

Water Legislation Amendment Bill 2008

Clause Notes

PART 1 – PRELIMINARY

Clause 1 **Short Title**

Clause 2 **Commencement**

This Bill will commence on a day or days to be proclaimed.

PART 2 – WATER MANAGEMENT ACT 1999 AMENDED

Clause 3 **Effect of certain consequential amendments**

This section clarifies that Regulations amended by this Act can be subsequently be amended via regulation in the future.

Clause 4 **Principal Act**

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

Clause 5 **Section 3 amended (Interpretation)**

The definition of applicant, elector and general newspaper are omitted as they are no longer required.

The definition of meter is amended to refer to an instrument that measures and records the flow or level of water. A meter may also include any ancillary device such as a datalogger.

Special Act is defined by referring to section 190(b) of the Act.

The definition of statutory rule is inserted for consistency throughout the Act.

Tidal area is redefined to refer to that area of a watercourse below the mean high water mark. This clarifies the existing situation regarding the taking of water from a tidal area.

The definition of water resource is expanded to include reference to a tidal area declared under the new Section 5A

The definition of well works is simplified for consistency with other jurisdictions.

- Clause 6** **Section 5 amended (Application of Act)**
Section 5(2) is amended to enable the tidal area declared under Section 5A to be subject to the Act.
- Clause 7** **Section 5A inserted (Tidal Areas)**
Section 5A is inserted to allow for a Ministerial order to declare that the taking of water in certain tidal areas is subject to the Act.
- Clause 8** **Section 10 amended (Delegation)**
This clause corrects drafting errors in subsection (5)(c).
- Clause 9** **Section 11 amended (Exemption from Act)**
Subsection (1A) is inserted to clarify the status of the Order mentioned in subsection (1).
- Clause 10** **Section 12 amended (Minister to keep register of licences and permits)**
Subsection (1) is amended to enable the register to include licences and permits issued under any Part of this Act.

Subsection (3) clarifies that the register may be inspected without charge.
- Clause 11** **Section 12A inserted (Application requirements)**
Section 12A is inserted to standardise application requirements for applications made to the Minister or Assessment Committee under this Act. The requirements under Section 12A are consistent with existing powers in the Act.
- Clause 12** **Section 14 amended (Scope of water management plan)**
Subsection (1)(ca) is inserted to provide for consistency with amendments in Clauses 5, 7 and 28 of the Bill and enables a water management plan to relate to declared tidal areas.
- Clause 13** **Section 25 amended (Public exhibition of draft plan)**
Section 25 is amended for consistency in terminology.
- Clause 14** **Section 26 amended (Consideration of representations)**
Section 26 is amended for consistency in terminology.
- Clause 15** **Section 27 amended (review by Commission)**
Section 27 is amended for consistency in terminology.
- Clause 16** **Section 29 amended (When do water management plans take effect?)**

Section 29 is amended to clarify when a Water Management Plan or an amended Plan takes effect. A Plan takes effect when a notice is published in the Gazette stating that the Minister has adopted the Plan.

- Clause 17** **Section 30 repealed (Notice of adoption of water management plan)**
The existing Section 30 is repealed and incorporated as part of the amended Section 35.
- Clause 18** **Section 31 amended (Interim water management plan)**
Subsection (1A) is inserted to clarify the status of the Order mentioned in subsection (1).
- Clause 19** **Section 34 amended (Review and amendment of water management plans)**
Section 34 is amended for consistency in terminology.
- Clause 20** **Section 35 substituted (Notice of amendment of plan)**
The existing Section 35 is substituted with provisions requiring notice of a Plan taking effect be given to relevant councils and any persons who made a representation on a Plan or amended Plan.
- Clause 21** **Section 36 amended (Implementation of plans)**
Subsection (3) is substituted by a new subsection (3) that replaces the reference to council with water entity. A water entity is defined as including councils.
- Clause 22** **Section 37 amended (Application by water entity or land owners)**
Subsections (2) and (3) are amended to more clearly describe the requirements for an application to administer a Water Management Plan by a water entity or group of landowners. The existing application requirements have not altered, rather reference is made to standard requirements provided for by Section 12A.
- Clause 23** **Section 38 amended (Approval of application)**
Subsection (1A) is inserted to clarify the status of the Order mentioned in subsection (1).
- Clause 24** **Section 39 amended (Withdrawal of representation)**
Subsection (1) is amended to more clearly clarify the timeframe when a representation may be withdrawn.
- Clause 25** **Section 47 amended (Revocation of approval)**

Subsection (2A) is inserted to clarify the status of the Order mentioned in subsection (2).

Clause 26

Section 48 amended (Rights to take water)

Subsection (4A) is amended to remove reference to a water management plan or a declared groundwater area which are now covered in the amended Section 53.

Clause 27

Section 53 amended (Exceptions to general rights) Paragraph (a) is expanded to include other matters currently not listed in the exceptions to general rights. This includes a short-term water allocation, temporary transfer under Section 103, watercourse authority, permit to undertake well works and water supply emergency direction. Subparagraphs (i) and (vii) were previously incorporated into Section 48(4A).

Clause 28

Section 54 substituted (Licences)

Section 54 is substituted in order to more clearly outline the requirement for licences under Part 6. It includes some new provisions:

- Subsection (1)(c) – a licence is required to take water in those tidal areas declared under section 5A.
- Subsection (2)(d) & (e) – the requirement for a licence does not apply to an authorisation under Section 90A or direction under Section 280D.

Clause 29

Section 56 amended (Details of licence)

Subsection (1) is amended as follows:

- Paragraph (aa) is inserted to require that a licence specifies the name and address details of the licensee.
- Paragraph (a) is amended to state that a licence may specify the water resource from which water is to be taken.
- Paragraph (e) is expanded to clarify when variations can be made to licences.
- Paragraph (f) is amended for consistency in terminology. Subsection (2) is amended to clarify that subsection (1) may apply to separate allocations of the same licence.

Clause 30

Section 57 amended (Duration of licence)

Subsection (1) is amended for consistency in terminology.

Clause 31

Section 61 amended (Notification of financial interest)

As water licences are no longer tied to land Section 61 is amended to remove reference to land in subsections (1), (2) and (4) and to repeal subsection (7).

- Clause 32** **Section 62 substituted (Application for licence)**
Section 62 is amended for consistency with the standardized application requirements outlined in the proposed Section 12A. The existing application requirements have not altered.
- Clause 33** **Section 64 amended (Refusal of application for a licence)**
Paragraphs (a) and (b) are amended for consistency in terminology.
- Clause 34** **Section 65 amended (Notice of application for licence)**
A new Subsection (3) has been inserted to enable the Minister to waive the requirement to advertise applications for stock and domestic water licences where less than 0.01 megalitres per day is to be taken and there would be no significant effect on other water users or the environment.
- Clause 35** **Section 69 amended (Variation of licences)**
Subsection (2) is amended for consistency in terminology and a new paragraph (h) is inserted to clarify the linkage to a relevant Order made under Section 192.
- Clause 36** **Section 70 substituted (Requirement for application to vary licence)**
Section 70 is amended for consistency with the standardized application requirements outlined in the proposed Section 12A. The existing application requirements have not altered.
- Clause 37** **Section 71 amended (Notice of application to vary licence)**
Subsection (5) is inserted to enable the Minister to waive the requirement to advertise applications for variations to stock and domestic water licences where less than 0.01 megalitres per day would be taken and there would be no significant effect on other water users or the environment.
- Clause 38** **Section 73 amended (Approval of application to vary licence)**
Section 73 is amended for consistency in terminology.
- Clause 39** **Section 77 substituted (Surrender of licences)**
Section 77 is amended for consistency in terminology.
- Clause 40** **Section 78 repealed**
Section 78 is repealed as the power to make copies of licences available for inspection is adequately dealt with in Section 12(3).
- Clause 41** **Section 80 substituted (Renewal of licences)**

Section 80 is amended for consistency in terminology and to allow for automatic licence renewal.

Clause 42

Section 87 amended (Re-allocation of water)

Subsection (1) is amended by inserting paragraph (ab) clarifying that a water allocation may be reallocated when it vests in the Minister on the surrender of a licence on which it was endorsed.

Subsection (2)(c) is reworded to clarify the liability from a former licensee relates to a financial interest noted on the register.

Clause 43

Section 90 substituted

This clause substitutes the current Section 90 with a revised Section 90 and a new Section 90A to facilitate a more effective system for enabling temporary and short term allocation of water.

Section 90 (Temporary water allocations)

Section 90 is amended to allow an authorised officer to permit a person to take water for a limited period. Subsections (2) to (10) are inserted to state when an authorised officer can give permission under Subsection (1) and what conditions can be placed on the taking of the water. Subsection (11) is inserted to make it an offence to contravene conditions imposed by an authorised officer. Section (12) specifies the maximum length of a temporary water allocation as 6 months.

Section 90A (Short-term water allocations)

Section 90A is inserted to enable short-term water allocations to be made for up to 7 days to overcome a significant water shortage and may authorise the taking of water, the transfer of a water allocation or a watercourse authority for a period of 7 days. Subsection (2) is inserted enable the Minister to place conditions on the short-term water allocation.

Clause 44

Section 94 amended (Restriction on taking of water)

Amendments to Subsection (2) are made for the more efficient operation of the Act. This includes:

- Amending paragraph (a)(i) to include public health purposes as a category to be given first priority when the taking of water is to be restricted.
- Amending paragraph (a)(iii) to remove reference to councils, which by implication is covered in the reference Clause 12(4) of Schedule 4 of this Act.
- Inserting paragraph (a)(iv) to clarify that first priority is given to other allocations that are of the highest surety class.

- Clause 45** **Section 95 amended (Transfer of licences and water allocation)**
The amendments to Section 95 are made to facilitate the more efficient operation of the Act and for consistency with Tasmania's obligations under the National Water Initiative. This includes amending Subsections (1) and (5), inserting Subsection (1A) and omitting Subsection (5).
- Clause 46** **Section 97 amended (Application for transfer of licence or water allocation)**
Subsection (1) is amended for consistency with the standardised application requirements outlined in the proposed Section 12A. It should be noted that the existing application requirements have not altered.
- Clause 47** **Section 97A and 98 substituted**
Section 97A is amended to remove reference to the physical transfer of water already taken into storage. A new Part 6A has been created to deal with that situation.

Section 98 is amended for consistency in terminology, however, the grounds on which a transfer may be refused have not altered.
- Clause 48** **Section 102 repealed**
Section 102 is repealed as these matters are now covered by the proposed Section 12A.
- Clause 49** **Section 103 amended (Temporary transfers)**
Section 103 is amended for consistency with the standardized application requirements outlined in the proposed Section 12A and for consistency in terminology. It should be noted that the existing application requirements have not altered.
- Clause 50** **Section 104 amended (Consent of parties with financial interests)**
Subsection (2) is amended to exclude transfers for less than 12 months and transfers involving one individual from requiring consent of the holder of the financial interest in the licence/water allocation. This amendment is consistent with proposed amendments to the transfers arrangements under the *Irrigation Clauses Act 1973*
- Clause 51** **Section 106 amended (Cancellation, and c., of licence on conviction for offence)**
The existing Subsection (8) is replaced by a new Subsection which allows a notice under Subsection (2), (3), (4) or (5) to be given in writing or by notice in the Gazette or local newspaper if the

relevant licensee cannot be found. Minor amendments are also made to Subsections (2), (3), (4) and (7) for consistency in terminology.

- Clause 52** **Section 111 amended (Surety of special licences)**
Subsection (1)(c) is amended for consistency in terminology.
- Clause 53** **Section 115 amended (Grant of special licences)**
Section 115 is amended for consistency with the standardized application requirements outlined in the proposed Section 12A and for consistency in terminology. It should be noted that the existing application requirements have not altered.
- Clause 54** **Section 121 amended (Transfer of water allocations)**
Section 121 is amended for consistency in terminology.
- Clause 55** **Part 6A inserted**
A new Part 6A is inserted to provide for the issuing of an authority to physically convey water released from a dam via a watercourse. This was previously provided for in Section 97A.

Section 123A (Watercourse authority)

Section 123A provides that water taken and stored pursuant to the Water Management Act 1999 or the Special Act (ie the Irrigation Clauses Act 1973) cannot be conveyed via a watercourse without a watercourse authority. The penalty is the same as that which applies to taking water without a licence under Section 54 of the Act.

Section 123B (Application for watercourse authority)

Section 123B sets out the application requirements for a watercourse authority.

Section 123C (Determination of application)

Section 123C sets out the grounds on which the Minister must be satisfied before an application is approved or refused.

Section 123D (Issue of watercourse authority)

Section 123D sets the terms and conditions that may be placed on the watercourse authority by the Minister. This includes terms and conditions relating to water demand, expected losses, terms on which water is released and ensuring water releases will not impact on other water users or the environment.

Section 123E (Nature of authority)

Section 123E outlines the nature of a watercourse authority, which authorises a person to convey water via a watercourse subject to relevant conditions. Subsection (2) clarifies to whom the authority may be issued to and held by. This Section also outlines that the authority is not transferable or renewable and may be surrendered but has no surrender value.

Section 123F (Cancellation or suspension of watercourse authority)

Section 123F details those matters under which the Minister may cancel or suspend a watercourse authority. These are consistent with those matters detailed elsewhere in the Act.

Section 123G (Exemptions)

Section 123G provides for a Ministerial Order to declare that Part 6A does not apply to a water entity.

- Clause 56** **Section 124 amended (Application of Division to certain wells)**
Section 124 is amended for consistency in terminology and to clarify the status of the Order mentioned in subsection (1).
- Clause 57** **Section 124A amended (Appointment of groundwater area)**
Section 124A is amended for consistency in terminology and to clarify the status of the Order mentioned in subsection (1).
- Clause 58** **Section 124B amended (Notice of appointment of groundwater area)**
Section 124B is amended for consistency in terminology.
- Clause 59** **Section 125 repealed (Works relating to wells)**
Section 125 is repealed, as the new Division 4 of Part 7 to be inserted by Clause 62 will legislate with respect of licensing drillers.
- Clause 60** **Section 126 amended (Well orders)**
Amendments to Section 126 will provide for the more efficient operation of the provisions relating to Well Orders. Subsection (1)(i) will enable an order to require that well works are discontinued for a specified period of time or permanently.
- Clause 61** **Section 130 substituted (Application of Division)**
Section 130 is substituted to broaden the potential scope of well works which may be declared to be exempt from Division 2.
- Clause 62** **Part 7, Divisions 3 and 4 inserted**
Clause 36 inserts two new Divisions into Part 7 of the Act:

- Division 3 inserted (Well works)
- Division 4 inserted (Well driller's licence)

DIVISION 3 WELL WORKS

A system of well works permits is to be provided for by inserting Division 3 into Part 7.

Section 135. Causing well works to be undertaken

Section 135 provides that well works must not be undertaken unless a well works permit is held or an exemption has been provided under Section 135H.

Section 135A. Application for well works permit

Section 135A sets out the requirements for an application for a well works permit. This includes the consent of the landowner where the application has been made by another person.

Section 135B. Determination of application

Section 135B details the grounds on which the Minister must be satisfied before an application for a well works permit is approved or refused. These include consideration of the consistency of the application with the objectives of the Act or a relevant Water Management Plan, impact on third parties, the environment, monitoring bores or matters of public safety.

Section 135C. Issue of well works permit

Section 135C sets out that the once approved, the Minister is to issue a well works permit to an applicant and that the permit may be issued on such terms and conditions as the Minister thinks fit.

Section 135D. Nature of well works permit

Section 135D details that a well works permit authorises the holder to cause well works as specified by the permit to be undertaken. The permit may be surrendered but has no surrender value. Furthermore, the permit is not renewable but can be extended for up to twelve months.

Section 135E. Permit may enure for the benefit of owner

Section 135E provides for well works permits to be assigned to successive owners of the relevant land.

Section 135F. Variation of well works permit

Section 135F provides for the variation of a well works permit on request by the permit holder or by the Minister. Such a variation will not be made if it would be inconsistent with the objectives of

the Act or a relevant Water Management Plan, or impact on third parties, the environment, monitoring bores or matters of public safety.

Section 135G Cancellation or suspension of well works permit

Section 135G details conditions under which the Minister may cancel or suspend a well works permit.

Section 135H. Exemptions

Section 135H provides for a Ministerial Order to exempt certain well works from requiring a permit. This exemption would relate to the purpose, location of the well works, amount of water to be taken, construction details and who will be undertaking the proposed well works.

DIVISION 4 – WELL DRILLER’S LICENCES

A driller’s licensing system will be provided for by inserting Division 4 into Part 7.

Section 136. Interpretation of Division

Section 136 defines certain terms used in Division 4, Part 7.

Section 136A Undertaking well works

Section 136A(1) provides that well works must not be physically undertaken unless the person undertaking those works holds a well driller’s licence. It also provides that well works can be undertaken by an employee working under the on-site supervision of a person holding a well driller’s licence. In addition, Subsection (2) provides that the appropriate class of licence and licence endorsements must be held by the driller for the relevant drilling.

Section 136B. Application for well driller’s licence

Section 136B sets out the requirements for an application for a well driller’s licence. The application requirements are consistent with the requirements under the Act for other types of applications.

Section 136C Determination of application

Section 136C sets out the grounds on which Minister must be satisfied of before an application for a well works permit is approved or refused. This includes the applicant satisfying any prescribed competency requirements.

Section 136D Issue of well driller’s licence

Section 136D provides that once approved the Minister is to issue a well driller’s licence to an applicant and that the licence may be issued on such conditions as the Minister thinks fit.

Section 136E. Nature of well driller's licence

Section 136E details that a well driller's licence authorises its holder to physically undertake well works in accordance with the licence. The licence is valid for a five year period and is renewable. In addition, the licence is not transferable and may be surrendered but has no surrender value.

Section 136F Renewal of licences

The renewal process for well driller's licences is provided for in Section 136F. Subsection (1) outlines that the Minister must renew the licence if satisfied that those matters detailed in paragraphs (a) to (d) have been met.

If the matters outlined in Subsection (1) are not met, the Minister may refuse to renew the licence, or renew the licence subjects to certain conditions.

Subsection (4) provides for well driller's licences to be renewed every 5 years.

136G Continuation of expiring licence

Section 136G clarifies that where a licence renewal fee has been paid, the driller's licence continues to be valid and in force until the driller is notified otherwise by the Minister.

Section 136H. Variation of well driller's licence

Section 136H provides for the variation of a well driller's licence on request by the licensee or by the Minister. This includes varying a licence to reflect any additional qualifications or experience gained by the licensee that enables them to undertake additional classes of well works.

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

Section 136I details the conditions under which the Minister may cancel or suspend a well driller's licence.

Section 136GJ. Exemptions

Section 136J provides for a Ministerial Order to exempt certain well works from needing to be physically undertaken by a person holding a well driller's licence.

Clause 63

Section 137 amended (Application of this Part)

Subsection (3) is inserted to clarify the status of the Order mentioned in subsection (2).

- Clause 64** **Section 139 amended (Members of Assessment Committee)**
Subsection (7) is amended to clarify the procedure to be followed when the bodies referred to in Subsection (2)(c) to (e) cease to operate or changes name. Paragraph (a) enables name changes and Paragraph (b) provides for the substitution of a new body if they represent substantially the same interests as the body that ceased to exist.
- Subsection (8) is inserted to clarify the status of the Order mentioned in subsection (7).
- Clause 65** **Section 143 amended (Functions of Assessment Committee)**
Paragraph (c) is amended to clarify that it is a function of the Assessment Committee to determine what specified action is to be taken by an applicant under Section 155. This provides consistency with clause 69 of the Bill.
- Clause 66** **Section 146 amended (Permit to undertake dam works)**
Section 146 is amended for consistency with the standardized application requirements outlined in the proposed Section 12A. The existing application requirements have not altered.
- Clause 67** **Section 148 amended (Application by person other than owner)**
Subsection (3) is amended to raise the fine for obtaining a permit by false representation to 50 penalty units
- Clause 68** **Section 152 amended (Referral to Director)**
Subsection (2) is amended to clarify that a notice under Section 154 can require an applicant to take specified action, in accordance with amendments in clause 69 of the Bill.
- Clause 69** **Section 154 substituted (Requirement for additional information or action)**
The amendments to Section 154 clarify that a notice can require an applicant to take specified action such as the requirement for an applicant to submit design plans prepared by an engineer with particular qualifications.
- Clause 70** **Section 155 amended (Provision of additional information or taking of action)**
Section 155 is amended to clarify that a notice under Section 154 can require an action to be taken according to specified instructions. This provides consistency with clause 69 of the Bill.
- Clause 71** **Section 155A amended (Supplementary information)**

Section 155A is amended to clarify that supplementary information would include the requirement to undertake a specified action. This provides consistency with clause 69 of the Bill.

Clause 72

Section 155B inserted (Amendment of application)

Section 155B is inserted to enable variations to an application for a dam works permit to be made. Under Subsections (1) and (2) an applicant for a permit, may in writing request for their application to the Assessment Committee to be amended. Subsection (3) enables the Assessment Committee to amend a permit application if it is still under consideration and has the permission of the owner of the land, as long as the permit does not:

- change the effect of any determination by the Board of Environmental Management and Pollution Control or the Director of Inland Fisheries; or
- impact on any person authorised to take water; or
- adversely impact on the land or property of any person or on the environment; or
- impact on matters of dam safety

Subsection (4) requires the Assessment Committee to notify the permit applicant, owner of the land and any persons who made representations under section 149 of the amendments made to a permit application.

Subsection (5) sets out those particulars of an application that may be amended, including type, size, location and purpose of the dam works.

Clause 73

Section 156 amended (Consideration of application)

Subsection (d) is amended to reflect the ability of the Assessment Committee to require specified actions to be undertaken as provided for by clause 69 of the Bill.

Clause 74

Section 157 amended (Granting of permit)

Minor amendments are made to Subsections (1) and (4) for consistency in terminology.

Clause 75

Section 159 amended (Time when permit takes effect)

Subsection (10) is inserted to require a permit holder to make an application for an extension under Subsection (9). The application must be in accordance with Section 12A and be made within a specified time period before the permit lapses.

Clause 76

Section 160 amended (Notification of decision)

Section 160 is amended for consistency in terminology.

- Clause 77** **Section 162 amended (Amendments of permits)**
Subsection (2)(c) is amended for consistency in terminology.
- Clause 78** **Section 164 amended (Time limits for decisions)**
Subsections (1)(b) and (6) are amended to reflect the ability of the Assessment Committee to require specified actions to be undertaken as provided for by clause 69 of the Bill. Subsection (1)(c) is repealed as no additional information can be required under Section 152(2) making subsection (1)(c) unnecessary.
- Clause 79** **Section 165D amended (Inquiries as to dam safety)**
Subsection (2) is amended for consistency in terminology.
- Clause 80** **Section 167 amended (Establishment of water districts)**
Reference to a *Gazette* notice is removed in Subsection (1), this notice is adequately dealt with in Section 176.
- Clause 81** **Section 171 amended (Requirement for application)**
Section 171 is amended for consistency with the standardized application requirements outlined in the proposed Section 12A. The existing application requirements have not altered.
- Clause 82** **Section 175 repealed**
Section 175 is repealed as these matters are now dealt with the proposed Section 12A.
- Clause 83** **Section 176 amended (Approval of application)**
Subsection (2A) is inserted to clarify the status of the Order mentioned in subsection (2).
- Clause 84** **Section 178 amended (Amendment of approval)**
Section 178 is amended to enable the Minister to vary the conditions of approval under section 176 at the request of the responsible water entity.
- Clause 85** **Section 180 amended (Alteration of boundaries)**
Subsection (1A) is inserted to clarify the status of the Order mentioned in subsection (1). Other minor amendments are made) for consistency in terminology.
- Clause 86** **Section 181 amended (Substitution of water entities)**
Section 181 is amended for consistency in terminology.
- Clause 87** **Section 182 amended (Annual reports to Minister)**

Subsection (4) is inserted to enable the Minister to issue to a responsible water entity a notice requiring them to provide an annual report to comply with this Section.

- Clause 88** **Section 186 amended (Revocation of approval for water entity to administer a water district)**
Subsection (4) is amended for consistency in terminology.
- Clause 89** **Section 188 amended (Revocation of appointment of district)**
Subsection (1A) is inserted to clarify the status of the Order mentioned in subsection (1).
- Clause 90** **Section 192 amended (Watercourses as water supply channels)**
Subsection (1AA) is inserted to clarify the status of the Order mentioned in subsection (1).
- Subsection (5A) is inserted to enable a Ministerial Order to direct that any registered financial interests in a licence or water allocation are to be attached to the relevant irrigation right. Clause 137 of this Bill amends the *Irrigation Clauses Act 1973* to require a register of irrigation rights to be kept.
- Subsection (9) is amended to clarify when the value of a replacement authorisation or right is to be taken into account in determining compensation under subsection (6).
- Clause 91** **Section 199 amended (Offences in connection with water districts)**
This clause repeals Subsection (c), the matter is adequately covered by the existing Subsection (e).
- Clause 92** **Section 205 amended (Application to establish trust)**
Subsection (2) is amended for consistency with the standardised application requirements outlined in the proposed Section 12A. The existing application requirements have not altered.
- Clause 93** **Section 206 amended (Approval of application)**
Subsection (1) is amended to replace reference to Schedule 3 of the Act with reference to any prescribed requirements. Subsection (2) is also amended for consistency in terminology.
- Clause 94** **Section 206A substituted (Establishment of trust)**
Section 206A is amended to more clearly outline the approval process by the Minister for the establishment of a trust.

Clause 95

Section 211 substituted (Constitution of Trust)

The existing Section 211 is substituted with a new Section 211 to facilitate the more efficient operation of the Trust provisions within the Act.

Subsection (1) is amended to allow for a Trust to consist of a board of such numbers as the Minister determines.

Subsection (2) clarifies that the Minister may require a specified number of the trustees are to be elected. Furthermore, when a Trust is responsible for the administration of an irrigation district and a water entity (eg council) has a right to take water from within the district for a town supply, then the Minister can determine that one of more of the trustees be a nominee of that water entity.

Subsections (3) and (4) relate to process by which the Minister may give directions to reconstitute a trust.

Subsection (5) provides that nothing in this Section will affect the operation of Section 308 in relation to the requirements for a trust for the River Clyde Irrigation District.

Clause 96

Section 211A inserted (Trust elections)

Section 211A is inserted to outline the conduct of Trust elections. Subsection (1) provides for an election to be conducted by a returning officer. The requirements of a Returning Officer are outlined in Subsection (2).

Subsection (3) provides for the Regulations to make provision for certain matters in relation to elections under Section 211A.

Clause 97

Section 213 amended (Poll to be taken)

Subsection (4) is amended for consistency in terminology.

Clause 98

Section 222 substituted (Inspection of accounts)

Section 222 is amended for consistency in terminology.

Clause 99

Sections 223, 224 and 225 substituted (Dissolution of trusts)

Subsection 223 is amended to more clearly outline the circumstances in which the Minister may dissolve a trust.

Sections 224 and 225 are repealed as their provisions are included in the amended Section 223.

Clause 100

Section 226 amended (Effect of dissolution)

Subsection (2A) is inserted to clarify the status of the Order mentioned in subsection (2).

Clause 101

Section 227 substituted (Power of Minister to install meters, &c.)

The existing Section 227 is substituted to more accurately reflect the contemporary use of water meters under the Act. Subsection (1) provides for the mechanisms for the Minister to install meters.

Subsection (2) outlines the type of requirements that are to be sought under Subsection (1), relating to type of meter, installation method, maintenance, monitoring, security, data recording and reporting requirements.

Subsection (3) makes it an offence not to comply with a direction under Subsection (1)(b).

Subsection (4) clarifies that an authorisation includes a water allocation.

Clause 102

Section 228 amended (Interference with meters)

Subsection (1) is amended for consistency in terminology.

Clause 103

Section 230 repealed

Section 230 is repealed as the matter is now addressed through amendments to Section 227.

Clause 104

Section 231 amended (Power of Minister to charge for meters)

Subsection (1) is amended for consistency in terminology.

Clause 105

Section 232, 233 and 234 repealed

Section 232 is repealed as it does not reflect contemporary metering practices.

Section 233 is repealed. The reading of meters by authorized officers and other persons is covered elsewhere in the Act and the remaining provisions do not reflect contemporary metering practices.

Section 234 is repealed as a consequential amendment resulting from the repeal of Section 233.

Clause 106

Section 235 amended (Inspection and removal of meters)

Section 235 is amended to include the installation of a meter by an authorised person.

- Clause 107** **Section 236 amended (Protection of meters)**
Section 236 is amended for consistency in terminology.
- Clause 108** **Section 244 amended (Entry on land for taking measurements)**
Subsection (3) is amended to enable the Minister to authorize an authorised person to exercise any general technical powers. These powers are defined in Subsection (1) as particular powers that are prescribed under Section 240. Subsections (3A) and (3B) more clearly detail the powers of an authorized person (whether an authorised officer or not) to enter on and survey any land.
- Clause 109** **Section 245 substituted (Authorised officers, &c., may use assistants)**
Section 245 is amended to enable authorised persons as well as authorised officers to allow people to accompany them onto land to assist in carrying out their duties.
- Clause 110** **Section 246 amended (Circumstances in which Division applies)**
Paragraph (e) is inserted in Subsection (1) to extend the scope of directions able to be given by an authorised officer to include a direction to release water that has been unlawfully taken into a dam.
- Clause 111** **Section 256A inserted (Interpretation of Division)**
Section 256A is inserted to enable demerit points to be allocated against a well driller's licence as well as a water licence.
- Clause 112** **Section 259 amended (Suspension or cancellation of licence)**
A minor amendments is made to Subsection (7)(b) for consistency in terminology.
- Clause 113** **Section 270 amended (Interpretation of Division)**
Section 270 is broadened to include interested persons relating to well works permits and well driller's licences.
- Clause 114** **Section 271 amended (Reviewable decisions)**
Section 271 is amended to insert into the reviewable decisions in Part 14 decisions relating to well works permits and well driller's licences.
- Clause 115** **Section 275 amended (Appealable decisions)**

A minor amendment to paragraph (f) clarifies that the reduction relates to a water allocation.

Paragraphs (ia), (ib) and (ic) are inserted to provide for appeals in relation to well works permits.

Clause 116 Section 279A Compensatory orders for gas pipeline safety detriments)

The definition of permit is removed as the definition is already contained in Section 3 of the Act.

Clause 117 Section 280 amended (Suspension of decision pending appeal or review)

Subsection (1) is amended to clarify that the suspension of a decision applies to both an appeal or review against a decision.

Clause 118 Section 284 amended (Hindering, &c., persons engaged in administration of Act)

Section 284 is amended by extending the offences to include using abusive language to an authorised person and defining the term authorised person. Currently this offence applies only to using abusive language against an authorised officer.

Clause 119 Section 295A inserted (Recovery of costs)

Section 295A enables a court that convicts a person of an offence against this Act to order the payment of costs by the defendant in relation to the investigation of that offence. This will only be possible if an application to the court has been made by or on behalf of the person involved in investigating the offence.

Clause 120 Section 300A inserted (Replacement of authorisations)

Section 300A provides for replacement licences and other authorisations if they have been stolen, lost, destroyed or damaged.

Clause 121 Section 301 amended (Works codes)

A minor amendment is made to Subsection (2) for consistency in terminology.

Clause 122 Section 302 amended (Regulations in general)

Subsection (3)(b) is amended to raise the maximum daily fine for a continuing offence against a regulation to 20 penalty units.

Clause 123 Section 303 amended (Information, assessment of quantity of water, &c.)

Paragraph (d) is repealed as this requirement is addressed through amendments to Section 154 (refer to Clause 69).

- Clause 124** **Section 304 amended (Fees and charges)**
Section 304 is amended to enable the Regulations to include a fee for the recording of matters in the water licence register. Amendments also allow for the Regulations to prescribe any concessions, waivers, rebates, exemptions as well as total or partial refunds of fees.
- Clause 125** **Section 304A amended (Regulations relating to fees)**
Section 304A is amended for consistency in terminology.
- Clause 126** **Section 305 amended (miscellaneous matters)**
Section 305 is amended for consistency in terminology.
- Clause 127** **Section 307A inserted (*Savings and transitional provisions consequent on Water Legislation Amendment Act 2008*)**
Section 307A provides for Schedule 4A to provide savings and transitional matters arising from the enactment of this Act.
- Clause 128** **Section 310 repealed (Administration of Act)**
Section 310 is repealed as this is now covered by the Administrative Arrangements Order 2007 which assigns the administration of this Act to the Minister for Primary Industries and Water.
- Clause 129** **Schedule 3 substituted (Schedule 3 – Membership and Proceedings of Trusts)**
The existing Schedule 3 has been repealed and replaced with provisions that will enable the more efficient operation of the Trust provisions in the Act. These provisions are also supported by new Regulations (Water Management (Trust Electoral and Polling) Regulations 2008) that prescribe some of the matters previously dealt with in Schedule 3 such as eligibility to vote, initial election and conduct of election.

PART 1 (Membership)

Clause 1 (Retirement of trustees)

Subclause (1) provides for Ministerial appointed trustees to hold office for a period determined by the Minister. Subclause (2) provides for the Regulations to set the retirement date of trustees. Subclause (3) allows trustees to remain for longer than the prescribed length of time where an election is delayed.

Clause 2 (Vacation of office)

Clause (2) sets the circumstances in which the office of a trustee becomes vacant.

PART 2 (Proceedings)

Clause 1 (Interpretation of Part)

Clause (1) of Part 2 defines the terms “board”, “concerned water entity”, “meeting” and “special Act”.

Clause 2 (Convening meetings)

Clause (2) states that a meeting may be convened by the chairperson alone or two trustees.

Clause 3 (Quorum)

Clause (3) specifies that a quorum is a majority of trustees.

Clause 4 (Chairing of meetings)

Clause (4) details who is to chair meetings and provides the requirements for presiding over meetings when the chairperson or deputy chairperson are not present.

Clause 5 (Procedure at meetings)

Clause (5) specifies the matters that can be decided at a convened meeting attended by a quorum and the manner in which those decisions will be made.

Clause 6 (Proxies)

Clause (6) details the use of proxies by a trustee.

Clause 7 (Trustee with pecuniary interest not to vote)

Clause 7 provides that a trustee must not vote on a question when they have a pecuniary interest. Subclauses (a) to (b) provide those circumstances when a trustee may have a pecuniary interest and may still vote.

Clause 8 (Minutes)

Clause (8) stipulates that trustees must keep accurate minutes and entitles a concerned water entity to inspect the minutes.

Clause 9 (Special attendance)

Clause 9 allows for special attendance of a trustee through telephone or telephone conference.

Clause 10 (Attendance of other water entities at meetings)

Clause 10 permits any concerned water entities to attend Trust meetings.

Clause 11 (General procedure)

This clause provides that unless stated in the Act or Regulations that a board of trustees may regulate its own proceedings.

Clause 130

Schedule 4 amended (Savings and transitional provisions)

Clause 9A (Savings for Hobart Regional Water Authority)
Subclause (3A) is inserted to clarify the status of the Order mentioned in subclause (3).

Clause 10 (Saving for rights under section 100D or 100H of repealed Act)

Subclause (3)(c)(iii) is amended to removed reference to councils for consistency in terminology.

Clause 131

Schedule 4A inserted – (Schedule 4A – Savings and Transitional Provisions Consequent on Water Legislation Amendment Act 2008)

Schedule 4A defines savings and transitional provisions for certain provisions affected by the commencement of the *Water Legislation Amendment Act 2008*.

Clause 1 (Interpretation)

This clause defines the amending Act as the *Water Legislation Amendment Act 2008*.

Clause 2 (Temporary water allocations)

This clause provides for the continuation of any temporary water allocations that were in force before the commencement of Section 43 of the *Water Legislation Amendment Act 2008*.

Clause 3 (Well drilling offences)

Clause 3 provides that it is not an offence to undertake well works during a two month lead in period after Section 62 of the *Water Legislation Amendment Act 2008* commences. Furthermore, the lead in period is extended by a further four months when the person has applied for a well driller's licence and the decision to grant or refuse the well driller's licence has not been made.

Clause 4 (Well works offences)

Clause 4 provides that it is not an offence to cause well works to be undertaken without a permit during a two month lead in period after Section 62 of the *Water Legislation Amendment Act 2008* commences.

Clause 5 (Trust elections)

If any trust elections are in the process of being conducted when Section 96 of the *Water Legislation Amendment Act 2008* commences then they are to proceed as if they former Act and former electoral regulations were still in force.

Clause 6 (Trust polls)

If any trust polls are in the process of being conducted when Section 97 of the *Water Legislation Amendment Act 2008* commences then they are to proceed as if they former Act and former polling regulations were still in force.

Clause 7 (Trust membership)

Clause 7 provides for the membership and retirement of any trustee elected before the commencement of the *Water Legislation Amendment Act 2008* to continue as if the former Act still applied

Clause 8 (Regulations)

Clause 8 enables regulations to be made relating to any savings and transitional matters consequent on the enactment of the *Water Legislation Amendment Act 2008*.

PART 3 – APPROVALS (DEADLINES) ACT 1993 AMENDED

Clause 132

Principal Act

The Principal Act referred to in this Part is the *Approvals (Deadlines) Act 1993*.

Clause 133

Schedule 1 amended (Approval Time Limits)

Schedule 1 is amended to omit references to the *Water Act 1957*. The reference should have been removed with the commencement of the *Water Management Act 1999 in 2000*.

PART 4 – FARM WATER DEVELOPMENT ACT 1985 AMENDED

Clause 134

Principal Act

The Principal Act referred to in this Part is the Farm Water Development Act 1985.

Clause 135

Section 5 amended (Loans for development of farm water)

Paragraph (a) is amended to replace the reference to the Rivers and Water Supply Commission with reference to the approval of a dam works permit to under the *Water Management Act 1999*. This reference should have been amended with the commencement of the *Water Management Act 1999 in 2000*.

PART 5 – IRRIGATION CLAUSES ACT 1973 AMENDED

Clause 136 **Principal Act**
The Act referred to in this Part of the Bill is the *Irrigation Clauses Act 1973*.

Clause 137 **Section 23 amended (Right to a supply for irrigation)**
Section 23 is amended to ensure the undertakers (water entity) managing an irrigation scheme with a system of irrigation rights keep a register of such rights (Subsections (3B) and (3C)).

Subsection (3D) and (3E) enable the Minister, by notice, to require the undertakers to make available a copy of their irrigation rights register.

The amendments support Tasmania’s obligations under the National Water Initiative in relation to publicly accessible and reliable water registers.

Clause 138 **Section 23A amended (Transfer of irrigation rights)**
Section 23A is amended to ensure that any transfer of an irrigation right for more than 12 months must not be approved unless consent has been obtained from any person with a registered financial interest in the irrigation right. This amendment is consistent with arrangements for transfers under the *Water Management Act 1999* (refer clause 50 of the Bill).

Clause 139 **Section 24 amended (Domestic Rights)**
Subsection (3) is amended to provide that the undertakers may grant a right to any water entity to take water for domestic purposes within an Irrigation District, if a water supply channel under Section 192 of the *Water Management Act 1999* has been declared.

PART 6 – INLAND FISHERIES (COMMERCIAL NETS AND FEES) REGULATIONS 1999 AMENDED

Clause 140 **Principal Regulations**
The Principal Regulations referred to in the Part are the *Inland Fisheries (Commercial Nets and Fees) Regulations 1999*

Clause 141 **Regulation 3 amended ((Interpretation))**

The definitions of commissional water right and fee unit are removed to reflect contemporary water entitlement practice and for consistency in terminology.

Clause 142

Schedule 1 amended (Fees)

Schedule 1 is amended to replace references to commissional water right with reference to entitlements under the *Water Management Act 1999*.

PART 7 – LEGISLATION REPEALED

Clause 143

Legislation repealed

This clause details that legislation to be repealed is specified in Schedule 1 of the Bill.

SCHEDULE 1 – LEGISLATION REPEALED

Schedule 1 repeals the:

- *Cressy-Longford Irrigation Act 1969*; and
- *Cressy-Longford Irrigation Water Act 1972*.

The *Cressy Longford Irrigation Act 1969* deals with providing Government finances to support the Rivers and Water Supply Commission (RWSC) in operating the Cressy-Longford scheme when expenditure exceeds revenue. The RWSC, as a Government Business Enterprise, no longer has the financial support of the Government that enables them to call on funds when expenditure exceeds revenue. As a result, the RWSC prices water in a manner that ensures they are self sufficient and not reliant on the Government.

The *Cressy-Longford Irrigation Act 1969* makes provision for the supply of water in the Cressy-Longford Irrigation Water District by the “Commission” (RWSC). The RWSC used to be responsible for providing water to the Cressy Longford area, however there now exists a separate body, the Cressy- Longford Irrigation Scheme Ltd, which is responsible for providing water under the *Irrigation Clauses Act 1973*. The Cressy-Longford Irrigation Scheme Ltd are a cooperative established by irrigators in the area and are responsible for managing operating assets and day-to-day operations and maintenance.