

TASMANIA

WATER MANAGEMENT AMENDMENT (DAM WORKS) BILL 2015

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WATER MANAGEMENT AMENDMENT (DAM WORKS) BILL 2015

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
25 August 2015

*(Brought in by the Minister for Primary Industries and Water,
the Honourable Jeremy Page Rockliff)*

A BILL FOR

An Act to amend the *Water Management Act 1999* with respect to dam works and for related purposes

Be it enacted by Her 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:

1. Short title

This Act may be cited as the *Water Management Amendment (Dam Works) Act 2015*.

2. Commencement

This Act commences on a day to be proclaimed.

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3. Principal Act

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

4. Section 3 amended (Interpretation)

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

- (a) by inserting the following definition after the definition of *Agency*:

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

- (b) by omitting the definition of *Assessment Committee*;
- (c) by omitting the definition of *Board*;
- (d) by omitting “, to which Part 8 or Part 8A applies” from the definition of *dam works*;
- (e) by omitting “such” from the definition of *dam works*;

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(f) by omitting the definition of *dedicated Crown land*;

(g) by inserting the following definition after the definition of *Director*:

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

(h) by inserting the following definitions after the definition of *dispersed surface water*:

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

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

(i) by inserting “, dam” after “resource” in the definition of *local newspaper*;

(j) by inserting “or in which a proposed or existing dam is to be situated” after “situated” in the definition of *local newspaper*;

(k) by inserting the following definition after the definition of *natural values*:

nest means –

(a) a structure or place where
a bird lays eggs and
shelters its young; and

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(b) an animal's breeding place, den or burrow;

(l) by omitting the definitions of *owner* and *permit* and substituting the following definition:

owner has the meaning given by section 3A;

(m) by omitting the definition of *register* and substituting the following definitions:

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

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

(n) by inserting the following definition after the definition of *surety*:

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

(o) by inserting the following definition after the definition of *taking*:

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

5. Section 3A inserted

After section 3 of the Principal Act, the following section is inserted in Part 1:

3A. Meaning of owner

- (1) In this Act, owner, in relation to land, means each of the following persons:
 - (a) in the case of a fee simple estate in land – the person in whom that estate is vested;
 - (b) in the case of land not registered under the *Land Titles Act 1980* and subject to a mortgage – the equity of redemption in that mortgage;
 - (c) in the case of land held under a tenancy for life – the person who is the life tenant;
 - (d) in the case of land held under a lease –
 - (i) for a term of not less than 99 years – the lessee; or
 - (ii) if another period is prescribed by the regulations, for a term of not less than that period – the lessee;

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- (e) in the case of land in respect of which a person has a prescribed interest – that person;
- (f) in the case of land that is unalienated from the Crown – the Crown.

(2) In this Act, owner, in relation to –

- (a) a dam that has been constructed, means each of the following persons:
 - (i) the person who owns the dam;
 - (ii) any person who owns land that may be covered by water when the dam is at maximum operating level (other than because of flood discharge) or, if there is a controlled spillway in relation to the dam, when water is at the spillway crest level; or
- (b) in the case of a dam under construction, means each of the following persons:
 - (i) the holder of a Division 3 permit or a Division 4 permit under which the dam is being constructed;

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- (ii) any person who is the owner of the land on which dam works in relation to the dam are being, or are to be, undertaken.

6. Section 8 amended (Functions and duties of the Minister)

Section 8(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (f) “management.” and substituting “management; and”;
- (b) by inserting the following paragraph after paragraph (f):
 - (g) any other functions and duties imposed on the Minister by this Act, including, but not limited to, functions and duties imposed under Part 8 in relation to dam works.

7. Section 10 amended (Delegation by Minister)

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

- (a) by omitting from paragraph (b) “section 137(2), 165L(5), 176(2), 178(1), 183(1), 186(1), 188(1), 192, 206, 225 or 259(6)” and substituting “section

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165L(5), 176(2), 178(1), 183(1), 186(1),
188(1), 192, 206, 225 or 295(6)”;

(b) by omitting from paragraph (c)
“section 46, 94(3), 127(1), 147(5),
165J(2), 165L(7), 165M(1), 165N(4),
229(1) or 282(4)” and substituting
“section 46, 94(3), 127(1), 147(5),
165J(2), 165L(7), 165M(1), 165N(4),
229(1), 282(4) or 164ZM”;

(c) by omitting paragraph (d).

8. Section 10A inserted

After section 10 of the Principal Act, the
following section is inserted in Part 3:

10A. Delegation by Secretary

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

9. Section 11 amended (Exemption from Act)

Section 11(2)(a) of the Principal Act is amended
by inserting “under this Act” after “permit”.

**10. Section 12 amended (Minister to keep certain
registers)**

Section 12 of the Principal Act is amended as
follows:

- (a) by omitting from subsection (1) “licences” and substituting “licences, water allocations”;
- (b) by inserting in subsection (1) “or issued” after “granted”;
- (c) by inserting the following subsection after subsection (1):
 - (1A) The Minister must keep a register of dams for the purposes of this Act.
- (d) by inserting the following subsection after subsection (7):
 - (8) The Minister may, of his or her own motion, amend the register of dams to add, amend or remove any particulars, in relation to a dam, relating to dam safety.

11. Section 12A amended (Application requirements)

Section 12A of the Principal Act is amended as follows:

- (a) by omitting “Assessment Committee” first occurring and substituting “Secretary”;
- (b) by omitting from paragraph (b) “Assessment Committee” and substituting “Secretary”.

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12. Section 14 amended (Scope of water management plans)

Section 14(3) of the Principal Act is amended by omitting paragraph (d).

13. Section 61 amended (Notification of financial interest)

Section 61 of the Principal Act is amended as follows:

- (a) by inserting in subsection (3) “of licences, water allocations and permits” after “register”;
- (b) by inserting in subsection (4) “of licences, water allocations and permits” after “register”;
- (c) by inserting in subsection (5) “of licences, water allocations and permits” after “Where the register”;
- (d) by inserting in subsection (6) “of licences, water allocations and permits” after “Where the register”.

14. Section 69 amended (Variation of licences)

Section 69 of the Principal Act is amended as follows:

- (a) by omitting paragraph (fa) from subsection (2) and substituting the following paragraph:

- (fa) if a water allocation endorsed on a licence is for the taking of water into a dam to which a Division 3 permit or a Division 4 permit relates and either –
 - (i) those dam works are not completed in accordance with that permit; or
 - (ii) conditions in relation to the operation, in accordance with the objectives of this Act, of the dam, when constructed, are to be placed on the licence; or
- (b) by inserting in subsection (3) “of licences, water allocations and permits” after “register”.

15. Section 77 amended (Surrender of licences)

Section 77(2) of the Principal Act is amended by inserting “of licences, water allocations and permits” after “register”.

16. Section 84 amended (Allocation of water)

Section 84(3A) of the Principal Act is amended by omitting “in respect of which a permit for dam works has been granted under section 157” and substituting “to which relates a Division 3

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permit, or a Division 4 permit, that authorises dam works”.

17. Section 88 amended (Reduction of water allocations)

Section 88(1) of the Principal Act is amended by inserting “of licences, water allocations and permits” after “register”.

18. Section 104 amended (Consent of parties with financial interest)

Section 104(1) of the Principal Act is amended by inserting “of licences, water allocations and permits” after “register”.

19. Section 106 amended (Cancellation, &c., of licence on conviction for offence)

Section 106(5) of the Principal Act is amended by inserting “of licences, water allocations and permits” after “register”.

20. Part 8 substituted

Part 8 of the Principal Act is repealed and the following Part is substituted:

PART 8 – DAM WORKS
Division 1 – Preliminary

138. Interpretation of Part

In this Part –

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

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

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

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

Division 3 permit means a permit issued under section 158;

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

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

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

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

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

(a) may result from dam works or is a kind of activity, mitigation measure, or action, that is prescribed; and

(b) is taken to compensate for adverse impact that endures beyond the duration of the permit to which the activity, mitigation measure or action relates;

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

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

permit application means an application for a Division 3 permit;

registered offset means –

- (a) an offset that is entered on the offsets register; and
- (b) any condition in relation to the offset that is entered under section 164R(3) on the offsets register.

139. Non-application of Part

This Part does not apply to dam works that –

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

140. Exemption from operation of Part

- (1) The Minister, by order, may exempt from the operation of this Part specific dam works or a category of dam works.

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- (2) Without limiting the categories of dam works the Minister may exempt or the manner in which the exemption is expressed, the Minister may exempt a category of dam works by reference to any one or more of the following criteria:
 - (a) the purpose of the dam works;
 - (b) the location of the dam works;
 - (c) the capacity or height of the dam;
 - (d) the ANCOLD consequence category of the dam works;
 - (e) the design specifications for, or methods of construction of, the dam works;
 - (f) the type of dam works.
- (3) Without limiting the categories of dam works the Minister may exempt or the manner in which the exemption is expressed, the Minister may exempt specific dam works, or a category of dam works, that consist of the decommissioning of a dam in accordance with a relevant works code under section 301.
- (4) The order may include requirements relating to reporting with respect to the undertaking and completion of the dam works.

- (5) An order under this section is a statutory rule.

141. Minister to take certain matters into account

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

- (a) the objectives of this Act; and
- (b) any prescribed requirements for the design, construction, erection, enlargement, modification, maintenance, repair, surveillance, decommissioning and removal of dams, for the conversion of land to a dam or for carrying out dam works and related matters; and
- (c) any relevant codes issued under section 301 or adopted under section 304B; and
- (d) any relevant approval guidelines.

142. Approval guidelines

- (1) The Minister, by order published in the *Gazette*, may issue guidelines in relation to –

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- (a) the consideration and determination of applications for Division 3 permits; and
 - (b) the determination of any conditions to which a Division 3 permit is to be subject; and
 - (c) any matter related to a matter referred to in paragraph (a) or (b).
- (2) The guidelines may include or adopt standards and codes.
- (3) The Minister, by order published in the *Gazette*, may –
 - (a) amend the guidelines; or
 - (b) repeal the guidelines and substitute new guidelines.
- (4) In issuing guidelines, amending guidelines or substituting guidelines, the Minister may consult with the persons he or she considers appropriate.
- (5) The Minister is to ensure that the guidelines, as in force, are published on the website of the Department and made available to the public in any other manner the Minister considers appropriate.
- (6) An order under subsection (1) or (3) is not a statutory rule.

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

143. Offence to undertake dam works without permit

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

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

- (2) It is a defence in proceedings for an offence against subsection (1) in relation to dam works on an existing dam if the defendant –
- (a) establishes that it was necessary to undertake the dam works in order to maintain the structural integrity of the dam; and

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- (b) establishes that the dam works were limited to such works as were necessary for that purpose; and
- (c) establishes that, within 2 working days after the dam works were commenced, notice of the works was given to the Minister or an authorised officer.

Division 3 – Division 3 permits
Subdivision 1 – Applications for Division 3 permits

144. Application for Division 3 permit

- (1) A person may apply to the Minister for a Division 3 permit to undertake dam works in respect of –
 - (a) a single dam; or
 - (b) a group of dams that collectively store, hold back or impede the flow of a single body of water.
- (2) An application –
 - (a) must comply with section 12A; and
 - (b) if the applicant is not the owner of the land on which the proposed dam works would be undertaken – must include a declaration that the applicant has notified the owner of the land, in

writing, of the intention to make the application.

- (3) If the Minister determines that an application does not comply with section 12A and the requirements of this section, and accordingly does not constitute an application under this section, the Minister must notify the applicant of that fact.
- (4) A notice under subsection (3) –
 - (a) is to be in writing; and
 - (b) is to be given within 10 days after the Minister receives the application; and
 - (c) is to include information concerning the applicant's rights of review or appeal under Part 14.
- (5) If –
 - (a) an applicant lodges an application for review under Part 14 in relation to the Minister's determination that the application does not comply with section 12A and the requirements of this section; and
 - (b) the review determines that the application does so comply –

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

145. Notice of permit application

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

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

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under subsection (1)(d) or
(e); and

(ii) the period during which
the representations may
be made; and

(iii) the manner in which, and
the address at which, the
representations may be
lodged with the Minister.

(3) The period in which representations may
be lodged under subsection (2)(d) is to be
a period of not less than 14 days
commencing on the day notice of the
application is published in a local
newspaper under subsection (1)(a).

**146. Representations relating to permit
application**

(1) If a notice of a permit application is
published under section 145(1)(a), any
person who may be affected by the
proposed dam works if the application is
granted may make written
representations to the Minister in relation
to the permit application –

(a) within the period specified in the
notice; and

(b) in the manner specified in the
notice; and

- (c) by lodging the representations at the address specified in the notice.
- (2) A person who has lodged a representation may withdraw it by written notice to the Minister lodged –
 - (a) at any time before the Minister grants or refuses to grant the permit application to which the representation relates; and
 - (b) at the address stated, in accordance with section 145(2)(d), in the notice published under section 145(1)(a).
- (3) If a representation has been withdrawn, it is taken never to have been made.

147. Further notice of permit application

- (1) Within 14 days after receiving a permit application, the Minister is to notify the following persons of the details of the application:
 - (a) the Director;
 - (b) the Director of Inland Fisheries.
- (2) Despite subsection (1), the Minister is not required to notify –

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

148. Referral by Director

- (1) The Director, on receiving a notice of a permit application under section 147(1), may, under section 27(2) of the EMPC Act and within 14 days after receiving the application, direct the applicant to refer details of the proposed dam works to the EPA Board for assessment.
- (2) Within 7 days after directing, in accordance with subsection (1), the applicant in a permit application to refer details of the proposed dam works to the EPA Board for assessment, the Director is to notify the Minister of that direction.
- (3) Within 7 days after the EPA Board, on the referral to it, for assessment, of the details of the proposed dam works under a permit application –
 - (a) completes an assessment under section 27(3) of the EMPC Act in relation those dam works; or
 - (b) gives notice under section 27(4) of the EMPC Act that such an assessment in relation to those dam works is not required –

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

149. Minister may require further information or action

- (1) After the period within which representations relating to a permit application may be made under section 146(1)(a) has ended, the Minister, by notice to the applicant, may require the applicant to provide to the Minister the further information, or take the action, specified in the notice, or both, to assist the Minister in determining the permit application.
- (2) A notice –
 - (a) is to be in writing; and
 - (b) is to specify the rights of the permit applicant, if aggrieved by the notice, to apply for a review or appeal under Part 14; and
 - (c) may require the applicant to cause additional information that is to be provided to be verified by the person specified in the notice; and
 - (d) may require that the additional information to be provided is to be in the format specified in the notice and is to be provided within the period, of not more than 2 years, specified in the notice; and

- (e) may specify that an action to be taken is to be taken in accordance with the instructions set out in the notice within the period, of not more than 2 years, specified in the notice.
- (3) An applicant is to comply with a requirement of a notice issued to the applicant under subsection (1) within –
 - (a) the period specified, in relation to the requirement, in the notice; or
 - (b) a longer period, if any, specified in an extension under subsection (4) in relation to the requirement.
- (4) On the written request, of an applicant to whom a notice is given under subsection (1), that is received by the Minister before the end of the period specified, in relation to a requirement, in the notice, the Minister may extend, for a further period not exceeding one year, the period specified in relation to the requirement.
- (5) The period in relation to a requirement may only be extended under subsection (4) once, and only if the Minister considers that the circumstances under which the notice under subsection (1) was issued have not significantly changed.

150. Statement of conditional approval

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

151. Amendment of permit application

- (1) An applicant in a permit application may, in writing, request the Minister to amend the permit application in respect of a particular relating to the design, type, size, location or purpose of the proposed dam works.
- (2) Section 12A applies to the request as if it were an application.

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

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application to a person – that person;

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

152. Withdrawal of permit application

A permit application is taken to have been withdrawn when –

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

Subdivision 2 – Determination of applications for Division 3 permits

153. Time for determining permit application

- (1) The Minister is to determine a permit application –

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

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section 27(7) of the EMPC Act – on the day on which the Minister receives notice of the determination of the appeal;

(b) if the Minister has, under section 149(1), required the applicant to provide further information or take action, or both – the period commencing on the day on which the Minister makes that requirement and ending –

(i) on the day on which the Minister is satisfied that he or she has received all further information, and that all actions have been taken, in accordance with a requirement of a notice under section 149(1); or

(ii) if a review under Part 14 is lodged against the requirement and the review is determined in favour of the applicant – on the day on which the applicant receives notice of the determination of the review;

- (c) if the applicant has, under section 151(1), requested the Minister to amend the permit application – the period commencing on the day the Minister receives the request and ending on the day the Minister grants or refuses to grant the request.

154. Failure by Minister to determine application

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

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

155. Consideration of permit application

- (1) In considering a permit application, the Minister is to take into consideration –
 - (a) the matters referred to in section 141; and

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- (b) any representations made under section 146(1) in relation to the permit application; and
- (c) any advice and comments received from the Director or Director of Inland Fisheries; and
- (d) any advice and comments received from a committee established under section 9 for the purposes of this Part; and
- (e) any information provided, or actions taken, by the applicant in compliance with a notice issued to the applicant under section 149(1); and
- (f) any matters relating to the potential impact of the dam works, including but not limited to –
 - (i) the potential impact of the dam works on, or matters that are relevant to, water resources and hydrology; and
 - (ii) the potential impact of the dam works on, or matters that are relevant to, conservation and protection of natural values; and

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

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

156. Determination of permit application

- (1) In this section –

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

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

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

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

- (c) if the proposed dam works are wholly or partly within a pipeline planning corridor and the Minister considers they are likely to compromise the safety or safe operation of the pipeline in that corridor; or
 - (d) if the applicant has been convicted of an offence under this Part, the previous Part 8 or Part 8A.
- (6) Despite subsection (4), the Minister is to refuse to grant a permit application if the EPA Board has assessed the proposed dam works under section 27(3) of the EMPC Act and determined that they must not proceed.
- (7) If, within 14 days after the permit application is made, the Minister determines it by refusing to grant it, the Minister is not required to publish or provide notice under sections 145 and 147.

157. Notification of determination of permit application

- (1) Within 14 days after determining a permit application, the Minister is to notify the following persons, in writing, of the determination:
 - (a) the applicant;

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- (b) the owner of the land in relation to which the proposed dam works are proposed in the permit application;
 - (c) each person who has lodged a representation in relation to the permit application under section 146(1).
- (2) The notice is to include –
 - (a) if the Minister has refused under section 156 to grant the permit application – the reasons for that refusal; and
 - (b) if the Minister has made a determination under section 156(3)(a) or (b) and the notice is to the owner of the land in relation to which the proposed dam works are proposed in the permit application – a statement of the dam safety obligations that apply to the owner as an owner of the dam; and
 - (c) any rights of the person receiving the notice to apply for a review or appeal under Part 14; and
 - (d) the details of any relevant dam operating notice; and
 - (e) details of any relevant variation to a water licence that is to be

made in accordance with
section 69(2)(fa)(ii).

158. Issue of Division 3 permits

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

Division 4 – Division 4 permit

159. Entitlement to Division 4 permits

(1) In this section –

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

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

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

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

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

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

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

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

- (2) A person who proposes to undertake dam works is entitled to a Division 4 permit if the proposed dam works –
- (a) are not on a watercourse; and
 - (b) relate to a single dam and not to a group of dams that collectively store, hold back or impede the flow of a single body of water; and
 - (c) are on land that –
 - (i) is unvegetated land; or
 - (ii) is vegetated land on which the harvest of timber, or the clearing of trees, that would be required as part of the

dam works is a
circumstance that is
prescribed for the
purposes of section 17(6)
of the *Forest Practices*
Act 1985; and

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

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

(k) will not inundate land owned by another person, unless the owner of land has given his or her consent, in writing, to the proposed dam works or any inundation; and

(l) are not declared works.

- (3) If a person is uncertain as to whether he or she is entitled under section 159(2) to a Division 4 permit, he or she may apply for a Division 3 permit.
- (4) The Minister, by order, may declare specific dam works, or a class of dam works, to be dam works that require a Division 3 permit.
- (5) An order under subsection (4) is a statutory rule.

160. Notice of intention to undertake dam works

- (1) A person who, in relation to proposed dam works, is entitled to a Division 4 permit under section 159(2) is to notify the Minister, in writing, of the intention to undertake those dam works.

(2) A notice –

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

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

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

- (a) the person is eligible for a Division 4 permit under section 159; and
- (b) a notice under section 160 of the person's intention to undertake dam works, and the fee prescribed for the purposes of that section, are received by the Minister from that person; and
- (c) the Minister has not issued a notice under section 162 to the person.

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

- (1) If the Minister has received from a person a notice under section 160 of the person's intention to undertake dam works, the Minister may issue to the person a notice directing the person to cease the dam works and to –
 - (a) apply for a Division 3 permit before undertaking the dam works; or

- (b) undertake to the satisfaction of the Minister, within the periods specified in the notice or a longer period allowed by the Minister, work, or activities, specified in the notice.
- (2) A person to whom a notice has been issued under subsection (1) must comply with the notice.

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

Division 5 – Permits generally

163. Authority of permit

- (1) A permit authorises the undertaking, in accordance with the permit, of the dam works –
 - (a) specified in the permit; or
 - (b) if the permit is a Division 4 permit – specified in the notice given under section 160 in relation to the dam works.
- (2) Despite subsection (1), a permit does not authorise the undertaking of the dam works specified in the permit, or, if the

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permit is a Division 4 permit, specified in a notice given under section 160 in relation to the dam works, without –

- (a) the further authority of a licence, permit, approval or other authorisation, if another Act requires such a licence, permit, approval or other authorisation for the undertaking of the dam works; or
- (b) the consent of the owner of the land on which those dam works are to be undertaken.

164. Conditions of Division 3 permit

- (1) A Division 3 permit is subject to the conditions determined by the Minister and specified in the permit.
- (2) The Minister may impose under subsection (1) conditions relating to any of the following matters:
 - (a) the time before which any activity that the permit authorises to be carried out must be commenced;
 - (b) the time by which any activity that the permit authorises to be carried out must be completed;

- (c) the actions and activities that must be undertaken before the construction of any works that are to be undertaken under the permit;
- (d) the investigation, or design specifications, of the dam works;
- (e) the undertaking of the dam works;
- (f) the conservation or protection of cultural heritage and natural values;
- (g) the mitigation of the impact of the dam works on the free passage of fish;
- (h) the type of, and the timing of the development and provision of, dam safety plans required for the dam works;
- (i) reporting requirements relating to the dam works;
- (j) offset measures and the requirements associated with offsets, including the consent by the owner of land to which the permit does not relate to the entry of an offset on the offsets register;

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- (k) the undertaking by a person, or a person of a class, specified in the conditions, of the work so specified;
- (l) any matter prescribed in the regulations;
- (m) any other matter the Minister considers appropriate.

164A. Conditions of Division 4 permit

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

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

164B. Form of Division 3 permit

A Division 3 permit –

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

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- (c) is to specify the conditions to which the permit is subject.

164C. When permit takes effect

- (1) In this section –

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

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

- (2) A Division 3 permit takes effect –

- (a) at the expiration of 14 days after the day on which the last of the notices under section 157(1) in relation to the permit has been issued, unless paragraph (b) or (c) applies to the permit; or
- (b) if the permit specifies a day on which it is to take effect – on the day so specified, unless paragraph (c) applies to the permit; or
- (c) if an appeal or review has been instituted in relation to the permit,

on the day on which the appeal is
determined or abandoned.

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

164D. Term of permit

- (1) In this section –

notice of completion has –

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

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whichever first occurs.

- (3) A Division 4 permit has effect for the term commencing on the day on which it is taken to be issued and ending –
 - (a) on the expiry of the period of 2 years commencing on that day; or
 - (b) on the day on which the Minister, under section 164ZB(6), notifies the permit holder that the notice of completion has been accepted; or
 - (c) on the day on which a notice is issued under section 162 to the holder of the permit –

whichever first occurs.

Division 6 – Amending permits

164E. Extension of term of Division 3 permit

- (1) Not later than one month before the expiry of a Division 3 permit, the permit holder may apply to the Minister for an extension of the term of the permit.
- (2) Section 12A applies to the application.
- (3) On receiving an application –
 - (a) the Minister may extend, once only, the term of the Division 3

permit for a period not exceeding
2 years; or

- (b) refuse to extend the term of the Division 3 permit, if the Minister considers that the dam works will not be completed within the period so extended.

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

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

164G. Determination of application to amend permit

- (1) In considering an application to amend a Division 3 permit made under section 164F the Minister –
 - (a) is to take into consideration the matters specified in section 155; and
 - (b) is to comply with section 156(2).
- (2) After considering an application to amend a Division 3 permit made under section 164F, the Minister may –
 - (a) grant the application and amend the permit accordingly; or
 - (b) if the applicant agrees, grant the application subject to the amendments to the application that the Minister considers appropriate and amend the permit accordingly; or
 - (c) refuse to grant the application.
- (3) Despite subsection (2), the Minister may only grant the application under subsection (2)(a) or (b) if satisfied that the proposed amendment of the permit –
 - (a) does not substantially alter the dam works to which the permit applies; and

- (b) does not increase the risk of an event that may affect dam safety arising from those dam works.
- (4) When granting an application under subsection (2)(a) or (b) and amending the permit, the Minister may determine under section 164 conditions to which the permit is subject.

164H. Notification of determination of application to amend permit

- (1) Within 14 days after determining an application to amend a permit made under section 164F, the Minister is to notify the following persons, in writing, of the determination:
 - (a) the applicant;
 - (b) if the applicant is not the owner of the land to which the permit relates – the owner.
- (2) If the Minister has refused to grant the application, or has granted the application under section 164G(2)(a) or (b) and imposed conditions on the permit, the notice is to include –
 - (a) the reasons for that decision; and
 - (b) any rights of the person who receives the notice to apply for a review or appeal under Part 14.

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164I. Amendment of permit to correct mistakes

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

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

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

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

- (a) if it is a Division 3 permit, amend the permit, including by varying or adding conditions under section 164; or

- (b) take action under section 164ZM as if a person had been found guilty of an offence under this Part; or
- (c) take action under Part 8A.

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

If –

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

the Minister may so amend the permit.

164L. When amendment takes effect

The amendment of a Division 3 permit takes effect –

- (a) if the Minister specifies in the amended permit that the amendment, or the permit as amended, takes effect on a day that is later than the day on which

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the amendment is made – on that specified day; or

- (b) if no such day is specified in the amended permit – on the day on which the Minister amends the permit.

164M. Issue of amended permit

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

Division 7 – Transfers of permits

164N. Transfer of permit

- (1) The holder of a Division 3 permit may apply to the Minister to transfer the permit to another person.
- (2) An application must –
 - (a) comply with section 12A; and
 - (b) if the applicant is not the owner of the land on which the dam works specified in the permit are being, or are to be, undertaken – be accompanied by the written permission of the owner of the land to the making of the application.

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

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(7) The transfer of a permit takes effect –

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

Division 8 – Registration of offsets for dam works

164O. Interpretation of Division 8

In this Division –

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

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

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

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

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

164P. Offsets register

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

164Q. Application to register offset

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

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land, to the registration of the offset; and

- (c) be accompanied by the prescribed fee, if any.

164R. Registration of offset

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

- (b) approval to register the offset has not been obtained in accordance with section 164Q(2)(b).
- (5) The Secretary is to notify the affected permit holder, in writing, of the decision of the Secretary under subsection (1) in relation to an application to register an offset, as soon as reasonably practicable after making the decision.

164S. Duration of offset

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

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

164T. Notice of offset to be lodged with Recorder

- (1) If the Secretary considers that a registered offset affects land, the Secretary is to lodge with the Recorder a notice of offset, relating to that offset, that includes the title reference (volume and folio) or the other particulars of title for the land.

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- (2) Subsection (1) does not apply to an offset if the offset is included in –
 - (a) a conservation covenant, within the meaning of Part 5 of the *Nature Conservation Act 2002*; or
 - (b) an agreement under Part 5 of the *Land Use Planning and Approvals Act 1993*.
- (3) A notice of offset –
 - (a) is to be in a form approved by the Recorder; and
 - (b) is to be lodged with the Recorder, as soon as practicable after the relevant offset is entered on the offsets register, in a manner approved by the Recorder.
- (4) As soon as practicable after a notice of offset is lodged with the Recorder, the Recorder must ensure that the notice of offset is available for viewing by a person when the person views the relevant folio of the Register.
- (5) If the land to which a notice of offset relates is not registered land, the Recorder, as soon as reasonably practicable after receiving the notice, is to register a copy of the notice in the Registry of Deeds in accordance with the *Registration of Deeds Act 1935*.

- (6) A notice of offset available for viewing by a person when the person views the relevant folio of the Register is not affected by a subsequent disposition of the land to which that folio relates or another subsequent dealing in that land.
- (7) For the purposes of proceeding under this section, the Recorder is entitled to assume that all necessary pre-requisites and procedures in respect of the notice have been complied with.

164U. Amendment of registered offset

- (1) Any of the following persons may apply to the Secretary for an amendment of the registration of a registered offset:
 - (a) if the registered offset relates to land – the owner of the land; or
 - (b) if the registered offset relates to water – the owner of the dam to which the registered offset relates.
- (2) An application must comply with section 12A and be accompanied by the prescribed fee, if any.
- (3) The Secretary is to grant an application received by the Secretary and amend the offsets register by amending the relevant registered offset –

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- (a) after having regard to the conservation or protection of natural values and cultural heritage, if the Secretary is satisfied that the amendment will not result in a new, significant adverse impact or a significant increase in an adverse impact, on the environment; and
 - (b) where the applicant is not an owner of land to which the registered offset relates and the registration of the offset is amended as requested in the application – if the Secretary is satisfied that all such owners have consented to the making of the requested amendment of the registered offset.
- (4) The Secretary is to refuse to grant an application lodged with the Secretary if not satisfied as to the matters specified in subsection (3).
- (5) If the Secretary grants an application –
 - (a) the Secretary is to amend the offsets register by amending the registered offset in accordance with the request in the application; and
 - (b) the Secretary is to lodge with the Recorder a notice of amendment

of offset, if the application relates to a registered offset referred to in a notice of offset that has been lodged with the Recorder in accordance with section 164T.

- (6) A notice of amendment of offset –
 - (a) is to include the title reference (folio and volume) to the land affected by the offset; and
 - (b) is to be in a form approved by the Recorder; and
 - (c) is to be lodged with the Recorder, as soon as practicable after the amendment of the relevant offset is entered on the offsets register, in a manner approved by the Recorder.
- (7) As soon as practicable after a notice of amendment of offset is lodged with the Recorder, the Recorder must ensure that the notice of offset as so amended is available for viewing by a person when the person views the relevant folio of the Register.
- (8) An amendment of the registration of an offset takes effect when the Secretary amends the offsets register.

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164V. Amendment of offsets register to correct mistakes

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

164W. Minister may direct cancellation of registration of offset

- (1) The Minister –

(a) after having regard to the conservation or protection of natural values and cultural heritage; and

(b) if of the opinion that an offset is no longer required –

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

(2) On receipt of a direction under subsection (1), the Secretary is to –

(a) cancel the registration of the relevant offset by removing it from the offsets register; and

(b) notify the following persons, in writing, of the cancellation of the registration of the registered offset:

(i) if the registered offset relates to land – the owner of the land; or

(ii) if the registered offset relates to water – the owner of the dam to which the registered offset relates.

164X. Cancellation of registered offset when offset naturally ends

- (1) As soon as practicable after the activity, mitigation, measure or action constituting a registered offset comes to its natural end –
 - (a) if the registered offset relates to land – the owner of the land; or
 - (b) if the registered offset relates to water – the owner of the dam to which the registered offset relates –

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

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

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

- (1) On cancelling the registration of an offset by removing it from the offsets register, the Secretary is to lodge with the Recorder a notice of cancellation of offset.
- (2) A notice of cancellation of offset –
 - (a) is to include the title reference (folio and volume) to the land

that was affected by the offset;
and

- (b) is to be in a form approved by the Recorder; and
 - (c) is to be lodged with the Recorder, as soon as practicable after the relevant offset is removed from the offsets register, in a manner approved by the Recorder.
- (3) On receiving a notice of cancellation of offset, the Recorder of Titles is to remove from the Register any notice of offset, and any notice of amendment of offset, available for viewing by a person when the person views the relevant folio of the Register.

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

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

Division 9 – Completion of dam works

164ZA. Completion of dam works under Division 3 permit

- (1) Before the expiration of a Division 3 permit and as soon as practicable after the dam works to which the permit relates have been completed, the holder

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

Penalty: Fine not exceeding 100 penalty units.

(2) On receiving a notice of completion, the Minister may require the permit holder, in writing, to do one or more of the following:

- (a) provide further information within the time specified in the request;
- (b) take further action, within the time specified in the requirement;
- (c) notify the Minister, in writing, of the completion of the further action the permit holder is required to take under paragraph (b).

(3) A permit holder must comply with a notice under subsection (2).

Penalty: Fine not exceeding 100 penalty units.

(4) On receiving a notice of completion, or any further information or notice required under subsection (2)(a) or (c), the Minister may accept the notice of completion.

- (5) On accepting a notice of completion, the Minister is to –
- (a) if the relevant dam works consisted of –
 - (i) the construction or erection of a dam – register the dam on the register of dams; or
 - (ii) the enlargement, modification, repair or removal of the dam – amend any existing registration of the dam on the register of dams; and
 - (b) notify the permit holder, in writing, of that acceptance.

164ZB. Completion of dam works under Division 4 permit

- (1) Within 30 days after the dam works under a Division 4 permit have been completed, the permit holder must give to the Minister a notice (the ***notice of completion***), in writing, of the completion of the dam works.

Penalty: Fine not exceeding 200 penalty units.

- (2) The notice of completion is to –
- (a) be in the approved form; and

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

Penalty: Fine not exceeding 200 penalty units.

- (5) On receiving a notice of completion or any further information or notice

required under subsection (3)(a) or (c), or on being notified that further action specified in a requirement under subsection (3)(b) has been taken, the Minister may –

- (a) accept the notice of completion; or
 - (b) notify the permit holder, in writing, that the dam works have not met the requirements for entitlement to a Division 4 permit set out in section 159(2).
- (6) On accepting a notice of completion, the Minister is to –
 - (a) if the relevant dam works consisted of –
 - (i) the construction or erection of a dam – register the dam on the register of dams; or
 - (ii) the enlargement, modification, repair or removal of a dam – amend any existing registration of the dam on the register of dams; and
 - (b) notify the permit holder, in writing, of that acceptance.

Division 10 – Dam operating notices

164ZC. Dam operating notice

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

application for a Division 3 permit is granted and the permit is issued to that person, that person may combine an application for a review of, or an appeal against, the notice and an application for a review of, or appeal against, the permit or its conditions into a single application for a review or an appeal under Part 14.

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

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an existing requirement or condition;

(c) revoke the dam operating notice.

(7) A dam operating notice and a notice under subsection (6) take effect on the day specified in the notice.

164ZD. Details of dam operating notice

A dam operating notice –

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

- (ii) to prevent the inundation of land not owned by the owner of the dam; and
- (d) may contain the conditions, determined by the Minister, to which it is subject.

164ZE. Period of dam operating notice

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

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

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

- (1) In this section –

responsible person means a person –

- (a) who is responsible for an activity, measure or action specified in a dam operating notice; or
- (b) who was responsible as specified in paragraph (a) but has ceased to be so responsible.

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

Penalty: Fine not exceeding 10 penalty units.

164ZG. Transfer of dam operating notice

- (1) On receiving a notice from a person (the *original responsible person*) under section 164ZF(2) –
- (a) that the person is ceasing, or has ceased, to be responsible for an activity, measure or action specified in a dam operating notice issued to him or her; and
 - (b) of the name and contact details of another person who is assuming, or has assumed, responsibility for that activity, measure or action (the *new responsible person*) –

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

(2) On the amendment of the dam operating notice –

(a) the Minister is to issue the dam operating notice, with the amendment incorporated, to the new responsible person; and

(b) the original operating person ceases to be bound by the dam operating notice.

(3) A new responsible person is not entitled under Part 14 to apply for a review in relation to, or appeal against, the issue of a dam operating notice to him or her under this section.

164ZH. Amendment of dam operating notice to correct mistakes

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

(a) to correct a mistake, if the mistake is a clerical mistake or an error arising from an accidental slip or omission; or

(b) to correct a mistake, if the mistake is an evident

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miscalculation of figures or an evident mistake in the description of land, other property or a person; or

- (c) to change the name or address of the person to whom the notice relates.

Division 11 – Offences

164ZI. Offence to contravene permit conditions

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

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

164ZJ. Offence to contravene dam operating notice or conditions

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

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

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

164ZK. Offence to contravene registered offset

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

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

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

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

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not exceeding 20 penalty units for
each day during which the
offence continues.

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

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

**164ZM. Ministerial action following contravention of
Part**

- (1) If a person is found guilty of an offence under this Part in relation to dam works or a dam operating notice, the Minister may require, in writing, any one or more of the following persons to take the action specified in the requirement, whether or not the person so required to take action is the person who is found guilty of the offence:
 - (a) the person who is or was the relevant permit holder;
 - (b) the owner of the relevant dam or an authorised operator of the dam;

- (c) the owner or occupier of land on which the dam or dam works is or was situated or undertaken.
- (2) The requirement –
- (a) is to specify the person's rights to apply for a review, or appeal against, the requirement under Part 14; and
 - (b) may require –
 - (i) the emptying, breaching, modification or removal of the relevant dam; or
 - (ii) the undertaking of work to repair damage to the site of the relevant dam works; or
 - (iii) the undertaking of actions to ensure compliance with a dam operating notice or its conditions; or
 - (iv) in the case of dam works being undertaken under a Division 4 permit – the cessation of the dam works and the making under section 144 of an application for a Division 3 permit; or

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- (v) any other action the Minister considers appropriate in the circumstances.

- (3) A person must comply with a requirement.

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

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

- (a) the Minister may authorise a person, in writing, to enter on the relevant land and take any action specified in the requirement and such other action as may be necessary or desirable to make good any damage caused by the failure to comply with the requirement; and
- (b) the expenses reasonably incurred by the Crown in the taking of action by the person authorised under paragraph (a) –
 - (i) are a debt due and owing by the person who failed to comply with the requirement; and

- (ii) may be recovered in a court of competent jurisdiction.
- (5) A person authorised under subsection (1) or subsection (4)(a) to take action as stated in that subsection is not required to obtain a permit unless the Minister, in the authorisation, so specifies.

Division 12 – Miscellaneous

164ZN. Minister to prepare annual report

- (1) The Minister, on or before 1 October in a year, is to prepare a report in relation to the performance and exercise of his or her functions and powers under this Part in relation to the immediately preceding financial year.
- (2) A report prepared under subsection (1) is to be published on the website of the Department for a period of not less than 12 months.

165. Review to be conducted

- (1) The Minister is to conduct, in accordance with the terms of review that are prescribed, an annual review of the operation of administrative processes under this Part.
- (2) The Minister may consult with any persons he or she thinks fit for the

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purposes of conducting the annual review.

- (3) This section ceases to apply in the year after the sixth year from the date on which this section commences.

21. Section 165C amended (Functions of Minister)

Section 165C of the Principal Act is amended by omitting paragraph (b).

22. Section 165F amended (Referral of applications under another enactment)

Section 165F of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Assessment Committee” and substituting “Minister”;
- (b) by omitting from subsection (2) “Assessment Committee –” and substituting “Minister –”;
- (c) by omitting from subsection (2)(a) “Committee” first occurring and substituting “Minister”;
- (d) by omitting from subsection (2)(a) “Committee” second occurring and substituting “he or she”;
- (e) by inserting in subsection (2)(a) “, including a condition consisting of a

requirement that the person report to the Minister in relation to the person's compliance with any condition of the approval or permit" after "works";

- (f) by omitting from subsection (3) "Assessment Committee" and substituting "Minister";
- (g) by omitting from subsection (3) "permit under section 146" and substituting "Division 3 permit";
- (h) by omitting from subsection (3)(a) "sections 149 and 152;" and substituting " sections 146, 147 and 148;";
- (i) by omitting paragraph (b) from subsection (3) and substituting the following paragraph:
 - (b) the provisions of section 156 relating to the granting or refusal of an application for a Division 3 permit do not apply; and
- (j) by omitting from subsection (3)(c) "Committee" and substituting "Minister";
- (k) by omitting from subsection (4) "Assessment Committee" and substituting "Minister";
- (l) by omitting from subsection (5) "Assessment Committee" and substituting "Minister".

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23. Section 165K amended (Operation and maintenance manuals)

Section 165K of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “the owner to –” and substituting “the owner to the Minister.”;
- (b) by omitting paragraphs (a) and (b) from subsection (1);
- (c) by omitting from subsection (3) “or Assessment Committee”.

24. Section 165L amended (Directions for maintenance, &c., of dams)

Section 165L of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subsection (4);
- (b) by omitting from subsection (8) “granted” and substituting “issued”.

25. Section 165V substituted

Section 165V of the Principal Act is repealed and the following sections are substituted:

165V. No requirement for permit where dam works required by direction or notice

A person required by direction or notice under section 165L, 165N or 165P to undertake dam works is not required to obtain a permit under Part 8 in relation to those dam works.

165W. Registration of dams

- (1) The Minister, by order, may declare that a dam of a height, storage capacity, ANCOLD consequence category, location or type be registered with the Secretary within the period, if any, specified in the order as the period within which the dam must be registered.
- (2) An order under subsection (1) is not a statutory rule.
- (3) The owner of a dam that is required under subsection (1) to be registered with the Secretary must give to the Secretary a notice, in the approved form, that –
 - (a) states his or her name, address and contact information; and
 - (b) states the name, address and contact information of any other owner of the dam; and
 - (c) specifies the geographical location of the dam; and

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- (d) includes a description of the dam, including its height, storage capacity, ANCOLD consequence category and type.

Penalty: Fine not exceeding 100 penalty units.

- (4) For the purposes of subsection (3), if an owner of a dam has given the notice required by that subsection, all other owners of the dam are taken to have given notice under that subsection.
- (5) On receiving a notice, the Secretary, in writing, may require the owner who gave that notice to provide the Secretary with the further information specified in the requirement for the purposes of allowing the Minister to obtain information and keep records on matters relating to the safety of dams under Part 8A.
- (6) An owner who receives a requirement under subsection (5) must comply with that requirement.

Penalty: Fine not exceeding 100 penalty units.

165X. Minister may assign, &c., ANCOLD consequence category

- (1) The Minister may –
 - (a) assign an ANCOLD consequence category to a dam; or

- (b) review or alter the assignment to a dam of an ANCOLD consequence category.
- (2) The Minister must give notice to the owner of land on which is situated a dam –
 - (a) to which an ANCOLD consequence category is assigned under subsection (1); or
 - (b) to which an alteration of the assignment to a dam of an ANCOLD consequence category relates.
- (3) If an ANCOLD consequence category is assigned, or altered, under subsection (1), in relation to a dam, the dam is to be taken to be a dam to which that ANCOLD consequence category is assigned.

26. Section 185 amended (Requirements for permits)

Section 185 of the Principal Act is amended by omitting “permit in respect of dam works under Division 4 of Part 8” and substituting “permit under Part 8”.

27. Section 263 amended (Correction of notation of demerit points)

Section 263 of the Principal Act is amended as follows:

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- (a) by inserting in subsection (1) “of licences, water allocations and permits” after “register”;
- (b) by inserting in subsection (2) “of licences, water allocations and permits” after “register”.

28. Section 270 amended (Interpretation of Division)

Section 270 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (d) “section 80(4)(a)” and substituting “section 80(2)(a)”;
- (b) by omitting paragraph (e) and substituting the following paragraph:
 - (e) in respect of a refusal under section 80(2)(b) –
 - (i) the licensee; and
 - (ii) a person with a financial interest in the licence or a water allocation of the licence;
- (c) by omitting paragraph (i);
- (d) by omitting paragraph (l);
- (e) by inserting the following paragraphs after paragraph (ld):

- (le) in respect of a determination under section 144(3) that an application for a Division 3 permit does not comply with the relevant requirements, the applicant;
- (lf) in respect of a requirement under section 149, the applicant for the permit to which the requirement relates;
- (lg) in respect of a determination under section 156 of an application for a Division 3 permit –
 - (i) the applicant; and
 - (ii) a person who made a representation under section 146 in relation to the application;
- (lh) in respect of a notice under section 162, the person undertaking the dam works to which the notice relates;
- (li) in respect of the imposition of conditions on a Division 3 permit under section 164 –
 - (i) the holder of the permit; and

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- (ii) a person who made a representation under section 146 in relation to the application to which the permit relates;
- (lj) in respect of a refusal to extend the term of a Division 3 permit under section 164E, the applicant for the extension;
- (lk) in respect of a refusal to amend a permit under section 164G, the applicant for the amendment;
- (lm) in respect of the issuing to the holder of a permit of a requirement under section 164ZA(2), the holder of the permit;
- (ln) in respect of the issuing to the holder of a permit of a requirement under section 164ZB(3), the holder of the permit;
- (lo) in respect of the issue under section 164ZC of a dam operating notice, the person to whom the notice is issued;
- (lp) in respect of a requirement or direction under section 164ZM or section 282(3) –

- (i) the person on whom the notice of the requirement or direction is served; and
 - (ii) where the notice of the requirement or direction is served on a person other than the owner of the relevant land, the owner or occupier of that land;
- (f) by omitting paragraph (m).

29. Section 271 amended (Reviewable decisions)

Section 271(1) of the Principal Act is amended as follows:

- (a) by omitting paragraph (d);
- (b) by omitting from paragraph (f) “135, 145,”;
- (c) by omitting paragraph (h);
- (d) by inserting the following paragraphs after paragraph (jd):
 - (je) a determination under section 144(3) that an application for a Division 3 permit does not comply with the relevant requirements;
 - (jf) a requirement under section 149;

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- (jg) a determination under section 156 of an application for a Division 3 permit;
- (jh) a notice under section 162;
- (ji) the imposition of conditions on a Division 3 permit under section 164;
- (jj) a refusal to extend the term of a Division 3 permit under section 164E;
- (jk) a refusal to amend a permit under section 164G;
- (jl) a requirement under section 164ZA(2);
- (jm) a requirement under section 164ZB(3);
- (jn) the issue under section 164ZC of a dam operating notice;
- (jo) a requirement or direction under section 164ZM or section 282(3);

30. Section 274 amended (Interpretation of Division)

Section 274(1) of the Principal Act is amended by omitting paragraphs (d) and (e).

31. Section 275 amended (Appealable decisions)

Section 275 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (i) “, 135, 147 or 282(3)”;
- (b) by omitting paragraph (j) and substituting the following paragraphs:
 - (j) a determination under section 156;
 - (ja) the imposition of conditions on a Division 3 permit under section 164;
 - (jb) the issue under section 164ZC of a dam operating notice;
 - (jc) a requirement or direction given under section 164ZM or section 282(3);
- (c) by omitting paragraph (l).

32. Section 276 amended (Appeal to Appeal Tribunal)

Section 276(4) of the Principal Act is amended by omitting “grant or refusal of a permit under Part 8” and substituting “determination under section 156 of an application for a Division 3 permit, the issue under section 164ZC of a dam operating notice or both those matters in combination”.

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33. Section 278 amended (Form of appeal to Appeal Tribunal)

Section 278(3) of the Principal Act is amended by omitting “grant or refusal of a permit,” and substituting “determination of an application for a Division 3 permit,”.

34. Section 279 amended (Determination of appeal)

Section 279 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “Minister, Assessment Committee” and substituting “Minister”;
- (b) by omitting from subsection (1)(b) “Minister, Committee” and substituting “Minister”;
- (c) by omitting from subsection (1A) “grant or refusal of a permit,” and substituting “determination of an application for a Division 3 permit,”;
- (d) by omitting from subsection (2) “grant or refusal of a permit under Part 8,” and substituting “determination of an application for a Division 3 permit,”.

35. Section 279A amended (Compensatory orders for gas pipeline safety detriments)

Section 279A of the Principal Act is amended as follows:

-
- (a) by omitting “a permit;” from paragraph (a) of the definition of *appeal* in subsection (1) and substituting “an application for a Division 3 permit;”;
 - (b) by omitting “a permit;” from paragraph (b) of the definition of *appeal* in subsection (1) and substituting “an application for a Division 3 permit;”;
 - (c) by inserting “Division 3” after “a” in the definition of *representations* in subsection (1);
 - (d) by omitting “Assessment Committee” from the definition of *representations* in subsection (1) and substituting “Minister under section 146”;
 - (e) by omitting from subsection (2) “a permit” and substituting “a Division 3 permit”;
 - (f) by omitting from subsection (3) “an applicant not being granted a permit” and substituting “an application for a Division 3 permit being refused”;
 - (g) by omitting from subsection (3)(a) “permit is not being granted” and substituting “application is being refused”;
 - (h) by omitting from subsection (3)(b) “not being granted the permit;” and substituting “the application for the permit being refused;”.

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36. Section 293 amended (Evidentiary provision for documents)

Section 293(1) of the Principal Act is amended by inserting “granted or issued under this Act” after “a licence or permit”.

37. Section 296 amended (Compensation not payable for stopping, &c., flow of water)

Section 296 of the Principal Act is amended by inserting “granted or issued under this Act” after “permit”.

38. Section 297A inserted

After section 297 of the Principal Act, the following section is inserted in Division 3:

297A. Service of notices and other documents

Except as otherwise specified in this Act, a notice or other document is issued to, or served on, a person if –

- (a) in the case of a natural person, it is handed to the person or –
 - (i) left at, or sent by post to, the person’s postal or residential address or place or address of business or employment; or

(ii) provided by way of facsimile to the person's facsimile number at the place or address of business or employment; or

(iii) provided by electronic mail to the electronic address of the person –

that is last known by the person issuing the notice or other document or that is provided to that person by the person to whom the notice or other document is issued or served; or

(b) in the case of any other person, it is –

(i) left at, or sent by post to, the person's principal or registered office or principal place of business; or

(ii) provided by way of facsimile to the facsimile number, of the person's principal or registered office or principal place of business; or

(iii) provided by way of electronic mail to the electronic address, of the

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person's principal or
registered office or
principal place of
business –

that is last known by the person
issuing the notice or other
document or that is provided to
that person by the person to
whom the notice or other
document is issued or served.

39. Section 300B inserted

After section 300A of the Principal Act, the
following section is inserted in Division 3:

300B. Calculation of number of days

A reference in this Act to a period of a
number of days does not include –

- (a) a statutory holiday within the
meaning of the *Statutory
Holidays Act 2000*; or
- (b) any day between Boxing Day (26
December) and the following
New Year's Day (1 January).

40. Schedule 2 repealed

Schedule 2 to the Principal Act is repealed.

41. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.