

## CLAUSE NOTES

### *Water Management Amendment (Dam Works) Bill 2015*

#### PART I – PRELIMINARY

Clause 1                      **Short Title**

Clause 2                      **Commencement**

This Act will commence on a day to be proclaimed.

Clause 3                      **Principal Act**

The Principal Act referred to in this Part is the *Water Management Act 1999*.

Clause 4                      **Section 3 amended (Interpretation)**

The definitions of 'Assessment Committee', 'Board', 'dedicated crown land', 'permit' and 'register' are rescinded as these are no longer applicable.

The term 'ANCOLD consequence category' is defined as 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 from time to time.

The definition of 'dam works' is amended to remove the reference to Part 8 and Part 8A.

The 'Director of Inland Fisheries' is defined as the Director of Inland Fisheries appointed under section 11 of the *Inland Fisheries Act 1995*.

The terms 'Division 3 permit' and 'Division 4 permit' are defined to state they have the same meaning as in Part 8 of the Act.

'Local newspaper' is amended to clarify that it refers to a local newspaper in the area in which a relevant dam is or is proposed to be situated.

'Nest' is defined as meaning a structure of place where a bird lays eggs and shelters its young and an animal's breeding place, den or burrow.

The term 'owner' is amended to refer to a new definition in section 3A.

The definition of 'register of licences, water allocations and permit' is inserted to mean the register kept under section 12(1).

'Register of dams' is inserted to mean the register of dams kept under section 12(1A).

'Take' is defined in relation to a threatened species, as having the same meaning as in the *Threatened Species Protection Act 1995*.

'Threatened species' is defined as having the same meaning as in the *Threatened Species Protection Act 1995*.

- Clause 5**                      **Section 3A inserted (Meaning of "owner")**  
This clause inserts the definition of owner for the purposes of this Act. Paragraphs (a) to (f) define owners of land in particular circumstances. Paragraphs (g) and (h) define the owners of a dam and a dam under construction respectively.
- Clause 6**                      **Section 8 amended (Functions and duties of the Minister)**  
A new paragraph (g) is inserted into subsection (1) to specify that one of the Minister's functions and duties relates to dam works under Part 8.
- Clause 7**                      **Section 10 amended (Delegation by Minister)**  
Paragraphs (b) and (c) are amended in subsection (5) to provide consistency with other amendments. Paragraph (d) in subsection (5) is omitted as it is no longer required.
- Clause 8**                      **Section 10A inserted (Delegation by Secretary)**  
This section allows the Secretary to delegate any of his or her powers and functions under the Act to any person.
- Clause 9**                      **Section 11 amended (Exemption from Act)**  
Subsection (2) is amended for consistency in terminology.
- Clause 10**                    **Section 12 amended (Minister to keep register of licences and permits)**  
Subsection (1) is amended to clarify that the Minister is to keep a register of licences, water allocations and permits  
  
Subsection (1A) is inserted to require the Minister to keep a register of dams for the purposes of Parts 8 and 8A.  
  
Subsection (8) is inserted to clarify that at any time the Minister may amend the register of dams to assign, review or change any particulars relating to dam safety.
- Clause 11**                    **Section 12A amended (Application requirements)**  
This section is amended to remove the reference to the 'Assessment Committee' and to include the 'Secretary'.
- Clause 12**                    **Section 14 amended (Scope of water management plans)**  
Reference to dam permits in subsection (3)(d) is removed as it is no longer relevant.

Clause 13	<b>Section 61 amended (Notification of financial interest)</b> Subsections (3) to (6) are amended for consistency in terminology.
Clause 14	<b>Section 69 amended (Variation of licences)</b> Paragraph (fa) of subsection (2) is amended to clarify that a licence may be varied to include conditions relating to the operation of a dam.
Clause 15	<b>Section 77 amended (Surrender of licences)</b> Subsection (2) is amended for consistency in terminology.
Clause 16	<b>Section 84 amended (Allocation of water)</b> Subsection (3A) is amended to clarify that it relates to Division 3 permits and Division 4 permits.
Clause 17	<b>Section 88 amended (Reduction of water allocations)</b> Subsection (1) is amended for consistency in terminology.
Clause 18	<b>Section 104 amended (Consent of parties with financial interest)</b> Subsection (1) is amended for consistency in terminology.
Clause 19	<b>Section 106 amended (Cancellation, &amp;c., of licence on conviction for offence)</b> Subsection (5) is amended for consistency in terminology.
Clause 20	<b>Part 8 (substituted)</b> This Clause repeals the existing Part 8 and replaces it with a new Part 8 (Dam Works).

## PART 8 – DAM WORKS

Sections 138 to 165 are inserted to legislate in respect of dam works.

### *DIVISION 1 – PRELIMINARY*

#### Section 138 Interpretation of Part

The term “affected permit holder” is defined as the holder of a permit who is required by a condition of that permit to register an offset in the offsets register.

The definition of ‘approval guidelines’ is defined as guidelines established by the Minister under section 142, as amended or substituted from time to time.

An ‘authorisation operator’ is defined as a person authorised by the owner of a dam to operate part, or all, of that dam or any infrastructure of the dam.

The term ‘dam operating notice’ means a notice issued under section 164ZC.

A 'Division 3 permit' is defined as a permit issued under section 158.

A 'Division 4 permit' refers a permit that is taken to be issued under section 161.

The 'EPA Board' is defined as the Board of the Environment Protection Authority established under section 13 of the *Environmental Management and Pollution Control Act 1994*.

The term 'holder of a permit' is defined to mean a person who holds a Division 3 permit or Division 4 permit.

A 'notice of offset' refers to a notice under section 164T.

An 'offset' is defined as any activity, mitigation measure or action to compensate for adverse impact that may result from dam works or a kind of activity, measure or action that is prescribed and endures beyond the duration of the permit.

The term 'offsets register' is defined as the register of offsets established and maintained under section 164P.

The phrase 'permit' is defined as referring to either a Division 3 permit or a Division 4 permit.

The term 'permit application' is defined as an application for a Division 3 permit.

The term 'registered offset' refers to an offset that is entered on the offsets register and any condition in relation to the offset that is entered under section 164R(3) on the offsets register.

#### Section 139 Non-application of Part

Section 139 details that Part 8 does not apply to dam works if primarily for the purpose of storing waste; or for the construction of a levee or bank during a flood and removed within four weeks; and any works exempted under section 140.

#### Section 140 Exemption from operation of Part

Section 140 provides for the exemption by Ministerial order of specific dam works or category of dam works from the operation of Part 8.

Subsection (2) details the criteria that may be used to exempt a category of dam works. And specifies under subsection (3), that the order may require reporting in relation to the undertaking or completion of dam works.

Subsection (4) states that such a notice is not a statutory rule.

#### Section 141 Minister to take certain matters into account

Section 141 specifies that certain matters are to be taken into account when considering applications and conditions that apply to Division 3 permits. This includes the Act's objectives – paragraph (a); prescribed standards – paragraph (b); relevant codes – paragraph (c); and any approval guidelines – paragraph (d).

#### Section 142 Approval guidelines

Subsection (1) provides that the Minister by order published in the *Gazette* may issue guidelines relating to the consideration and determination of Division 3 permits and conditions relating to such permits. The guidelines may include or adopt standards and codes – subsection (2) and may be amended or repealed through an order published in the *Gazette* – subsection (3).

Subsection (4) clarifies that when issuing or amending guidelines, the Minister may consult with persons whom he or she considers appropriate.

In accordance with subsection (5) any guidelines are to be published on the Department's website.

Subsection (6) clarifies that an order under subsections (1) or (3) is not a statutory rule.

### *DIVISION 2 – OFFENCE TO UNDERTAKE DAM WORKS WITHOUT AUTHORITY OF PERMIT*

#### Section 143 Offence to undertake dam works without permit

Subsection (1) establishes that it is an offence to undertake dam works without the authority of a permit unless certain criteria are met provided for by paragraphs (a) and (b).

Subsection (2) provides that it is a defence in proceedings for an offence if the defendant establishes that the dam works were necessary to maintain the structural integrity of the dam and only for that purpose and gave notification to either the Minister or an authorised officer within 2 working days.

### *DIVISION 3 – DIVISION 3 PERMIT*

#### *SUBDIVISION 1 – Applications for Division 3 permits*

#### Section 144 Application for Division 3 permit

Section 144 outlines the requirements for an application for a Division 3 permit to undertake dam works. Subsection (1) specifies that an application may be in respect of a single dam or a group of dams that collectively store, hold back or impede the flow of a single body of water.

Subsection (2) specifies the mandatory requirements to be included in an application. This includes complying with section 12A and including a declaration that the applicant has notified any land owners of the proposed dam works where they are on land not owned by the applicant.

If the Minister determines that the application does not constitute an application under this section, then in accordance with subsection (3), the Minister is required to notify the applicant.

Subsection (4) outlines the requirements for a notice under subsection (3), including that it must be in writing and given within 10 days of receipt of the application. It also must include information on the applicant's review and appeal rights.

Subsection (5) clarifies that an application is taken to have been made on the day that a determination is made that the application does comply with the requirements of this section as a result of a review under Part 14.

#### Section 145 Notice of permit application

Subsection (1) details the requirements for the Minister to give public notice of a permit application in a local newspaper as well as to a range of other parties under certain circumstances. Where the proposed works are in proximity to gas pipeline planning corridor, notification is to be given to the person operating the pipeline – paragraph (b). Where the dam works are proposed to be undertaken on another person's land, notification is to be given to the owner of the land – paragraph (c). Where the Minister considers that the proposed dam works will have an impact on adjoining land, that person may be notified – paragraph (d). And paragraph (e) enables the Minister to notify any person the Minister thinks fit of the application where it is his or her opinion that it is in the public interest to do so.

Subsection (2) outlines the matters covered by a notice including the details of the proposed dam works, location where copies of the full application may be viewed and an invitation to make written representations in relation to the proposal.

Subsection (3) requires the minimum period for representations to be not less than 14 days.

#### Section 146 Representations relating to permit application

Under subsection (1), a person who may be affected by a dam works proposal for which notice has been given, may make a representation in accordance with this subsection.

Subsections (2) and (3) cover the withdrawal of representations.

#### Section 147 Further notice of permit application

Subsection (1) requires the Minister within 14 days of receiving an application to notify the EPA Director and the Director of Inland Fisheries.

Subsections (2) and (3) outline the circumstances when notification to either the EPA Director or the Director of Inland Fisheries will not be undertaken.

#### Section 148 Referral by Director

Subsection (1) stipulates that the EPA Director has 14 days from receipt of a notice under section 147(1) to direct the applicant for a dam works permit to refer the details of the proposed dam works to the EPA Board for assessment (in accordance with section 27(2) of the *Environmental Management and Pollution Control Act 1994*).

If the EPA Director makes a direction to the EPA Board under subsection (1), the EPA Director must inform the Minister of that direction within 7 days – subsection (2).

Subsection (3) requires the EPA Director to inform the Minister within 7 days of any decision that the EPA Board makes in accordance with either section 27(3) or 27(4) of the *Environmental Management and Pollution Control Act 1994*.

#### Section 149 Minister may require further information or action

Subsection (1) enables the Minister, once the representation period ends by notice to require an applicant to provide further information or take specified action to assist with the determination of their application.

The form of the notice is specified in subsection (2), including the requirement to specify a time limit of not more than 2 years for complying with a notice and the rights of review or appeal against the notice Part 14.

Subsection (3) specifies that an applicant must comply with a notice for further information or action within the timeframe specified in the notice or where an extension has been granted within that timeframe.

An extension to the timeframe of a notice is provided for in subsection (4). And the parameters for the Minister to extend a notice are outlined in subsection (5).

#### Section 150 Statement of conditional approval

In the circumstances outlined in subsection (1), the Minister may issue to the applicant a statement that the permit application is likely to be granted if the requirements specified in the statement are met.

Subsection (2) clarifies that such a statement does not authorise the

undertaking of dam works nor prevent the Minister from refusing to grant the permit application.

#### Section 151 Amendment of permit application

Section 151 enables an applicant to request an amendment of their permit application if they are seeking to amend either the design, type, size, location or purpose of the proposed works.

Section 12A applies to the request as if it were an application – subsection (2).

Subsection (3) provides that the Minister may grant or refuse the request. And in accordance with subsection (4) the request may only be granted if it does not significantly alter the permit application.

Subsection (5) outlines who must be notified of the Minister's decision.

#### Section 152 Withdrawal of permit application

Section 152 details the circumstances when an application is taken to be withdrawn including when advised from the applicant and as a result of the failure to comply with a notice for further information under section 149 within the period defined in that notice.

### SUBDIVISION 2 – Determination of applications for Division 3 permits

#### Section 153 Time for determining permit application

In accordance with subsection (1)(a) the Minister is to determine a permit application within 12 weeks after the date on which the application was made. Under subsection (1)(b), this period can be extended by agreement between the application and the Minister.

Under subsection (2) a range of circumstances are listed that are not taken into account when calculating the 12 week period. This includes the referral by the EPA Director to the EPA Board, any requests for further information or action under section 149 and consideration of any application to amend a permit application in accordance with section 151.

#### Section 154 Failure by Minister to determine application

In the circumstance that the Minister fails to determine a permit application within the 12 week period referred to in section 153, this section provides that the Minister must grant the application and within 28 days issue a permit on conditions the Minister thinks fit.

#### Section 155 Consideration of permit application

Section 155 specifies a range of matters that the Minister must take into consideration when considering a permit application. This includes the matters referred to in section 141; any representations; advice from the EPA Director, Director of Inland Fisheries or relevant committees



established under section 9 of the Act; and information provided or action taken by the application to comply with a notice under section 149.

Subsection (1)(f) outlines a range of matters that the Minister must take into account when considering the potential impact of the dam works. This includes impacts on water resources, hydrology, natural values (including the mitigation or offset of adverse impacts), cultural heritage, inland fisheries, other water users, impoundment area impacts and the chemical nature and stability of the material contained in the dam.

Subsection (2) enables the Minister, when considering an application to consult with any person with expertise, knowledge or skills relevant to the determination of an application.

#### Section 156 Determination of permit application

Subsection (1) clarifies the meaning of the phrase 'previous Part 8'.

Subsection (2) requires the Minister to seek to further the objectives of the Act and to act consistently with any relevant State policy or approval guidelines when making a determination in relation to a dam permit application.

Subsection (3) states that the Minister may grant or refuse to grant a permit application. If the applicant agrees this may include the granting of the permit, subject to amendments to the permit application that the Minister considers appropriate.

Subsection (4) sets out the grounds on which the Minister must grant an application if reasonably satisfied that certain matters are met. This includes the application being consistent with the objectives of the Act, any relevant State policy or approval guidelines; and not resulting in material or serious environmental harm, significant adverse impacts on other persons taking water or adverse public safety impacts.

Subsection (5) sets out the grounds on which the Minister may refuse to grant an application. Under paragraph (a) refusal may occur if the permit application is not consistent with the objectives of the Act, any relevant State policy or approval guidelines. Refusal may occur as outlined in paragraph (b) where the Minister considers that the proposed dam works may result in material or serious environmental harm, have significant adverse impacts on other persons taking water or adversely impact public safety. Under paragraph (c) refusal may also occur if proposed dam works are within a gas pipeline planning corridor and may compromise the safety of the pipeline. Refusal may also occur if the applicant has been convicted of an offence relating to dams under this Act.

In accordance with subsection (6), if the EPA Board have determined that the proposed dam works must not proceed, the Minister is to

refuse the application.

Subsection (7) specifies that if refusal is made within 14 days of receipt of the application, notice is not required to be given in accordance with sections 145 and 147.

#### Section 157 Notification of determination of permit application

Under subsection (1) the Minister must, within 14 days of making a decision to grant or refuse a permit application, notify the applicant, owner of the land to which the proposed dam works relate and each person who lodged a representation.

The notification is to include the matters detailed in subsection (2) including the reasons for the refusal, any rights of review or appeal, the details of any relevant dam operating notice or relevant variations to a water licence and where the dam works are proposed on another person's lands, the dam safety obligations that will rest with the land owner as an owner of the dam.

#### Section 158 Issue of Division 3 permit

Section 158 requires the Minister to issue a permit on the granting of a permit application.

### *DIVISION 4 – DIVISION 4 PERMIT*

#### Section 21 Entitlement to Division 4 permit

Subsection (1) defines a range of terms used in this section.

The terms 'clearance and conversion', 'clearing of trees' and 'harvest' have the same meaning as in the *Forest Practices Act 1985*.

'Heritage area' and 'Heritage Register' have the same meaning as in the *Historic Cultural Heritage Act 1995*.

The terms 'conservation covenant' and 'threatened native vegetation community' have the same meaning as in the *Nature Conservation Act 2002*.

'Declared works' is defined as works declared under subsection (4) to be works that require a Division 3 permit.

Subsection (2) outlines the criteria that must to be met in order to be entitled to a Division 4 permit for dam works and includes the following:

- not on a watercourse; and
- relate only to a single dam and not a group of dams that store, hold back or impede the flow of a single body of water; and
- are on land this is unvegetated or vegetated land on which the harvesting of timber or the clearing of trees required as part of

the dam works would be a prescribed circumstances for which a forest practices plan is not required; and

- do no clear or convert a threatened native vegetation community unless it is a prescribed circumstance for which a forest practices plan is not required; and
- will not take a threatened species or destroy or damage a nest of such species; and
- is not within a gas pipeline planning corridor; and
- is not within a heritage area listed on the Heritage Register; and
- is not subject to a conservation covenant; and
- is not subject to a Part 5 agreement under *the Land Use Planning and Approvals Act 1993*; and
- is not on land owned by another person, unless their written consent has been obtained; and
- will not inundate land owned by another person, unless their written consent has been obtained; and
- are not works declared under subsection (4) as works that require a Division 3 permit.

Subsection (3) specifies that if a person is unsure about their eligibility that they may apply for a Division 3 permit.

Subsection (4) provides the head of power for the Minister by order to declare that specific works or class of works will require a Division 3 permit.

Subsection (5) states that an order under subsection (4) is a statutory rule.

#### Section 160 Notice of intention to undertake dam works

Subsection (1) requires a person who proposes to undertake dam works under the authority of a Division 4 permit to notify the Minister of the intention to undertake those dam works.

The requirements of the notice of intention are outlined in subsection (2). The information to be included is specified in paragraph (b) and includes the contact details of the proposed permit holder, location, photograph and description of the proposed works and a declaration that the proposed works meet the eligibility criteria set out in section 159(2).

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

Under section 161 a person is taken to have been issued with a Division 4 permit if they are eligible under section 159; have given notice under section 160; and the Minister has not issued a notice under section 162.

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

Where the Minister has received a notice of intent under section 160, in accordance with subsection (1) the Minister may issue a notice directing the person to stop work and to apply for a Division 3 permit or to undertake specific work or activity to the Minister's satisfaction. These measure will enable the Minister to ensure public safety and environmental safeguards are in place.

Subsection (2) specifies that a person must comply with a notice issued under subsection (1) and a penalty applies for non-compliance.

## *DIVISION 5 – PERMITS GENERALLY*

### Section 163 Authority of permit

Subsection (1) outlines that a permit authorises the undertaking of dam works in accordance with the permit. And in the case of a Division 4 permit, authorises dam works in accordance with the notice given under section 160.

Subsection (2) clarifies that a permit does not authorise that dam works can be undertaken when approval for those works are required under another enactment or without the consent of the owner of the land on which the dam works are to be undertaken.

### Section 164 Conditions of Division 3 permit

Subsection (1) states that a Division 3 permit is subject to conditions determined by the Minister and specified in the permit.

Subsection (2) outlines the types of conditions associated with a Division 3 permit.

### Section 164A Conditions of Division 4 permit

Subsection (1) states that a Division 4 permit is subject to conditions determined by the Minister in accordance with subsection (2).

Under subsection (2), the Minister may by order determine the conditions to which Division 4 permits are subject. Paragraphs (a) to (f) outline the types of conditions that may be included in an order including matters relating to engineer and construction, dam safety, sediment and erosion control, the taking and destruction of wildlife or wildlife products, matters prescribed in the regulations and other relevant matters.

In accordance with subsection (3) the Minister may amend or revoke the order.

Such an order is a statutory rule that may be made to apply differently to different types of dam works – subsection (4).

Subsection (5) clarifies that when an order is amended or revoked that

will apply to any person undertaking works in accordance with a Division 4 permit.

#### Section 164B Form of Division 3 permit

This section outlines the form of a Division 3 permit, namely that it is to be in an approved form, specify the term and the conditions to which it is subject.

#### Section 164C When permit takes effect

Subsection (1) defines the terms 'review' and 'appeal' for the purposes of this section.

Subsections (2) specifies the circumstances when a Division 3 permit takes effect. This includes 14 days after notification of the decision to grant an application; or a later date (if that date is specified on the permit); or after the resolution of any relevant an appeal or review under Part 14.

Subsection (3) states that a Division 4 permit takes effect 14 days after the day on which the permit is taken to be issued under section 161.

#### Section 164D Term of permit

Subsection (1) defines 'notice of completion' in respect of both a Division 3 permit and a Division 4 permit.

Subsections (2) specifies the term of a Division 3 permit being from the date of effect until either the permit expires or a notice of completion is received. Paragraph (a) also stipulates that the term of a Division 4 permit is to be not less than 2 years after the date of issue.

Subsection (3) specifies the term of a Division 4 permit being the day on which it is taken to be issued until either 2 years has elapsed; a notice of completion is received; or the Minister has issued a notice under section 162.

### *DIVISION 6 – AMENDING PERMITS*

#### Section 164E Extension of term of Division 3 permit

In accordance with subsection (1), a permit holder who wishes to extend the term of a Division 3 permit must apply to the Minister no later than one month before the permit is due to expire. Subsection (2) states that the requirements of section 12A apply to the application.

Subsection (3) specifies that the Minister's may extend the permit for up to two years or refuse to grant an extension if it is unlikely that the dam works will be completed within an extra two year timeframe.

#### Section 164F Other amendment of permit on application of permit holder

Subsection (1) clarifies that this section does not relate to the extension

of a permit as this is provided for in section 164E.

Under subsection (2), a Division 3 permit holder may apply to amend a permit and subsection (3) sets out the requirements for such an application.

#### Section 164G Determination of application to amend permit

Subsection (1) requires the Minister, in considering an application to amend a Division 3 permit to take into consideration the matters specified in section 155 and comply with section 156(2).

Subsection (2) states that the Minister may grant or refuse to grant an application to amend a permit. If the applicant agrees this may include the granting of the application subject to amendments that the Minister considers appropriate.

Subsection (3) clarifies that the Minister may only grant an application to amend a permit if the matters outlined in paragraphs (a) and (b) are met.

On granting an application subsection (5) enables the Minister to determine permit conditions under section 164.

#### Section 164H Notification of determination of application to amend permit

Under subsection (1) the Minister must, within 14 days of making a decision under section 164F, notify the applicant and the owner of the land to which the proposed dam works relate.

The notification is to include the matters detailed in subsection (2) including the reasons for the refusal and any rights of review or appeal.

#### Section 164I Amendment of permit to correct mistakes

This section provides the Minister with the power to correct mistakes on a permit as well as to change the name or address of a person.

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

Where the Minister considers that undertaking the dam works in accordance with the permit may be or is causing material or serious environmental harm, then under this section the Minister is authorised to amend a Division 3 permit or in relation to a Division 3 or Division 4 permit to take action under section 164ZM or Part 8A.

#### Section 164K Amendment of permit in accordance with conditions of Appeal Tribunal

This section clarifies that if as a result of an appeal to the Appeal Tribunal in relation to the issue of a Dam Operating Notice, the conditions of that operating notice are varied, the Minister has the power to amend the dam permit to take account of those amendments

by the Appeal Tribunal.

#### Section 164L When amendment takes effect

Section 164L specifies when the amendment to a Division 3 permit takes effect.

#### Section 164M Issue of amended permit

This section provides that if a permit is amended the Minister is to re-issue the permit to its holder.

### *DIVISION 7 – TRANSFER OF PERMITS*

#### Section 164N Transfer of permit

In accordance with subsection (1), a permit holder may apply to the Minister to transfer a permit to another person.

Subsection (2) states the requirements that must be contained in an application.

Subsection (3) specifies that the Minister may approve or refuse an application to transfer a dam permit. With subsection (4) detailing the circumstances under which the Minister must approve an application.

If the application is refused, the Minister must in accordance with subsection (5) notify the applicant, including the reasons for the refusal.

Subsection (6) specifies what notification is to be given to the transferor and transferee on the granting of an application.

Subsection (7) specifies when the transfer of a permit takes effect.

### *DIVISION 8 – REGISTRATION OF OFFSETS FOR DAM WORKS*

#### Section 164O Interpretation of Division 8

Section 164O defines the terms 'notice of amendment of offset', 'notice of cancellation of offset', 'Recorder', 'Register' and 'registered land' to clarify their meaning in Division 8.

#### Section 164P Offsets register

Subsection (1) provides the power for the Secretary to establish and maintain an offsets register, containing information that the Secretary considers appropriate – subsection (2).

Subsections (3) and (4) cover what information from the offsets register will be made publicly available and published on the Department's website.

#### Section 164Q Application to register offset

Subsection (1) provides that a permit holder who is required as a condition of their permit to register an offset may apply to the Secretary for such registration.

In accordance with subsection (2), an application must comply with the requirements of section 12A and be accompanied by the prescribed fee (if any). And if it is a land based offset on land not owned by the applicant, subsection (2)(b) requires the written permission of the land owner to the registration to be included in the application.

#### Section 164R Registration of offset

Subsection (1) specifies that the Secretary may approve or refuse the application for an offset.

Under subsection (2) the Secretary is required to register an offset in the offsets register unless it has not been approved. In accordance with subsection (3), the registration is to include conditions required to ensure the offset is carried out.

Subsection (4) details the circumstances under which the Secretary must not approve an application for registration of an offset. This includes the proposed offset not meeting the requirements in relation to a condition of a dam permit to which the offset relates and land owner approval under section 164Q(2)(b) not being obtained.

Subsection (5) requires the Secretary to notify an affected permit holder of a decision under subsection (1) as soon as practicable.

#### Section 164S Duration of offset

This section specifies that a registered offset continues until the circumstances outlined in either paragraph (a) or (b) occur. That includes the cancellation of the offset on the direction of the Minister under section 164W.

#### Section 46 Notice of offset to be lodged with the Recorder

Where the Secretary considers that a registered offset affects land, a notice of offset is to be lodged with the Recorder of Titles in accordance with subsection (1).

To avoid doubt, subsection (2) states that an offset that effects land that is either a conservation covenant (within the meaning of Part 5 of the *Nature Conservation Act 2002*); or an agreement under Part 5 of the *Land Use Planning and Approvals Act 1993* do not need to be lodged with the Recorder (given that they are already noted on the relevant land title).

Subsection (3) requires the notice of offset to be in a form approved by the Recorder and to be lodged as soon as possible after the Secretary enters it on the offsets register.



Under subsection (4), once the notice of offset is lodged with the Recorder, the Recorder must ensure that the notice is available for viewing by a person who views the relevant land folio on the Lands Title Register.

Subsection (5) states that if a notice of offset does not relate to registered land, the Recorder as soon as reasonably practicable will register a copy of the notice in the Registry of Deeds under the *Registration of Deeds Act 1935*.

Subsection (6) clarifies that the ability to view a notice of offset in relation to a particular parcel of land will not be affected by the subsequent disposition of land or any dealing in that land.

Subsection (7) states that the Recorder is entitled to assume that all necessary pre-requisites and procedures in respect of the notice of offset have been completed.

#### Section 164U Amendment of registered offset

Subsection (1) states who may apply to the Secretary to amend a registered offset, this includes a land owner (where an offset relates to land) and where an offset relates to water, the owner of the dam to which the registered offset relates.

In accordance with subsection (2), an application must comply with the requirements of section 12A and be accompanied by the prescribed fee (if any).

Subsection (3) allows the Secretary to grant an application for amendment of a registered offset, but in doing so must have regard for the conservation or protection of natural values and cultural heritage and will not result in any new, significant or increased adverse impacts to the environment. And in accordance with subsection (3)(b), must have the permission of a land owner to which the offset relates.

Subsection (4) specifies that the Secretary may refuse the application to amend a registered offset if not satisfied with the matters specified in subsection (3).

Subsection (5) sets out what the Secretary is to do on granting an application to amend a registered offset. This includes amending the offsets register and where appropriate lodging with the Recorder of Titles a notice of amendment of offset.

Subsection (6) requires the notice of offset to be in a form approved by the Recorder and to be lodged as soon as possible after the Secretary enters it on the offsets register.

Under subsection (7), once the notice of amendment of an offset is lodged with the Recorder, the Recorder must ensure that the notice is

available for viewing by a person who views the relevant land folio on the Lands Title Register.

Subsection (8) states that the amendment of an offset takes effect when registered by the Secretary on the offsets register.

#### Section 164V Amendment of offset register to correct mistakes

Subsection (1) provides the Secretary with the power to correct mistakes on an entry on the offsets register.

Subsection (2) states that where the Secretary makes such an amendment, notice of that amendment is to be lodged with the Recorder. And that section 164U(6) to (8) applies to a notice of offset under this section.

#### Section 164W Minister may direct cancellation of registration of offset

In accordance with subsection (1), the Minister can direct the Secretary to cancel and offset where the circumstances outlined in paragraphs (a) and (b) apply.

Subsection (2) outlines the Secretary's actions on receipt of a Ministerial direction, including who is to be informed of the cancellation.

#### Section 164X Cancellation of registered offset when offset naturally ends

Subsection (1) requires the notification to be given to the Secretary when a registered offset comes to its natural end. The Secretary is to cancel the registration of the offset in accordance with subsection (2).

#### Section 164Y Notice of cancellation of offset to be lodged with Recorder

Subsection (1) requires the Secretary to lodge a notice of cancellation of offset with the Recorder. The content of the notice is specified in subsection (2) and subsection (3) requires the Recorder to remove any relevant notice of offset from the Register.

#### Section 164Z No fees payable under *Land Titles Act 1980*

This section clarifies that no fee is payable under the *Land Titles Act 1980* in relation to the lodgement of notices relating to offsets.

### *DIVISION 9 – COMPLETION OF DAM WORKS*

#### Section 164ZA Completion of dam works under Division 3 permit

Subsection (1) requires a permit holder to notify the Minister of the completion of dam works. This includes a penalty for non-compliance.

Subsection (2) outlines the matters that the Minister may require from the permit holder on receipt of the notice of completion.

Subsection (3) requires that a permit holder must comply with a request under subsection (2) and a penalty is included for non-compliance.

Subsection (4) states that on receipt of either a notice of completion or any further information provided in accordance with either subsection (2)(a) or (c) the Minister may accept the notice of completion.

Subsection (5) specifies the actions of the Minister on acceptance of a notice of completion including registering the dam and notifying the permit holder of that acceptance.

#### Section 164ZB Completion of dam works under Division 4 permit

Subsection (1) requires a permit holder to notify the Minister of the completion of dam works within 30 days of completion. This subsection includes a penalty for non-compliance.

Subsection (2) outlines the requirements for a notice of completion for a Division 4 permit.

Subsection (3) outlines the matters that the Minister may request from the permit holder on receipt of the notice of completion.

Subsection (4) requires that a permit holder must comply with a notice under subsection (3) and a penalty is included for non-compliance.

Subsection (5) states that on receipt of either a notice of completion or any further information provided in accordance with either subsection (2)(a) or (c) the Minister may accept the notice of completion.

Subsection (6) specifies the actions of the Minister on acceptance including registering the dam and notifying the permit holder of that acceptance.

### *DIVISION 10 – DAM OPERATING NOTICES*

#### Section 164ZC Dam operating notice

Subsection (1) specifies the purposes for which the Minister may issue a dam operating notice. This includes to ensure that the operation of the dam has no adverse impacts on other water users, to prevent pollution, to protect the environment or to prevent the inundation of land not owned by the owner of the dam.

Subsection (2) outlines when a dam operating notice may be issued and to whom. Subsection (3) clarifies that when a dam operating notice is issued at the same time that a Division 3 permit is granted, a

person may combine an appeal against the dam operating notice and granting of the permit into a single appeal under Part 14.

In accordance with subsection (4), if a dam operating notice is issued to more than one person they are joint and severally liable for compliance with that notice.

Subsection (5) clarifies that if a dam operating notice is inconsistent with an authorisation, that the dam operating notice prevails over the authorisation to the extent of the inconsistency.

A dam operating notice may be amended or revoke in accordance with subsection (6).

Subsection (7) states that a dam operating notice takes effect on the day specified in the notice.

#### Section 164ZD Details of dam operating notice

Section 164ZD outlines the details of a dam operating notice which includes the specifying the person to whom it is issued; the reasons for its issue; conditions to which it is subject.

This section also specifies that the notice may require a person to take certain measures specified in the notice in order to ensure the operation of the dam will not have a significant adverse impact on other water users or cause material or serious environmental harm or inundate land owned by another person.

#### Section 164ZE Period of dam operating notice

Section 164ZE specifies that a dam operating notice has effect until either the notice expires or is revoked.

#### Section 165ZF Notification of cessation of duties under dam operating notice

Subsection (1) defines the term responsible person for the purposes of this section. Subsection (2) outlines the requirements of a person who ceases to be responsible for a dam to notify the Minister and to provide the name of any person who has become responsible for the operation of that dam. This subsection also includes a penalty for non-compliance.

#### Section 164ZG Transfer of dam operating notice

Subsection (1) enables the Minister to vary a dam operating notice on receipt of a notice under section 164ZF(2).

Subsection (2) requires the Minister, on amendment of the dam operating notice to issue a revised dam operating notice and provides that the original operating person ceases to be bound by the dam operating notice.

Subsection (3) clarifies that the new responsible person has no rights of review or appeal under Part 14 in relation to the issue of a dam operating notice under this section.

Section 164ZH Amendment of dam operating notice to correct mistakes

Section 164ZH provides the Minister with the power to correct mistakes on a dam operating notice.

*DIVISION 11 – OFFENCES*

Section 164ZI Offence to contravene permit conditions

Section 164ZI states that a permit holder must not contravene a dam works permit condition, and includes a penalty for non-compliance.

Section 164ZJ Offence to contravene dam operating notice or conditions

Section 164ZJ states that a person who has been issued with a dam operating notice must not contravene that notice or a condition of that notice. This section includes a penalty for non-compliance.

Subsection (2) stipulates that if a dam operating notice is issued to more than one person that each person is jointly and severally liable for a contravention under this section.

Section 164ZK Offence to contravene registered offset

Subsection (1) states that if a registered offset relates to land, the owner of the land must comply with the registered offset. Subsection (2) provides that if a registered offset relates to water, the person who owns the dam to which the registered offset relates must comply with a registered offset.

Penalties for non-compliance are stipulated in both subsections.

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

Section 164ZL clarifies that in any proceedings for an offence under this or any other Act in relation to the taking of threatened species or nest products of such species, it is not a defence for a person to allege that authority was given under the authority of a Division 3 or Division 4 permit.

Section 164ZM Ministerial action following contravention of Part

Subsection (1) states that where a person is found guilty of an offence under Part 8 in relation to dam works or a dam operating notice, the Minister may require persons to take particular action. Paragraphs (a) to (c) clarify the persons to whom this applies.

Subsection (2) outlines the types of requirements that a person may be

required to do and their rights of review or appeal under Part 14.

Under subsection (3), a person must comply with a requirement under subsection (2) and this subsection includes a penalty for non-compliance.

Subsection (4) outlines the action that the Minister is entitled to take action where a requirement under subsection (2) has not been complied with. This includes authorising a person to enter land and to undertake the relevant action and the recovery of costs associated with undertaking such action.

Subsection (5) states that where action is required under subsections (1) or (4)(a), a person is not required to obtain a permit unless specified by the Minister.

## *DIVISION 12 – MISCELLANEOUS*

### Section 164ZN Minister to prepare annual report

Subsection (1) requires that by 1 October each year the Minister is to prepare a report on the operation of Part 8 for the previous financial year. In accordance with subsection (2), the report is to published on the Department's website.

### Section 165 Review to be conducted

Subsection (1) requires the Minister is to conduct an annual review of the operation of administrative processes under Part 8 of the Act and the terms of the review are to be prescribed in the regulations.

Subsection (2) specifies that in undertaking the annual review, Minister may consult with such person as he or she considers appropriate.

Subsection (3) stipulates that this section expires 6 years after the *Water Management (Dam Works) Amendment Act 2015* commences.

## **Clause 21**

### **Section 165C amended (Functions of Minister)**

Paragraph (b) is omitted from section 165C, it is now covered by amendments to section 12 of the Act.

## **Clause 22**

### **Section 165F amended (Referral of applications under another enactment))**

Subsections (1) to (5) are amended to replace 'Assessment Committee' with 'Minister'. Subsection (3) is also amended to clarify that it refers to a Division 3 permit and to ensure consistency with the proposed amendments to Part 8.

## **Clause 23**

### **Section 165K amended (Operation and maintenance manuals**

Subsections (1) and (3) are amended to remove references to the 'Assessment Committee'.

Clause 24	<p><b>Section 165L amended (Directions for maintenance, &amp;c., of dams)</b>  Subsection (4)(a) is omitted as it is no longer required.</p>
Clause 25	<p><b>s.165V (substituted)</b>  The existing section 165V is repealed and substituted with the following provisions.</p> <p><u>Section 165V No requirement for permit where dam works required by direction or notice</u>  A new section 165V is inserted to clarify that a permit under Part 8 is not required for dam works that are required to be undertaken as a result of a notice or direction under sections 165L, 165N or 165P.</p> <p><u>Section 165W inserted (Registration of dams works)</u>  Under subsection (1) the Minister by order may declare that dams with certain characteristics are to be registered with the Secretary.</p> <p>Subsection (2) states the order is not a statutory rule.</p> <p>Subsection (3) outlines the type of information that must be given to the Secretary by the owner of a dam and includes a penalty for non-compliance.</p> <p>Subsection (4) clarifies that when there is more than one owner of a dam, notice is taken to have been given when notice is received by one of those owners.</p> <p>Under subsection (5) the Secretary may seek further information in relation to the safety of the dam.</p> <p>Subsection (6) requires compliance with a notice under subsection (5) and specifies a penalty for non-compliance.</p> <p><u>Section 165X Minister may assign, &amp;c., ANCOLD consequence category</u>  Subsection (1) provides the Minister with the power to assign or review or alter an ANCOLD consequence category.</p> <p>The Minister is required to give notice to the owner of the land on which the dam is situated where an ANCOLD consequence category has been assigned or altered under subsection (1).</p> <p>Subsection (3) clarifies that any change to an ANCOLD consequence category under subsection (1) is taken to be the assigned ANCOLD consequence category for that dam.</p>
Clause 26	<p><b>Section 185 amended (Requirements for permits)</b>  This section is amended for consistency with the proposed amendments to Part 8.</p>

Clause 27

**Section 263 amended (Correction of notation of demerit points)**  
This section is amended for consistency in terminology.

Clause 28

**Section 270 amended (Interpretation of Division)**  
Section 270 is amended as follows.

Paragraphs (d) and (e) are amended to correct drafting errors.

Paragraphs (i), (l) and (m) are omitted.

Paragraphs (le) to (lp) are inserted.

Paragraph (le) is inserted to include the applicant as an interested person in respect of a determination under section 144(3) that an application for a Division 3 permit does not comply with the relevant requirements.

Paragraph (lf) defines the applicant as an interested person in respect of a requirement under section 149.

Paragraph (lg) defines the applicant and representors as interested persons in respect of a determination under section 156

Paragraph (lh) defines an interested person in respect of a notice under section 162, as the person undertaking the dam works to which the notice relates.

Paragraph (li) defines the applicant and representors as interested persons in respect of the imposition of conditions on a Division 3 permit under section 164.

Paragraph (lj) defines the applicant as an interested person in relation to the refusal to extend the term of a Division 3 permit under section 164E

Paragraph (lk) defines the applicant as an interested person in respect of a refusal to amend a permit under section 164G.

Paragraphs (lm) and (ln) define the holder of a permit as an interested person in respect of the issuing to the holder of a permit a requirement under sections 164ZA(2) and 164ZB(3), respectively.

Paragraph (lo) states that the interested person in respect of the issue under section 164ZC of a dam operating notice, is the person to whom the notice is issued.

In relation to a direction given under section 164ZM or section 282(3), paragraph (lp) defines an interested person as the person on whom the notice is served; and where the notice is served on a person other than



the owner of the relevant land, the owner or occupier of that land.

**Clause 29**

**Section 271 amended (Reviewable decisions)**

Subsection (1) is amended as follows.

Paragraphs (d) and (h) are omitted.

Reference to sections 135 and 145 are omitted from paragraph (f).

Paragraph (h) is substituted with a new provision that refers to a refusal under section 181(5)(c).

Paragraphs (je) to (jo) are inserted as reviewable decisions under this section. This includes:

A determination under section 144(3) that an application for a Division 3 permit does not comply with the relevant requirements – paragraph (je).

A requirement under section 149 – paragraph (jf).

A determination under section 156 of an application for a Division 3 permit – paragraph (jg).

A notice under section 162 – paragraph (jh).

The imposition of conditions on a Division 3 permit under section 164 – paragraph (ji).

A refusal to extend the term of a Division 3 permit under section 164E – paragraph (jj).

A refusal to amend a permit under section 164G– paragraph (jk).

A requirement under section 164ZA(2) – paragraph (jl).

A requirement under section 164ZB(3) – paragraph (jm).

The issue under section 164ZC of a dam operating notice – paragraph (jn).

A direction given under section 164ZM or section 282(3) – paragraph (jo).

**Clause 30**

**Section 274 amended (Interpretation of Division)**

Paragraphs (d) and (e) are omitted, as all interested persons are now defined in section 271 and covered by the requirement in subsection (1)(a).

**Clause 31**

**Section 275 amended (Appealable decisions)**

Reference to sections 135, 147 and 282(3) are omitted from paragraph (i).

Paragraph (j) and (l) are omitted and the following appealable decisions are substituted:

A determination under section 156 – paragraph (j).

The imposition of conditions on a Division 3 permit under section 164 – paragraph (ja).

The issue under section 164ZC of a dam operating notice – paragraph (jb).

A direction given under section 164ZM or section 282(3) – paragraph (jc).

- Clause 32**                      **Section 276 amended (Appeal to Appeal Tribunal)**  
Subsection (4) is amended for consistency with amendments to Part 8 and to incorporate an appeal in relation to the issuing of a dam operating notice.
- Clause 33**                      **Section 278 amended (Form of appeal to Appeal Tribunal)**  
Subsection (3) is amended for consistency with amendments to Part 8.
- Clause 34**                      **Section 279 amended (Determination of appeal)**  
Subsections (1) and (2) are amended for consistency in terminology.
- Clause 35**                      **Section 279A amended (Compensatory orders for gas pipeline safety detriments)**  
This section is amended for consistency in terminology.
- Clause 36**                      **Section 293 amended (Evidentiary provision for documents)**  
Subsection (1) is amended for consistency in terminology.
- Clause 37**                      **Section 296 amended (Compensation not payable for stopping, &c., flow of water)**  
This section is amended for consistency in terminology.
- Clause 38**                      **Section 297A inserted (Service of notices and other documents)**  
This section clarifies how notices and other documents are to be served or issued to a person. It covers both a person and a natural person and describes how it can be served by post, facsimile or electronic mail and in the case of a natural person, handed to that person.
- Clause 39**                      **Section 300B inserted (Calculation of number of days)**  
This section clarifies that a reference in the Act to a number of days excludes statutory holidays and any day between 26 December and the following 1 January.

Clause 40

**Schedule 2 repealed**

Schedule 2 detailing the constitution and procedure of the Assessment Committee for Dam Construction is repealed.

Clause 41

**Repeal of Act**

This clause allows for the repeal of this Act one year from the day on which it commences.