Act must at all times take all reasonable measures to protect it from damage or interference and is responsible for its safekeeping.

Penalty: Fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding one penalty unit for each day during which the offence continues.

PART 12 – AUTHORISED OFFICERS

Division 1 – Appointment of authorised officers

237. Appointment of authorised officers

- (1) The Minister may, in writing, appoint persons to be authorised officers for the purposes of this Act but, if the person appointed is an officer or employee of a council, the appointment is to be made only with the agreement of the council.
- (2) An appointment –
 - (a) is to be for a period, not exceeding 3 years, stated in the instrument of appointment; and
 - (b) may be made subject to conditions limiting the area within which, or the purposes for which, the appointee may exercise the powers of an authorised officer.
- (3) The Minister must provide an authorised officer with an identity card in an approved form.
- (4) The Minister may, by notice in writing served on an authorised officer –
 - (a) vary or revoke a condition of the appointment; or
 - (b) revoke the appointment.

238. Production of identity card

- (1) An authorised officer, if so required by a person who may be affected by the exercise of the officer's powers under this Act, must produce his or her identity card for inspection by that person.
- (2) If an authorised officer fails to produce his or her identity card when required by a person referred to in subsection (1), the person is not obliged to comply with a requirement of the officer.

239. Return of identity card

An authorised officer must, on ceasing to be so authorised, return his or her identity card to the Minister.

Penalty: Fine not exceeding 5 penalty units.

Division 2 – Powers of authorised officers

240. General powers of authorised officers

Subject to any conditions imposed under section 237(2)(b), an authorised officer may, at any reasonable time and for the purposes of this Act –

- (a) measure the flow or levels of water in any watercourse, dam or lake or the flow of water under or over any land; or

Water Management Act 1999
Act No. 45 of 1999

Part 12 – Authorised officers

s. 240

- (b) measure the quantity of water taken by any person from a water resource or dam;
or
- (c) ascertain the quality of water in a watercourse, lake or dam or of any groundwater; or
- (d) take samples of water on, or under, any land; or
- (e) take samples of any material of a kind that, in the officer's opinion, has entered, or may enter, water on or under any land;
or
- (f) make such measurements or undertake such activities as are necessary to ascertain the state of the environment of a watercourse, dam or lake or of groundwater; or
- (g) ascertain the location of or inspect a works used for, or in connection with, the taking of water; or
- (h) inspect any machinery or equipment or structure which may be used for taking, storing, pumping, transporting or supplying water; or
- (i) inspect and examine meters and ascertain the quantity of water taken by a person;
or
- (j) inspect, repair or maintain in working order any property owned by the Crown

Water Management Act 1999
Act No. 45 of 1999

s. 240

Part 12 – Authorised officers

- or under its control or management or inspect any property owned by a water entity or under its control or management; or
- (k) carry out a survey or investigation for, or in connection with, a works for the supply of water under this Act; or
 - (l) maintain a works for the supply of water or carry out a modification to any such works; or
 - (m) inspect any waterworks, use of water, or the level or flow of a watercourse or lake; or
 - (n) examine any water, cuttings or other materials required to be preserved under section 132(1); or
 - (o) carry out such operations on a well, to determine the condition of the well or of the soil, rock or other water-bearing material in which the well is situated or of waters, as the Minister may authorise and specify in a notice for the purposes of this subsection; or
 - (p) take photographs, films or video or audio recordings or make a record in any other manner or by any other means; or
 - (q) require a person who the officer reasonably believes has committed, is committing or is about to commit an offence against this Act to state the

Water Management Act 1999
Act No. 45 of 1999

Part 12 – Authorised officers

s. 241

- person's full name and usual place of residence; or
- (r) require a person holding or required to hold an authorisation to produce evidence of the authorisation for inspection; or
 - (s) take any action or execute any work required by this Act to be taken or executed in connection with the performance of the functions or the exercise of the powers of a water entity under this Act if the water entity is in default after being requested for a reasonable time to take that action or execute that work; or
 - (t) exercise any other powers prescribed by regulations.

241. Powers of authorised officers to enter premises

- (1) Subject to section 242 –
 - (a) an authorised officer who has a reasonable belief that there is or has been on, or in connection with, any premises any contravention of this Act may enter those premises at any reasonable time without notice for the purpose of ascertaining whether in fact there is, or was, any such contravention; and
 - (b) an authorised officer may enter premises at any reasonable time for the purpose of

Water Management Act 1999
Act No. 45 of 1999

s. 242

Part 12 – Authorised officers

exercising his or her powers under section 240.

- (2) On entering and on leaving the premises, an authorised officer must ensure that they are as effectively secured against trespassers as he or she found them.

242. Notice of entry to premises

- (1) Where entry to premises is required for the purposes of –
- (a) maintaining a works for the supply of water under this Act; or
 - (b) constructing or maintaining a works for the management of water under this Act; or
 - (c) carrying out any addition or modification to any such works –

an authorised officer must give notice in accordance with this section.

- (2) For the purposes of subsection (1) –
- (a) not less than 7 days' notice is to be given to the owner or occupier; and
 - (b) the notice may authorise entry at such times and on such occasions as are specified in the notice during the period that is so specified as the period required for the construction, maintenance, addition or modification; and

Water Management Act 1999
Act No. 45 of 1999

- (c) the period specified in a notice under paragraph (b) may be extended by giving a further such notice to the owner or occupier not less than 2 days before the expiration of that period.
- (3) Except as provided in this Act, where the entry is required for the purpose of carrying out a survey or investigation for, or in connection with, a works for the management or supply of water under this Act or for a purpose not mentioned in this section –
 - (a) not less than 3 days' notice must be given to the owner or occupier; and
 - (b) the notice may authorise entry at such times and on such occasions as may be specified in the notice.
- (4) An authorised officer may use reasonable force to enter on land or enter a building or structure on land –
 - (a) with the authority of a warrant issued by a justice of the peace; or
 - (b) if the officer believes, on reasonable grounds, that the circumstances require immediate action to be taken.
- (5) A justice of the peace must not issue a warrant under subsection (4) unless satisfied, on information given on oath –
 - (a) that there are reasonable grounds to suspect that an offence against this Act

Water Management Act 1999
Act No. 45 of 1999

s. 243

Part 12 – Authorised officers

has been, is being, or is about to be,
committed; or

- (b) that the warrant is reasonably required in
the circumstances.

**243. General powers of authorised officers to enter
watercourses, lakes, &c.**

- (1) An authorised officer may –
- (a) enter on the bed and banks of any
watercourse or lake; or
 - (b) enter any premises as provided by
section 241 after giving such notice, if
any, as is provided by that section –

for the purpose of, or in connection with,
exercise by the water entity concerned of any
power conferred by this Part to carry out works
on or in that watercourse or lake and may take
with him or her such vehicles, machinery and
other things as may be required for the purpose
of the works.

- (2) In the exercise of the powers conferred by this
section, an authorised officer must do as little
damage as possible and, in case of any damage,
the water entity concerned must pay
compensation in accordance with the *Land
Acquisition Act 1993*.
- (3) If the claimant and the water entity do not agree
as to the amount of compensation payable under

Water Management Act 1999
Act No. 45 of 1999

Part 12 – Authorised officers

s. 244

subsection (2), the claim for compensation is to be determined –

- (a) if it is a small claim, by the small claims division of the Magistrates Court; or
- (b) in any other case, as if it were a disputed claim under the *Land Acquisition Act 1993*.

244. Entry on land for taking measurements

(1) In this section,

authorised person means –

- (a) a State Service officer or State Service employee who is employed in the Department and authorised in writing by the Secretary; and
- (b) a person who is employed by, or for the purposes of, a responsible water entity and authorised in writing by the entity; and
- (c) any other person authorised in writing by the Minister for the purposes of this section;

general technical power means a power under section 240(a), (b), (c), (d), (e), (f), (g), (i), (j), (k), (m), (n), (o) or (p).

Water Management Act 1999
Act No. 45 of 1999

s. 245

Part 12 – Authorised officers

- (2) An authority may be granted by reference to an office or position held in an Agency or the water entity.
- (3) The Minister, by instrument in writing, may authorise an authorised person, or authorised persons of a particular class, to exercise any general technical powers.
- (3A) An authorised person who is an authorised officer may enter on and survey any land and take any action required to exercise any general technical power.
- (3B) An authorised person who is not an authorised officer may enter on and survey any land and take any action required to exercise any general technical powers that he or she is authorised to exercise pursuant to subsection (3).
- (4) The Minister may require that a copy of any information obtained in the exercise of powers under subsection (3) be supplied to the Minister free of charge unless the Minister agrees otherwise.

245. Authorised officers, &c., may use assistants

- (1) In entering any land or premises for any purpose under this Act, an authorised officer or authorised person may be accompanied by such other persons as the authorised officer or authorised person reasonably requires for that purpose.
- (2) In this section –

authorised person means an authorised person as defined in section 244.

Division 3 – Powers to prevent unlawful taking of water

246. Circumstances in which Division applies

(1) If –

- (a) water is taken from a watercourse, lake or well in contravention of a licence or right under this Act, having regard to any order or direction in force for the time being under this Act; or
- (b) in any other circumstances water is taken from a watercourse, lake or well without lawful authority –

an authorised officer may, without any previous notice, enter on any land and direct the owner or occupier of the land –

- (c) to cease forthwith the taking of part or all of that water; or
- (d) to modify forthwith the equipment used for the taking of that water or carry out such other works as may be directed to ensure that any water taken will be restricted to such amount as may be lawfully taken; or
- (e) to release part or all of that water within a specified time.

Water Management Act 1999
Act No. 45 of 1999

s. 247

Part 12 – Authorised officers

- (2) A person must not contravene a direction of an authorised officer under subsection (1).

Penalty: Fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

247. Action on contravention of direction

- (1) Where an owner or occupier of land who has been given a direction under section 246 contravenes the direction, an authorised officer may, without any previous notice –
- (a) enter on any land for the purposes of taking such action as necessary to carry out the direction or to prevent continuing contravention of the direction; and
 - (b) seize any equipment used for the unlawful taking of water.
- (2) Where equipment has been seized under this section, the owner or occupier is not entitled to the return of that equipment until he or she has complied with the relevant direction.

248. Authorised officer may affix seals

Where an owner or occupier of land has been given a direction under section 246, an authorised officer may affix a seal to any equipment used for the taking of water or, as the

Water Management Act 1999
Act No. 45 of 1999

Part 12 – Authorised officers

s. 249

case may be, any works carried out under section 246(1)(d).

249. Recovery of costs

- (1) On the conviction of a person for an offence under this Division, the court by which he or she is convicted may, in addition to any other penalty that may be imposed, order that that person must pay to the Minister the amount of any expense reasonably incurred by an authorised officer in taking action under section 247(1).
- (2) An amount ordered to be paid to the Minister under subsection (1) is recoverable in any court of competent jurisdiction as a debt due to the Minister by the person against whom the order is made.

250. Liability for offence not limited

Nothing in this Division is taken as affecting any liability for an offence under any other provision of this Act.

Division 4 – Supplemental

251. Manner of giving notices

- (1) A notice under section 242 may be given to an owner or occupier –
 - (a) by delivering it personally to the owner or occupier; or

Water Management Act 1999
Act No. 45 of 1999

s. 251

Part 12 – Authorised officers

- (b) by leaving it at his or her usual or last place of residence known to the relevant water entity; or
 - (c) by sending it by post as certified mail; or
 - (d) in the case of an owner or occupier having an office or shop, by leaving it there in a receptacle apparently provided for the purpose of receiving mail or with any person apparently a manager, accountant, cashier or clerk in the office or shop; or
 - (e) by delivering it, or a true copy of the notice, to some person on the land and apparently an agent of the owner or occupier; or
 - (f) if no such agent can be found on the land, by fixing it on some conspicuous part of the land.
- (2) Where a notice is required to be given to a person whose address is unknown to the relevant water entity and who has no agent in Tasmania known to the water entity or authorised officer, it may instead of delivery be advertised 3 times, at intervals of not less than one week between any 2 publications, in a newspaper regularly circulating in the district where the land is situated.
- (3) If the name of the owner or occupier is not known to the relevant water entity or authorised officer, the notice may be addressed to him or her by the description of the “owner” or

Water Management Act 1999
Act No. 45 of 1999

Part 12 – Authorised officers

s. 251

“occupier” of the land (naming or describing it) in respect of which the notice is given, without further name or description.

- (4) If a notice has been given to an owner or occupier under this section, the notice is binding on a person who claims by, from or under that owner or occupier.

PART 13 – ENFORCEMENT

Division 1 – Infringement notices

252. Infringement notices

- (1) Where an authorised officer is satisfied that a person has committed an offence or offences against this Act, he or she may serve on that person an infringement notice in respect of that offence or those offences by delivering it to that person or by sending it to that person by post.
- (2) An infringement notice is to specify the number of demerit points, if any, applicable in respect of the offence or offences to which the notice relates.
- (3) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.

253 - 256.

Division 2 – Demerit points

256A. Interpretation of Division

In this Division –

licence means a licence granted and in force under any Part of this Act;

licensee means the holder of a licence.

257. Allocation of demerit points

Where a licensee or a person acting on behalf of a licensee is convicted, or taken to have been convicted in accordance with section 20 of the *Monetary Penalties Enforcement Act 2005*, of an offence against this Act, demerit points are to be allocated to his or her licence in accordance with the regulations.

258. Effective period of demerit points

- (1) Demerit points remain in force for a period prescribed by the regulations and take effect on the date of commission of the offence in respect of which they are allocated.
- (2) For the purposes of this Part, an offence is taken to have been committed on the date on which the act or conduct constituting the offence occurred.

259. Suspension or cancellation of licence

- (1) Where demerit points are allocated to a licence, the regulations may provide for a licence to be suspended or cancelled during a period prescribed by the regulations.
- (2) The regulations may also provide that, if a licence is suspended on a specified number of occasions, the licence is taken to be cancelled.
- (3) The Secretary must, by notice in writing served on the holder of a licence, notify the holder of the date on which the licence is suspended or

Water Management Act 1999
Act No. 45 of 1999

s. 259

Part 13 – Enforcement

cancelled and of any application made under subsection (4).

- (4) A person may make written application to the Minister for an alteration of the date on which a licence is suspended or cancelled under subsection (3).
- (5) An application under subsection (4) –
 - (a) is to be in an approved form; and
 - (b) is to contain such information as the Minister may require to consider the application.
- (6) The Minister may approve an application made under subsection (4) where he or she is of the opinion that the approval –
 - (a) is necessary to avoid a serious adverse effect on the applicant; and
 - (b) is not likely to cause a significant adverse effect on other persons holding a right to take water under this Act.
- (7) An approval under subsection (6) –
 - (a) is to be for no longer than 6 months after the date specified in subsection (3); and
 - (b) may be subject to such conditions as the Minister thinks fit.
- (8) Where the date of suspension or cancellation of a licence is extended by an approval under subsection (6), the licence or a water allocation

of the licence may not be transferred under Division 4 of Part 6 during the extended period.

260. Disqualification from obtaining licence

The regulations may provide that the following persons are disqualified from obtaining or holding a licence:

- (a) a person who has been the holder of a licence which has been suspended on a prescribed number of occasions or has been cancelled following the allocation of demerit points;
- (b) a person who is or has been a member of a partnership or a substantial shareholder in a body corporate that has held a licence which has been suspended on a specified number of occasions or cancelled following the allocation of demerit points;
- (c) a partnership or body corporate of which a member or substantial shareholder has been the holder of a licence that has been suspended on a prescribed number of occasions or cancelled following the allocation of demerit points.

261. Notification of cancellation or suspension

The Secretary must, by notice in writing, notify a person of –

- (a) any cancellation or suspension of his or her licence under this Part; and
- (b) the date on which it takes effect.

262. Transfer of demerit points

- (1) Any demerit points allocated to a licence that is transferred to another person under Division 4 of Part 6 continue to be in force in respect of that licence as provided by the regulations.
- (2) Where part of a water allocation of a licence to which demerit points are allocated is transferred to another licensee under Division 4 of Part 6, the demerit points are allocated to the licence of the transferor and the licence of the transferee in proportion to the part of the water allocation which is transferred.

263. Correction of notation of demerit points

- (1) A person may apply to a magistrate for an order to correct the register of licences, water allocations and permits in respect of any demerit points allocated to his or her licence.
- (2) The magistrate, if satisfied that the notation of demerit points in the register of licences, water allocations and permits is incorrect, may order the Minister to correct the notation as specified in the order or, if not so satisfied, may dismiss the application.

- (3) The magistrate may make any order that he or she considers appropriate in respect of costs of the application.

Division 3 – Civil enforcement proceedings

264. Application to Appeal Tribunal for order

- (1) Where –
- (a) a person has engaged, is engaging or is proposing to engage in conduct in contravention of this Act; or
 - (b) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail to take any action required by this Act –

the Secretary, a water entity or any other person with the leave of the Appeal Tribunal may apply to the Tribunal for an order under this section.

- (2) The Appeal Tribunal may not grant leave for the purposes of subsection (1), unless it is satisfied that –
- (a) the proceedings on the application would not be an abuse of the process of the Tribunal; and
 - (b) it is likely that the requirements for the making of a determination under subsection (6) on the application would be satisfied; and
 - (c) it is in the public interest that the proceedings should be brought.

Water Management Act 1999
Act No. 45 of 1999

s. 264

Part 13 – Enforcement

- (3) The application may be made *ex parte* and, if the Appeal Tribunal is satisfied that there are sufficient grounds, it must issue a summons requiring the respondent to appear before the Tribunal to show cause why an order should not be made under this section.
- (4) After hearing –
- (a) the applicant and the respondent; and
 - (b) any other person who has, in the opinion of the Appeal Tribunal, a proper interest in the subject matter of the proceedings and desires to be heard in the proceedings –
- the Tribunal may, if it considers it appropriate to do so, make an order as mentioned in subsection (6).
- (5) If the respondent fails to appear in response to the summons or, having appeared, does not avail himself or herself of an opportunity to be heard, the Appeal Tribunal may, if it considers it appropriate to do so, by order do any of the things specified in subsection (6).
- (6) The Appeal Tribunal may make any order on the application that it thinks fit and in particular may –
- (a) require the respondent to refrain, either temporarily or permanently, from the act or course of action that constitutes a contravention or potential contravention of this Act; and

Water Management Act 1999
Act No. 45 of 1999

Part 13 – Enforcement

- (b) preclude, for a period specified by the Tribunal, the respondent from carrying out any use or development in relation to the land or water to which the contravention relates; and
- (c) require the respondent to make good the contravention or default in a manner, and within a period, specified by the Tribunal; and
- (d) require the payment of compensation for the injury, loss or damage, or the payment of the reasonable costs and expenses incurred to a person who has suffered injury, loss or damage, to property as a result of a contravention of this Act, including costs and expenses incurred in taking action to prevent or mitigate any such injury, loss or damage.

265 - 267.

268. Power of Secretary to carry out work

Where the Appeal Tribunal makes an order under section 264(6)(c) and the respondent contravenes the order within the period specified by the Tribunal, the Secretary may, by leave of the Tribunal, cause any work required by the order to be carried out, and may recover the costs of that work from the respondent as a debt due to the Crown in any court of competent jurisdiction.

Water Management Act 1999
Act No. 45 of 1999

s. 269

Part 13 – Enforcement

269. Time limit for commencement of proceedings

Proceedings under this Division may be commenced at any time within 3 years after the date of the relevant event referred to in section 264(1).

PART 14 – REVIEW OF DECISIONS AND APPEALS

Division 1 – Review of decisions

270. Interpretation of Division

For the purposes of this Division, each of the following is taken to be an interested person:

- (a) in respect of a declaration under section 38(1) –
 - (i) the applicant; and
 - (ii) a licensee or other person with a right to take water from the relevant water resource;
- (b) in respect of an approval under section 63 or 73 or a refusal under section 64 or 74 –
 - (i) the applicant; and
 - (ii) a person who made a representation under section 65 or 71;
- (c) in respect of a determination under section 69(2)(c) –
 - (i) the relevant licensee; and
 - (ii) a person with a financial interest in the licence or a water allocation of the licence;

Water Management Act 1999
Act No. 45 of 1999

s. 270

Part 14 – Review of decisions and appeals

- (d) in respect of the imposition of conditions under section 80(2)(a) –
 - (i) the licensee; and
 - (ii) a person with a financial interest in the licence or a water allocation of the licence;
- (e) in respect of a refusal under section 80(2)(b) –
 - (i) the licensee; and
 - (ii) a person with a financial interest in the licence or a water allocation of the licence;
- (f) in respect of a direction given under section 86(1), the person to whom the water allocation is to be granted;
- (g) in respect of a reduction under section 88(1) –
 - (i) the licensee; and
 - (ii) a person with a financial interest in the licence or the relevant water allocation of the licence;
- (h) in respect of an approval under section 97(2) or 101(1) or a refusal under section 98, the applicant;
 - (i)

Water Management Act 1999
Act No. 45 of 1999

-
- (j) in respect of a cancellation, suspension or variation under section 106(3) or a suspension or cancellation under section 106(4) –
 - (i) the licensee; and
 - (ii) a person with a financial interest in the licence or a relevant water allocation of the licence;
 - (k) in respect of a direction under section 126, the owner or occupier of the relevant land;
 - (l)
 - (la) in respect of an approval or refusal under section 135B or 136C, the applicant;
 - (lb) in respect of a variation pursuant to section 135F or 136H, the relevant permit holder or licensee;
 - (lc) in respect of a cancellation or suspension under section 135G or 136I, the relevant permit holder or licensee;
 - (ld) in respect of a renewal under section 136F, the licensee;
 - (le) in respect of a determination under section 144(3) that an application for a Division 3 permit does not comply with the relevant requirements, the applicant;

Water Management Act 1999
Act No. 45 of 1999

s. 270

Part 14 – Review of decisions and appeals

- (lf) in respect of a requirement under section 149, the applicant for the permit to which the requirement relates;
- (lg) in respect of a determination under section 156 of an application for a Division 3 permit –
 - (i) the applicant; and
 - (ii) a person who made a representation under section 146 in relation to the application;
- (lh) in respect of a notice under section 162, the person undertaking the dam works to which the notice relates;
- (li) in respect of the imposition of conditions on a Division 3 permit under section 164 –
 - (i) the holder of the permit; and
 - (ii) a person who made a representation under section 146 in relation to the application to which the permit relates;
- (lj) in respect of a refusal to extend the term of a Division 3 permit under section 164E, the applicant for the extension;
- (lk) in respect of a refusal to amend a permit under section 164G, the applicant for the amendment;

Water Management Act 1999
Act No. 45 of 1999

- (lm) in respect of the issuing to the holder of a permit of a requirement under section 164ZA(2), the holder of the permit;
- (ln) in respect of the issuing to the holder of a permit of a requirement under section 164ZB(3), the holder of the permit;
- (lo) in respect of the issue under section 164ZC of a dam operating notice, the person to whom the notice is issued;
- (lp) in respect of a requirement or direction under section 164ZM or section 282(3) –
 - (i) the person on whom the notice of the requirement or direction is served; and
 - (ii) where the notice of the requirement or direction is served on a person other than the owner of the relevant land, the owner or occupier of that land;
- (m)
- (n) in respect of an alteration of boundaries made under section 180(1) –
 - (i) the relevant water entity; and
 - (ii) where the application is for an extension of the water district, an

Water Management Act 1999
Act No. 45 of 1999

s. 271

Part 14 – Review of decisions and appeals

- owner of land proposed to be included in the extended district;
- (o) in respect of an approval under section 183(1) –
 - (i) the responsible water entity; and
 - (ii) the owner or occupier of the land to be acquired; and
 - (iii) a person with a financial interest in the land to be acquired;
- (p) in respect of a direction under section 208(1), the trust;
- (q) in respect of a dissolution of a Trust under Division 3 of Part 10, the trust.

271. Reviewable decisions

- (1) This Division applies to a decision made by virtue of delegated authority under section 10 relating to the following:
 - (a) a declaration under section 38(1);
 - (b) an approval under section 63, 73, 97(2), 101(1) or 183(1);
 - (c) a refusal under section 64, 74 or 98;
 - (d)
 - (e) a renewal of a licence or a refusal to renew a licence under section 80;

Water Management Act 1999
Act No. 45 of 1999

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- (f) a direction under section 86(1), 126, 208(1) or 280;
 - (g) a reduction of a water allocation under section 88(1);
 - (h)
 - (i) a cancellation, suspension or variation under section 106(3);
 - (j) a suspension or cancellation under section 106(4);
 - (ja) an approval or refusal under section 135B or 136C;
 - (jb) a variation pursuant to section 135F or 136H;
 - (jc) a cancellation or suspension under section 135G or 136I;
 - (jd) a renewal under section 136F;
 - (je) a determination under section 144(3) that an application for a Division 3 permit does not comply with the relevant requirements;
 - (jf) a requirement under section 149;
 - (jg) a determination under section 156 of an application for a Division 3 permit;
 - (jh) a notice under section 162;

Water Management Act 1999
Act No. 45 of 1999

s. 271

Part 14 – Review of decisions and appeals

- (ji) the imposition of conditions on a Division 3 permit under section 164;
 - (jj) a refusal to extend the term of a Division 3 permit under section 164E;
 - (jk) a refusal to amend a permit under section 164G;
 - (jl) a requirement under section 164ZA(2);
 - (jm) a requirement under section 164ZB(3);
 - (jn) the issue under section 164ZC of a dam operating notice;
 - (jo) a requirement or direction under section 164ZM or section 282(3);
 - (k) an alteration of boundaries under section 180(1);
 - (l) a direction made under section 208(1);
 - (m) a dissolution of a trust under Division 3 of Part 10.
- (1A) Where a notice under section 165H(1) or section 165N(1), or a direction under section 165L(1), is given, this Division applies to the notice or direction as if it were a decision and for that purpose –
- (a) the notice or direction is taken to be a decision to which this Division applies; and

Water Management Act 1999
Act No. 45 of 1999

- (b) the person to whom the notice or direction is given is taken to be an interested person.
- (1B) Subsection (1A) does not apply in a case where the Minister determines that urgent action is necessary to avoid or mitigate the effects of an incident.
- (2) A person who makes a decision to which this Division applies must, by notice served on the interested person, notify the interested person –
 - (a) of the decision and, if so requested, the reasons for it; and
 - (b) that the interested person may apply for a review of the decision under section 272.

272. Application for review of decision

- (1) An interested person may apply to the Minister to review a decision to which this Division applies.
- (2) The application –
 - (a) is to be made in writing within 14 days after the date of service of a notice under section 271(2); and
 - (b) is to be accompanied by any fee imposed under section 285(3); and
 - (c) is to specify the reasons for the application.

Water Management Act 1999
Act No. 45 of 1999

s. 273

Part 14 – Review of decisions and appeals

- (3) The Minister may extend the period referred to in subsection (2) for making an application.

273. Review of decisions

- (1) The Minister must, within 45 days after receiving an application under section 272 for a review of a decision to which this Division applies, make a determination –
- (a) substituting the decision with another decision; or
 - (b) confirming the decision; or
 - (c) revoking the decision.
- (2) The Minister must, by notice served on the applicant, notify the applicant of –
- (a) the determination made; and
 - (b) the findings on material questions of fact; and
 - (c) the evidence or other material on which the findings are based; and
 - (d) the reasons for the determination; and
 - (e) if the decision is one to which Division 2 applies, the right to appeal to the Appeal Tribunal against the determination.
- (3) Where the determination is to substitute the decision with another decision or to revoke the

Water Management Act 1999
Act No. 45 of 1999

decision, any fee paid under section 272(2)(b) is to be refunded to the applicant.

Division 2 – Appeals to Appeal Tribunal

274. Interpretation of Division

- (1) For the purposes of this Division, each of the following is taken to be an interested person:
 - (a) in respect of a decision to which Division 1 applies, an interested person within the meaning of that Division;
 - (b)
 - (c) in respect of the granting of a special licence under section 115, a person with a right to take water under this Act whose interests may be significantly affected by the grant;
 - (d - e)
 - (f) in respect of a decision under section 176(2) or a condition imposed under section 176(5) –
 - (i) the applicant; or
 - (ii) a person who made a representation under section 174;
 - (g) a person who is granted leave to appeal by the Appeal Tribunal.

Water Management Act 1999
Act No. 45 of 1999

s. 275

Part 14 – Review of decisions and appeals

- (2) The Appeal Tribunal may not grant leave for the purposes of subsection (1)(g) if it appears to the Tribunal that –
- (a) the proceedings proposed by the relevant application would be an abuse of the process of the Tribunal; or
 - (b) it is likely that the requirements for the making of a determination under section 279 on the application would not be satisfied; or
 - (c) it is not in the public interest that the proceedings should be brought.

275. Appealable decisions

This Division applies to the following:

- (a)
- (b) an approval under section 63, 73, 97(2) or 101(1);
- (c) a refusal under section 64, 74 or 98;
- (d) a determination under section 69(2)(c);
- (e) a renewal of a licence or a refusal to renew a licence made under section 80;
- (f) a reduction of a water allocation under section 88(1);
- (g) a cancellation, suspension or variation under section 106(3);

Water Management Act 1999
Act No. 45 of 1999

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- (h) the granting of a special licence under section 115;
 - (i) a direction under section 126;
 - (ia) an approval or refusal under section 135B;
 - (ib) a variation under section 135F;
 - (ic) a cancellation or suspension under section 135G;
 - (j) a determination under section 156;
 - (ja) the imposition of conditions on a Division 3 permit under section 164;
 - (jb) the issue under section 164ZC of a dam operating notice;
 - (jc) a requirement or direction given under section 164ZM or section 282(3);
 - (k) a decision under section 176(2) or a condition imposed under section 176(5);
 - (l)

276. Appeal to Appeal Tribunal

- (1) An interested person may appeal to the Appeal Tribunal against a decision to which this Division applies within 14 days after service of the relevant notice in respect of the decision.
- (2) An interested person who has made an application under Division 1 for a review of a

Water Management Act 1999
Act No. 45 of 1999

s. 276

Part 14 – Review of decisions and appeals

decision may, if this Division also applies to the decision, appeal to the Appeal Tribunal against a determination under section 273(1) within 14 days after the date of service of the notice under section 273(2).

- (3) The Appeal Tribunal must hear and determine the appeal under the *Tasmanian Civil and Administrative Tribunal Act 2020*.
- (4) However, an appeal under subsection (1) or (2) in respect of the determination under section 156 of an application for a Division 3 permit, the issue under section 164ZC of a dam operating notice or both those matters in combination may only be instituted, heard and determined on the grounds that the process by which the decision or determination appealed against was procedurally incorrect or unfair having regard to the requirements of this Act and natural justice, not on the grounds that any technical information taken into account in making the decision or determination, or that any technical finding made in reaching the decision or determination, was incorrect as a matter of fact.
- (5) In this section –

technical finding includes an economic, engineering or scientific finding;

technical information includes economic, engineering and scientific information.

277. Constitution of Appeal Tribunal

- (1) For the purpose of an appeal under this Act, the Appeal Tribunal is to include a member whose appointment was on the ground that he or she has, in the opinion of the Governor, wide practical knowledge of, and experience in, the use or management of water resources.
- (2) The member referred to in subsection (1) is to be designated as such by the Governor, by instrument in writing, for the purposes of the Tribunal's jurisdiction under this Act.

278. Form of appeal to Appeal Tribunal

- (1) An appeal to the Appeal Tribunal is to be instituted in the manner and form determined by the Tribunal.
- (2) The appeal is to be referred in the first instance to a compulsory conference, or an alternative dispute resolution process, under Division 7 of Part 8 of the *Tasmanian Civil and Administrative Tribunal Act 2020* and the provisions of that Act extend in respect of the appeal accordingly.
- (3) However, in its application to an appeal in respect of the determination of an application for a Division 3 permit, Division 7 of Part 8 of the *Tasmanian Civil and Administrative Tribunal Act 2020* is subject to section 276(4).

279. Determination of appeal

- (1) On an appeal, the Appeal Tribunal may –

Water Management Act 1999
Act No. 45 of 1999

s. 279A

Part 14 – Review of decisions and appeals

- (a) affirm or vary the decision appealed against, or substitute any decision that should have been made in the first instance; or
 - (b) remit the subject matter of the appeal to the Minister or other authority and direct that the matter is to be further considered by the Minister or that authority; or
 - (c) make or give any consequential or ancillary order or direction.
- (1A) However, in its application to an appeal in respect of the determination of an application for a Division 3 permit, subsection (1) is subject to section 276(4).
- (2) Where the Appeal Tribunal has determined an appeal in respect of the determination of an application for a Division 3 permit, an application for a permit in respect of dam works which are substantially the same as the dam works to which the appeal related may not, without the leave of the Tribunal, be made within a period of 2 years from the date on which the Tribunal made its decision.

279A. Compensatory orders for gas pipeline safety detriments

- (1) In this section –

appeal means an appeal to the Appeal Tribunal –

Water Management Act 1999
Act No. 45 of 1999

- (a) by a pipeline licensee against the grant of an application for a Division 3 permit; or
- (b) by an applicant against the refusal to grant an application for a Division 3 permit;

representations, in relation to a Division 3 permit, means representations made to the Minister under section 146 on the application for the permit.

- (2) If the Appeal Tribunal's determination on an appeal will result in a Division 3 permit being granted subject to conditions designed to ensure the safety or safe operation of a pipeline in a pipeline planning corridor and the Appeal Tribunal is satisfied that –
 - (a) the conditions are the same or substantially the same as conditions that were recommended by the pipeline licensee in representations; and
 - (b) the conditions will add to the cost of the dam works; and
 - (c) the pipeline licensee knew or reasonably ought to have known of the applicant's need or intention to undertake the dam works before the pipeline was constructed –

the Appeal Tribunal may, in addition to any other power it may exercise on the appeal, order that the pipeline licensee reimburse the applicant

Water Management Act 1999
Act No. 45 of 1999

s. 279A

Part 14 – Review of decisions and appeals

for the additional cost or such part of the additional cost as the Appeal Tribunal determines is fair in the circumstances.

- (3) If the Appeal Tribunal's determination on an appeal will result in an application for a Division 3 permit being refused and the Appeal Tribunal is satisfied that –
- (a) the sole or principal reason why the application is being refused is the acceptance of representations made by a pipeline licensee that the proposed dam works would or may compromise the safety or safe operation of a pipeline in a pipeline planning corridor; and
 - (b) the applicant will suffer a loss or detriment as a consequence of the application for the permit being refused; and
 - (c) the pipeline licensee knew or reasonably ought to have known of the applicant's need or intention to undertake the dam works before the pipeline was constructed –

the Appeal Tribunal may, in addition to any other power that it may exercise on the appeal, order that the pipeline licensee pay the applicant such amount by way of compensation for the loss or detriment as the Appeal Tribunal determines is fair in the circumstances.

- (4) In determining whether to make an order under subsection (2) or (3), and in making any such

Water Management Act 1999
Act No. 45 of 1999

order, the Appeal Tribunal is to have regard to whether any compensation has been paid or awarded under the *Land Acquisition Act 1993* or *Major Infrastructure Development Approvals Act 1999* to the applicant and, if so, the amount paid or awarded.

- (5) An order of the Appeal Tribunal under subsection (2) or (3) is enforceable in the same manner as a judgment of a court of competent jurisdiction.

280. Suspension of decision pending appeal or review

- (1) Where –
- (a) a decision to which this Division or Division 1 applies has been made, given or imposed by the Minister or a water entity; and
 - (b) the Minister, water entity or Appeal Tribunal is satisfied that an appeal or review against the decision has been instituted or is intended –

the Minister, water entity or Tribunal may suspend the operation of the decision until the determination of the appeal or review.

- (2) The suspension may be terminated by the Minister, water entity or Tribunal at any time.

Water Management Act 1999
Act No. 45 of 1999

s. 280A

Part 14A – Water supply emergencies

PART 14A – WATER SUPPLY EMERGENCIES

280A. Interpretation

In this Part –

authorised person means a person, or a member of a class of persons, authorised under section 280E(1);

water supply needs means water supply needs for –

- (a) domestic water; or
- (b) town water; or
- (c) stock water; or
- (d) firefighting; or
- (e) industrial and commercial activity; or
- (f) hydro-electric power generation;

WSE direction means a Ministerial direction given under section 280D(1).

280B. Declaration of water supply emergency

- (1) The Minister may declare a water supply emergency if –
 - (a) the State's present water supply needs cannot be met, either generally or in

Water Management Act 1999
Act No. 45 of 1999

Part 14A – Water supply emergencies

s. 280C

- respect of particular persons, activities or localities; or
- (b) there is a serious risk that the State's immediately foreseeable water supply needs will be unable to be met, either generally or in respect of particular persons, activities or localities.
- (2) The declaration may be made by any means the Minister considers appropriate.
- (3) The declaration is to specify –
- (a) the nature of the water supply emergency; and
 - (b) the period for which the water supply emergency will be in effect; and
 - (c) the persons, activities or localities to which the declaration relates; and
 - (d) such other matters as the Minister considers necessary or expedient.

280C. Duration of water supply emergency

A water supply emergency comes into effect on the day on which it is declared and continues in effect for –

- (a) the period specified in the declaration; or
- (b) such longer period as the Minister, by instrument made during the period specified in the declaration, determines.

Water Management Act 1999
Act No. 45 of 1999

s. 280D

Part 14A – Water supply emergencies

280D. Ministerial directions to deal with water supply emergency

- (1) During a water supply emergency, the Minister may give such directions (“WSE directions”) to such persons as the Minister considers necessary or expedient to deal with that emergency.
- (2) Without limiting the generality of subsection (1), the Minister may give one or more of the following WSE directions:
 - (a) a direction preventing the taking of water by a person otherwise authorised to do so;
 - (b) a direction permitting the taking of water by a person not otherwise authorised to do so;
 - (c) if practicable, a direction for a person to release into a watercourse water that has been taken in accordance with an authority under this Act;
 - (d) a direction for a person to operate infrastructure so as to release or transfer water.
- (3) A WSE direction may be inconsistent with a water management plan.
- (4) A person who is given a WSE direction may, without any further authority than this provision, comply with the direction.
- (5) A person must not contravene a WSE direction.

Water Management Act 1999
Act No. 45 of 1999

Part 14A – Water supply emergencies

s. 280E

Penalty: Fine not exceeding 500 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

280E. Special powers

- (1) The Minister may, in writing, authorise persons or a class of persons for the purposes of this Division.
- (2) The Minister may require an authorised person to assist in executing a WSE direction.
- (3) An authorised person may –
 - (a) contact any relevant person and request, in writing, that they take action to comply with all or part of a WSE direction; and
 - (b) if the authorised person's request is not complied with within a reasonable time, take, without any further authority than this provision, such action as may be reasonably necessary in the circumstances to ensure that the WSE direction is executed.
- (4) For the purposes of subsection (3)(b), an authorised person may, if necessary with reasonable force and assistance –
 - (a) enter any land or building; and
 - (b) operate or shut down any infrastructure.

Water Management Act 1999
Act No. 45 of 1999

s. 280F

Part 14A – Water supply emergencies

280F. Compensation

- (1) A person who suffers loss or damage as a result of anything done under this Division may be entitled to be paid reasonable compensation for that loss or damage.
- (2) However, the entitlement does not extend to –
 - (a) loss or damage suffered as a result of any action, or inaction, not attributable to a WSE direction; or
 - (b) loss or damage resulting from events that would have occurred irrespective of actions taken under this Division; or
 - (c) loss or damage that caused or contributed to the relevant water supply emergency; or
 - (d) loss or damage that is recoverable under a policy of insurance, lease or other contract.
- (3) A claim for compensation under subsection (1) is to be made to the Minister in the first instance.
- (4) In default of an agreement between the Minister and the claimant regarding a compensation claim for loss or damage resulting from a direction of the kind referred to section 280D(2)(c), the amount of any compensation that the claimant may be entitled to under subsection (1) is to be determined in accordance with the *Commercial Arbitration Act 2011*.

PART 15 – MISCELLANEOUS AND SUPPLEMENTAL

Division 1 – Offences

281. Interference with works or other property

- (1) A person must not interfere with any property of the Minister or a water entity used in, or in connection with, the administration of this Act unless the Minister or water entity (as applicable) has given permission to do so.

Penalty: Fine not exceeding 50 penalty units.

- (2) A person must not interfere with any infrastructure or other property that is vested in or is under the care, control and management of a water entity or a person acting on behalf of a water entity without the permission of the water entity.

Penalty: Fine not exceeding 50 penalty units.

- (3) The permission of the Minister or water entity under this section may be conditional or unconditional and, if conditional, the person to whom the permission is given must not contravene the condition.

Penalty: Fine not exceeding 50 penalty units.

282. Duty not to damage watercourse or lake

- (1) This section does not apply to any damage caused in the normal course of an activity authorised by, or under, this Act.

Water Management Act 1999
Act No. 45 of 1999

s. 282

Part 15 – Miscellaneous and supplemental

- (2) In taking water as provided by this Act, it is the duty of the owner and occupier of land on which a watercourse or lake is situated or that adjoins a watercourse or lake, and any other person permitted to take water on or from that land, to take reasonable steps to prevent damage to the bed and banks of the watercourse or the bed, banks or shores of the lake and to the ecosystems that depend on the watercourse or lake.
- (3) Where a person has failed to carry out his or her duty under subsection (2), the Minister may serve notice on that person directing him or her to take such action as is specified in the notice –
 - (a) to prevent damage of the kind referred to in subsection (2); and
 - (b) to rectify the failure; and
 - (c) as may be necessary or desirable in order to make good any damage caused.
- (4) If an owner, occupier or other person contravenes a notice under subsection (3) –
 - (a) the Minister may authorise a person to enter on the land and take the action specified in the notice and such other action as may be appropriate in the circumstances; and
 - (b) the Minister's expenses actually and reasonably incurred in doing so are a debt due by the owner, occupier or other person to the Minister and recoverable as

Water Management Act 1999
Act No. 45 of 1999

Part 15 – Miscellaneous and supplemental

s. 283

such in any court of competent jurisdiction.

- (5) An owner, occupier or other person must not contravene a notice under subsection (3).

Penalty: Fine not exceeding 50 penalty units.

283. False or misleading information

A person must not furnish information to the Minister, a water entity or an authorised officer that is false or misleading in a material particular.

Penalty: Fine not exceeding 50 penalty units.

284. Hindering, &c., persons engaged in administration of Act

- (1) A person must not –
- (a) without reasonable excuse hinder or obstruct an authorised officer or other person engaged in the administration of this Act; or
 - (b) produce a written statement of the contents of a record that he or she knows, or ought to know, is false or misleading in a material particular; or
 - (c) fail without reasonable excuse to comply with a requirement or direction of an authorised officer under this Act; or

Water Management Act 1999
Act No. 45 of 1999

s. 285

Part 15 – Miscellaneous and supplemental

- (d) use abusive, threatening or insulting language to an authorised officer or authorised person or to a person assisting an authorised officer or authorised person; or
- (e) falsely represent, by words or conduct, that he or she is an authorised officer or authorised person.

Penalty: Fine not exceeding 50 penalty units.

(2) In this section –

authorised person means an authorised person as defined in section 244.

Division 2 – Fees and charges

285. Imposition of fees and charges

- (1) The Minister may impose a fee in respect of the grant or issue of an authorisation, except for a special licence, or for an application for the grant or issue of any such authorisation at an amount or rate that the Minister determines.
- (2) The Minister, by notice in writing to the holder of an authorisation, may vary any fee imposed under subsection (1).
- (3) The Minister may impose a fee in respect of an application for the review of a decision under Division 1 of Part 14 of such amount as he or she may determine.

Water Management Act 1999
Act No. 45 of 1999

Part 15 – Miscellaneous and supplemental

s. 286

- (4) A fee imposed under this section may be determined so as to apply differently according to any matter that the Minister considers appropriate.

286. Variation of fees and charges

- (1) The Minister, if of the opinion that it is necessary or desirable to do so, may –
- (a) extend the time for payment of any fee or charge; or
 - (b) waive the whole or part of any fee or charge; or
 - (c) refund the whole or part of any fee or charge; or
 - (d) accept a lesser amount in place of the full fee or charge.
- (2) A licensee may apply to the Minister to extend the time for payment of any fee or charge payable in respect of a licence held by that person.
- (3) The application –
- (a) is to be in writing; and
 - (b) is to state the reasons for the application.
- (4) The Minister may –
- (a) grant the application; or
 - (b) refuse to grant the application.

Water Management Act 1999
Act No. 45 of 1999

s. 287

Part 15 – Miscellaneous and supplemental

287. Recovery of unpaid fees and charges

- (1) A fee, charge or penalty referred to in subsection (2) that is not paid by the due date is recoverable from the person liable to pay it as a debt due to the Crown.
- (2) The Minister, by notice in the *Gazette*, may impose a penalty as determined by the Minister for the failure to pay any fee or charge.

288. Payments into Public Account

The following amounts are to be paid into the Public Account unless the Minister determines otherwise under section 289:

- (a) any fees or charges paid under this Act;
- (b) any penalties paid under this Act;
- (c) any other money received under this Act.

289. Establishment of account

The Minister may establish an account in the Public Account into which any specified money received under this Act is to be paid.

Division 3 – Miscellaneous

289A. Confidentiality

- (1) A person who is, or has been, employed in carrying out duties related to the administration of this Act must not disclose confidential

Water Management Act 1999
Act No. 45 of 1999

Part 15 – Miscellaneous and supplemental

s. 290

information acquired in the course, or as a result, of carrying out those duties except –

- (a) as may be required for the purposes of this Act; or
- (b) as authorised by the person to whom the duty of confidentiality is owed; or
- (c) as authorised by the regulations; or
- (d) as required by a court or other lawfully constituted authority; or
- (e) as authorised by the Secretary after consultation with the person to whom the duty of confidentiality is owed.

Penalty: Fine not exceeding 50 penalty units.

- (2) No civil liability attaches to any person for a disclosure of confidential information made as authorised under subsection (1).

290. Liability of employers and principals

- (1) If an employee or agent commits an offence under this Act –
 - (a) the employer or the principal is taken to have committed that offence; and
 - (b) proceedings for that offence may be brought against the principal or employer whether or not proceedings are brought against the employee or agent.

Water Management Act 1999
Act No. 45 of 1999

s. 291

Part 15 – Miscellaneous and supplemental

- (2) It is a defence in proceedings for an offence under subsection (1) if the employer or principal can show that he or she –
- (a) did not know the offence had been committed; and
 - (b) could not reasonably have prevented the commission of the offence; and
 - (c) if practicable to do so, took reasonable action to minimise the impact of the offence on other users of the relevant water resource and the aquatic environment.

291. Liability of officers of body corporate

- (1) In this section,
- officer* has the same meaning as in the Corporations Act.
- (2) An officer of a body corporate which commits an offence is taken to have committed that offence if it is proved that –
- (a) the offence was committed with the consent or connivance of the officer; or
 - (b) the officer failed to exercise reasonable care to prevent the commission of the offence having regard to the nature of the officer's functions and the circumstances of the offence.

Water Management Act 1999
Act No. 45 of 1999

Part 15 – Miscellaneous and supplemental

s. 292

- (3) This section does not apply to an employee of a body corporate who is not concerned in the management of the body corporate.

292. Liability of licence holder

- (1) If an agent of the holder of an authorisation commits an offence under this Act –
- (a) the holder is taken to have committed the offence; and
 - (b) proceedings for the offence may be brought against the holder whether or not proceedings are brought against the agent.
- (2) It is a defence in proceedings for an offence under subsection (1) if the holder of the authorisation can show that he or she –
- (a) issued written instructions and took reasonable precautions to ensure compliance with this Act; and
 - (b) did not know the offence had been committed; and
 - (c) could not reasonably have prevented the commission of the offence; and
 - (d) if practicable to do so, took reasonable action to minimise the impact of the offence on other users of any relevant water resource and the aquatic environment.

Water Management Act 1999
Act No. 45 of 1999

s. 293

Part 15 – Miscellaneous and supplemental

293. Evidentiary provision for documents

- (1) A document that purports to have been certified by the Minister, a water entity or an authorised officer to be an accurate copy of a licence or permit granted or issued under this Act is, in the absence of proof to the contrary, to be accepted in any proceedings under this Act as an accurate copy of that licence or permit.
- (2) In proceedings before the Appeal Tribunal, a document purporting to be a water management plan prepared and adopted under this Act is to be presumed, in the absence of proof to the contrary, to be a water management plan in force under this Act.

294. Evidentiary provision for meters

- (1) Where in any proceedings under this Act it is proved that –
 - (a) a meter used to measure the quantity of water taken from a water resource has been adjusted or modified in a manner that affects the accuracy of the meter; or
 - (b) a pipe has been installed to bypass a meter referred to in paragraph (a); or
 - (c) any other pipe or fitting has been interfered with –

it is to be presumed (in the absence of proof to the contrary) that the occupier of the land on which the meter, pipe or other fitting is situated,

Water Management Act 1999
Act No. 45 of 1999

Part 15 – Miscellaneous and supplemental

s. 295

or a person acting on his or her behalf, was the person who –

- (d) adjusted or modified the meter; or
 - (e) installed the pipe bypassing the meter; or
 - (f) interfered with the pipe or other fitting.
- (2) Where, for the purposes of an infringement notice or any proceedings under this Act, a reading from a meter is used as evidence that a person took water without authority, took water in excess of an authorised quantity of water or took water contrary to a condition endorsed on a licence, a meter reading obtained in accordance with section 233 is evidence of the amount of water taken.

295. Proceedings for offences

- (1) Proceedings for an offence against this Act –
- (a) may be commenced by an authorised officer; and
 - (b) must be commenced within 3 years after the date on which the offence is alleged to have been committed.
- (2) An apparently genuine document purporting to be under the hand of the Minister and to authorise the commencement of proceedings under this Act is to be accepted in any proceedings under this Act, in the absence of proof to the contrary, as proof of the authority.

Water Management Act 1999
Act No. 45 of 1999

s. 295A

Part 15 – Miscellaneous and supplemental

295A. Recovery of costs

- (1) A court that convicts a person of an offence against this Act may, on application by or on behalf of a person involved in investigating the offence, order that, in addition to any other penalty, the convicted person must pay any costs that the person making the application reasonably incurred in investigating the offence.
- (2) In this section –

person includes a body politic.

296. Compensation not payable for stopping, &c., flow of water

Where the exercise of rights under a licence or a permit granted or issued under this Act has the effect of stopping, reducing or diverting the flow of water in a watercourse, compensation is not payable by the Minister to any person injuriously affected.

297. Immunity from liability

- (1) Except as otherwise provided by this Act, an authorised officer incurs no civil liability for an honest act or omission in the performance or discharge, or purported performance or discharge, of functions or powers under this Act.
- (2) A liability that would, but for subsection (1), lie against an authorised officer lies instead –

Water Management Act 1999
Act No. 45 of 1999

Part 15 – Miscellaneous and supplemental

s. 297A

- (a) if the officer is an officer or agent of the Crown, against the Crown; or
- (b) if the officer is an officer, employee or agent of a water entity, against the water entity.

297A. Service of notices and other documents

Except as otherwise specified in this Act, a notice or other document is issued to, or served on, a person if –

- (a) in the case of a natural person, it is handed to the person or –
 - (i) left at, or sent by post to, the person's postal or residential address or place or address of business or employment; or
 - (ii) provided by way of facsimile to the person's facsimile number at the place or address of business or employment; or
 - (iii) provided by way of electronic mail to the electronic address of the person –

that is last known by the person issuing the notice or other document or that is provided to that person by the person to whom the notice or other document is issued or served; or

- (b) in the case of any other person, it is –

Water Management Act 1999
Act No. 45 of 1999

s. 298

Part 15 – Miscellaneous and supplemental

- (i) left at, or sent by post to, the person's principal or registered office or principal place of business; or
- (ii) provided by way of facsimile to the facsimile number, of the person's principal or registered office or principal place of business; or
- (iii) provided by way of electronic mail to the electronic address, of the person's principal or registered office or principal place of business –

that is last known by the person issuing the notice or other document or that is provided to that person by the person to whom the notice or other document is issued or served.

298. Determination of cost and expenses

- (1) A reference in this Act to the cost of an authority under this Act in taking action or performing work includes a reference to expenses incurred in taking the action or performing the work.
- (2) The cost and expenses of an authority under this Act in taking action or performing work must be determined by reference to the costs and expenses that would have been incurred if an independent contractor had been engaged to take the action or perform the work.

Water Management Act 1999
Act No. 45 of 1999

Part 15 – Miscellaneous and supplemental

s. 299

299. Duties of police officers

When required to do so by a water entity or an authorised officer, a police officer must –

- (a) obtain and furnish any information required for the purposes of this Act; and
- (b) serve any notices or documents; and
- (c) accompany an authorised officer or other person entering any premises under this Act.

300. Power of Minister to approve forms

The Minister may approve forms to be used for the purposes of this Act.

300A. Replacement of authorisations

The Minister, on receipt of a prescribed fee, may give the holder of a licence or other authorisation under this Act a replacement for the licence or other authorisation if the Minister is satisfied that the original has been –

- (a) stolen, lost or destroyed; or
- (b) damaged to a degree that renders it unsuitable for use.

300B. Calculation of number of days

A reference in this Act to a period of a number of days does not include –

Water Management Act 1999
Act No. 45 of 1999

s. 301

Part 15 – Miscellaneous and supplemental

- (a) a statutory holiday within the meaning of the *Statutory Holidays Act 2000*; or
- (b) any day between Boxing Day (26 December) and the following New Year's Day (1 January).

301. Works codes

- (1) The Minister, by order published in the *Gazette*, may issue a code of practice to be followed in respect of either or both of the following:
 - (a) well works;
 - (b) dam works and any related matters.
- (2) The order is not a statutory rule.

301A. Review of Act

- (1) On the expiration of 5 years after the date on which Part 3 of the *Dam Works Legislation (Miscellaneous Amendments) Act 2007* commences, the Minister is to prepare a report on the operation of this Act.
- (2) The report is to state in particular whether –
 - (a) the objectives of this Act remain valid; and
 - (b) the provisions of this Act remain appropriate for securing those objectives.
- (3) The Minister is to cause a copy of the report to be laid before each House of Parliament within

Water Management Act 1999
Act No. 45 of 1999

Part 15 – Miscellaneous and supplemental

s. 302

15 sitting days of that House after the period of 5 years referred to in subsection (1).

Division 4 – Regulations

302. Regulations in general

- (1) The Governor may make regulations for the purposes of this Act, but any regulations relating to the powers or duties of an electricity entity must be made on the recommendation of the Advisory Committee.
- (2) The regulations may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance specified in the regulations.
- (3) The regulations may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 1 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.
- (4) The regulations may authorise any matter to be determined, applied or regulated by any person or body.

Water Management Act 1999
Act No. 45 of 1999

s. 303

Part 15 – Miscellaneous and supplemental

- (5) The regulations may confer a power, including a discretionary power, and impose a duty on a specified person or a specified class of persons.
- (6) The Governor's powers under this section are not limited by the following provisions of this Division.

303. Information, assessment of quantity of water, &c.

The regulations may –

- (a) require persons referred to in the regulations to provide the Minister with any information relating to the administration of this Act that is in their possession; and
- (b) provide for the assessment of the quantity of water taken by a licensee or any other person authorised to take water; and
- (c) provide for the keeping of records and the provision of information by licensees and other persons to the Minister; and
- (d)
- (e) amend the letters patent relating to a trust established under the repealed Act, immediately before the commencement day, or any other regulations relating to that trust that are continued in force under this Act.

Water Management Act 1999
Act No. 45 of 1999

Part 15 – Miscellaneous and supplemental

s. 304

304. Fees and charges

- (1) The regulations may prescribe fees and charges in respect of –
 - (a) any services provided under this Act; and
 - (b) any agreement between the Minister and any person for the right to take water; and
 - (c) any agreement between the Minister and a water entity to administer a water district or a water management plan; and
 - (d) any verification of compliance with any conditions or requirements of an authorisation or water allocation; and
 - (e) any other action taken by the Minister, the Secretary or an authorised officer in the performance or exercise of any function or power under this Act; and
 - (f) the granting, holding, administration or management of authorisations and water allocations; and
 - (g) the recording of matters in the register.
- (2) The regulations may prescribe a fee or charge by –
 - (a) specifying an amount; or
 - (b) specifying a rate or proportion by which the fee or charge is to be calculated; or

Water Management Act 1999
Act No. 45 of 1999

s. 304A

Part 15 – Miscellaneous and supplemental

(c) any other method of calculating the fee or charge.

(3) The regulations may provide for –

(a) any fee or charge to be paid by instalments; and

(b) any fee or charge to be paid in advance or in arrears; and

(c) any additional charge if a fee or charge is paid by instalments; and

(d) any matter relating to the payment, collection and recovery of fees or; and

(e) concessions, waivers, rebates or exemptions related to fees; and

(f) refunds (or partial refunds) of fees.

304A. Regulations relating to safety of dams and dam works

The regulations may prescribe–

(a) standards for design, construction, maintenance, surveillance or decommissioning of dams or classes of dams; and

(ab) standards for the carrying out of dam works and any related matters; and

(ac) activities to be activities that are required to be carried out for the purposes of, or in

Water Management Act 1999
Act No. 45 of 1999

Part 15 – Miscellaneous and supplemental

s. 304B

connection with, the design, construction, maintenance, surveillance, or decommissioning, of dams or a class of dams and when such activities, and reports to the Minister in relation to such activities, are required to be carried out or provided; and

- (b) fees payable by the owner of a dam or proposed dam for assessing design, construction, maintenance, surveillance or decommissioning reports required to be submitted by the owner of the dam; and
- (c) competency standards for persons undertaking activities associated with dams; and
- (d) travelling allowances and compensation to be paid to persons attending or giving evidence at an inquiry or examination referred to in Part 8A.

304B. Adoption of code relating to safety of dams and dam works

- (1) For the purposes of Parts 8 and 8A, the regulations may adopt, wholly or partially and with or without modification, a code relating to matters in respect of which regulations may be made for the purposes of those Parts.
- (2) The code may be adopted either as in force at the time the regulations are made or as in force from time to time.

Water Management Act 1999
Act No. 45 of 1999

s. 304B

Part 15 – Miscellaneous and supplemental

- (3) Any regulations adopting a code, or an amendment to a code, may contain such incidental, supplementary and transitional provisions as appear to the Governor to be necessary or desirable.
- (4) The regulations or a code adopted by the regulations –
 - (a) may refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a body specified in the regulations, either as in force at the time the regulations are made or as in force from time to time; and
 - (b) may be of general or limited application.
- (5) Where a code, standard or other document is adopted under subsection (1) or (4) as it is in force from time to time, an alteration to the code, standard or other document does not take effect for the purposes of this Act –
 - (a) before the day on which notice of the alteration is published by the Minister in the *Gazette*; or
 - (b) if the Minister so provides in the notice, until a day specified by the Minister in the notice.
- (6) Where the regulations or a code adopted by the regulations refer to a standard or other document

Water Management Act 1999
Act No. 45 of 1999

prepared or published by a body specified in the regulations –

- (a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
- (b) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by the Minister as a true copy of the code, standard or other document; and
- (c) the code, standard or other document has effect as if it were a regulation made under this Act.

305. Miscellaneous matters

The regulations may provide for –

- (a) the use of water in a watercourse, dam, reservoir or lake; or
- (b) activities on or in the water of a watercourse, dam, reservoir or lake; or
- (c) the transfer of licences and water allocations; or
- (d) the rounding up or rounding down of demerit points to the nearest whole number; or

Water Management Act 1999
Act No. 45 of 1999

s. 306

Part 15 – Miscellaneous and supplemental

- (e) the transfer of demerit points by reference to the time when they were imposed.

306. Adoption of code

- (1) The regulations may adopt, wholly or partially and with or without modification, a code relating to matters in respect of which regulations may be made under this Act.
- (2) The code may be adopted either as in force at the time the regulations are made or as in force from time to time.
- (3) Any regulations adopting a code, or an amendment to a code, may contain such incidental, supplementary and transitional provisions as appear to the Governor to be necessary or desirable.
- (4) The regulations or a code adopted by the regulations may –
 - (a) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a body prescribed by the regulations, either as in force at the time the regulations are made or as in force from time to time; and
 - (b) be of general or limited application; and

Water Management Act 1999
Act No. 45 of 1999

- (c) make different provision according to the persons, things or circumstances to which they are expressed to apply.
- (5) Where a code, standard or other document is adopted under subsection (1) or (4) as it is in force from time to time, an alteration to the code, standard or other document does not take effect for the purposes of this Act –
 - (a) before the day on which notice of the alteration is published by the Minister in the *Gazette*; or
 - (b) if the Minister so provides in the notice, until a day specified by the Minister in the notice.
- (6) Where the regulations or a code adopted by the regulations refers to a standard or other document prepared or published by a body prescribed by the regulations –
 - (a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
 - (b) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by the Minister as a true copy of the code, standard or other document; and

Water Management Act 1999
Act No. 45 of 1999

s. 307

Part 15 – Miscellaneous and supplemental

- (c) the code, standard or other document has effect as if it were a regulation made under this Act.

Division 5 – Savings and transitional provisions

307. Savings and transitional provisions

Schedule 4 has effect with respect to savings and transitional matters.

307A. Savings and transitional provisions consequent on *Water Legislation Amendment Act 2008*

Schedule 4A has effect with respect to savings and transitional matters consequent on the *Water Legislation Amendment Act 2008*.

308. River Clyde Irrigation District

- (1) Notwithstanding the repeal of the *Clyde Water Act 1898* effected by Schedule 8, the trustees of the River Clyde as established under that Act are reconstituted as trustees of a trust under this Act for the purposes of –
 - (a) administering the River Clyde Irrigation District; and
 - (b) supplying the inhabitants of Bothwell and Hamilton and owners or occupiers of land within the irrigation district with water.

Water Management Act 1999
Act No. 45 of 1999

- (2) Schedule 5 has effect with respect to the membership of the River Clyde Trust and the administration of the River Clyde Irrigation District.

309. Transitional water districts

For the purposes of this Division, the Minister may, by notice published in the *Gazette*, appoint, name and define a water district so as to give a water entity administrative control of, and responsibility for, that water district.

Division 6 – Administration

310.

Water Management Act 1999
Act No. 45 of 1999

s. 311

Part 16 – Miscellaneous Amendments and Repeals

**PART 16 – MISCELLANEOUS AMENDMENTS AND
REPEALS**

311. *See Schedule 6.*

- 312. *See Schedule 7.*

313. Acts repealed

The Acts specified in Schedule 8 are repealed.

314. Savings and transitional provisions – *Water Management Amendment (Dam Works) Act 2015*

Schedule 9 has effect.

**SCHEDULE 1 – OBJECTIVES OF THE RESOURCE
MANAGEMENT AND PLANNING SYSTEM OF
TASMANIA**

Section 6(1)

1. The objectives of the resource management and planning system of Tasmania are –
 - (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
 - (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
 - (c) to encourage public involvement in resource management and planning; and
 - (d) to facilitate economic development in accordance with the objectives specified in paragraphs (a), (b) and (c); and
 - (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in Tasmania.

2. In item 1(a),
sustainable development means managing the use, development and protection of natural and physical resources in a way,

Water Management Act 1999
Act No. 45 of 1999

sch. 1

or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –

- (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

Water Management Act 1999
Act No. 45 of 1999

sch. 2

SCHEDULE 2 –

**SCHEDULE 3 – MEMBERSHIP AND PROCEEDINGS
OF TRUSTS**

Section 207

PART 1 – MEMBERSHIP

1. Retirement of trustees

- (1) A trustee appointed by a Minister under section 211(2)(b) or (c) holds office during the Minister's pleasure.
- (2) Unless the Minister by instrument in writing determines otherwise, trustees are to retire as prescribed by the regulations.
- (3) However, in any case where from any cause an election is delayed, the retiring trustees are to hold office until the election of their successors.

2. Vacation of office

The office of a trustee becomes vacant if the trustee –

- (a) dies; or
- (b) becomes bankrupt; or
- (c) resigns his or her office in writing addressed to the trust and the resignation is accepted by the trust; or
- (d) accepts an office of profit under the trust;
or

- (e) is absent without leave of the trust from 3 consecutive meetings of the trust of which he or she had due notice; or
- (f) is convicted in Tasmania of an offence which is punishable by imprisonment for a term of 12 months or more, or if the trustee is convicted elsewhere than in Tasmania of an offence which, if committed in Tasmania, would be so punishable.

PART 2 – PROCEEDINGS

1. Interpretation of Part

In this Part –

board means the board of trustees of a trust;

concerned water entity, in relation to a trust, means a water entity that administers a water supply district and has a right under this Act or the special Act to take water for domestic purposes from a watercourse over which the trust exercises any responsibility;

meeting means a meeting of a board;

special Act has the same meaning as in section 190.

Water Management Act 1999
Act No. 45 of 1999

sch. 3

2. Convening meetings

A meeting may be convened by the chairperson or any 2 trustees.

3. Quorum

A quorum is a majority of the trustees.

4. Chairing of meetings

- (1) The chairperson is to preside at all meetings at which he or she is present.
- (2) If the chairperson is not present at a meeting, the deputy chairperson is to preside at that meeting if he or she is present.
- (3) If the chairperson and deputy chairperson are both absent from a meeting, the trustees present are to elect one of their number to preside at the meeting.

5. Procedure at meetings

- (1) Any duly convened meeting at which a quorum is present is competent to transact any trust business.
- (2) In a meeting a trustee may vote –
 - (a) in person; or
 - (b) by proxy.

- (3) Each trustee, including the chairperson and deputy chairperson, has only one vote.
- (4) A question arising at a meeting is to be determined by a majority of the votes cast.
- (5) In the event of an equality of votes on a question arising at a meeting, the question stands adjourned until the next meeting.

6. Proxies

- (1) A trustee is not entitled to use a proxy for more than 2 consecutive meetings without leave of the board.
- (2) A vote that a trustee casts by proxy is as valid as if it were cast by the member in person.

7. Trustee with pecuniary interest not to vote

A trustee must not vote on any question arising before the trust in which he or she has any direct or indirect pecuniary interest otherwise than as –

- (a) an owner or occupier of land in the relevant area; or
- (b) the holder of a right under this Act or the special Act to take water from a relevant water resource.

Penalty: Fine not exceeding 5 penalty units.

Water Management Act 1999
Act No. 45 of 1999

sch. 3

8. Minutes

- (1) A board is to keep accurate minutes of each of its meetings; and
- (2) A concerned water entity is entitled to inspect the minutes at any reasonable time.

9. Special attendance

- (1) A board may permit a trustee to participate in a particular meeting by –
 - (a) telephone; or
 - (b) television conference; or
 - (c) another means of communication approved by the trust.
- (2) A trustee who participates in a meeting under a permission granted under this clause is taken to be present at the meeting.
- (3) A board may permit a person to attend a meeting for the purpose of advising or informing it on any matter.

10. Attendance of other water entities at meetings

Unless the Minister directs a trust otherwise, the representatives of any concerned water entity may attend a meeting.

Water Management Act 1999
Act No. 45 of 1999

sch. 3

11. General procedure

Except as provided by this Act or the regulations, a board may regulate its own proceedings.

**SCHEDULE 4 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 307

1. Interpretation

In this Schedule, unless the contrary intention appears –

Commission means the Rivers and Water Supply Commission;

Corporation means the Hydro-Electric Corporation;

financial year means a period of 12 months ending on 30 June.

2. Saving for water districts

- (1) A council, authority, body corporate or trust responsible for the administration of a water district immediately before the commencement day is taken to have been appointed under this Act as a water entity for that purpose.
- (2) An irrigation water district in force under the repealed Act immediately before the commencement day is taken to be an irrigation district under this Act.
- (3) A river improvement district or sealed river improvement scheme in force under the repealed Act immediately before the commencement day is taken to be a riverworks district under this Act.

Water Management Act 1999
Act No. 45 of 1999

sch. 4

- (4) A water district in force under the repealed Act and administered by a council immediately before the commencement day is taken to be a water district under Division 1 of Part 6 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.
- (5) A water district in force under the repealed Act and administered otherwise than by a council immediately before the commencement day is taken to be a water supply district under this Act.
- (6) A hydro-electric water district in force under the repealed Act immediately before the commencement day is taken to be a hydro-electric district under this Act and the Corporation is taken to have been appointed as the water entity responsible for the administration of that district.
- (7) A drainage area proclaimed under Part VI of the repealed Act is taken to be a drainage district under this Act and the Commission or the relevant trust is taken to have been appointed as a water entity under this Act for the purposes of the administration of that district.

3. Saving for existing trusts

- (1) A trust that, immediately before the commencement day, was established under, or subject to, the repealed Act continues as if it had been established under Part 10 of this Act and the provisions of this Act extend to the trust accordingly.

Water Management Act 1999
Act No. 45 of 1999

sch. 4

- (2) If the letters patent establishing any such trust or the regulations relating to it are inconsistent with this Act, the letters patent or the regulations prevail.
- (3) The amendment to this clause made by the *Water Management Amendment Act 2002* is taken to have taken effect on the commencement day.

4. Saving for orders, licences, &c., under repealed Act

- (1) An order in force under section 75A or section 116A of the repealed Act immediately before the commencement day is taken to be an order in force on the same terms and conditions made under this Act.
- (2) A licence in force under section 114A of the repealed Act immediately before the commencement day is taken to be a licence in force on the same terms and conditions under this Act.
- (3) A permission granted, or requirement imposed, under section 116 of the repealed Act and in force immediately before the commencement day is taken to have been granted or imposed on the same terms and conditions under this Act.

5. Saving for proposals and petitions under repealed Act

- (1) Where –

Water Management Act 1999
Act No. 45 of 1999

sch. 4

- (a) a proposal has been made under Division 5 of Part 3 of the repealed Act; or
- (b) a petition has been made under Division 4 of Part 3 or Division 1 of Part 4 of the repealed Act –

and the Commission has not set its seal to the proposed scheme or the Governor has not appointed the proposed irrigation water district or proclaimed the proposed drainage area, the proposal or petition is taken to be an application under Part 8 of this Act and is to be dealt with accordingly.

- (2) For the purposes of this clause, the Minister may exempt the applicant from complying with a provision of this Act if satisfied that the applicant has provided sufficient information or complied with a relevant requirement under the repealed Act.

6. Saving for orders under *Groundwater Act 1985*

An order in force under section 16 or 26 of the *Groundwater Act 1985* immediately before the commencement day is taken to be an order in force on the same terms and conditions under Division 1 of Part 7 of this Act.

Water Management Act 1999
Act No. 45 of 1999

sch. 4

7. Saving for certain rights of Corporation under repealed Act

- (1) A right of the Corporation, as in force under the repealed Act immediately before the commencement day, continues in full force and effect, notwithstanding any other provision of this Act, on the same terms and conditions as were applicable at that time.
- (2) The Corporation is taken to hold a special licence under section 115(2) with an endorsement that Division 6 of Part 6 applies to the licence, conferring on the Corporation the rights mentioned in subclause (1) with the conditions applicable to those rights under that subclause and also confers such other rights and is subject to such other conditions as the Minister may agree with the Corporation.

8. Saving for commissional water rights under repealed Act

- (1) A commissional water right in force under the repealed Act immediately before the commencement day continues in force until it is replaced by a licence issued under Part 6 in accordance with this clause.
- (2) The rights conferred by a commissional water right as so continued in force are subject to the following provisions of this Act as if they were conferred by a licence issued under Part 6:
 - (a) section 55;

Water Management Act 1999
Act No. 45 of 1999

sch. 4

- (b) section 79;
 - (c) section 82;
 - (d) Division 3 of Part 6;
 - (e) section 106(1), (3) and (4);
 - (f) Division 3 of Part 12.
- (3) A commissional water right may be extended in identical terms from time to time for a period not exceeding 5 years at any one time by notice in writing signed by a person authorised by the Minister to do so.
- (4) A commissional water right may be replaced by a licence under Part 6 at any time on application by the person holding the commissional water right or on a direction given by the Minister and on that replacement –
- (a) the commissional water right ceases to have any force or effect; and
 - (b) the licence is to be issued for a period not less than the unexpired term of the commissional water right and with not less than the same water allocation; and
 - (c) the licence is to confer a surety that is not less favourable than that applicable under the commissional water right; and
 - (d) any fee paid by the holder of the commissional water right for the unexpired term of the right is to be

Water Management Act 1999
Act No. 45 of 1999

sch. 4

credited towards the fee payable for the licence; and

- (e) a fee is not payable under section 85 in respect of a water allocation transferred from the commissional water right to the licence.

- (5) A permission to take water in force under section 100N of the repealed Act immediately before the commencement day continues in force on the same terms and conditions until –

- (a) it is replaced by a water allocation conferred by a licence under this Act; or
- (b) the date on which it would have expired under the repealed Act –

whichever occurs first.

- (6) Where a commissional water right in force under the repealed Act immediately before the commencement day was granted in fee –

- (a) the right is converted to a licence under this Act for a term of 50 years with no annual fee; and
- (b) the right remains annexed to the land to which it was annexed under the repealed Act.

9. Effect of replacement licence

- (1) Where a commissional water right is replaced by a licence, as mentioned in clause 8 –

Water Management Act 1999
Act No. 45 of 1999

sch. 4

- (a) that right may not be abrogated under section 21; and
 - (b) the water allocation referred to in clause 8(4)(b) may not be reduced under section 88(1).
- (2) Subclause (1) does not apply in a case where the effect of an absolute transfer of a licence or of any such water allocation is that the relevant water is no longer used on any land that was at the time of the replacement subject to a determination under section 58.

9A. Savings for Hobart Regional Water Authority

- (1) In this clause –

Authority means the Hobart Regional Water Authority;

former Board means the Hobart Regional Water Board as established under section 4 of the repealed Act;

relevant council means a council that was at the relevant time a constituent municipality under the repealed Act;

repealed Act means the *Hobart Regional Water Act 1984*.

- (2) On and from 1 January 2000, the Authority is taken to hold, and to have held, a licence under Part 6 to take water from the following water resources:

Water Management Act 1999
Act No. 45 of 1999

sch. 4

- (a) the waters of –
 - (i) the Bower Creek; and
 - (ii) all streams flowing between the Bower Creek and the North West Bay River (excepting the streams known as Millhouse's or Falls Creek and Long Creek) –

that flow from Mount Wellington towards the Huon Road and rise or flow above, or at, the intakes or pipelines of the Hobart City Council constructed or laid before 16 December 1925;
- (b) the North West Bay River and any additional waters which are diverted into that river;
- (c) the River Derwent and its tributaries above the boundary of the town of New Norfolk as established on the commencement of the repealed Act, subject to such conditions, if any, as the Minister may determine, and subject, in respect of the place of taking, to the approval of the Corporation;
- (d) Lady Barron Creek, having its source in Lake Fenton, or any other river, rivulet or lake in Mount Field National Park, except the rivulet known as Falls Creek having its source in Lake Nicholls;
- (e) all streams arising in or flowing through the areas of land delineated and marked

Water Management Act 1999
Act No. 45 of 1999

sch. 4

- as catchment areas in the maps numbered LD814 and LD827 deposited in the Central Plan Register held in the department;
- (f) any other place, except Illabrook Creek and the creek used for the supply of water to the Colebrook township, that immediately before the commencement of the repealed Act was a source of supply of the former Board or a relevant council, but subject to any limitation that was at the time applicable to that Board or council;
 - (g) any other place that the Minister, by order under subclause (3), determines to be a source of supply for the Authority.
- (3) The Minister may, by order, determine that a place specified in the order is to be, for the purposes of this clause, a source of supply for the Authority.
- (3A) The order is a statutory rule.
- (4) On and from the commencement of the *Water Legislation Amendment Act 2004*, the Authority's licence under subclause (2) is taken to be subject to any terms and conditions determined by the Minister to give effect to the objectives of this Act.
- (5) Without limiting the generality of subclause (4), the Minister is to determine the water allocations of the licence.

Water Management Act 1999
Act No. 45 of 1999

sch. 4

- (6) Any fees or charges paid by the Authority for water taken from the water resources referred to in subclause (2) since the commencement of this clause are taken to have been properly imposed under section 79.

10. Saving for rights under section 100D or 100H of repealed Act

- (1) A right registered under section 100D or 100H of the repealed Act that was in force immediately before the commencement day continues in force until it is replaced by a licence issued under Part 6 in accordance with this clause.
- (2) A right that is so continued in force is subject to the following provisions of this Act as if it were conferred by a licence issued under Part 6:
 - (a) section 55;
 - (b) section 82;
 - (c) Division 3 of Part 6;
 - (d) section 106(1) and (3);
 - (e) Division 3 of Part 12.
- (3) A right that is so continued in force may be replaced by a licence under Part 6 at any time on application by the owner of the land to which the right attaches or on a direction given by the Minister and, on that replacement –

Water Management Act 1999
Act No. 45 of 1999

sch. 4

- (a) the owner of the land to which the replaced right was attached before its replacement is taken to be the holder of the licence; and
- (b) the licence is to be issued for a period of not less than 99 years with a water allocation of not less than the water allocation formerly conferred by the replaced right; and
- (c) in respect of that water allocation, the licence is to confer a paramount surety against all persons except for –
 - (i) rights under Part 5 for the taking of water for domestic purposes, consumption by livestock or firefighting; and
 - (ii) rights of licensees for the taking of water for domestic purposes or for consumption by livestock where the licence is endorsed with a condition that section 94(2) applies to the licence; and
 - (iii) the rights mentioned in clause 12(1); and
 - (iv) the essential needs of ecosystems dependent on the water resource; and

Water Management Act 1999
Act No. 45 of 1999

sch. 4

- (d) a fee is not payable under section 85 in respect of a water allocation conferred by paragraph (b); and
 - (e) in respect of any such water allocation –
 - (i) the fee payable for the licence under section 79 is to be \$50 for the first year when the licence is in force; and
 - (ii) any increase in that fee in any subsequent year is not to exceed an increase in the Consumer Price Index which relates to that year; and
 - (f) paragraph (e) does not apply to a licence or a water allocation which is transferred under Division 4 of Part 6 unless the transfer is to the successor in title of a person who held the land to which the replaced right was attached immediately before its replacement; and
 - (g) the water allocation conferred under paragraph (b) may be used only on the land to which the replaced right was attached immediately before its replacement unless the water allocation is transferred under Division 4 of Part 6.
- (4) For the purposes of subclause (3)(e)(ii), the Consumer Price Index is taken to be the cumulative effect of each Consumer Price Index (All Groups) - Hobart published by the

Australian Bureau of Statistics in respect of the preceding 4 quarters.

- (5) If a licence under this clause or a water allocation of the licence is transferred under Division 4 of Part 6, the surety attaching to the water allocation under subclause (3)(b) continues in force.
- (6) A water allocation under subclause (3)(b) may not be reduced under section 21 or 88 until all water allocations of lesser surety have been abrogated.

10A. Saving for practice of Commission

- (1) The Commission is taken to hold a licence under Part 6 to continue to take water from the Cascade River, Coal River, Galeford Creek and Prosser River for the purposes of town water supply, stock and domestic use and irrigation in accordance with its practice since 1 January 1995.
- (2) For the purposes of subclause (1), the Commission's licence is taken to be subject to any conditions determined by the Minister to give effect to the objectives of this Act.

11. Saving for applications for registration of rights under section 100D or 100H of repealed Act

- (1) Where, immediately before the commencement day, an application for the registration of a right under section 100D or 100H of the repealed Act

Water Management Act 1999
Act No. 45 of 1999

sch. 4

was pending before the Rivers and Water Supply Commission, the Minister must consider the application and any evidence provided in support of it.

- (2) For the purposes of subclause (1) –
 - (a) Part 4 of the repealed Act continues to apply, notwithstanding the repeal, to an application referred to in that subclause as if references to the Commission were read as references to the Minister; and
 - (b) in particular, if the Minister is satisfied that the applicant is entitled to the right claimed, the Minister must register it.
- (3) This clause expires 6 months after the commencement day.

12. Saving for rights of councils

- (1) This clause applies to a right under Division 1 of Part 6 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* to take water for a water district.
- (2) Where a council held a right to which this clause applies immediately before the commencement day, that right may, on application by the council at any time or on a direction given by the Minister, be replaced by a licence under Part 6 for a term of not less than 50 years.
- (3) The water allocation which may be taken daily under the licence is to be at least 105 per cent of

Water Management Act 1999
Act No. 45 of 1999

sch. 4

the water allocation taken daily under the right to which this clause applies during the period of 5 years ended on the commencement day.

- (4) The surety attaching to the water allocation of the licence is to be determined as follows:
 - (a) as to two-thirds of the water which may be taken, the surety is to be of the highest class which may be granted under section 59;
 - (b) as to the remaining one-third, the surety is to be the same as that applicable to an allocation of water of a replacement licence under clause 8(4).
- (5) On the replacement of a right to which this clause applies, the Minister may, with the agreement of the Minister having the administration of the *Local Government Act 1993*, vary the water allocation referred to in subclause (3).
- (6) A right to which this clause applies continues in force under the same conditions until the right is replaced by a licence in accordance with this clause.

13. Saving for subsidies

- (1) A subsidy payable to a council under section 40 of the repealed Act immediately before the commencement day continues to be payable subject to any terms and conditions to which it was subject at that time.

Water Management Act 1999
Act No. 45 of 1999

sch. 4

- (2) Subclause (1) does not prevent the Minister from varying any terms or conditions of a subsidy at any time.

14. Financial interests

- (1) Where a person is granted a licence under this Act by way of replacement of a right in force under the repealed Act –
- (a) the licensee must, within 2 months, provide the Minister in writing with details of any financial interest of another person in the licence or in land to which the licence relates; and
 - (b) section 61(3), (4), (5), (7) and (8) applies to, and in respect of, the licensee.
- (2) A licensee is not entitled to vary or transfer a licence referred to in subclause (1) until he or she has complied with that subclause.

15. Compensation not payable

Where any right to take water is replaced under this Act, the holder of the right is not entitled to compensation in respect of that replacement.

16. Exclusion of appeals to Appeal Tribunal

An appeal to the Appeal Tribunal does not lie in respect of a licence taking effect by way of replacement of a right under this Schedule.

17. Licences to be non-justiciable

A licence that is conferred or continued in force under this Schedule may not be called in question in any legal proceedings by any person other than the person to whom, or for whose benefit, the licence is conferred or continued in force.

Water Management Act 1999
Act No. 45 of 1999

sch. 4A

**SCHEDULE 4A – SAVINGS AND TRANSITIONAL
PROVISIONS CONSEQUENT ON WATER
LEGISLATION AMENDMENT ACT 2008**

Section 307A

1. Interpretation

In this Schedule –

amended Act means this Act as amended by
the *Water Legislation Amendment Act*
2008.

2. Temporary water allocations

- (1) This clause applies to a permission in force under section 90 of this Act as in force immediately before the day on which section 43 of the *Water Legislation Amendment Act 2008* commences.
- (2) The permission continues in force according to its terms on and after the day referred to in subclause (1) until the expiry of the period not exceeding 3 months for which the permission was granted.

3. Well drilling offences

- (1) Notwithstanding section 136A(1) of the amended Act –
 - (a) it is not an offence for a person to physically undertake well works contrary

Water Management Act 1999
Act No. 45 of 1999

sch. 4A

to that section during the first 2 months of the lead-in period; and

(b) it is not an offence for a person to physically undertake well works contrary to paragraph (a) of that section during the last 4 months of the lead-in period if the person –

(i) has applied for a well driller’s licence in accordance with section 136B; and

(ii) has not been given notice that the application has been refused; and

(c) it is not an offence for a person to physically undertake well works contrary to paragraph (b) of that section during the last 4 months of the lead-in period if the person is an employee of, and working under the on-site supervision of, someone who has or is reasonably believed by the first-mentioned person to have –

(i) applied for a well driller’s licence in accordance with section 136B; and

(ii) not been given notice that the application has been refused.

(2) In this clause –

lead-in period means the 6-month period immediately following the day on which

Water Management Act 1999
Act No. 45 of 1999

sch. 4A

section 62 of the *Water Legislation Amendment Act 2008* commences.

4. Well works offences

Notwithstanding section 135 of the amended Act, it is not an offence for a person to cause any well works to be undertaken contrary to that section during the first 2 months immediately following the day on which section 62 of the *Water Legislation Amendment Act 2008* commences.

5. Trust elections

- (1) This clause applies if any elections of trustees are in the process of being conducted immediately before the day on which section 96 of the *Water Legislation Amendment Act 2008* commences.
- (2) The elections are to proceed as if the former Act and the former electoral regulations were still in force.
- (3) The elections have effect under and for the amended Act.
- (4) For the purposes of this clause, an election of trustees is taken to be in the process of being conducted if the returning officer has not issued a certificate of the result of the election.
- (5) In this clause –

former Act means this Act as in force immediately before the day referred to in subclause (1);

former electoral regulations means the provisions of Part 5 of the *Water Management Regulations 1999* as in force immediately before the day referred to in subclause (1).

6. Trust polls

- (1) This clause applies if any polls under section 213 are in the process of being taken immediately before the day on which section 97 of the *Water Legislation Amendment Act 2008* commences.
- (2) The polls are to proceed as if the former Act and the former polling regulations were still in force.
- (3) The polls have effect under and for the amended Act.
- (4) For the purposes of this clause, a poll is taken to be in the process of being taken if the returning officer has not finished counting the ballot papers.
- (5) In this clause –

former Act means this Act as in force immediately before the day referred to in subclause (1);

former polling regulations means the provisions of Part 5 of the *Water Management Regulations 1999* as in

Water Management Act 1999
Act No. 45 of 1999

sch. 4A

force immediately before the day referred
to in subclause (1).

7. Trust membership

(1) Subject to clause 2 of Part 1 of Schedule 3 to the amended Act, a person who was an elected trustee under the former Act retires at the same time as he or she would have retired had the *Water Legislation Amendment Act 2008* not been enacted.

(2) In this clause –

former Act means this Act as in force
immediately before the commencement
of section 96 of the *Water Legislation
Amendment Act 2008*.

8. Regulations

(1) The Governor may make regulations of a savings and transitional nature consequent on the enactment of the *Water Legislation Amendment Act 2008*.

(2) A regulation made under subclause (1) in respect of any matter may take effect on a day on which any provision of the *Water Legislation Amendment Act 2008* relating to that matter commences or a later day.

(3) The provisions of Division 4 of Part 15 have, subject to any necessary modification, the same application to regulations made under

Water Management Act 1999
Act No. 45 of 1999

sch. 4A

subclause (1) as they have to any of the regulations to which that Division applies.

**SCHEDULE 5 – RIVER CLYDE TRUST AND RIVER
CLYDE IRRIGATION DISTRICT**

Section 308(2)

1. Interpretation

In this Schedule –

eligible person means an owner or occupier of land within the irrigation district referred to in section 308(1)(a);

responsible water entity means the water entity responsible for the River Clyde Irrigation District;

trust means the River Clyde Trust as reconstituted under section 308(1);

trustees means the persons acting as trustees of the River Clyde immediately before the commencement of the *Water Legislation Amendment Act 2005*.

2. Membership of trustees of River Clyde

The trust is to consist of 3 members until a date to be determined by the Minister, but on and after that date is to consist of 5 members.

3. Powers of responsible water entity

- (1) The responsible water entity may, in addition to the powers conferred under the *Irrigation Clauses Act 1973* –

Water Management Act 1999
Act No. 45 of 1999

sch. 5

- (a) construct, repair, alter and remove any works as may be required to convey water directly from Lake Sorell to the River Clyde as the responsible water entity considers necessary; and
 - (b) enter, or cause its servants or workmen to enter, on any land on either side of the River Clyde or the River Interlaken or of Lake Sorell or Lake Crescent for the purpose of constructing, repairing, altering or removing any works authorised by this Act to be constructed, repaired, altered or removed.
- (2) If the works or land referred to in subclause (1) are outside the River Clyde Irrigation District, the responsible water entity must obtain the Minister's permission in writing before exercising its powers under that subclause.
- (3) If the works referred to in subclause (1) will or might have any adverse effect on any fish in inland waters, within the meaning of the *Inland Fisheries Act 1995*, the responsible water entity must obtain the permission of the Minister having the administration of that Act before exercising its powers under that subclause.

4. Saving provision

- (1) On and from the commencement day –
 - (a) the property and rights of the trustees are transferred to the trust and the liabilities

Water Management Act 1999
Act No. 45 of 1999

sch. 5

- of the trustees become liabilities of the trust; and
- (b) legal proceedings instituted by or against the trustees before the commencement day and pending on that day may be continued by or against the trust; and
 - (c) legal proceedings by or against the trustees to enforce a right that accrued before the commencement day and in existence on that day may be instituted by or against the trust; and
 - (d) a judgment or order of a court obtained by or against the trustees may be enforced by or against the trust; and
 - (e) a document addressed to, and purporting to have been served on, the trustees is taken to have been served on the trust; and
 - (f) a contract made or entered into by the trustees before the commencement day but not performed or discharged before that day is taken to have been made or entered into by the trust.
- (2) Nothing in this Schedule affects a liability to pay any rates that were outstanding immediately before the commencement day.

5. Construction of instruments

Where, in an instrument that was in force immediately before the commencement day, there is a reference to the trustees, the instrument has effect on and from that day, except in so far as the context or subject matter otherwise indicates or requires, as if the reference were a reference to the trust or included a reference to the trust.

6. Trust entitled to licence

- (1) The Minister must grant a licence to the trust with effect from the commencement day.
- (2) The conditions and water allocation of the licence are to be such as the Minister determines as appropriate for the purposes of the trust, taking into account –
 - (a) the quantity of water needed by the ecosystems that depend on the relevant water resources and the times at which, or the periods during which, those ecosystems will need that water; and
 - (b) the reasonable requirements of the trust.

Water Management Act 1999
Act No. 45 of 1999

sch. 6

SCHEDULE 6

The amendments effected by Section 311 and this Schedule have been incorporated into authorised versions of the following Acts:

- (a) *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995;*
- (b) *Florentine Valley Paper Industry Act 1935;*
- (c) *Fluoridation Act 1968;*
- (d) *Irrigation Clauses Act 1973;*
- (e) *Land Use Planning and Approvals Act 1993;*
- (f) *Local Government (Building and Miscellaneous Provisions) Act 1993;*
- (g) *Sewers and Drains Act 1954;*
- (h) *Water Act 1957;*
- (i) *Water Management Act 1999;*
- (j) *Waterworks Clauses Act 1952;*
- (k) *Wesley Vale Pulp and Paper Industry Act 1961.*

Water Management Act 1999
Act No. 45 of 1999

sch. 7

SCHEDULE 7

The amendments effected by Section 312 and this Schedule have been incorporated into the authorised version of the Inland Fisheries Regulations 1996.

Water Management Act 1999
Act No. 45 of 1999

sch. 8

SCHEDULE 8 – ACTS REPEALED

Section 313

Clyde Water Act 1898 (No. 62 of 1898)

Groundwater Act 1985 (No. 84 of 1985)

Rossarden Water Act 1954 (No. 86 of 1954)

Thomas Owen and Co. (Australia) Limited Act 1948 (No. 67
of 1948)

Water Act 1957 (No. 39 of 1957)

Water Amendment Act 1997 (No. 61 of 1997)

**SCHEDULE 9 – SAVINGS AND TRANSITIONAL
PROVISIONS – WATER MANAGEMENT AMENDMENT
(DAM WORKS) ACT 2015**

Section 314

1. Interpretation

In this Schedule –

Assessment Committee means the Assessment Committee for Dam Construction constituted under section 138 of the previous Act;

commencement day means the day on which section 20 of the *Water Management Amendment (Dam Works) Act 2015* commences;

existing permit means a permit granted under section 157 of the previous Act and in force immediately before the commencement day;

new Act means this Act as in force on and after the commencement day;

offset has the same meaning as in section 138 of the new Act;

offsets register has the same meaning as in section 138 of the new Act;

previous Act means this Act as in force immediately before the commencement day;

Water Management Act 1999
Act No. 45 of 1999

sch. 9

registered offset has the same meaning as in section 138 of the new Act.

2. Abolition of Assessment Committee for Dam Construction

- (1) The Assessment Committee is abolished.
- (2) The appointment of each member of the Assessment Committee is revoked.
- (3) Each subcommittee established by the Assessment Committee under section 142 of the previous Act is abolished.
- (4) The appointment of each member of a subcommittee referred to in subclause (3) is revoked.
- (5) A member of the Assessment Committee, or a member of a subcommittee referred to in subclause (3), is not entitled to receive any benefit in respect of the termination of his or her appointment as such a member.

3. Orders exempting dam works from needing permit

An order made under section 137(2) of the previous Act and in force immediately before the commencement day is taken to be an order made under section 140 of the new Act.

4. Existing permits

- (1) An existing permit continues in force as if it were a Division 3 permit issued under the new Act, subject to the conditions to which the existing permit was subject immediately before the commencement day.
- (2) Subclause (1) ceases to apply in relation to an existing permit that relates to dam works or to a dam constructed under the existing permit, when all conditions of that permit that relate to –
 - (a) the operation of the dam; or
 - (b) an offset in relation to the dam works or a dam –have been fulfilled or have become conditions of a water licence, a dam operating notice, or a registered offset, that relates to the dam works or dam.
- (3) The Minister may require the Secretary to register in the offsets register an offset, the carrying out of which is a condition of a permit to which subclause (1) relates.
- (4) If an offset is registered in accordance with subclause (3), it is taken to be a condition of the registered offset under section 164R of the new Act that the offset will be carried out.
- (5) If, under section 159(9) of the previous Act, an application for the extension of the time for which an existing permit is in force was made, but not determined, before the commencement

Water Management Act 1999
Act No. 45 of 1999

sch. 9

day, that application is taken to be an application for the extension of the relevant Division 3 permit made, on the day on which the application was made under the previous Act, under section 164E of the new Act.

- (6) If, under section 162(1) of the previous Act, a request to amend an existing permit was made by the holder of the existing permit, but not determined, before the commencement day, the request is taken to be an application for an amendment of the relevant Division 3 permit made, on the day on which the request was made under the previous Act, under section 164F of the new Act.
- (7) If it is a condition of an existing permit that notice of the completion of the dam works to which the permit relates is to be given, section 164ZA of the new Act does not apply in relation to the dam works.

5. Applications for permits

- (1) Subclause (2) applies in relation to an application if –
 - (a) the application is an application, for a permit, made under section 146(1) of the previous Act; and
 - (b) the application is not an application that was, before the commencement day, taken under section 149(4) of the previous Act to not have been received by the Assessment Committee; and

Water Management Act 1999
Act No. 45 of 1999

sch. 9

- (c) the application was not, before the commencement day, granted, or refused, by the Assessment Committee under the previous Act.
- (2) If this subclause applies in relation to an application –
 - (a) the application is taken to be an application for a Division 3 permit made, on the day on which the application under the previous Act was made, under section 144 of the new Act; and
 - (b) any representation made under section 149 of the previous Act in relation to the application is taken to be a representation made, in relation to the application, under section 146 of the new Act.
- (3) If the Director, under section 152(2) or (3) of the previous Act, refers an application for a permit under the previous Act to the Board under section 27(2) of the EMPC Act, that referral is taken to be a referral made under section 148 of the new Act.
- (4) If the Assessment Committee, by a notice under section 154(1) or 155A(2) of the previous Act, required an applicant for a permit under the previous Act to provide additional information or to take or arrange for the taking of an action, and the requirement had not been satisfied before the commencement day, the notice is taken to be a notice issued under section 149 of

Water Management Act 1999
Act No. 45 of 1999

sch. 9

the new Act on the day on which the requirement was imposed.

- (5) If a request was made under section 155B of the previous Act for the Assessment Committee to amend an application for a permit and the request was not determined under that section before the commencement day, the request is taken to be a request under section 151 of the new Act.

6. Applications for approval of dam works

If, under section 146(4)(d) of the previous Act, an application for approval of dam works was made, but not determined, before the commencement day, that application is taken to be a notice of completion, in relation to the dam works, given under section 164ZA of the new Act.

7. Dam works for which permit was not required under previous Act

- (1) Subclause (2) applies in relation to dam works carried out after the commencement day, if –
- (a) a person undertaking the dam works before the commencement day was not required, under the previous Act, to hold a dam works permit in relation to the dam works; and
 - (b) the dam works had commenced before the commencement day; and

- (c) immediately after the commencement day, a person who proposes to undertake the dam works –
 - (i) is entitled to a Division 4 permit under section 159 of the new Act; or
 - (ii) is required under the new Act to hold a Division 3 permit before undertaking the works.
- (2) If this subclause applies in relation to dam works –
 - (a) section 143 of the new Act does not apply in relation to so much of the dam works as are carried out before 6 months after the commencement day; and
 - (b) where the dam works are completed before 6 months after the commencement day, section 164ZB of the new Act applies in relation to the dam works as if the person who carried out the dam works held a Division 4 permit in relation to the dam works.

8. Notice requiring action if offence committed

- (1) If a notice under section 147(1) of the previous Act directing that action be taken was given, but not complied with, before the commencement day, that direction is taken to be a requirement under section 164ZM(1) of the new Act.

Water Management Act 1999
Act No. 45 of 1999

sch. 9

- (2) If, immediately before the commencement day, a person is authorised under section 147(5) of the previous Act to enter on land and take any action specified in the authorisation, that authorisation is taken to be an authorisation given under section 164ZM(4)(a) of the new Act.

9. Appeals

- (1) If, under section 276 of the previous Act, an appeal against a direction made under section 147 of the previous Act was instituted, but not determined, before the commencement day, that appeal is taken to be an appeal under section 276 of the new Act against a requirement under section 164ZM of the new Act.
- (2) If, under section 276 of the previous Act, an appeal against a requirement made under section 154 of the previous Act was instituted, but not determined, before the commencement day, that appeal is taken to be an appeal under section 276 of the new Act against a requirement under section 149 of the new Act.
- (3) If, under section 276 of the previous Act, an appeal against the grant or refusal to grant a permit under Part 8 of the previous Act or the imposition of a condition on such a permit was instituted, but not determined, before the commencement day, that appeal is taken to be an appeal under section 276 of the new Act against the determination under section 156, or section 164, respectively, of the new Act.

10. Legal proceedings

- (1) A legal proceeding that is instituted by or against the Assessment Committee and is pending immediately before the commencement day may be continued by or against the Crown.
- (2) A legal proceeding that could have been instituted by or against the Assessment Committee to enforce a right that had accrued, and was in existence, immediately before the commencement day may be instituted by or against the Crown.
- (3) A judgment or order of a court obtained by or against the Assessment Committee before the commencement day may be enforced by or against the Crown.

11. Documents

- (1) If appropriate –
 - (a) a document issued or made by the Assessment Committee is taken to have been issued or made by the Minister; and
 - (b) a document served on or by, or provided to or by, the Assessment Committee is taken to have been served on or by, or provided to or by, the Minister.
- (2) If appropriate, a reference in a document, including an existing permit, to the Assessment Committee is taken to be, or to include, a reference to the Minister.

Water Management Act 1999
Act No. 45 of 1999

sch. 9

12. Subordinate instruments amended by amending Act may be amended or rescinded by regulations

The amendment by the *Water Management Amendment (Consequential and Transitional Provisions) Act 2015* of a provision of any regulations made under any other Act does not prevent that provision, or any other provision, of those regulations from being amended or rescinded by a later regulation.

Water Management Act 1999
Act No. 45 of 1999

sch. 9

NOTES

The foregoing text of the *Water Management Act 1999* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 5 November 2021 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Water Management Act 1999</i>	No. 45 of 1999	1.1.2000
<i>Water Management Amendment (Transfer of Water Allocations) Act 2002</i>	No. 48 of 2002	1.1.2000
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Corporations (Consequential Amendments) Act 2001</i>	No. 42 of 2001	15.7.2001
<i>Gas Pipelines Planning and Safety (Miscellaneous Amendments) Act 2002</i>	No. 57 of 2002	5.12.2002
<i>Water Management Amendment Act 2002</i>	No. 49 of 2002	1.3.2003
<i>Water Legislation Amendment Act 2004</i>	No. 12 of 2004	9.6.2004
<i>State Policies and Projects Amendment Act 2005</i>	No. 3 of 2005	12.4.2005
<i>Water Legislation Amendment Act 2004</i>	No. 12 of 2004	29.6.2005
<i>Water Legislation Amendment Act 2005</i>	No. 30 of 2005	11.7.2005
<i>Water Management Amendment Act 2006</i>	No. 28 of 2006	1.10.2006
<i>Dam Works Legislation (Miscellaneous Amendments) Act 2007</i>	No. 6 of 2007	30.4.2007
<i>Monetary Penalties Enforcement (Transitional Arrangements and Consequential Amendments) Act 2007</i>	No. 72 of 2007	16.7.2007 28.4.2008
<i>Environmental Management and Pollution Control (Environment Protection Authority) (Consequential Amendments) Act 2007</i>	No. 76 of 2007	1.7.2008

Water Management Act 1999
Act No. 45 of 1999

sch. 9

Act	Number and year	Date of commencement
<i>Water Legislation Amendment Act 2008</i>	No. 56 of 2008	11.2.2009
<i>Audit (Consequential Amendments) Act 2008</i>	No. 50 of 2008	1.3.2009
<i>Water and Sewerage Industry (Consequential and Transitional) Act 2008</i>	No. 52 of 2008	1.7.2009
<i>Resource Planning and Development Commission Legislation (Miscellaneous Amendments) Act 2009</i>	No. 28 of 2009	1.9.2009
<i>Audit (Consequential Amendments) Act 2008</i>	No. 50 of 2008	1.7.2010
<i>Commercial Arbitration (Consequential Amendments) Act 2011</i>	No. 9 of 2011	1.10.2012
<i>Water and Sewerage Corporation Act 2012</i>	No. 51 of 2012	1.7.2013
<i>Forest Management (Consequential Amendments) Act 2013</i>	No. 50 of 2013	11.12.2013
<i>Water Management Amendment (Consequential and Transitional Provisions) Act 2015</i>	No. 34 of 2015	1.1.2016
<i>Water Management Amendment (Dam Works) Act 2015</i>	No. 33 of 2015	1.1.2016
<i>Unclaimed Money Act 2015</i>	No. 40 of 2015	1.7.2016
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2018</i>	No. 29 of 2018	10.12.2018
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Gas (Consequential Amendments) Act 2019</i>	No. 3 of 2019	3.2.2021
<i>Tasmanian Civil and Administrative Tribunal (Consequential Amendments) Act 2021</i>	No. 18 of 2021	5.11.2021

TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 86 of 2000, Sched. 1, No. 49 of 2002, s. 4, No. 57 of 2002, s. 13, No. 12 of 2004, s. 4, No. 30 of 2005, s. 4, No. 6 of 2007, s. 7, No. 72 of 2007, Sched. 1, No. 76 of 2007, Sched. 1, No. 52 of 2008, Sched. 1, No. 56 of 2008, s. 5, No. 28 of 2009, s. 62, No. 51 of 2012, Sched. 2, No. 33 of 2015, s. 4, No. 29 of 2018, s.

Water Management Act 1999
Act No. 45 of 1999

sch. 9

Provision affected	How affected
	50, No. 3 of 2019, s. 26 and No. 18 of 2021, s. 347
Section 3A	Inserted by No. 33 of 2015, s. 5
Section 5	Amended by No. 56 of 2008, s. 6
Section 5A	Inserted by No. 56 of 2008, s. 7
Section 6	Amended by No. 6 of 2007, s. 8
Section 8	Amended by No. 49 of 2002, s. 5, No. 12 of 2004, s. 5 and No. 33 of 2015, s. 6
Section 10	Amended by No. 49 of 2002, s. 6, No. 6 of 2007, s. 4, No. 56 of 2008, s. 8 and No. 33 of 2015, s. 7
Section 10A	Inserted by No. 33 of 2015, s. 8
Section 11	Amended by No. 56 of 2008, s. 9 and No. 33 of 2015, s. 9
Section 12	Amended by No. 56 of 2008, s. 10 and No. 33 of 2015, s. 10
Section 12A	Inserted by No. 56 of 2008, s. 11 Amended by No. 33 of 2015, s. 11
Section 13	Substituted by No. 12 of 2004, s. 6
Section 14	Amended by No. 49 of 2002, s. 7, No. 12 of 2004, s. 7, No. 30 of 2005, s. 5, No. 56 of 2008, s. 12 and No. 33 of 2015, s. 12
Section 19	Repealed by No. 12 of 2004, s. 8
Section 20	Substituted by No. 12 of 2004, s. 9 Amended by No. 76 of 2007, Sched. 1
Section 21	Amended by No. 12 of 2004, s. 10
Section 22	Amended by No. 12 of 2004, s. 11, No. 9 of 2011, Sched. 1 and No. 4 of 2017, Sched. 1
Section 24	Amended by No. 12 of 2004, s. 12
Section 25	Amended by No. 56 of 2008, s. 13
Section 26	Substituted by No. 12 of 2004, s. 13 Amended by No. 56 of 2008, s. 14
Section 27	Substituted by No. 12 of 2004, s. 13 Amended by No. 56 of 2008, s. 15 and No. 28 of 2009, s. 63
Section 27A	Inserted by No. 12 of 2004, s. 13
Section 27B	Inserted by No. 12 of 2004, s. 13
Section 28	Substituted by No. 12 of 2004, s. 14
Section 29	Substituted by No. 56 of 2008, s. 16
Section 30	Amended by No. 12 of 2004, s. 15 Repealed by No. 56 of 2008, s. 17
Section 31	Amended by No. 56 of 2008, s. 18
Section 32	Repealed by No. 12 of 2004, s. 16
Section 34	Amended by No. 12 of 2004, s. 17, No. 3 of 2005, s. 9 and No. 56 of 2008, s. 19
Section 35	Substituted by No. 56 of 2008, s. 20
Section 36	Amended by No. 56 of 2008, s. 21
Section 37	Amended by No. 12 of 2004, s. 18 and No. 56 of 2008, s. 22
Section 38	Amended by No. 12 of 2004, s. 19 and No. 56 of 2008, s. 23

Water Management Act 1999
Act No. 45 of 1999

sch. 9

Provision affected	How affected
Section 39	Amended by No. 56 of 2008, s. 24
Section 47	Amended by No. 56 of 2008, s. 25
Section 48	Amended by No. 49 of 2002, s. 8, No. 12 of 2004, s. 20 and No. 56 of 2008, s. 26
Section 49	Amended by No. 49 of 2002, s. 9
Section 53	Amended by No. 56 of 2008, s. 27
Section 54	Amended by No. 49 of 2002, s. 10, No. 12 of 2004, s. 21, No. 30 of 2005, s. 6
Section 56	Substituted by No. 56 of 2008, s. 28 Amended by No. 49 of 2002, s. 11, No. 12 of 2004, s. 22 and No. 56 of 2008, s. 29
Section 57	Amended by No. 56 of 2008, s. 30
Section 58	Substituted by No. 49 of 2002, s. 12 Amended by No. 6 of 2007, s. 9
Section 61	Amended by No. 56 of 2008, s. 31 and No. 33 of 2015, s. 13
Section 62	Substituted by No. 56 of 2008, s. 32
Section 63	Amended by No. 49 of 2002, s. 13 Substituted by No. 6 of 2007, s. 10
Section 64	Amended by No. 49 of 2002, s. 14, No. 72 of 2007, Sched. 1, No. 76 of 2007, Sched. 1 and No. 56 of 2008, s. 33
Section 65	Amended by No. 56 of 2008, s. 34
Section 69	Amended by No. 6 of 2007, s. 11, No. 56 of 2008, s. 35 and No. 33 of 2015, s. 14
Section 70	Substituted by No. 56 of 2008, s. 36
Section 71	Amended by No. 30 of 2005, s. 7 and No. 56 of 2008, s. 37
Section 73	Amended by No. 49 of 2002, s. 15 Substituted by No. 6 of 2007, s. 12 Amended by No. 56 of 2008, s. 38
Section 74	Amended by No. 12 of 2004, s. 23
Section 77	Substituted by No. 56 of 2008, s. 39 Amended by No. 33 of 2015, s. 15
Section 78	Repealed by No. 56 of 2008, s. 40
Section 79	Amended by No. 28 of 2006, s. 4
Section 80	Substituted by No. 56 of 2008, s. 41
Section 84	Amended by No. 49 of 2002, s. 16, No. 6 of 2007, s. 13 and No. 33 of 2015, s. 16
Section 86	Amended by No. 12 of 2004, s. 24
Section 87	Amended by No. 56 of 2008, s. 42 and No. 40 of 2015, Sched. 2
Section 88	Amended by No. 33 of 2015, s. 17
Section 89	Amended by No. 12 of 2004, s. 25, No. 9 of 2011, Sched. 1 and No. 4 of 2017, Sched. 1
Section 90	Substituted by No. 56 of 2008, s. 43
Section 90A	Inserted by No. 56 of 2008, s. 43
Section 91	Amended by No. 49 of 2002, s. 17
Section 94	Amended by No. 56 of 2008, s. 44
Section 95	Amended by No. 48 of 2002, s. 4, No. 49 of 2002, s. 18,

Water Management Act 1999
Act No. 45 of 1999

sch. 9

Provision affected	How affected
	No. 12 of 2004, s. 26 and No. 56 of 2008, s. 45
Section 96	Repealed by No. 12 of 2004, s. 27
Section 97	Amended by No. 12 of 2004, s. 28 and No. 56 of 2008, s. 46
Section 97A	Inserted by No. 12 of 2004, s. 29 Substituted by No. 56 of 2008, s. 47
Section 98	Amended by No. 12 of 2004, s. 30 Subsection (2) omitted by No. 12 of 2004, s. 30 Amended by No. 72 of 2007, Sched. 1 Substituted by No. 56 of 2008, s. 47
Section 100	Amended by No. 29 of 2018, s. 51
Section 102	Amended by No. 12 of 2004, s. 31 Repealed by No. 56 of 2008, s. 48
Section 103	Amended by No. 56 of 2008, s. 49
Section 104	Amended by No. 56 of 2008, s. 50 and No. 33 of 2015, s. 18
Section 106	Amended by No. 56 of 2008, s. 51 and No. 33 of 2015, s. 19
Section 111	Amended by No. 56 of 2008, s. 52
Section 115	Amended by No. 56 of 2008, s. 53
Section 116	Amended by No. 9 of 2011, Sched. 1
Section 118	Amended by No. 9 of 2011, Sched. 1 and No. 4 of 2017, Sched. 1
Section 121	Substituted by No. 48 of 2002, s. 5 Amended by No. 12 of 2004, s. 32 and No. 56 of 2008, s. 54
Section 123A	Inserted by No. 56 of 2008, s. 55
Section 123B	Inserted by No. 56 of 2008, s. 55
Section 123C	Inserted by No. 56 of 2008, s. 55
Section 123D	Inserted by No. 56 of 2008, s. 55
Section 123E	Inserted by No. 56 of 2008, s. 55
Section 123F	Inserted by No. 56 of 2008, s. 55
Section 123G	Inserted by No. 56 of 2008, s. 55
Section 124	Substituted by No. 56 of 2008, s. 56
Section 124A	Inserted by No. 12 of 2004, s. 34 Amended by No. 56 of 2008, s. 57
Section 124B	Inserted by No. 12 of 2004, s. 34 Amended by No. 56 of 2008, s. 58
Section 125	Amended by No. 12 of 2004, s. 35 Subsection (1) omitted by No. 6 of 2007, s. 14 Repealed by No. 56 of 2008, s. 59
Section 126	Amended by No. 56 of 2008, s. 60
Section 130	Substituted by No. 56 of 2008, s. 61
Division 3 of Part 7	Repealed by No. 49 of 2002, s. 19 Inserted by No. 56 of 2008, s. 62
Section 135	Repealed by No. 49 of 2002, s. 19 Inserted by No. 56 of 2008, s. 62
Section 135A	Inserted by No. 56 of 2008, s. 62

Water Management Act 1999
Act No. 45 of 1999

sch. 9

Provision affected	How affected
Section 135B	Inserted by No. 56 of 2008, s. 62
Section 135C	Inserted by No. 56 of 2008, s. 62
Section 135D	Inserted by No. 56 of 2008, s. 62
Section 135E	Inserted by No. 56 of 2008, s. 62
Section 135F	Inserted by No. 56 of 2008, s. 62
Section 135G	Inserted by No. 56 of 2008, s. 62
Section 135H	Inserted by No. 56 of 2008, s. 62
Division 4 of Part 7	Inserted by No. 56 of 2008, s. 62
Section 136	Repealed by No. 49 of 2002, s. 19 Inserted by No. 56 of 2008, s. 62
Section 136A	Inserted by No. 56 of 2008, s. 62
Section 136B	Inserted by No. 56 of 2008, s. 62
Section 136C	Inserted by No. 56 of 2008, s. 62
Section 136D	Inserted by No. 56 of 2008, s. 62
Section 136E	Inserted by No. 56 of 2008, s. 62
Section 136F	Inserted by No. 56 of 2008, s. 62
Section 136G	Inserted by No. 56 of 2008, s. 62
Section 136H	Inserted by No. 56 of 2008, s. 62
Section 136I	Inserted by No. 56 of 2008, s. 62
Section 136J	Inserted by No. 56 of 2008, s. 62
Part 8	Substituted by No. 33 of 2015, s. 20
Division 1 of Part 8	Substituted by No. 33 of 2015, s. 20
Section 138	Amended by No. 6 of 2007, s. 16 Subsection (3) inserted by No. 6 of 2007, s. 16 Substituted by No. 33 of 2015, s. 20
Section 139	Amended by No. 6 of 2007, s. 17 Subsection (6A) inserted by No. 6 of 2007, s. 17 Subsection (7) substituted by No. 56 of 2008, s. 64 Subsection (8) inserted by No. 56 of 2008, s. 64 Substituted by No. 33 of 2015, s. 20
Section 140	Substituted by No. 33 of 2015, s. 20
Section 141	Amended by No. 49 of 2002, s. 21 Substituted by No. 33 of 2015, s. 20
Section 142	Substituted by No. 33 of 2015, s. 20
Section 137	Substituted by No. 49 of 2002, s. 20 Amended by No. 12 of 2004, s. 36, No. 6 of 2007, s. 15, No. 56 of 2008, s. 63 Subsection (3) inserted by No. 56 of 2008, s. 63 Repealed by No. 33 of 2015, s. 20
Division 2 of Part 8	Substituted by No. 33 of 2015, s. 20
Section 143	Amended by No. 49 of 2002, s. 22, No. 56 of 2008, s. 65 Substituted by No. 33 of 2015, s. 20
Division 3 of Part 8	Substituted by No. 33 of 2015, s. 20
Subdivision 1 of	Amended by No. 33 of 2015, s. 20

Water Management Act 1999
Act No. 45 of 1999

sch. 9

Provision affected	How affected
Division 3 of Part 8	
Section 143A	Inserted by No. 49 of 2002, s. 23 Substituted by No. 6 of 2007, s. 18 Repealed by No. 33 of 2015, s. 20
Section 144	Subsection (3) substituted by No. 57 of 2002, s. 14 Amended by No. 6 of 2007, s. 19 Substituted by No. 33 of 2015, s. 20
Section 145	Subsection (2) substituted by No. 57 of 2002, s. 15 Substituted by No. 33 of 2015, s. 20
Section 146	Amended by No. 49 of 2002, s. 24 Subsection (3) substituted by No. 49 of 2002, s. 24 Subsection (4) inserted by No. 49 of 2002, s. 24 Subsection (5) inserted by No. 49 of 2002, s. 24 Subsection (1A) inserted by No. 6 of 2007, s. 20 Amended by No. 6 of 2007, s. 20, No. 56 of 2008, s. 66 Subsection (2) substituted by No. 56 of 2008, s. 66 Amended by No. 56 of 2008, s. 66 Substituted by No. 33 of 2015, s. 20
Section 146A	Inserted by No. 6 of 2007, s. 21 Repealed by No. 33 of 2015, s. 20
Section 147	Amended by No. 49 of 2002, s. 25 Subsection (1) substituted by No. 6 of 2007, s. 22 Amended by No. 6 of 2007, s. 22 Substituted by No. 33 of 2015, s. 20
Section 148	Amended by No. 6 of 2007, s. 23, No. 56 of 2008, s. 67 Substituted by No. 33 of 2015, s. 20
Section 149	Amended by No. 57 of 2002, s. 16, No. 6 of 2007, s. 24 Subsection (1A) inserted by No. 6 of 2007, s. 24 Subsection (4) inserted by No. 6 of 2007, s. 24 Substituted by No. 33 of 2015, s. 20
Section 150	Substituted by No. 33 of 2015, s. 20
Section 151	Substituted by No. 33 of 2015, s. 20
Section 152	Amended by No. 49 of 2002, s. 26, No. 12 of 2004, s. 37, No. 30 of 2005, s. 8, No. 6 of 2007, s. 25, No. 56 of 2008, s. 68 Substituted by No. 33 of 2015, s. 20 Amended by No. 33 of 2015, s. 20
Subdivision 2 of Division 3 of Part 8	
Section 153	Substituted by No. 33 of 2015, s. 20
Section 154	Amended by No. 49 of 2002, s. 27, No. 6 of 2007, s. 26 Substituted by No. 56 of 2008, s. 69 and No. 33 of 2015, s. 20
Section 155	Amended by No. 49 of 2002, s. 28, No. 57 of 2002, s. 17, No. 12 of 2004, s. 38 Subsection (7) inserted by No. 12 of 2004, s. 38 Subsection (8) inserted by No. 12 of 2004, s. 38

Water Management Act 1999
Act No. 45 of 1999

sch. 9

Provision affected	How affected
	Amended by No. 6 of 2007, s. 27
	Subsection (1) substituted by No. 56 of 2008, s. 70
	Amended by No. 56 of 2008, s. 70
	Subsection (4) substituted by No. 56 of 2008, s. 70
	Subsection (5) substituted by No. 56 of 2008, s. 70
	Subsection (6) substituted by No. 56 of 2008, s. 70
	Amended by No. 56 of 2008, s. 70
	Substituted by No. 33 of 2015, s. 20
Section 155A	Inserted by No. 6 of 2007, s. 28
	Amended by No. 56 of 2008, s. 71
	Subsection (4) substituted by No. 56 of 2008, s. 71
	Repealed by No. 33 of 2015, s. 20
Section 155B	Inserted by No. 56 of 2008, s. 72
	Repealed by No. 33 of 2015, s. 20
Section 156	Amended by No. 49 of 2002, s. 29, No. 56 of 2008, s. 73
	Substituted by No. 33 of 2015, s. 20
Section 157	Substituted by No. 49 of 2002, s. 30
	Amended by No. 6 of 2007, s. 29, No. 56 of 2008, s. 74
	Substituted by No. 33 of 2015, s. 20
Section 157A	Inserted by No. 49 of 2002, s. 30
	Repealed by No. 33 of 2015, s. 20
Section 158	Amended by No. 49 of 2002, s. 31, No. 57 of 2002, s. 18
	Substituted by No. 33 of 2015, s. 20
Division 4 of Part 8	Substituted by No. 33 of 2015, s. 20
Section 159	Subsection (7) substituted by No. 49 of 2002, s. 32
	Subsection (7A) inserted by No. 49 of 2002, s. 32
	Amended by No. 12 of 2004, s. 39
	Subsection (9) inserted by No. 12 of 2004, s. 39
	Amended by No. 6 of 2007, s. 30
	Subsection (7) substituted by No. 6 of 2007, s. 30
	Subsection (8) substituted by No. 6 of 2007, s. 30
	Amended by No. 6 of 2007, s. 30
	Subsection (10) inserted by No. 56 of 2008, s. 75
	Amended by No. 56 of 2008, s. 75
	Substituted by No. 33 of 2015, s. 20
Section 160	Amended by No. 6 of 2007, s. 31, No. 56 of 2008, s. 76
	Substituted by No. 33 of 2015, s. 20
Section 161	Substituted by No. 33 of 2015, s. 20
Section 162	Amended by No. 12 of 2004, s. 40
	Subsection (1) substituted by No. 6 of 2007, s. 32
	Amended by No. 6 of 2007, s. 32, No. 56 of 2008, s. 77
	Substituted by No. 33 of 2015, s. 20
Division 5 of Part 8	Inserted by No. 33 of 2015, s. 20
Section 163	Substituted by No. 33 of 2015, s. 20
Section 164	Amended by No. 49 of 2002, s. 33, No. 56 of 2008, s. 78
	Substituted by No. 33 of 2015, s. 20

Water Management Act 1999
Act No. 45 of 1999

sch. 9

Provision affected	How affected
Section 164A	Inserted by No. 33 of 2015, s. 20
Section 164B	Inserted by No. 33 of 2015, s. 20
Section 164C	Inserted by No. 33 of 2015, s. 20
Section 164D	Inserted by No. 33 of 2015, s. 20
Division 6 of Part 8	Inserted by No. 33 of 2015, s. 20
Section 164E	Inserted by No. 33 of 2015, s. 20
Section 164F	Inserted by No. 33 of 2015, s. 20
Section 164G	Inserted by No. 33 of 2015, s. 20
Section 164H	Inserted by No. 33 of 2015, s. 20
Section 164I	Inserted by No. 33 of 2015, s. 20
Section 164J	Inserted by No. 33 of 2015, s. 20
Section 164K	Inserted by No. 33 of 2015, s. 20
Section 164L	Inserted by No. 33 of 2015, s. 20
Section 164M	Inserted by No. 33 of 2015, s. 20
Division 7 of Part 8	Inserted by No. 33 of 2015, s. 20
Section 164N	Inserted by No. 33 of 2015, s. 20
Division 8 of Part 8	Inserted by No. 33 of 2015, s. 20
Section 164O	Inserted by No. 33 of 2015, s. 20
Section 164P	Inserted by No. 33 of 2015, s. 20
Section 164Q	Inserted by No. 33 of 2015, s. 20
Section 164R	Inserted by No. 33 of 2015, s. 20
Section 164S	Inserted by No. 33 of 2015, s. 20
Section 164T	Inserted by No. 33 of 2015, s. 20
Section 164U	Inserted by No. 33 of 2015, s. 20
Section 164V	Inserted by No. 33 of 2015, s. 20
Section 164W	Inserted by No. 33 of 2015, s. 20
Section 164X	Inserted by No. 33 of 2015, s. 20
Section 164Y	Inserted by No. 33 of 2015, s. 20
Section 164Z	Inserted by No. 33 of 2015, s. 20
Division 9 of Part 8	Inserted by No. 33 of 2015, s. 20
Section 164ZA	Inserted by No. 33 of 2015, s. 20
Section 164ZB	Inserted by No. 33 of 2015, s. 20
Division 10 of Part 8	Inserted by No. 33 of 2015, s. 20
Section 164ZC	Inserted by No. 33 of 2015, s. 20
Section 164ZD	Inserted by No. 33 of 2015, s. 20
Section 164ZE	Inserted by No. 33 of 2015, s. 20
Section 164ZF	Inserted by No. 33 of 2015, s. 20
Section 164ZG	Inserted by No. 33 of 2015, s. 20
Section 164ZH	Inserted by No. 33 of 2015, s. 20
Division 11 of Part 8	Inserted by No. 33 of 2015, s. 20
Section 164ZI	Inserted by No. 33 of 2015, s. 20
Section 164ZJ	Inserted by No. 33 of 2015, s. 20

Water Management Act 1999
Act No. 45 of 1999

sch. 9

Provision affected	How affected
Section 164ZK	Inserted by No. 33 of 2015, s. 20
Section 164ZL	Inserted by No. 33 of 2015, s. 20
Section 164ZM	Inserted by No. 33 of 2015, s. 20
Division 12 of Part 8	Inserted by No. 33 of 2015, s. 20
Section 164ZN	Inserted by No. 33 of 2015, s. 20
Section 165	Substituted by No. 33 of 2015, s. 20
Division 1	Inserted by No. 49 of 2002, s. 34
Section 165B	Amended by No. 12 of 2004, s. 41
Division 2	Inserted by No. 49 of 2002, s. 34
Section 165C	Amended by No. 33 of 2015, s. 21
Section 165D	Amended by No. 56 of 2008, s. 79
Division 3	Inserted by No. 49 of 2002, s. 34
Section 165F	Amended by No. 33 of 2015, s. 22
Section 165H	Amended by No. 12 of 2004, s. 42
Section 165K	Amended by No. 33 of 2015, s. 23
Section 165L	Amended by No. 33 of 2015, s. 24
Section 165P	Amended by No. 6 of 2007, s. 33
Division 4	Inserted by No. 49 of 2002, s. 34
Section 165V	Substituted by No. 33 of 2015, s. 25
Section 165W	Inserted by No. 33 of 2015, s. 25
Section 165X	Inserted by No. 33 of 2015, s. 25
Section 166	Amended by No. 49 of 2002, s. 35, No. 12 of 2004, s. 44, No. 52 of 2008, Sched. 1 and No. 51 of 2012, Sched. 2
Section 167	Amended by No. 12 of 2004, s. 45, No. 56 of 2008, s. 80 and No. 50 of 2013, Sched. 1
Section 171	Amended by No. 12 of 2004, s. 46 and No. 56 of 2008, s. 81
Section 173	Amended by No. 12 of 2004, s. 47
Section 175	Repealed by No. 56 of 2008, s. 82
Section 176	Amended by No. 12 of 2004, s. 48 and No. 56 of 2008, s. 83
Section 177	Amended by No. 12 of 2004, s. 49
Section 178	Amended by No. 56 of 2008, s. 84, No. 9 of 2011, Sched. 1 and No. 4 of 2017, Sched. 1
Section 180	Amended by No. 56 of 2008, s. 85
Section 181	Amended by No. 12 of 2004, s. 50, No. 30 of 2005, s. 9 and No. 56 of 2008, s. 86
Section 182	Amended by No. 49 of 2002, s. 36 and No. 56 of 2008, s. 87
Section 185	Substituted by No. 6 of 2007, s. 34 Amended by No. 33 of 2015, s. 26
Section 186	Amended by No. 56 of 2008, s. 88
Section 188	Amended by No. 56 of 2008, s. 89
Section 192	Amended by No. 30 of 2005, s. 10 and No. 56 of 2008, s. 90
Section 193	Amended by No. 49 of 2002, s. 37 Substituted by No. 12 of 2004, s. 51

Water Management Act 1999
Act No. 45 of 1999

sch. 9

Provision affected	How affected
Section 194	Amended by No. 49 of 2002, s. 38
Section 195	Amended by No. 49 of 2002, s. 39
Section 197	Amended by No. 49 of 2002, s. 40
Section 199	Amended by No. 56 of 2008, s. 91
Section 201	Amended by No. 49 of 2002, s. 41
Section 202	Amended by No. 4 of 2017, Sched. 1
Section 205	Amended by No. 12 of 2004, s. 52 and No. 56 of 2008, s. 92
Section 206	Substituted by No. 12 of 2004, s. 53 Amended by No. 56 of 2008, s. 93
Section 206A	Inserted by No. 12 of 2004, s. 53 Substituted by No. 56 of 2008, s. 94
Section 211	Substituted by No. 56 of 2008, s. 95
Section 211A	Inserted by No. 56 of 2008, s. 95
Section 213	Amended by No. 56 of 2008, s. 97
Section 216	Amended by No. 12 of 2004, s. 54
Section 219	Amended by No. 12 of 2004, s. 55
Section 221	Amended by No. 86 of 2000, Sched. 1, No. 50 of 2008, Sched. 1 Repealed by No. 50 of 2008, Sched. 2
Section 222	Substituted by No. 56 of 2008, s. 98
Section 223	Substituted by No. 56 of 2008, s. 99
Section 224	Repealed by No. 56 of 2008, s. 99
Section 225	Repealed by No. 56 of 2008, s. 99
Section 226	Amended by No. 56 of 2008, s. 100
Section 227	Substituted by No. 56 of 2008, s. 101
Section 228	Amended by No. 56 of 2008, s. 102
Section 230	Repealed by No. 56 of 2008, s. 103
Section 231	Amended by No. 56 of 2008, s. 104
Section 232	Repealed by No. 56 of 2008, s. 105
Section 233	Amended by No. 86 of 2000, Sched. 1 Repealed by No. 56 of 2008, s. 105
Section 234	Repealed by No. 56 of 2008, s. 105
Section 235	Amended by No. 49 of 2002, s. 42 and No. 56 of 2008, s. 106
Section 236	Amended by No. 56 of 2008, s. 107
Section 244	Amended by No. 86 of 2000, Sched. 1 and No. 56 of 2008, s. 108
Section 245	Substituted by No. 56 of 2008, s. 109
Section 246	Amended by No. 56 of 2008, s. 110
Division 1 of Part 13	Substituted by No. 72 of 2007, Sched. 1
Section 252	Substituted by No. 72 of 2007, Sched. 1
Section 253	Repealed by No. 72 of 2007, Sched. 1
Section 254	Repealed by No. 72 of 2007, Sched. 1
Section 255	Repealed by No. 72 of 2007, Sched. 1
Section 256	Repealed by No. 72 of 2007, Sched. 1
Section 256A	Inserted by No. 56 of 2008, s. 111

Water Management Act 1999
Act No. 45 of 1999

sch. 9

Provision affected	How affected
Section 257	Amended by No. 72 of 2007, Sched. 1
Section 259	Amended by No. 56 of 2008, s. 112
Section 263	Amended by No. 33 of 2015, s. 27
Section 265	Repealed by No. 18 of 2021, s. 348
Section 266	Repealed by No. 18 of 2021, s. 348
Section 267	Repealed by No. 18 of 2021, s. 348
Section 270	Amended by No. 56 of 2008, s. 113 and No. 33 of 2015, s. 28
Section 271	Amended by No. 49 of 2002, s. 43, No. 56 of 2008, s. 114 and No. 33 of 2015, s. 29
Section 274	Amended by No. 12 of 2004, s. 56 and No. 33 of 2015, s. 30
Section 275	Amended by No. 12 of 2004, s. 57, No. 56 of 2008, s. 115 and No. 33 of 2015, s. 31
Section 276	Amended by No. 6 of 2007, s. 35, No. 33 of 2015, s. 32 and No. 18 of 2021, s. 349
Section 278	Amended by No. 6 of 2007, s. 36, No. 33 of 2015, s. 33 and No. 18 of 2021, s. 350
Section 279	Amended by No. 6 of 2007, s. 37 and No. 33 of 2015, s. 34
Section 279A	Inserted by No. 57 of 2002, s. 19 Amended by No. 56 of 2008, s. 116 and No. 33 of 2015, s. 35
Section 280	Amended by No. 56 of 2008, s. 117
Section 280A	Inserted by No. 6 of 2007, s. 5
Section 280B	Inserted by No. 6 of 2007, s. 5
Section 280C	Inserted by No. 6 of 2007, s. 5
Section 280D	Inserted by No. 6 of 2007, s. 5
Section 280E	Inserted by No. 6 of 2007, s. 5
Section 280F	Inserted by No. 6 of 2007, s. 5
Section 284	Amended by No. 9 of 2011, Sched. 1 Substituted by No. 56 of 2008
Section 288	Amended by No. 4 of 2017, Sched. 1
Section 289	Amended by No. 4 of 2017, Sched. 1
Section 289A	Inserted by No. 49 of 2002, s. 44
Section 291	Amended by No. 42 of 2001, Sched. 1
Section 293	Amended by No. 33 of 2015, s. 36
Section 294	Amended by No. 72 of 2007, Sched. 1
Section 295A	Inserted by No. 56 of 2008, s. 119
Section 296	Amended by No. 33 of 2015, s. 37
Section 297A	Inserted by No. 33 of 2015, s. 38
Section 300A	Inserted by No. 56 of 2008, s. 120
Section 300B	Inserted by No. 33 of 2015, s. 39
Section 301	Substituted by No. 6 of 2007, s. 38 Amended by No. 56 of 2008, s. 121
Section 301A	Inserted by No. 6 of 2007, s. 39
Section 302	Amended by No. 56 of 2008, s. 122
Section 303	Amended by No. 56 of 2008, s. 123
Section 304	Amended by No. 12 of 2004, s. 58, No. 28 of 2006, s. 5

Water Management Act 1999
Act No. 45 of 1999

sch. 9

Provision affected	How affected
	and No. 56 of 2008, s. 124
Section 304A	Inserted by No. 49 of 2002, s. 45 Amended by No. 6 of 2007, s. 40, No. 56 of 2008, s. 125 and No. 34 of 2015, s. 21
Section 304B	Inserted by No. 49 of 2002, s. 45
Section 305	Amended by No. 56 of 2008, s. 126
Section 307A	Inserted by No. 56 of 2008, s. 127
Section 308	Amended by No. 30 of 2005, s. 11
Section 310	Repealed by No. 56 of 2008, s. 128
Section 314	Inserted by No. 34 of 2015, s. 22
Schedule 2	Amended by No. 86 of 2000, Sched. 1, No. 6 of 2007, s. 41 Repealed by No. 33 of 2015, s. 40
Schedule 3	Substituted by No. 56 of 2008, s. 129
Part 1 of Schedule 3	Amended by No. 56 of 2008, s. 129
Part 2 of Schedule 3	Amended by No. 56 of 2008, s. 129
Schedule 4	Amended by No. 49 of 2002, s. 46, No. 12 of 2004, s. 62 and No. 56 of 2008, s. 130
Schedule 4A	Inserted by No. 56 of 2008, s. 131
Schedule 5	Amended by No. 30 of 2005, s. 12
Schedule 9	Inserted by No. 34 of 2015, s. 23
