

TASMANIA

**WATER MANAGEMENT AMENDMENT BILL
2002**

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 8 amended (Functions and duties of the Minister)
6. Section 10 amended (Delegation)
7. Section 14 amended (Scope of water management plans)
8. Section 48 amended (Rights to take water)
9. Section 49 amended (Hydro-electric generation)
10. Section 54 amended (Licences)
11. Section 56 amended (Details of licence)
12. Section 58 substituted
 58. Restriction on use of allocation
13. Section 63 amended (Approval of application)
14. Section 64 amended (Refusal of application for a licence)
15. Section 73 amended (Approval of application to vary licence)
16. Section 84 amended (Allocation of water)

17. Section 91 amended (Inadequate supply or overuse of water)
18. Section 95 amended (Transfer of licences and water allocations)
19. Part 7, Division 3 repealed
20. Section 137 substituted
 137. Application of this Part
21. Section 141 amended (Facilities and employees of Crown, &c., available to Assessment Committee)
22. Section 143 amended (Functions of Assessment Committee)
23. Section 143A inserted
 - 143A. Assessment Committee to have regard to standards
24. Section 146 amended (Permit to undertake dam works)
25. Section 147 amended (Minister may require action to be taken)
26. Section 152 amended (Referral to Director)
27. Section 154 amended (Requirement for additional information)
28. Section 155 amended (Information to be provided)
29. Section 156 amended (Consideration of application)
30. Section 157 substituted
 157. Granting of permit
 - 157A. Permit may enure for benefit of owner
31. Section 158 amended (Refusal of application for permit)
32. Section 159 amended (Time when permit takes effect)
33. Section 164 amended (Time limits for decision)
34. Part 8A inserted
 - PART 8A – Safety of dams
 - Division 1 – Interpretation*
 - 165A. Application of Part
 - 165B. Interpretation of Part 8A
 - Division 2 – Functions of Minister*
 - 165C. Functions of Minister

165D. Inquiries as to dam safety

165E. Evidence at inquiry

Division 3 – Control of dams

165F. Referral of applications under another enactment

165G. Duty for safe operation of dam

165H. Obtaining and providing information

165I. Reporting of incidents

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

165K. Operation and maintenance manuals

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

165M. Surveillance and testing

165N. Notices to ensure safety of dam following provision of information

165P. Notices to ensure safety of dams in case of imminent danger, &c.

Division 4 – Miscellaneous and supplemental

165Q. Obstruction of authorised person

165R. Determination of compensation

165S. Contracts

165T. Arrangements with statutory authorities

165U. Form of information provided under this Part

165V. Requirement for permit where dam works required by direction or notice

35. Section 166 amended (Application of Division to water entities)
36. Section 182 amended (Annual reports to Minister)
37. Section 193 amended (Purpose of riverworks district)
38. Section 194 amended (Purpose of hydro-electric district)
39. Section 195 amended (Purposes of drainage district)
40. Section 197 amended (Powers to undertake works near or through highways)
41. Section 201 amended (Power to levy rates)
42. Section 235 amended (Inspection and removal of meters)
43. Section 271 amended (Reviewable decisions)
44. Section 289A inserted
289A. Confidentiality
45. Sections 304A and 304B inserted

304A. Regulations relating to dams safety

304B. Adoption of code relating to dams safety

46. Schedule 4 amended (Savings and transitional provisions)
47. *Sewers and Drains Act 1954* amended

WATER MANAGEMENT AMENDMENT BILL 2002

(Brought in by the Minister for Primary Industries, Water and Environment, the Honourable Bryan Alexander Green)

A BILL FOR

An Act to amend the *Water Management Act 1999* to ensure the safety of dams and to make other miscellaneous amendments and to amend the *Sewers and Drains Act 1954*

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

Short title

1. This Act may be cited as the *Water Management Amendment Act 2002*.

Commencement

2. This Act commences on a day to be proclaimed.

Principal Act

3. In this Act, the *Water Management Act 1999** is referred to as the Principal Act.

*No. 45 of 1999

Section 3 amended (Interpretation)

4. Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting the definitions of “dam” and “dam works” and substituting the following definitions:

“**dam**” means a permanent or temporary barrier or structure, the main purpose of which is the storage, holding back or impedance of the flow of water and includes –

- (a) any spillway or similar works for passing water around or over the barrier or structure; and
- (b) a pipe or other works for passing water through or over the barrier or structure; and
- (c) water stored or held back by the barrier or structure and the area covered by that water; and
- (d) an artificial depression or hole excavated in a watercourse for the purpose of holding water or impeding the flow of water; and
- (e) a levee or bank constructed for the purpose of preventing, controlling or mitigating the effect of a flood –

but does not include –

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

“dam works” means any works for the construction, erection, enlargement, modification or removal of a dam to which Part 8 or Part 8A applies or any work on any such dam which may significantly increase the dam’s safety risk;

- (b) by inserting the following definition after the definition of “Director”:

“dispersed surface water” means –

- (a) water flowing over land otherwise than in a watercourse –
 - (i) after having fallen as rain or hail or having precipitated in any other manner; or

- (ii) after rising to the surface naturally from underground; or
 - (b) water as mentioned in paragraph (a) that has been collected in a dam or reservoir;
- (c) by inserting the following definition after the definition of “equipment”:
 - “**functions**” includes powers, authorities and duties;
- (d) by inserting the following definition after the definition of “groundwater area”:
 - “**highway**” means –
 - (a) a State highway or subsidiary road within the meaning of the *Roads and Jetties Act 1935*; or
 - (b) a local highway within the meaning of the *Local Government (Highways) Act 1982*;
- (e) by inserting the following definition after the definition of “hydro-electric district”:
 - “**incident**”, in the case of a dam, means any incident or event relating to the structural integrity or safety of the dam which causes, or has the potential to cause –
 - (a) death or injury to a person;
or

- (b) damage to, or loss of, property or services; or
 - (c) material environmental harm or serious environmental harm;
- (f) by omitting the definition of “owner” and substituting the following definition:

“owner” means –

- (a) in the case of land alienated from the Crown by grant in fee simple, the holder of an estate in fee simple; or
- (b) in the case of dedicated Crown land that has not been granted in fee simple but which is under the care, control and management of a Minister, body or other person, that Minister, body or other person; or
- (c) in the case of land held under Crown lease or licence, the lessee or licensee of the land; or
- (d) in the case of land held under an agreement to purchase it from the Crown, the person entitled to the benefit of the agreement; or
- (e) in the case of any other land, the Minister who is responsible for the care, control and management of

- the land or, if no Minister is so responsible, the Minister having the administration of the EMPC Act; or
- (f) in the case of a dam, any person or statutory authority who, whether solely or with another person or statutory authority, owns, controls, operates, manages or maintains a dam, and includes any person or statutory authority who, whether solely or with another person or statutory authority, proposes to build a dam;
- (g) by inserting the following definition after the definition of “State policy”:
- “statutory authority”** means a person, body or authority, whether incorporated or unincorporated, constituted by or under an Act, or appointed by the Governor under the authority of an Act, to administer or control a department, office, business or undertaking on behalf of the State;
- (h) by omitting the definition of “surface water”;
- (i) by omitting paragraph (d) from the definition of “water entity” and substituting the following paragraph:

- (d) a body corporate under the Corporations Act; or
- (j) by omitting paragraph (g) from the definition of “water entity” and substituting the following paragraph:
 - (g) a trust or society that is registered under the *Cooperatives Act 1999* –
- (k) by omitting the definition of “water resource” and substituting the following definition:
 - “water resource”** means a watercourse, lake or any dispersed surface water or groundwater;
- (l) by omitting paragraph (d) from the definition of “watercourse” and substituting the following paragraphs:
 - (d) part of any such stream; and
 - (da) the floodplain of any such stream –
- (m) by inserting the following definition after the definition of “well”:
 - “working day”** means a day that is not –
 - (a) a Saturday or Sunday; or
 - (b) a statutory holiday within the meaning of the *Statutory Holidays Act 2000*;

Section 8 amended (Functions and duties of the Minister)

5. Section 8(1)(c) of the Principal Act is amended by inserting “dispersed” after “wells and”.

Section 10 amended (Delegation)

6. Section 10(5) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (b) “165L(5),” after “section 137(2),”;
- (b) by omitting from paragraph (c) “135(2),”;
- (c) by inserting in paragraph (c) “165J(3), 165L(7), 165M(1), 165N(4),” after “147(5),”.

Section 14 amended (Scope of water management plans)

7. Section 14(1) of the Principal Act is amended by inserting “dispersed” after “include”.

Section 48 amended (Rights to take water)

8. Section 48(4) of the Principal Act is amended by inserting “dispersed” after “land may take”.

Section 49 amended (Hydro-electric generation)

9. Section 49 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) cause material environmental harm or serious environmental harm or significant detrimental effects to other users; and

Section 54 amended (Licences)

10. Section 54(1) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- (b) dispersed surface water.

Section 56 amended (Details of licence)

11. Section 56(1)(b) of the Principal Act is amended by omitting “is to” and substituting “may”.

Section 58 substituted

12. Section 58 of the Principal Act is repealed and the following section is substituted:

Restriction on use of allocation

58. (1) Without limiting section 56, the Minister may determine that a water allocation of a licence may be –

- (a) taken from, or used on, only a specified area of land; or
- (b) used only for a specified purpose; or
- (c) used only to allow the taking of water into a specified dam or proposed dam.

(2) Where a water allocation is determined under subsection (1)(c) to be used for the taking of water into a proposed dam or to increase the quantity of water to be taken into an existing dam, the allocation may be made conditional on the completion of –

- (a) the construction of the proposed dam; or
- (b) the dam works increasing the existing dam's capacity.

Section 63 amended (Approval of application)

13. Section 63(d) of the Principal Act is amended by inserting “or on the commercial operations of a major user of water from that water resource” after “resource”.

Section 64 amended (Refusal of application for a licence)

14. Section 64(b)(i) of the Principal Act is amended by inserting “or on the commercial operations of a major user of water from the relevant water resource” after “Part 5”.

Section 73 amended (Approval of application to vary licence)

15. Section 73(d) of the Principal Act is amended by inserting “or on the commercial operations of a major user of water from that water resource” after “resource”.

Section 84 amended (Allocation of water)

16. Section 84 of the Principal Act is amended by inserting after subsection (3) the following subsection:

(3A) Without limiting subsection (3), a condition may provide that, where a water allocation is granted for the taking of water into a dam in respect of which a permit for the relevant dam works is granted under section 157, the allocation expires if the permit lapses under section 159(8).

Section 91 amended (Inadequate supply or overuse of water)

17. Section 91(1)(c) of the Principal Act is amended as follows:

- (a) by inserting “dispersed” after “which”;
- (b) by inserting in subparagraph (i) “dispersed” after “that the”;
- (c) by inserting in subparagraph (ii) “dispersed” after “on the”.

Section 95 amended (Transfer of licences and water allocations)

18. Section 95(6) of the Principal Act is amended by inserting “of a licence” after “transfer”.

Part 7, Division 3 repealed

19. Division 3 of Part 7 of the Principal Act is repealed.

Section 137 substituted

20. Section 137 of the Principal Act is repealed and the following section is substituted:

Application of this Part

137. (1) This Part applies to all dams except –

- (a) a dam which is not on a watercourse and which is constructed for the purpose of preventing, controlling or mitigating the effect of a flood; and
- (b) a dam which is not on a watercourse and holds less than one megalitre of water; and
- (c) a dam constructed for the primary purpose of storing waste; and
- (d) a levee or bank that is constructed during a flood and removed entirely within 4 weeks after the day on which it was constructed.

(2) The Minister may, by order published in the *Gazette*, determine that a permit under this Part is not required in respect of dam works of a specified type, location or purpose.

Section 141 amended (Facilities and employees of Crown, &c., available to Assessment Committee)

21. Section 141 of the Principal Act is amended by omitting “public” twice occurring and substituting “statutory”.

Section 143 amended (Functions of Assessment Committee)

22. Section 143(d) of the Principal Act is amended by inserting “, where the Committee considers it appropriate,” after “recommendations”.

Section 143A inserted

23. After section 143 of the Principal Act, the following section is inserted in Division 3:

Assessment Committee to have regard to standards

143A. In performing its functions under section 143, the Assessment Committee must have regard to prescribed standards for the design, construction, maintenance, surveillance and decommissioning of dams.

Section 146 amended (Permit to undertake dam works)

24. Section 146 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2)(c) “or Part 8A” after “Part”;
- (b) by omitting subsection (3) and substituting the following subsections:

(3) A person must not undertake, or cause or permit to be undertaken, any dam works unless –

- (a) the person who undertakes those works, or the person who causes or

permits them to be undertaken, as the case may be, holds a permit authorising those works; and

- (b) the works are carried out in accordance with that permit.

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

(4) In a prosecution for an offence under this section, it is a defence if the person who undertook the dam works, or caused or permitted them to be undertaken –

- (a) shows that it was necessary to do so in order to maintain the structural integrity of the dam; and
- (b) shows that the dam works were limited to works necessary for that purpose; and
- (c) within 2 working days after commencing the works, gave written notice of the works to the Minister or an authorised officer; and
- (d) as soon as practicable after completing the dam works, applied to the Assessment Committee for its approval of the works.

(5) An application for approval referred to in subsection (4)(d) is to be treated by the

Assessment Committee as an application for a permit under this section.

Section 147 amended (Minister may require action to be taken)

25. Section 147(5)(a) of the Principal Act is amended by omitting “only” and substituting “any”.

Section 152 amended (Referral to Director)

26. Section 152 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “for a permit” after “an application”;
- (b) by inserting in subsection (5) “for a permit” after “application”.

Section 154 amended (Requirement for additional information)

27. Section 154(1) of the Principal Act is amended by omitting “the applicant” first occurring and substituting “an applicant for a permit”.

Section 155 amended (Information to be provided)

28. Section 155(2)(b) of the Principal Act is amended by inserting “, including a plan for the safe operation and maintenance of a proposed dam” after “matters”.

Section 156 amended (Consideration of application)

29. Section 156 of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (da) take into consideration –
 - (i) the effect of the water or other stored material on the impoundment area of the dam; and
 - (ii) the chemical nature and stability of the material contained by the dam; and
 - (iii) the advice of the relevant authority referred to in section 165F(1); and

Section 157 substituted

30. Section 157 of the Principal Act is repealed and the following sections are substituted:

Granting of permit

157. (1) On receipt of an application for a permit, the Assessment Committee may –

- (a) grant the permit; or
- (b) refuse to grant the permit in accordance with section 158.

(2) A permit –

- (a) is to be consistent with any relevant State policy or water management plan; and
- (b) is subject to such conditions as may be specified in the permit or prescribed; and

- (c) is binding on, and has effect for the benefit of, the applicant and the owner and occupier of the land to which it relates and all subsequent owners and occupiers of the land; and
- (d) is subject to any determination of the Board under section 153.

(3) Without limiting subsection (2)(b) –

- (a) a condition may relate to the time before which the permitted activity must be commenced, the time before which the activity must be completed or the period during which the permit remains in force; and
- (b) a condition may relate to –
 - (i) the investigation, design, construction, operation, maintenance, surveillance or decommissioning of the dam; or
 - (ii) reporting to the Minister any information relating to the dam; or
 - (iii) any matter prescribed in the regulations; or
 - (iv) the objectives of this Act; and
- (c) it may be a condition of a permit that specified work is to be undertaken by a specified person or class of persons; and
- (d) a condition may provide that the permit does not take effect until –

- (i) permission has been obtained for the taking of water under section 90; or
- (ii) a relevant water allocation has been obtained by transfer under Division 4 of Part 6.

(4) The Assessment Committee may vary a condition under subsection (2)(b) if of the opinion that the variation is necessary –

- (a) to comply with a relevant water management plan; or
- (b) to avoid material environmental harm or serious environmental harm; or
- (c) to ensure that the dam is safe; or
- (d) for any other purpose that is not contrary to the objectives of this Act, a relevant water management plan or any prescribed matter relating to dam safety.

(5) The Assessment Committee must not make a variation under subsection (4) if the variation is contrary to –

- (a) a determination or terms and conditions made by the Board under section 153; or
- (b) an order under section 264; or
- (c) a determination of the Appeal Tribunal under section 279.

(6) The Assessment Committee must not make a variation under subsection (4)(d) without the written consent of the dam owner.

(7) Unless a variation is made under subsection (4)(d), the owner of a dam for which a variation of a permit is made has the same rights of appeal as if the variation were an original condition of the permit.

(8) A condition remains in force after the activity authorised by the permit has been completed, unless otherwise expressed in the permit.

Permit may enure for benefit of owner

157A. A permit to undertake dam works may be assigned so as to enure for the benefit of the owner of the relevant land from time to time.

Section 158 amended (Refusal of application for permit)

31. Section 158(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “resource –” and substituting “resource; or”;
- (b) by inserting the following paragraphs after paragraph (c):
 - (ca) may damage or adversely impact on property owned by a third party; or
 - (cb) may adversely impact on public safety –

Section 159 amended (Time when permit takes effect)

32. Section 159 of the Principal Act is amended by omitting subsection (7) and substituting the following subsections:

(7) Where –

- (a) any other approvals under this or any other Act are required for the proposed dam works to which the permit relates; or
- (b) a new licence or a variation to an existing licence is required to take water for the purposes of the dam works –

the permit does not take effect until all those approvals and the licence or the variation to the licence, as the case may require, have been granted.

(7A) The Assessment Committee may, with the approval of the Minister and by endorsement on the permit, declare that subsection (7) does not apply to the permit.

Section 164 amended (Time limits for decision)

33. Section 164(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “section 152(3)” and substituting “section 152(2)”;
- (b) by omitting paragraph (d) and substituting the following paragraph:
 - (d) in any other case, 12 weeks after the date on which the Assessment

Committee becomes satisfied that an application in accordance with section 146(2) has been lodged.

Part 8A inserted

34. After section 165 of the Principal Act, the following Part is inserted:

PART 8A – SAFETY OF DAMS

Division 1 – Interpretation

Application of Part

165A. This Part applies to all dams except a dam that holds less than one megalitre of water or waste and is not on a watercourse.

Interpretation of Part 8A

165B. In this Part –

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

“**dam**” means a permanent or temporary barrier or structure, the main purpose of which is the storage of water or other liquids, silt, debris, mine tailings or other liquid-borne material or the holding back or impedance of the flow of water or other material and includes –

- (a) water or other material stored or held back by the barrier or structure and the area covered by that water or other material; and
- (b) an artificial depression or hole excavated in a watercourse for the purpose of holding water or impeding the flow of water; and
- (c) a levee or bank formed for the purpose of holding back water; and
- (d) any appurtenant works;

“dam works” includes any appurtenant works;

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

Division 2 – Functions of Minister

Functions of Minister

165C. For the purposes of this Part, the Minister has the following functions:

- (a) to develop specifications for the purposes of the regulations relating to dams;
- (b) to establish and maintain a register of dams;
- (c) to develop prescribed standards required for the design, construction, maintenance, surveillance and decommissioning of dams or classes of dams;

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

Inquiries as to dam safety

165D. (1) The Minister may conduct an inquiry into any matter relating to the safety of a dam.

(2) The Minister may, by order in writing, authorise, on such terms and conditions as are specified in the order, any other person to conduct an inquiry or to examine, and report on, any matter in connection with an inquiry.

(3) Nothing in this section is to be construed as limiting the power of the Minister to conduct an examination in connection with an inquiry under this section and the Minister may conduct such an examination notwithstanding that he or she has authorised another body or person to do so.

Evidence at inquiry

165E. (1) An inquirer may require a person, by notice in writing –

- (a) within such reasonable time as may be specified in the notice, to provide the inquirer with such information and to produce to the inquirer such books, plans, documents or other papers and such films, tape recordings or other records in the person's possession or under the person's control as may be required for the purpose of the inquiry or examination, as the case may be, and as may be specified in the notice, whether generally or otherwise; or
- (b) to attend, at a time and place specified in the notice, before the inquirer and then, from time to time as required by the inquirer, to give evidence concerning any matter the subject of the inquiry or examination, as the case may be, and to produce to the inquirer any of the articles referred to in paragraph (a).

(2) An inquirer may require any evidence referred to in subsection (1)(b) to be given on oath, either in writing or orally, and, for that purpose, the inquirer may administer the oath.

(3) A person must not neglect or refuse to comply with the requirements of a notice served on the person under this section.

Penalty: Fine not exceeding 100 penalty units.

(4) A person must not –

- (a) furnish any information referred to in subsection (1)(a) required of him or her by a notice served on him or her under subsection (1) that is false or misleading in a material particular; or
- (b) give any evidence referred to in subsection (1)(b) that is false or misleading in a material particular.

Penalty: Fine not exceeding 100 penalty units.

(5) It is a defence to a prosecution under subsection (4) if the defendant proves that he or she believed the truth of the information or evidence given by him or her and that it was given in good faith.

(6) A person who is required to attend an inquiry under this section is entitled to be paid an allowance specified in the regulations in respect of that attendance.

Division 3 – Control of dams

Referral of applications under another enactment

165F. (1) Where a person who proposes to undertake dam works is required under any other enactment to apply for any approval or permit before those works are undertaken, the relevant authority must refer the application to the Assessment Committee before granting the approval or issuing the permit.

(2) Where an application is referred to the Assessment Committee –

- (a) the Committee may require the imposition on the approval or permit of such terms and conditions as the Committee considers necessary or desirable to ensure the safety of the dam works; and
- (b) the relevant authority must include those terms and conditions on the approval or permit.

(3) An application referred to the Assessment Committee under subsection (1) is taken to be an application for a permit under section 146 except that –

- (a) it is exempt from the provisions of sections 149 and 152; and
- (b) the provisions of sections 157 and 158 relating to the granting or refusal of a permit do not apply; and
- (c) the Committee may impose terms and conditions as mentioned in subsection (2) of this section.

(4) Division 2 of Part 14 does not apply to any terms or conditions imposed by the Assessment Committee under subsection (2) but this subsection does not affect any right of appeal against those terms and conditions which may lie under any enactment under which the relevant application is made.

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

such time as the Assessment Committee makes a final decision on the referral.

Duty for safe operation of dam

165G. An owner of a dam must, so far as is reasonably practicable, maintain and operate the dam so as not to cause, or be likely to cause, material environmental harm or serious environmental harm or danger to any person or property.

Penalty: In the case of –

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

Obtaining and providing information

165H. (1) In order to satisfy himself or herself that a dam is in a safe condition, the Minister may, by notice in writing, require the owner of a dam specified in the notice to do either or both of the following:

- (a) in accordance with the regulations, make such observations, take such measurements, undertake such engineering studies and keep such

records of or in respect of the dam, the environs over, under and surrounding the dam and the water or other material impounded by the dam as may be specified in the notice;

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

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

Penalty: Fine not exceeding 100 penalty units.

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

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

Reporting of incidents

165I. An owner of a dam must, as soon as practicable after an incident occurs in respect of the dam, report that incident to the Secretary in writing.

Penalty: Fine not exceeding 100 penalty units.

Entry, surveillance, testing, &c.

165J. (1) In this section, a reference to land comprising a dam includes a reference to the water or other material impounded by the dam.

(2) The Minister may, in writing, authorise a person to carry out a surveillance of any dam for the purposes of this Part.

(3) A person authorised under subsection (2) may enter on any land or any place on any land comprising any dam or the environs over, under or surrounding any dam and may –

- (a) carry out such surveillance, tests, investigations, surveys, experiments, boring, drilling and exploration; and
- (b) take such samples and such photographs –

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

(4) A person authorised under subsection (2) must not exercise any of the powers conferred by subsection (3) in respect of any land or any place on any land unless –

- (a) reasonable notice has been given to the owner or occupier of the land or place of the intention to exercise those powers; or
- (b) the person believes, on reasonable grounds, that the circumstances require immediate action to be taken.

(5) In the exercise of a power conferred by subsection (3) –

- (a) the person must ensure that no more damage than is necessary in the circumstances is done; and
- (b) the Minister must fully compensate any person who sustains damage in the course of the exercise of that power.

(6) A person authorised under subsection (2), in exercising a power conferred by subsection (3) in the case of any land or any place on any land, must, if so required by a person apparently in charge of that land or place, produce the instrument of his or her authority to that person.

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

Operation and maintenance manuals

165K. (1) An owner of a dam may demonstrate the safe operation and maintenance of the dam by demonstrating compliance with an operation and maintenance manual submitted by the owner to –

- (a) the Minister; or
- (b) if the manual was submitted in support of an application for a permit under section 146 or a referral under section 165F, the Assessment Committee.

(2) An operation and maintenance manual –

- (a) is to be in writing; and
- (b) is to be in accordance with the regulations.

(3) The Minister or Assessment Committee must accept an operation and maintenance manual if satisfied that it has been prepared in accordance with the regulations.

Directions for maintenance, &c., of dams

165L. (1) In order to satisfy himself or herself that a dam is in a safe condition, the Minister may give an owner of a dam a written direction –

- (a) relating to the undertaking of works and carrying out investigations, in accordance with the regulations, for the maintenance, surveillance or decommissioning of a dam; and
- (b) requiring the owner to keep such records relating to the maintenance, surveillance or decommissioning of the dam as the Minister may reasonably require in order to ensure its safety; and
- (c) requiring the owner to prepare and submit to the Minister when so directed a plan of action proposed to be taken in case the dam is, or is likely to become, a danger to any person or property or to the environment.

(2) Where an operation and maintenance manual has been accepted under section 165K(3), the Minister may only give a direction under subsection (1) of this section if the Minister is satisfied that the owner of the dam has not complied with the manual.

(3) An owner of a dam must comply with a direction under subsection (1).

Penalty: In the case of –

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

(4) The Minister must not give a written direction under subsection (1)(a) that is inconsistent with –

- (a) a condition specified in a relevant permit for dam works under section 157; or
- (b) a relevant determination of an appeal under section 279.

(5) If an owner fails to comply with a direction under subsection (1)(a) or (c), the Minister may undertake or carry out any work or investigation required to be undertaken or carried out or may prepare any plan required to be prepared and may, in any court of competent jurisdiction, recover from the owner, as a debt due to the Crown, any cost reasonably incurred in so doing.

(6) If an owner fails to comply with a direction under subsection (1)(b), the Minister may, in any court of competent jurisdiction, recover from him or her, as a debt due to the Crown, any cost reasonably incurred in obtaining the required information.

(7) If an owner fails to comply with a direction under subsection (1), the Minister may authorise

any person to enter on the owner's land for the purpose of performing any work or investigation required, preparing the required plan or obtaining the required information.

(8) If works that are needed to make a dam permanently safe have the effect of rendering it unsuitable for its intended purpose, any permit granted in respect of the dam under this or any other Act is of no effect.

Surveillance and testing

165M. (1) If an owner of a dam fails to carry out such testing and surveillance as required by a direction of the Minister under this Part, the Minister may authorise a person –

- (a) to enter on the owner's land; and
- (b) carry out surveillance of the dam and any other land or works as may be necessary to ensure the safety of the dam.

(2) For the purposes of subsection (1), the authorised person may carry out boring and drilling operations, make surveys and take measurements.

(3) Unless the Minister is satisfied that there is imminent danger to any person or property or to the environment, the authorised person must give the owner at least 14 days' notice in writing of any action proposed under this section.

(4) In the exercise of powers under this section –

- (a) the authorised person must ensure that no more damage than is necessary is done to the land; and
- (b) the Minister must compensate the owner for any damage done to the land.

Notices to ensure safety of dam following provision of information

165N. (1) Where as a result of information provided under section 165H, 165J, 165L or 165M the Minister determines that, in order to ensure the safety of a dam, it is necessary to modify the dam –

- (a) as a result of the review of the spillway and its design flood; or
- (b) as a result of a change to the hazard category of the dam subsequent to its construction; or
- (c) to meet prescribed safety requirements –

the Minister may, by notice in writing, require the owner of the dam to carry out modifications specified or described in the notice as may be reasonably necessary to ensure the ongoing safety of the dam.

(2) The Minister may specify in the notice a period, not exceeding 10 years, within which the owner must comply with the notice.

(3) An owner must comply with a notice under subsection (1) within the time specified in the notice.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units and a

daily fine not exceeding 50 penalty units for each day during which the offence continues; and

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

(4) If an owner of a dam fails to comply with a notice under this section –

- (a) the Minister may authorise a person to enter on the owner's land and take the action specified in the notice and such other action as may be necessary or desirable to make good any damage caused; and
- (b) any expense actually and reasonably incurred by the Minister in so doing is a debt due by the owner to the Minister and recoverable as such in any court of competent jurisdiction.

(5) Nothing in this section prevents the Minister from issuing a notice under section 165P.

Notices to ensure safety of dams in case of imminent danger, &c.

165P. (1) Where it appears to the Minister that a dam is unsafe or is in imminent danger of becoming unsafe or there is a high risk of an incident, the Minister may, by notice in writing, require the owner of the dam or the person in control of the dam at the relevant time to do such things as are specified or described in the notice as may be

reasonably necessary to ensure the safety of the dam.

(2) A person must comply with a notice under subsection (1).

Penalty: In the case of –

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

(3) Where it appears to the Minister that anything done or proposed to be done to, or in respect of, a dam or in the vicinity of a dam by its owner or any other person may increase the dam's safety risk, the Minister may, by notice in writing, require the owner or other person, as the case may be, to do such things as are specified or described in the notice as may be reasonably necessary to ensure the safety of the dam.

(4) The owner or other person must comply with a notice under subsection (3).

Penalty: In the case of –

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

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

(5) If an owner of a dam fails to comply with a notice under this section –

- (a) the Minister may authorise a person to enter on the owner's land and take the action specified in the notice and such other action as may be necessary or desirable to make good any damage caused; and
- (b) any expense actually and reasonably incurred by the Minister in so doing is a debt due by the owner to the Minister and recoverable as such in any court of competent jurisdiction.

(6) If, as a result of taking any action specified or described in a notice under this section, a dam becomes unsuitable for its intended purpose and is rendered permanently safe, any permit or licence granted in respect of the dam under this or any other Act is of no effect.

Division 4 – Miscellaneous and supplemental

Obstruction of authorised person

165Q. A person must not obstruct, hinder or interfere with –

- (a) a person authorised under subsection (2) of section 165J in the exercise of his or her powers under that section; or

- (b) a person authorised under subsection (7) of section 165L in the exercise of his or her powers under that subsection; or
- (c) a person authorised under subsection (1) of section 165M in the exercise of his or her powers under that section; or
- (d) a person authorised under subsection (4) of section 165N in the exercise of his or her powers under that subsection; or
- (e) a person authorised under subsection (5) of section 165P in the exercise of his or her powers under that subsection.

Penalty: Fine not exceeding 100 penalty units.

Determination of compensation

165R. (1) The amount of compensation payable under section 165J(5)(b) or section 165M(4)(b) is to be determined –

- (a) if the amount is a small claim for the purposes of the *Magistrates Court (Small Claims Division) Act 1989*, by the small claims division of the Magistrates Court; or
- (b) in any other case, as if it were a disputed claim for compensation under the *Land Acquisition Act 1993*.

(2) In determining the amount of compensation payable under section 165J(5)(b) or section 165M(4)(b), the court must have regard to any benefits accruing to a relevant person from the action which is the subject of the determination and

reduce the amount of the compensation payable accordingly.

Contracts

165S. The Minister may make a contract with any person for the carrying out of works, the performance of services or the supply of goods or materials in connection with the exercise by the Minister of his or her functions under this Part.

Arrangements with statutory authorities

165T. (1) The Minister may enter into an arrangement with any statutory authority that –

- (a) the statutory authority will act as agent of the Minister for the purposes of this Part; or
- (b) the Minister will act as agent of the statutory authority for the purposes of this Part –

on such terms and conditions as may be agreed between the Minister and the statutory authority.

(2) Notwithstanding anything in any other Act, a statutory authority is empowered to enter into arrangements referred to in subsection (1) and may do or suffer anything necessary or expedient for carrying out any such arrangements.

Form of information provided under this Part

165U. Any information or report submitted in fulfilment of an obligation under this Part is to be submitted in a form approved by the Minister.

Requirement for permit where dam works required by direction or notice

165V. (1) A person required by direction or notice under section 165L or 165N to undertake dam works must apply for an appropriate permit under Part 8 for those works unless the direction or notice otherwise provides.

(2) If the Assessment Committee or the Appeal Tribunal decides to refuse an application for a permit or the permit, if granted, would be inconsistent with a direction or notice under section 165L or 165N, the Minister may vary the direction or notice to take that decision into account.

(3) A person required by notice under section 165P to undertake dam works is not required to obtain a permit under Part 8 for those works.

Section 166 amended (Application of Division to water entities)

35. Section 166(1) of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraphs:

- (c) a body corporate that is incorporated under the Corporations Act if at least one-third of the members of the body corporate own or occupy land in a proposed water district; and

- (ca) a trust or society that is registered under the *Cooperatives Act 1999* if at least one-third of the members of the trust or society own or occupy land in a proposed water district; and

Section 182 amended (Annual reports to Minister)

36. Section 182 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3)** Where a responsible water entity is required to provide an annual report under any other Act, the Minister may direct that the provision of that report is sufficient compliance with this section.

Section 193 amended (Purpose of riverworks district)

37. Section 193 of the Principal Act is amended by inserting “so as to enable a water entity” after “established”.

Section 194 amended (Purpose of hydro-electric district)

38. Section 194 of the Principal Act is amended by inserting “so as to enable a water entity” after “established”.

Section 195 amended (Purposes of drainage district)

39. Section 195 of the Principal Act is amended as follows:

- (a) by inserting “so as to enable a water entity” after “established”;
- (b) by omitting from paragraph (a) “its” and substituting “the”.

Section 197 amended (Powers to undertake works near or through highways)

40. Section 197 of the Principal Act is amended as follows:

- (a) by omitting “*Highways Act 1951*” from the definition of “Secretary” in subsection (1) and substituting “*Roads and Jetties Act 1935*”;
- (b) by omitting from subsection (4) “, or to the Secretary in the case of a State highway,” and substituting “or to the Secretary”;
- (c) by omitting from subsection (8) “, or to the Secretary in the case of a State highway,” and substituting “or to the Secretary”;
- (d) by omitting from subsection (10) “*Highways Act 1951*” and substituting “*Roads and Jetties Act 1935*”.

Section 201 amended (Power to levy rates)

41. Section 201(1)(b) of the Principal Act is amended by omitting “constructing” and substituting “constructing, maintaining”.

Section 235 amended (Inspection and removal of meters)

42. Section 235(1) of the Principal Act is amended by omitting “section” and substituting “Part”.

Section 271 amended (Reviewable decisions)

43. Section 271 of the Principal Act is amended by inserting after subsection (1) the following subsections:

(1A) Where a notice under section 165H(1) or section 165N(1), or a direction under section 165L(1), is given, this Division applies to the notice or direction as if it were a decision and for that purpose –

- (a) the notice or direction is taken to be a decision to which this Division applies; and
- (b) the person to whom the notice or direction is given is taken to be an interested person.

(1B) Subsection (1A) does not apply in a case where the Minister determines that urgent action is necessary to avoid or mitigate the effects of an incident.

Section 289A inserted

44. Before section 290 of the Principal Act, the following section is inserted in Division 3:

Confidentiality

289A. (1) A person who is, or has been, employed in carrying out duties related to the administration of this Act must not disclose confidential information acquired in the course, or as a result, of carrying out those duties except –

- (a) as may be required for the purposes of this Act; or
- (b) as authorised by the person to whom the duty of confidentiality is owed; or
- (c) as authorised by the regulations; or
- (d) as required by a court or other lawfully constituted authority; or
- (e) as authorised by the Secretary after consultation with the person to whom the duty of confidentiality is owed.

Penalty: Fine not exceeding 50 penalty units.

(2) No civil liability attaches to any person for a disclosure of confidential information made as authorised under subsection (1).

Sections 304A and 304B inserted

45. After section 304 of the Principal Act, the following sections are inserted in Division 4:

Regulations relating to dams safety

304A. The Governor may make regulations prescribing –

- (a) standards for design, construction, maintenance, surveillance or decommissioning of dams or classes of dams; and
- (b) fees payable by the owner of a dam or proposed dam for assessing design, construction, maintenance, surveillance or decommissioning reports required to be submitted by the owner of the dam; and
- (c) competency standards for persons undertaking activities associated with dams; and
- (d) travelling allowances and compensation to be paid to persons attending or giving evidence at an inquiry or examination referred to in Part 8A.

Adoption of code relating to dams safety

304B. (1) For the purposes of Parts 8 and 8A, the regulations may adopt, wholly or partially and with or without modification, a code relating to matters in respect of which regulations may be made for the purposes of those Parts.

(2) The code may be adopted either as in force at the time the regulations are made or as in force from time to time.

(3) Any regulations adopting a code, or an amendment to a code, may contain such incidental, supplementary and transitional provisions as appear to the Governor to be necessary or desirable.

(4) The regulations or a code adopted by the regulations –

- (a) may refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a body specified in the regulations, either as in force at the time the regulations are made or as in force from time to time; and
- (b) may be of general or limited application.

(5) Where a code, standard or other document is adopted under subsection (1) or (4) as it is in force from time to time, an alteration to the code, standard or other document does not take effect for the purposes of this Act –

- (a) before the day on which notice of the alteration is published by the Minister in the *Gazette*; or
- (b) if the Minister so provides in the notice, until a day specified by the Minister in the notice.

(6) Where the regulations or a code adopted by the regulations refer to a standard or other document prepared or published by a body specified in the regulations –

- (a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and
- (b) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by

the Minister as a true copy of the code, standard or other document; and

- (c) the code, standard or other document has effect as if it were a regulation made under this Act.

Schedule 4 amended (Savings and transitional provisions)

46. Schedule 4 to the Principal Act is amended as follows:

- (a) by omitting from clause 2(4) “supply” twice occurring;
- (b) by omitting from clause 2(5) “supply” first occurring;
- (c) by omitting from clause 3(1) “under” first occurring and substituting “under, or subject to,”;
- (d) by inserting the following subclause after subclause (2) in clause 3:

(3) The amendment to this clause made by the *Water Management Amendment Act 2002* is taken to have taken effect on the commencement day.

***Sewers and Drains Act 1954* amended**

47. Section 8(5) of the *Sewers and Drains Act 1954* is amended by omitting “, or on the recommendation of the Rivers and Water Supply Commission”.