

TASMANIA

WATER LEGISLATION AMENDMENT BILL 2008

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WATER LEGISLATION AMENDMENT BILL 2008

*(Brought in by the Minister for Primary Industries and Water,
the Honourable David Edward Llewellyn)*

A BILL FOR

An Act to amend the *Water Management Act 1999*, *Approvals (Deadlines) Act 1993*, *Farm Water Development Act 1985*, *Irrigation Clauses Act 1973* and *Inland Fisheries (Commercial Nets and Fees) Regulations 1999*, to repeal the *Cressy-Longford Irrigation Act 1969* and *Cressy-Longford Irrigation Water Act 1972* and for related purposes

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

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Water Legislation Amendment Act 2008*.

2. Commencement

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

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s. 3

Part 1 – Preliminary

3. Effect of certain consequential amendments

The amendment by this Act of a provision of any regulations does not prevent that provision or any other provision of those regulations from being amended or rescinded by a subsequent regulation.

**PART 2 – WATER MANAGEMENT ACT 1999
AMENDED**

4. Principal Act

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

5. Section 3 amended (Interpretation)

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

- (a) by omitting the definition of “applicant”;
- (b) by omitting the definition of “elector”;
- (c) by omitting the definition of “general newspaper”;
- (d) by omitting the definition of “meter” and substituting the following definition:

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

- (e) by inserting the following definition after the definition of “small claim”:

*No. 45 of 1999

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s. 5

Part 2 – Water Management Act 1999 Amended

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

- (f) by inserting the following definition after the definition of “statutory authority”:

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

- (g) by omitting “subject to the regular ebb and flow of the highest spring tides” from the definition of “tidal area” and substituting “below the mean high-water mark”;
- (h) by omitting the definition of “water resource” and substituting the following definition:

“water resource” means –

- (a) a watercourse, lake or any dispersed surface water or groundwater; or
- (b) a tidal area that a declaration under section 5A relates to;
- (i) by omitting “deeper than 3 metres” from paragraph (a) of the definition of “well”.

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Part 2 – Water Management Act 1999 Amended

s. 6

6. Section 5 amended (Application of Act)

Section 5(2) of the Principal Act is amended by omitting “Nothing” and substituting “Except as provided by section 5A, nothing”.

7. Section 5A inserted

After section 5 of the Principal Act, the following section is inserted in Part 1:

5A. Tidal areas

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

8. Section 10 amended (Delegation)

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

- (a) by omitting “165J(3),” and substituting “165J(2),”;
- (b) by omitting “185(4),”.

9. Section 11 amended (Exemption from Act)

Section 11 of the Principal Act is amended as follows:

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s. 10

Part 2 – Water Management Act 1999 Amended

- (a) by omitting from subsection (1) “and in a general newspaper”;
- (b) by inserting the following subsection after subsection (1):

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

10. Section 12 amended (Minister to keep register of licences and permits)

Section 12 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “any Part of” after “under”;
- (b) by omitting from subsection (1) “may direct” and substituting “thinks fit”;
- (c) by inserting in subsection (3) “without charge” after “register”.

11. Section 12A inserted

After section 12 of the Principal Act, the following section is inserted in Part 3:

12A. Application requirements

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

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Part 2 – Water Management Act 1999 Amended

s. 12

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

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

Section 14(1) of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (c):
 - (ca) a tidal area that a declaration under section 5A relates to; or
- (b) by omitting from paragraph (d) “paragraphs (a), (b) and (c)” and substituting “paragraphs (a), (b), (c) and (ca)”.

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s. 13

Part 2 – Water Management Act 1999 Amended

13. Section 25 amended (Public exhibition of draft plan)

Section 25(1)(c) of the Principal Act is amended by omitting “relating to” and substituting “on”.

14. Section 26 amended (Consideration of representations)

Section 26 of the Principal Act is amended by omitting “referred to in section 25(1)(c) relating to” and substituting “on”.

15. Section 27 amended (Review by Commission)

Section 27(1) of the Principal Act is amended by omitting “relating to” and substituting “on”.

16. Section 29 substituted

Section 29 of the Principal Act is repealed and the following section is substituted:

29. When do water management plans take effect?

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

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Part 2 – Water Management Act 1999 Amended

s. 17

17. Section 30 repealed

Section 30 of the Principal Act is repealed.

18. Section 31 amended (Interim water management plan)

Section 31 of the Principal Act is amended by inserting after subsection (1) the following subsection:

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

19. Section 34 amended (Review and amendment of water management plans)

Section 34(4)(a) of the Principal Act is amended by omitting “in respect of” and substituting “on”.

20. Section 35 substituted

Section 35 of the Principal Act is repealed and the following section is substituted:

35. Notice of water management plan

(1) Within 14 days after a water management plan or amended water management plan takes effect, the Minister is to give written notice of that fact to –

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Part 2 – Water Management Act 1999 Amended

- (a) the council of each municipal area with a relevant water resource; and
 - (b) the persons, if any, who made representations on the plan or the relevant amendments.
- (2) The notice is to include details of any alteration made under section 27B(2)(b).

21. Section 36 amended (Implementation of plans)

Section 36 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

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

22. Section 37 amended (Application by water entity or landowners)

Section 37 of the Principal Act is amended as follows:

- (a) by omitting subsections (2) and (3) and substituting the following subsection:
 - (2) The application –

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Part 2 – Water Management Act 1999 Amended

s. 22

- (a) must be in accordance with section 12A; and
 - (b) is to be made jointly by persons who hold the majority of licences granted to take water from the water resource or water resources to which the plan relates; and
 - (c) must recite an agreement by those persons to create a water entity; and
 - (d) must include particulars of –
 - (i) the water entity or proposed water entity; and
 - (ii) the functions for which the water entity would be responsible; and
 - (iii) the proposed arrangements for funding the water entity's administration.
- (b) by omitting from subsection (4) “an application under subsection (1)” and substituting “the application”.

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s. 23

Part 2 – Water Management Act 1999 Amended

23. Section 38 amended (Approval of application)

Section 38 of the Principal Act is amended by inserting after subsection (1) the following subsection:

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

24. Section 39 amended (Withdrawal of representation)

Section 39 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

(1) A representation made under section 24, 25 or 34 may be withdrawn, by notice in writing to the Secretary by the person who made it, at any time before the Secretary –

(a) forwards a copy of the representation to the Commission under section 26; or

(b) if applicable, makes a recommendation to the Minister under section 34(4)(b).

25. Section 47 amended (Revocation of approval)

Section 47 of the Principal Act is amended by inserting after subsection (2) the following subsection:

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

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Part 2 – Water Management Act 1999 Amended

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26. Section 48 amended (Rights to take water)

Section 48 of the Principal Act is amended by omitting subsection (4A) and substituting the following subsection:

(4A) An owner or occupier of land may take groundwater from the land for any purpose.

27. Section 53 amended (Exceptions to general rights)

Section 53 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) contrary to –
- (i) a water management plan; or
 - (ii) a licence; or
 - (iii) a permission under section 90; or
 - (iv) an authorisation under section 90A; or
 - (v) a notice under section 92(1); or
 - (vi) a temporary transfer under section 103; or
 - (vii) an authorisation under section 123A; or
 - (viii) an order under section 124A; or

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Part 2 – Water Management Act 1999 Amended

- (ix) a permit under section 135C; or
- (x) a direction under section 280D;
or

28. Section 54 substituted

Section 54 of the Principal Act is repealed and the following section is substituted:

54. Licences

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

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

- (2) However, subsection (1) does not apply to the taking of water under and in accordance with –
 - (a) Part 5; or

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- (b) an exemption under section 11; or
 - (c) a permission under section 90; or
 - (d) an authorisation under section 90A; or
 - (e) a direction under section 280D; or
 - (f) an irrigation or other right under the *Irrigation Clauses Act 1973*.
- (3) Also, subsection (1) does not apply to the taking of water directly from a dam or other works if the water in the dam or works has previously been taken under and in accordance with this Act.
- (4) A person may apply for a licence under section 62 or a special licence under Division 6.

29. Section 56 amended (Details of licence)

Section 56 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph before paragraph (a) in subsection (1):
 - (aa) is to specify the name and address of the licensee; and
- (b) by omitting from subsection (1)(a) “is to” first occurring and substituting “may”;

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- (c) by omitting paragraphs (e) and (f) from subsection (1) and substituting the following paragraphs:
 - (e) may specify when the Minister may vary the conditions of the licence; and
 - (f) may specify such other conditions and matters as the Minister thinks fit.
- (d) by omitting from subsection (2) “applies” and substituting “may apply”.

30. Section 57 amended (Duration of licence)

Section 57(1) of the Principal Act is amended by omitting “is endorsed on” and substituting “specifies in”.

31. Section 61 amended (Notification of financial interest)

Section 61 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or in land to which the licence or water allocation relates”;
- (b) by omitting from subsection (2) “or owns the relevant land”;

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Part 2 – Water Management Act 1999 Amended

s. 32

- (c) by omitting from subsection (4) “or land to which a licence relates”;
- (d) by omitting subsection (7).

32. Section 62 substituted

Section 62 of the Principal Act is repealed and the following section is substituted:

62. Application for licence

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

33. Section 64 amended (Refusal of application for a licence)

Section 64 of the Principal Act is amended as follows:

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s. 34

Part 2 – Water Management Act 1999 Amended

- (a) by omitting “to grant” and substituting “an application for”;
- (b) by omitting from paragraph (a) “any relevant water management plan or the objectives of this Act” and substituting “the objectives of this Act or any relevant water management plan”;
- (c) by omitting from paragraph (b)(i) “grant” and substituting “licence”.

34. Section 65 amended (Notice of application for licence)

Section 65 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) However, the Minister, in his or her discretion, need not comply with subsection (2) if satisfied that –
 - (a) the water allocation to which the proposed licence relates would be solely for stock or domestic use, or a combination of those uses; and
 - (b) the maximum daily quantity of water taken under the proposed licence would be less than 0.01 megalitres; and
 - (c) the taking of the water allocation would not have a significant

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Part 2 – Water Management Act 1999 Amended

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effect on other users of water or
the environment.

35. Section 69 amended (Variation of licences)

Section 69(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “in an approved form”;
- (b) by omitting paragraph (c) and substituting the following paragraph:
 - (c) where the licence specifies when the conditions of the licence may be varied, at or within the times so specified if the Minister reasonably determines that the variation is necessary or desirable to further the objectives of this Act; or
- (c) by omitting from paragraph (f) “in order”;
- (d) by omitting from paragraph (g) “Division 4.” and substituting “Division 4; or”;
- (e) by inserting the following paragraph after paragraph (g):
 - (h) to give effect to an order under section 192.

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s. 36

Part 2 – Water Management Act 1999 Amended

36. Section 70 substituted

Section 70 of the Principal Act is repealed and the following section is substituted:

70. Requirements for application to vary licence

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

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

37. Section 71 amended (Notice of application to vary licence)

Section 71 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “in respect of” and substituting “on”;
- (b) by omitting from subsection (4) “A” and substituting “However, a”;
- (c) by inserting the following subsection after subsection (4):

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

38. Section 73 amended (Approval of application to vary licence)

Section 73(1) of the Principal Act is amended as follows:

- (a) by omitting “that” first occurring and substituting “if satisfied that the variation”;

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Part 2 – Water Management Act 1999 Amended

- (b) by omitting from paragraph (c)
“reasonably”.

39. Section 77 substituted

Section 77 of the Principal Act is repealed and
the following section is substituted:

77. Surrender of licences

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

40. Section 78 repealed

Section 78 of the Principal Act is repealed.

41. Section 80 substituted

Section 80 of the Principal Act is repealed and
the following section is substituted:

80. Renewal of licences

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

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Part 2 – Water Management Act 1999 Amended

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

42. Section 87 amended (Re-allocation of water)

Section 87 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (a) in subsection (1):
 - (ab) has vested in the Minister on the surrender of the licence on which it was endorsed; or
- (b) by omitting paragraph (c) from subsection (2) and substituting the following paragraph:
 - (c) thirdly, in discharging any liability of the former licensee that is secured by a financial interest in the licence, or the water allocation, noted in the register;

43. Section 90 substituted

Section 90 of the Principal Act is repealed and the following sections are substituted:

90. Temporary water allocations

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

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the permission may only be granted with the agreement of the relevant electricity entity, which agreement –

- (a) may be given subject to reasonable conditions; but
 - (b) is not to be unreasonably withheld.
- (5) If subsection (4)(a) applies, the electricity entity's conditions are to be made conditions of the permission.
- (6) The permission is to be granted –
- (a) for subsection (1)(a), by individual notice in writing; and
 - (b) for subsection (1)(b), by general notice published in a local newspaper or such other means as the authorised officer thinks fit.
- (7) The Minister may give an authorised officer directions as to the exercise of powers under this section and the authorised officer must comply with those directions.
- (8) If a fee is prescribed for the purposes of subsection (1)(a), a person is not eligible to be granted a permission under that subsection unless that fee has been paid.
- (9) A person who has permission to take water from a water resource for a limited

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period under this section may, without further authority, take that water under and in accordance with the conditions, if any, of that permission.

(10) A person belonging to a class of persons that has permission to take water from a water resource in a particular way under this section may, without further authority, take that water under and in accordance with the conditions, if any, of that permission.

(11) A person must not –

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

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

(12) In this section –

“limited period” means a period not exceeding 6 months.

90A. Short-term water allocations

- (1) To alleviate a significant but temporary water shortage, the Minister may authorise either or both of the following things:
 - (a) the short-term taking of water by any person adversely affected by the shortage;
 - (b) the short-term transfer of a water allocation from any person to a person adversely affected by the shortage.
- (2) The authorisation may be granted on such conditions as the Minister thinks fit having regard to the objectives of this Act and any relevant water management plan.
- (3) Without limiting the Minister's discretion under subsection (1), the conditions may impose time restrictions on the granting of any subsequent authorisation.
- (4) In this section –

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

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44. Section 94 amended (Restrictions on taking of water)

Section 94(2) of the Principal Act is amended as follows:

- (a) by omitting “Where there is no” and substituting “Except as may be otherwise provided by a”;
- (b) by inserting in paragraph (a)(i) “public health purposes,” after “purposes,”;
- (c) by omitting from paragraph (a)(iii) “of councils to take water as”;
- (d) by inserting the following subparagraph after subparagraph (iii) in paragraph (a):
 - (iv) other allocations, where the surety attaching to those allocations in accordance with section 59 is of the highest class; and

45. Section 95 amended (Transfer of licences and water allocations)

Section 95 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsections:
 - (1) The holder of a licence or a person entitled under

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section 106(7) may, subject to this Division and the conditions of the licence, transfer –

- (a) the licence (including any water allocation of the licence); or
- (b) a water allocation of the licence.

(1A) However, a transfer under subsection (1) requires and is ineffective without the Minister's approval unless, in the case of subsection (1)(b), the Minister is the transferee.

(b) by omitting subsection (5) and substituting the following subsection:

(5) Where a transfer under this section is for a limited period, the transfer is to be effected by a Ministerial endorsement on the transferring and receiving licences.

(c) by omitting subsection (6).

46. Section 97 amended (Application for transfer of licence or water allocation)

Section 97 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

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- (1) An application to the Minister for approval of the transfer of a licence or for the variation of a licence on the transfer of a water allocation must be in accordance with section 12A.

47. Sections 97A and 98 substituted

Sections 97A and 98 of the Principal Act are repealed and the following sections are substituted:

97A. Transfers to or from tributaries

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

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

98. Refusal of application for transfer

- (1) The Minister may refuse an application for the transfer of a licence or water

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allocation of a licence if reasonably satisfied that –

- (a) the transfer would be inconsistent with the objectives of this Act or any relevant water management plan; or
 - (b) the transfer would have a significant adverse impact on any licensee or a person taking water under Part 5; or
 - (c) the proposed taking or use of water would or might contravene the EMPC Act.
- (2) The Minister may also refuse an application for the transfer of a licence or water allocation of a licence if the proposed transferor or transferee –
- (a) has been convicted of an offence against this Act; or
 - (b) has accepted an infringement notice; or
 - (c) has not paid any fee or other amount payable under this Act.

48. Section 102 repealed

Section 102 of the Principal Act is repealed.

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49. Section 103 amended (Temporary transfers)

Section 103 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “in an approved form”;
- (b) by omitting subsection (2) and substituting the following subsections:
 - (2) The application must be in accordance with section 12A.
 - (2A) Section 95(4) does not apply to the application.
- (c) by omitting from subsection (3) “significant” and substituting “serious”;
- (d) by inserting the following subsection after subsection (5):
 - (5A) If subsection (5) applies, the Minister is to notify the applicant as soon as practicable of –
 - (a) the refusal; and
 - (b) the reasons for the refusal.

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

Section 104 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

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- (2) However, subsection (1) does not apply to –
- (a) a temporary transfer under section 103; or
 - (b) a transfer under section 95 for a period of less than 12 months if, after that period, the licence or, as the case may be, the full or partial water allocation is intended to be transferred back to the licensee who, but for this subsection, would be required to provide the written evidence of consent to the Minister; or
 - (c) a transfer where the transferor and the transferee are the same person.

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

Section 106 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “written”;
- (b) by omitting from subsection (3) “written”;
- (c) by omitting from subsection (4) “written”;

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- (d) by omitting from subsection (5) “, in writing,”;
- (e) by omitting from subsection (7) “a transfer of” and substituting “approval to transfer”;
- (f) by omitting subsection (8) and substituting the following subsection:
 - (8) A notice required to be given to a person under subsection (2), (3), (4) or (5) may be given to the person in writing or, if the person’s whereabouts are unknown, given by means of a notice in the *Gazette* or a local newspaper, or both.

52. Section 111 amended (Surety of special licences)

Section 111(1)(c) of the Principal Act is amended by omitting “of councils to take water as”.

53. Section 115 amended (Grant of special licences)

Section 115 of the Principal Act is amended by inserting after subsection (4) the following subsection:

- (5) An application under this section must be in accordance with section 12A.

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54. Section 121 amended (Transfer of water allocations)

Section 121(9) of the Principal Act is amended by omitting “for the purposes of the *Rules Publication Act 1953*”.

55. Part 6A inserted

After section 123 of the Principal Act, the following Part is inserted:

PART 6A – AUTHORITY TO CONVEY WATER VIA WATERCOURSE

123A. Watercourse authority

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

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

Penalty: Fine not exceeding 500 penalty units and, in the case of a continuing offence, a further fine

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not exceeding 50 penalty units for each day during which the offence continues.

123B. Application for watercourse authority

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

123C. Determination of application

- (1) Subject to subsection (2), after considering an application for a watercourse authority the Minister may –
 - (a) approve the application; or
 - (b) refuse the application.
- (2) The application must be approved if the Minister is reasonably satisfied that issuing the watercourse authority –
 - (a) would be consistent with the objectives of this Act and any

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- relevant water management plan;
and
 - (b) would not result in material or serious environmental harm or environmental nuisance; and
 - (c) would not have a significant adverse impact on other persons taking water from the relevant water resource or on the commercial operations of a major user of water from that water resource; and
 - (d) would not adversely impact on public safety.
- (3) If subsection (1)(b) applies, the Minister is to notify the applicant as soon as practicable of –
- (a) the refusal; and
 - (b) the reasons for the refusal.

123D. Issue of watercourse authority

- (1) Within 7 days after approving an application for a watercourse authority, the Minister is to –
- (a) notify the applicant of the approval; and

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- (b) issue the applicant with the authority.
- (2) The watercourse authority is to be in approved form and may be issued on such conditions as the Minister thinks fit.
- (3) Without limiting the Minister's discretion, the conditions of the watercourse authority may include conditions to –
 - (a) ensure that water demand under the watercourse authority does not exceed the availability of water in the relevant water resource; and
 - (b) reflect expected losses to the relevant water resource from evaporation or other causes as water is conveyed under the watercourse authority; and
 - (c) reflect the terms on which water is to be released and taken under the watercourse authority or any other authorisation; and
 - (d) ensure that the watercourse authority does not have a significant adverse impact on other water users; and
 - (e) ensure that the watercourse authority does not cause material

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or serious environmental harm;
and

- (f) provide for the variation of the watercourse authority (including the circumstances in which it may occur and the procedures for effecting it).

123E. Nature of watercourse authority

(1) A watercourse authority –

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

(2) To avoid doubt, a watercourse authority may be issued to and held by –

- (a) a corporation; or

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

Penalty: Fine not exceeding 10 penalty units.

123F. Cancellation or suspension of watercourse authority

- (1) The Minister may cancel or suspend a watercourse authority if satisfied that –
 - (a) the holder of the watercourse authority has contravened the conditions of the watercourse authority in a material way or has

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caused or allowed another person to do so; or

- (b) where the holder of the watercourse authority has been convicted of an offence under section 123A, the offence resulted in material environmental harm or serious environmental harm or had a significant adverse impact on other water users; or
- (c) the holder of the watercourse authority has committed, or caused or allowed another person to commit, an offence under the EMPC Act that is in any way related to the watercourse authority; or
- (d) the watercourse authority has been shown, in practice, to be having a significant adverse impact on other water users or the environment; or
- (e) the relevant watercourse has become, for any reason, unsuitable for conveying water; or
- (f) no use is being made of the watercourse authority; or
- (g) the holder of the watercourse authority has failed to pay, when

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required to do so, a fee prescribed pursuant to section 123E(1)(b); or

- (h) the holder of the watercourse authority has committed, or caused or allowed another person to commit, an offence under section 283 that is in any way related to the watercourse authority.
- (2) The cancellation or suspension takes effect when the holder of the watercourse authority is given notice of it by the Minister or on such later date as the Minister, by the notice, specifies.
 - (3) The notice of cancellation or suspension is to –
 - (a) specify the reasons for the cancellation or suspension; and
 - (b) specify, for a suspension, the term of suspension.
 - (4) The Minister may revoke the suspension of a watercourse authority at any time.
 - (5) A watercourse authority is of no effect while it is suspended.
 - (6) In this section –
 - “**allow**” includes –
 - (a) consciously or carelessly ignore; and

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(b) knowingly acquiesce.

123G. Exemptions

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

56. Section 124 substituted

Section 124 of the Principal Act is repealed and the following section is substituted:

124. Application of Division

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

57. Section 124A amended (Appointment of groundwater area)

Section 124A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “published in the *Gazette*”;

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(b) by inserting the following subsection after subsection (1):

(1A) The order is a statutory rule.

(c) by omitting from subsection (2)(d) “considers expedient to give effect to the objectives of this Act” and substituting “thinks fit”.

58. Section 124B amended (Notice of appointment of groundwater area)

Section 124B(2)(a) of the Principal Act is amended by omitting “considers desirable for the purposes of this Act” and substituting “thinks fit”.

59. Section 125 repealed

Section 125 of the Principal Act is repealed.

60. Section 126 amended (Well orders)

Section 126 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “Division” and substituting “Part”;

(b) by omitting from subsection (1)(h) “order.” and substituting “order;”;

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- (c) by inserting the following paragraph after paragraph (h) in subsection (1):
 - (i) to discontinue any well works, either permanently or for a period specified in the order.
- (d) by omitting from subsection (3)(b) “within the meaning of the *Rules Publication Act 1953*.” and substituting “; and”;
- (e) by inserting the following paragraph after paragraph (b) in subsection (3):
 - (c) prevails, to the extent of any inconsistency, over any authorisation.

61. Section 130 substituted

Section 130 of the Principal Act is repealed and the following section is substituted:

130. Application of Division

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

62. Part 7, Divisions 3 and 4 inserted

After section 134 of the Principal Act, the following Divisions are inserted in Part 7:

Division 3 – Well works

135. Causing well works to be undertaken

(1) A person must not cause any well works to be undertaken unless –

- (a) the person holds a permit (in this Division called a “well works permit”) authorising the well works; or
- (b) by virtue of an order under section 135H, the well works do not require a well works permit.

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

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

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

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

135A. Application for well works permit

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

135B. Determination of application

- (1) Subject to subsection (2), after considering an application for a well works permit the Minister may –
 - (a) approve the application; or
 - (b) refuse the application.
- (2) The application must be approved if the Minister is reasonably satisfied that the proposed well works –

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- (a) would be consistent with the objectives of this Act, any relevant water management plan and any relevant order under section 124A; and
 - (b) would not result in material or serious environmental harm or environmental nuisance; and
 - (c) would not adversely impact on a groundwater monitoring bore; and
 - (d) would not damage or adversely impact on property owned by a third party; and
 - (e) would not adversely impact on public safety; and
 - (f) would not adversely impact on other persons taking water from the relevant water resource or any hydrologically linked water resource.
- (3) If subsection (1)(b) applies, the Minister is to notify the applicant as soon as practicable of –
- (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) any rights of review or appeal under Part 14.

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135C. Issue of well works permit

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

Penalty: Fine not exceeding 50 penalty units.

135D. Nature of well works permit

- (1) A well works permit authorises its holder to cause the well works specified in the

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permit to be undertaken in accordance with the permit.

- (2) A well works permit –
 - (a) takes effect on such day as the Minister specifies in the permit; and
 - (b) unless sooner cancelled or surrendered, remains in force for a 2-year period commencing on that day; and
 - (c) is not renewable but may, at the written request of the permit holder made no later than 30 days before the permit expires, be extended by the Minister for one further period not exceeding 12 months if the Minister is still satisfied as to the matters set out in section 135B(2) in respect of the relevant well works.
- (3) The holder of a well works permit may surrender it at any time by giving the Minister written notice to that effect.
- (4) A well works permit has no surrender value.
- (5) The holder of a well works permit must produce the permit for inspection if required to do so by an authorised officer.

Penalty: Fine not exceeding 10 penalty units.

135E. Permit may enure for benefit of owner

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

135F. Variation of well works permit

- (1) The Minister may vary a well works permit on his or her own motion at any time if, after consulting the permit holder, the Minister is reasonably satisfied that the variation is necessary to ensure that the permit –
 - (a) is consistent with the objectives of this Act, any relevant water management plan and any relevant order under section 124A; or
 - (b) will not result in material or serious environmental harm or environmental nuisance; or
 - (c) will not adversely impact on a groundwater monitoring bore; or
 - (d) will not damage or adversely impact on property owned by a third party; or

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- (e) will not adversely impact on public safety; or
 - (f) will not adversely impact on other persons taking water from the relevant water resource or any hydrologically linked water resource.
- (2) The Minister may also vary a well works permit consequent on an application made by the permit holder –
- (a) in accordance with section 12A; and
 - (b) with the consent of the owner of the relevant land (if the owner is a person other than the permit holder).
- (3) Subject to subsection (4), the Minister may –
- (a) approve the application; or
 - (b) refuse the application.
- (4) The application must be approved if the Minister is reasonably satisfied that the permit as proposed to be varied –
- (a) would be consistent with the objectives of this Act, any relevant water management plan and any relevant order under section 124A; and

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

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

135G. Cancellation or suspension of well works permit

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

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- (d) the holder of the permit has committed an offence against section 283 in any way related to the permit; or
 - (e) the holder of the permit has committed an offence under the EMPC Act in any way related to the permit; or
 - (f) work undertaken in accordance with the permit has been shown, in practice, to be having a significant adverse impact on other water users or the environment.
- (2) The cancellation or suspension takes effect on such date as is specified for that purpose in the notice required to be served under section 271(2) on the holder of the permit.
- (3) The notice of cancellation or suspension is to –
- (a) specify the reasons for the cancellation or suspension; and
 - (b) specify, for a suspension, the term of suspension and what needs to be done to revoke the suspension; and
 - (c) advise of any rights of review or appeal under Part 14.

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- (4) The Minister may revoke the suspension of a well works permit at any time.
- (5) A well works permit is of no effect while it is suspended.

135H. Exemptions

- (1) The Minister may, by order, declare that a well works permit is not required for well works or a class of well works specified in the order.
- (2) The order is a statutory rule.
- (3) For the purposes of subsection (1), and without limiting the Minister's discretion, well works may be classified by reference to any or any combination of the following criteria:
 - (a) their purpose;
 - (b) their location;
 - (c) the amount of groundwater to be taken;
 - (d) their scale, design or method or time of construction;
 - (e) their undertaker.

Division 4 – Well driller’s licences

136. Interpretation of Division

In this Division –

“**class**”, of well driller’s licence,
means a class prescribed by the
regulations;

“**employee**” includes a contractor,
whether independent or
otherwise;

“**endorsement**”, on a well driller’s
licence, means an endorsement
prescribed by the regulations;

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

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

136A. Undertaking well works

- (1) A person must not physically undertake well works unless the person –
 - (a) holds a licence (in this Division called a “well driller’s licence”);
or

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- (b) is an employee of, and working under the on-site supervision of, a person referred to in paragraph (a).

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

- (2) The holder of a well driller's licence must not undertake well works of any kind unless –

- (a) the licence is of a class that authorises its holder to undertake well works of that kind; or

- (b) undertaking those well works of that kind is authorised by an endorsement on the licence.

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

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

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136B. Application for well driller’s licence

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

136C. Determination of application

- (1) After considering an application for a well driller’s licence, the Minister may –
 - (a) approve the application as submitted; or
 - (b) if the applicant agrees, approve the application as if it were for a licence of a class lower than that actually applied for; or
 - (c) refuse the application.
- (2) However, the Minister must not approve the application unless satisfied that –

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- (a) the applicant is qualified to physically undertake well works of the relevant class; and
 - (b) any endorsements sought by the applicant are appropriate for the class of licence and that the applicant is qualified to employ the drilling methods to which the endorsements relate; and
 - (c) the applicant has no convictions for offences of a serious kind against this Part or for offences against section 283; and
 - (d) the applicant has or satisfies any prescribed competencies; and
 - (e) if the applicant has held another well driller's licence, no more than the prescribed number of demerit points were allocated to it under Division 2 of Part 13.
- (3) If subsection (1)(c) applies, the Minister is to notify the applicant as soon as practicable of –
- (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) any rights of review or appeal under Part 14.

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136D. Issue of well driller's licence

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

Penalty: Fine not exceeding 50 penalty units.

136E. Nature of well driller's licence

- (1) A well driller's licence of any class –

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- (a) authorises its holder to physically undertake well works in accordance with the licence; and
 - (b) unless sooner cancelled or surrendered, remains in force for a 5-year period commencing on the day on which it is issued and is renewable; and
 - (c) is not transferable.
- (2) The holder of a well driller's licence may surrender it at any time by giving the Minister written notice to that effect.
 - (3) A well driller's licence has no surrender value.
 - (4) The holder of a well driller's licence must produce the licence for inspection if required to do so by an authorised officer.

Penalty: Fine not exceeding 10 penalty units.

136F. Renewal of licences

- (1) The Minister must renew a well driller's licence that is otherwise about to expire if satisfied that the licensee –
 - (a) has paid a prescribed licence renewal fee; and

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- (b) has paid all fees and charges payable under the licence; and
 - (c) has complied with the licence during the expiring term; and
 - (d) has or satisfies any prescribed competencies.
- (2) If the Minister is not satisfied as required under subsection (1), the Minister may –
- (a) refuse to renew the licence; or
 - (b) renew the licence subject to conditions.
- (3) If the licence is renewed, with or without conditions, the Minister is to notify the licensee accordingly.
- (4) If the licence is renewed, it must be renewed for a 5-year period unless –
- (a) the licensee requests a shorter term; or
 - (b) by reason of special or changed circumstances, the Minister determines that the renewal should be for a shorter term.
- (5) If subsection (2)(a) applies, the Minister is to notify the licensee as soon as practicable of –
- (a) the refusal; and

- (b) the reasons for the refusal; and
- (c) any rights of review or appeal under Part 14.

136G. Continuation of expiring licence

- (1) This section applies if, immediately before a well driller’s licence is due to expire (that licence being referred to in this section as “the expiring licence”) –
 - (a) the licensee has paid the prescribed licence renewal fee; and
 - (b) the licensee has not been given notice under section 136F that the Minister has renewed or refused to renew the expiring licence.
- (2) The expiring licence continues in force until such time as the licensee is so notified.

136H. Variation of well driller’s licence

- (1) The Minister may vary a well driller’s licence at any time.
- (2) The variation may be effected –
 - (a) on the Minister’s own motion after consulting the licensee; or

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- (b) consequent on an application made by the licensee.
- (3) For the purposes of subsection (2)(b), the application must –
 - (a) be in accordance with section 12A; and
 - (b) specify, if applicable, any other class of licence sought; and
 - (c) specify, if applicable, any additional endorsements sought.
- (4) The Minister may –
 - (a) approve the application; or
 - (b) if the applicant agrees, approve the application as if it were for variations of a more limited kind than those actually applied for; or
 - (c) refuse the application.
- (5) However, the Minister must not approve the application unless he or she is reasonably satisfied that –
 - (a) the applicant is, if applicable, qualified to physically undertake well works of the relevant class; and
 - (b) any additional endorsements are appropriate for the class of licence and the applicant is

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- qualified to employ the drilling methods to which the endorsements relate; and
- (c) the applicant has no convictions for offences of a serious kind against this Part or for offences against section 283; and
 - (d) the applicant has or satisfies any prescribed competencies; and
 - (e) under Division 2 of Part 13, no more than the prescribed number of demerit points have been allocated to the licence.
- (6) If subsection (4)(c) applies, the Minister is to notify the licensee as soon as practicable of –
- (a) the refusal; and
 - (b) the reasons for the refusal; and
 - (c) any rights of review or appeal under Part 14.
- (7) The variation of a well driller’s licence under this section takes effect when the licensee is given notice of it or on such later date as the Minister, by the notice, specifies.
- (8) The Minister, on varying a well driller’s licence may issue a fresh form of the licence to reflect the variations.

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

- (1) The Minister may cancel or suspend a well driller's licence if –
 - (a) the Minister is satisfied that the licensee has contravened the conditions of the licence in a material or repeated way; or
 - (b) the licensee has been convicted of an offence against section 136A or Division 2; or
 - (c) the licensee has knowingly undertaken well works that are in contravention of section 135; or
 - (d) the licensee has been convicted of an offence against section 283 in any way related with the licence; or
 - (e) under Division 2 of Part 13, more than the prescribed number of demerit points have been allocated to the licence.
- (2) The cancellation or suspension takes effect on such date as is specified for that purpose in the notice required to be served under section 271(2) on the licensee.
- (3) The notice of cancellation or suspension is to –

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-
- (a) specify the reasons for the cancellation or suspension; and
 - (b) specify, for a suspension, the term of suspension.
- (4) The Minister may revoke the suspension of a well driller's licence at any time.
 - (5) Except for the purposes of renewal, a well driller's licence is of no effect while it is suspended.
 - (6) A person whose well driller's licence has been cancelled under this section must return it to the Minister within 30 days after being given notice of the cancellation.

Penalty: Fine not exceeding 5 penalty units.

136J. Exemptions

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

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

63. Section 137 amended (Application of this Part)

Section 137 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “published in the *Gazette*”;
- (b) by inserting the following subsection after subsection (2):
 - (3) The order is a statutory rule.

64. Section 139 amended (Members of Assessment Committee)

Section 139 of the Principal Act is amended by omitting subsection (7) and substituting the following subsections:

- (7) If a body referred to in subsection (2)(c), (d) or (e) changes its name or ceases to

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exist, the Minister, by order, may amend that subsection as the case requires by –

- (a) substituting the body's new name; or
 - (b) substituting the name of a body that, in the reasonable opinion of the Minister, represents substantially the same interests as the body that has ceased to exist.
- (8) The order is a statutory rule.

65. Section 143 amended (Functions of Assessment Committee)

Section 143(c) of the Principal Act is amended by inserting “, or what specified action is to be taken,” after “provided”.

66. Section 146 amended (Permit to undertake dam works)

Section 146 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “the granting of”;
- (b) by omitting subsection (2) and substituting the following subsection:

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(2) An application for a permit must be in accordance with section 12A.

(c) by omitting from subsection (4)(a) “shows” and substituting “establishes”;

(d) by omitting from subsection (4)(b) “shows” and substituting “establishes”.

67. Section 148 amended (Application by person other than owner)

The penalty under section 148(3) of the Principal Act is amended by omitting “20” and substituting “50”.

68. Section 152 amended (Referral to Director)

Section 152(2) of the Principal Act is amended by inserting “, or take a specified action,” after “information”.

69. Section 154 substituted

Section 154 of the Principal Act is repealed and the following section is substituted:

154. Requirement for additional information or action

(1) The Assessment Committee, by notice, may require an applicant for a permit to

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provide it with additional information or to take or arrange for the taking of a specified action if the committee reasonably considers that the information or action is critical to a proper consideration of the application.

- (2) A notice under subsection (1) is to –
 - (a) inform the applicant that there is a right of appeal under Part 14 in respect of the notice; and
 - (b) be served on the applicant within 12 weeks after the day on which the Assessment Committee receives the application.
- (3) However, before the period referred to in subsection (2)(b) expires –
 - (a) the Minister, on the application of the Assessment Committee, may grant an extension of that period for up to 6 weeks if satisfied that special circumstances are preventing the committee from complying with that subsection; or
 - (b) the Assessment Committee and the applicant may agree in writing to extend that period.
- (4) Within 7 days after being notified of the granting of an extension under subsection (3)(a), the Assessment

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Committee is to give the applicant written notice of the extension.

- (5) If the Assessment Committee does not serve any notices under subsection (1), it is taken to have decided that it does not require the applicant to provide additional information or take a specified action before it considers the application.

70. Section 155 amended (Provision of additional information or taking of action)

Section 155 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:

(1) A notice under section 154(1) may require that –

- (a) additional information be provided or verified by specified persons or provided in a special format; or
- (b) an action be taken according to specified instructions.

- (b) by omitting from subsection (2) “The information required under” and substituting “Additional information required pursuant to”;

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(c) by inserting the following paragraph after paragraph (g) in subsection (2):

(gaa) any survey, study or investigation; or

(d) by omitting subsections (4), (5) and (6) and substituting the following subsections:

(4) If the Assessment Committee reasonably considers that any information or action required pursuant to section 154(1) has a public benefit –

(a) it may make a recommendation to the Minister on the sharing, between the applicant and any Agency, of the costs of obtaining the information or taking the action; and

(b) on the basis of that recommendation, the Minister may determine that an Agency is to pay a share of those costs.

(5) However, if a determination under subsection (3) relates to an Agency administered by another Minister, the relevant payment requires the approval of that Minister.

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- (6) If an applicant for a permit does not, to the Assessment Committee's satisfaction, comply with a notice under section 154(1) within 2 years after the date of the notice –
 - (a) the application is taken to have been withdrawn; and
 - (b) the Assessment Committee need not take any further action on the application.
- (e) by omitting from subsection (7) “The Assessment Committee may extend the time for providing the information required under section 154(1)” and substituting “However, the Assessment Committee may extend the time for complying with a notice under section 154(1)”;
- (f) by omitting from subsection (7)(b)(i) “flora, fauna” and substituting “natural values”;
- (g) by omitting from subsection (8) “If” and substituting “Also, if”.

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71. Section 155A amended (Supplementary information)

Section 155A of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “or to take or arrange for the taking of a specified action” after “information”;
- (b) by omitting from subsection (2) “the additional information” and substituting “the required additional information or the completion of the required action”;
- (c) by inserting in subsection (2) “or to take or arrange for the taking of any supplementary actions” after “supplementary information”;
- (d) by omitting from subsection (3) “A” and substituting “The”;
- (e) by omitting subsection (4) and substituting the following subsection:
 - (4) If the applicant fails to comply with the notice under subsection (2) within 2 years after the date on which it is served –
 - (a) the application for the permit is taken to have been withdrawn; and
 - (b) the Assessment Committee is not required

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to take any further action
on the application.

72. Section 155B inserted

After section 155A of the Principal Act, the
following section is inserted in Division 4:

155B. Amendment of application

- (1) An applicant for a permit may, in writing, request the Assessment Committee to amend the application for the permit in respect of a prescribed particular.
- (2) Section 12A applies to the request as if it were an application.
- (3) The Assessment Committee, in its discretion, may agree to and action the request if –
 - (a) the application is still under consideration; and
 - (b) the committee is reasonably satisfied that amending the application would not –
 - (i) vitiate any relevant determination of the Board or the Director of Inland Fisheries; or

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- (ii) adversely impact on other users of water or on land or property of other persons; or
 - (iii) adversely impact on the environment, having particular regard to the conservation and protection of natural values and cultural heritage; or
 - (iv) be contrary to any prescribed matter relating to dam safety; and
 - (c) the request has been made with the permission of the owner of the land in respect of which the permit is required (if not the applicant).
- (4) If the Assessment Committee agrees to and actions the request, it must give the following persons notice of its decision and particulars of the amendment:
- (a) the applicant;
 - (b) each person who has made a representation under section 149 in respect of the application;
 - (c) the owner of the land in respect of which the permit is required (if not the applicant).

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(5) In this section –

“prescribed particular” means a particular relating to the type, size, location or purpose of dam works.

73. Section 156 amended (Consideration of application)

Section 156 of the Principal Act is amended by omitting paragraph (d) and substituting the following paragraph:

(d) take into consideration any information provided or actions taken pursuant to section 154 or 155A; and

74. Section 157 amended (Granting of permit)

Section 157 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “On receipt of” and substituting “After considering”;

(b) by omitting from subsection (4)(d) “contrary to” and substituting “inconsistent with”.

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75. Section 159 amended (Time when permit takes effect)

Section 159 of the Principal Act is amended as follows:

- (a) by inserting in subsection (9) “on the application of the permit holder,” after “However,”;
- (b) by inserting the following subsection after subsection (9):
 - (10) An application for an extension under subsection (9) must be –
 - (a) in accordance with section 12A; and
 - (b) made no later than one month before the permit is due to lapse.

76. Section 160 amended (Notification of decision)

Section 160(1) of the Principal Act is amended by omitting “a decision” and substituting “any decision”.

77. Section 162 amended (Amendments of permits)

Section 162(2)(c) of the Principal Act is amended by omitting “flora, fauna” and substituting “natural values”.

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78. Section 164 amended (Time limits for decision)

Section 164 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:
 - (b) where the Committee has required additional information or the taking of a specified action pursuant to section 154, 6 weeks after that information is provided or that action is taken to the Committee’s satisfaction; or
- (b) by omitting paragraph (c) from subsection (1);
- (c) by omitting from subsection (6) “for additional information” and substituting “contained in a notice”.

79. Section 165D amended (Inquiries as to dam safety)

Section 165D(2) of the Principal Act is amended as follows:

- (a) by omitting “order in writing” and substituting “instrument in writing”;
- (b) by omitting “the order” and substituting “that instrument”.

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80. Section 167 amended (Establishment of water districts)

Section 167(1) of the Principal Act is amended by omitting “, by notice published in the *Gazette*.”.

81. Section 171 amended (Requirements for application)

Section 171 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) and substituting the following paragraph:
 - (a) must be in accordance with section 12A; and
- (b) by omitting paragraph (f);
- (c) by omitting from paragraph (h) “district; and” and substituting “district.”;
- (d) by omitting paragraph (i).

82. Section 175 repealed

Section 175 of the Principal Act is repealed.

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83. Section 176 amended (Approval of application)

Section 176 of the Principal Act is amended by inserting after subsection (2) the following subsection:

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

84. Section 178 amended (Amendment of approval)

Section 178(1) of the Principal Act is amended by omitting “on the application” and substituting “at the request”.

85. Section 180 amended (Alteration of boundaries)

Section 180 of the Principal Act is amended as follows:

(a) by omitting from subsection (1) “on the application of a responsible water entity and by order” and substituting “at the request of a responsible water entity and by notice”;

(b) by inserting the following subsection after subsection (1):

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

(c) by omitting from subsection (2) “application” first occurring and substituting “request”;

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- (d) by omitting from subsection (5) “order” and substituting “notice”.

86. Section 181 amended (Substitution of water entities)

Section 181 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “On a joint application by 2 water entities or by” and substituting “At the joint request of 2 water entities or”;
- (b) by omitting from subsection (2) “application” and substituting “request”;
- (c) by omitting from subsection (3) “approve the application” and substituting “agree to the request”;
- (d) by omitting from subsection (4) “application” and substituting “request”;
- (e) by omitting from subsection (6) “application” first occurring and substituting “request”;
- (f) by inserting the following subsection after subsection (6B):
 - (6C) The notice is not a statutory rule.

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87. Section 182 amended (Annual reports to Minister)

Section 182 of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) The Minister may give a responsible water entity that has failed to comply with this section a notice directing it to provide the Minister with the required report by or within such time as the Minister, by the notice, specifies.
- (5) A responsible water entity that is given a Ministerial direction under subsection (4) must comply with that direction.

Penalty: Fine not exceeding 50 penalty units.

88. Section 186 amended (Revocation of approval for water entity to administer a water district)

Section 186 of the Principal Act is amended as follows:

- (a) by omitting from subsection (4) “sees” and substituting “thinks”;
- (b) by inserting the following subsection after subsection (7):
 - (8) A notice under this section is not a statutory rule.

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89. Section 188 amended (Revocation of appointment of district)

Section 188 of the Principal Act is amended by inserting after subsection (1) the following subsection:

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

90. Section 192 amended (Watercourses as water supply channels)

Section 192 of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (1):

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

(b) by inserting in subsection (5) “, or any water allocation of a licence,” after “authorisation”;

(c) by omitting from subsection (5) “relevant” and substituting “specified”;

(d) by inserting the following subsection after subsection (5):

(5A) If subsection (5)(a) applies to the order, the Minister may further direct, by the same order, that any registered financial interests in the relevant authorisation, or the

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relevant water allocation, are to attach to the irrigation right.

(e) by omitting subsection (9) and substituting the following subsection:

(9) Where, in place of a right affected by subsection (6) –

(a) the Minister grants an authorisation to take water under this Act; or

(b) a water entity grants an irrigation right or domestic purposes right under the *Irrigation Clauses Act 1973* –

the value of the replacement authorisation or right is to be taken into account in assessing the amount of any compensation under that subsection.

91. Section 199 amended (Offences in connection with water districts)

Section 199 of the Principal Act is amended by omitting paragraph (c).

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92. Section 205 amended (Application to establish trust)

Section 205 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) The application –
 - (a) must be in accordance with section 12A; and
 - (b) must include a copy of the rules of the proposed trust conforming to the prescribed requirements, if any.

93. Section 206 amended (Approval of application)

Section 206 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “comply with the requirements of clause 6A of Schedule 3” and substituting “conform to the prescribed requirements, if any”;
- (b) by omitting from subsection (2) “to give effect to” second occurring.

94. Section 206A substituted

Section 206A of the Principal Act is repealed and the following section is substituted:

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206A. Establishment of trust

- (1) On approving an application under section 205, the Minister –
 - (a) must approve the rules of the trust; and
 - (b) must, by notice published in the *Gazette*, establish and name the trust and state the water district in respect of which it is established; and
 - (c) may give notice of the establishment of the trust in any newspaper.
- (2) The notice under subsection (1)(b) –
 - (a) is to include particulars of any determinations or requirements under section 211; and
 - (b) is not a statutory rule.
- (3) The Minister, at the written request of a trust, may approve an alteration in the rules of the trust if satisfied that the alteration is consistent with this Act and in accordance with the prescribed requirements, if any.

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95. Section 211 substituted

Section 211 of the Principal Act is repealed and the following section is substituted:

211. Constitution of trust

- (1) A trust is to consist of a board of such number of trustees as the Minister, by instrument in writing, determines –
 - (a) on its establishment; or
 - (b) from time to time subsequent to its establishment.
- (2) In approving the establishment of a trust, the following provisions apply (according to circumstance):
 - (a) the Minister may require that one or more of the trustees are to be elected;
 - (b) if the trust is to be the responsible water entity for an irrigation district in which a water entity administering a water supply district has a right, under this Act or a special Act, to take water for domestic purposes from any watercourse, or from any water supply channel declared under section 192, the Minister may require that one or more of the trustees be a nominee of that

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water entity appointed by the Minister;

- (c) if the trust is to be the responsible water entity for a water district containing Crown land or it is to manage works owned by the Crown, the Minister may, with the agreement of the Minister administering that land or those works, require that one or more of the trustees be appointed by that Minister.
- (3) The Minister, by order published in the *Gazette*, may give such directions as are necessary to reconstitute a trust following a change in its constitution and, in particular, may provide for the retirement, election and term of office of the trustees and the dates on which provisions of the order are to take effect.
- (4) The order is not a statutory rule.
- (5) Nothing in this section affects the operation of section 308.

96. Section 211A inserted

After section 211 of the Principal Act, the following section is inserted in Division 1:

211A. Trust elections

- (1) An election to elect members of the board of a trust is to be conducted by a Returning Officer appointed for the purpose by –
 - (a) for the initial election, the Minister in consultation with the Electoral Commissioner; or
 - (b) for any subsequent election, the trust in consultation with the Electoral Commissioner.
- (2) The Returning Officer must be a person who –
 - (a) has attained the age of 18 years; and
 - (b) appears to the Minister or trust to be capable of discharging the functions of that office fairly and responsibly; and
 - (c) is not eligible to vote in the election in any capacity.
- (3) The regulations may make provision for and in relation to such elections and, without limiting the generality of this, may –
 - (a) specify which persons or classes of persons are eligible to stand as candidates, and to vote; and

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- (b) authorise the Minister to appoint persons to fill casual vacancies; and
- (c) provide for the payment, repayment and recovery of electoral costs; and
- (d) provide for disputed returns and for the resolution of such disputes; and
- (e) stipulate when the terms of office of elected persons begin or end; and
- (f) confer functions on the Electoral Commissioner or Returning Officer.

(4) In this section –

“Electoral Commissioner” means the Electoral Commissioner appointed under section 14 of the *Electoral Act 2004*.

97. Section 213 amended (Poll to be taken)

Section 213 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

- (4) The poll is to be taken as prescribed by the regulations.

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98. Section 222 substituted

Section 222 of the Principal Act is repealed and the following section is substituted:

222. Inspection of accounts

A person having the custody of any accounts of a trust must, on demand by the Minister or an elector of the trust, permit the Minister or that elector to –

- (a) inspect the accounts; or
- (b) make copies of the accounts; or
- (c) take extracts from the accounts.

Penalty: Fine not exceeding 5 penalty units.

99. Sections 223, 224 and 225 substituted

Sections 223, 224 and 225 of the Principal Act are repealed and the following section is substituted:

223. Dissolution of trusts

- (1) The Minister may, by order published in the *Gazette*, dissolve a trust if the Minister –
 - (a) has, under section 47 or 186, revoked approval for the trust to be a responsible water entity for administering a water

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- management plan or water district; or
- (b) is satisfied that the trust has contravened the conditions to which its administration of a water management plan or water district is subject; or
 - (c) is satisfied that the trust has been guilty of serious neglect, mismanagement or incompetence in the discharge of its responsibilities; or
 - (d) is satisfied that the trust's administration of a water management plan or water district does not further the objectives of this Act; or
 - (e) has received a written application from the trust requesting its dissolution.
- (2) The order is not a statutory rule.
 - (3) Before dissolving a trust pursuant to subsection (1)(e), the Minister is to –
 - (a) give notice of the trust's application in the *Gazette* and in a local newspaper; and
 - (b) by the notice, specify that any persons who may be affected by the proposed dissolution may

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Part 2 – Water Management Act 1999 Amended

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make written representations to the Minister in the matter within such period of not less than 30 days as is specified in the notice; and

- (c) consider the representations, if any, received in response to the notice.

100. Section 226 amended (Effect of dissolution)

Section 226 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (2A) The order is not a statutory rule.

101. Section 227 substituted

Section 227 of the Principal Act is repealed and the following section is substituted:

227. Power of Minister to install meters, &c.

- (1) To monitor the level, flow, quality or use of water in a water resource, the Minister may –
- (a) install a meter; or
 - (b) by notice in writing, direct a person taking water from the water resource to install a meter; or

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- (c) notwithstanding any other provision of this Act, impose metering conditions on any authorisation in respect of the water resource.
- (2) A direction or condition under subsection (1)(b) or (c) may –
- (a) require that a meter be of a certain type or standard; and
 - (b) impose requirements in respect of the installation process; and
 - (c) impose meter maintenance, monitoring and security requirements; and
 - (d) impose data recording and reporting requirements; and
 - (e) impose such other requirements as the Minister reasonably thinks fit.
- (3) A person who is given a direction under subsection (1)(b) must comply with that direction.

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

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(4) In this section –

“authorisation” includes a water allocation on a licence.

102. Section 228 amended (Interference with meters)

Section 228(1) of the Principal Act is amended by omitting “affixed” and substituting “that has been installed in respect of a water resource”.

103. Section 230 repealed

Section 230 of the Principal Act is repealed.

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

Section 231(1) of the Principal Act is amended by omitting “affixed” and substituting “installed”.

105. Sections 232, 233 and 234 repealed

Sections 232, 233 and 234 of the Principal Act are repealed.

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Part 2 – Water Management Act 1999 Amended

106. Section 235 amended (Inspection and removal of meters)

Section 235 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or authorised person” after “officer”;
- (b) by omitting from subsection (1) “belonging to the Minister”;
- (c) by inserting the following subsection after subsection (2):

(3) In this section –

“authorised person” has the same meaning as in section 244.

107. Section 236 amended (Protection of meters)

Section 236 of the Principal Act is amended by omitting “belonging to the Minister is installed” and substituting “is installed pursuant to this Act”.

108. Section 244 amended (Entry on land for taking measurements)

Section 244 of the Principal Act is amended as follows:

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(a) by omitting “section.” from paragraph (c) of the definition of “authorised person” in subsection (1) and substituting “section;”;

(b) by inserting the following definition after the definition of “authorised person” in subsection (1):

“general technical power” means a power under section 240(a), (b), (c), (d), (e), (f), (g), (i), (j), (k), (m), (n), (o) or (p).

(c) by omitting subsection (3) and substituting the following subsections:

(3) The Minister, by instrument in writing, may authorise an authorised person, or authorised persons of a particular class, to exercise any general technical powers.

(3A) An authorised person who is an authorised officer may enter on and survey any land and take any action required to exercise any general technical power.

(3B) An authorised person who is not an authorised officer may enter on and survey any land and take any action required to exercise any general technical powers that he or she is authorised to exercise pursuant to subsection (3).

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109. Section 245 substituted

Section 245 of the Principal Act is repealed and the following section is substituted:

245. Authorised officers, &c., may use assistants

(1) In entering any land or premises for any purpose under this Act, an authorised officer or authorised person may be accompanied by such other persons as the authorised officer or authorised person reasonably requires for that purpose.

(2) In this section –

“authorised person” means an authorised person as defined in section 244.

110. Section 246 amended (Circumstances in which Division applies)

Section 246(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (d) “taken.” and substituting “taken; or”;
- (b) by inserting the following paragraph after paragraph (d):
 - (e) to release part or all of that water within a specified time.

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111. Section 256A inserted

Before section 257 of the Principal Act, the following section is inserted in Division 2:

256A. Interpretation of Division

In this Division –

“**licence**” means a licence granted and in force under any Part of this Act;

“**licensee**” means the holder of a licence.

112. Section 259 amended (Suspension or cancellation of licence)

Section 259(7)(b) of the Principal Act is amended by omitting “determines” and substituting “thinks fit”.

113. Section 270 amended (Interpretation of Division)

Section 270 of the Principal Act is amended by inserting after paragraph (1) the following paragraphs:

- (1a) in respect of an approval or refusal under section 135B or 136C, the applicant;
- (1b) in respect of a variation pursuant to section 135F or 136H, the relevant permit holder or licensee;

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- (lc) in respect of a cancellation or suspension under section 135G or 136I, the relevant permit holder or licensee;
- (ld) in respect of a renewal under section 136F, the licensee;

114. Section 271 amended (Reviewable decisions)

Section 271(1) of the Principal Act is amended by inserting after paragraph (j) the following paragraphs:

- (ja) an approval or refusal under section 135B or 136C;
- (jb) a variation pursuant to section 135F or 136H;
- (jc) a cancellation or suspension under section 135G or 136I;
- (jd) a renewal under section 136F;

115. Section 275 amended (Appealable decisions)

Section 275 of the Principal Act is amended as follows:

- (a) by inserting in paragraph (f) “of a water allocation” after “reduction”;
- (b) by inserting the following paragraphs after paragraph (i):

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- (ia) an approval or refusal under section 135B;
- (ib) a variation under section 135F;
- (ic) a cancellation or suspension under section 135G;

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

Section 279A(1) of the Principal Act is amended by omitting the definition of “permit”.

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

Section 280(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (b) “or review” after “appeal”;
- (b) by inserting “or review” after “the appeal”.

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

Section 284 of the Principal Act is amended as follows:

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- (a) by omitting “A person” and substituting “(1) A person”;
- (b) by omitting paragraph (d) and substituting the following paragraph:
 - (d) use abusive, threatening or insulting language to an authorised officer or authorised person or to a person assisting an authorised officer or authorised person; or
- (c) by inserting “or authorised person” in paragraph (e) after “authorised officer”;
- (d) by inserting the following subsection:

(2) In this section –

“authorised person” means
an authorised person as
defined in section 244.

119. Section 295A inserted

After section 295 of the Principal Act, the following section is inserted in Division 3:

295A. Recovery of costs

- (1) A court that convicts a person of an offence against this Act may, on application by or on behalf of a person involved in investigating the offence, order that, in addition to any other

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penalty, the convicted person must pay any costs that the person making the application reasonably incurred in investigating the offence.

(2) In this section –

“**person**” includes a body politic.

120. Section 300A inserted

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

300A. Replacement of authorisations

The Minister, on receipt of a prescribed fee, may give the holder of a licence or other authorisation under this Act a replacement for the licence or other authorisation if the Minister is satisfied that the original has been –

- (a) stolen, lost or destroyed; or
- (b) damaged to a degree that renders it unsuitable for use.

121. Section 301 amended (Works codes)

Section 301 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) The order is not a statutory rule.

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122. Section 302 amended (Regulations in general)

Section 302(3)(b) of the Principal Act is amended by omitting “10 penalty units” and substituting “20 penalty units”.

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

Section 303 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “make provision for, or relating to,” and substituting “provide for”;
- (b) by omitting from paragraph (c) “make provision for, or in respect of,” and substituting “provide for”;
- (c) by omitting paragraph (d).

124. Section 304 amended (Fees and charges)

Section 304 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Governor may make regulations prescribing” and substituting “regulations may prescribe”;
- (b) by inserting in subsection (1)(d) “or water allocation” after “authorisation”;

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- (c) by omitting from subsection (1)(f) “licences.” and substituting “authorisations and water allocations; and”;
 - (d) by inserting the following paragraph after paragraph (f) in subsection (1):
 - (g) the recording of matters in the register.
 - (e) by omitting from subsection (3)(d) “charges.” and substituting “; and”;
 - (f) by inserting the following paragraphs after paragraph (d) in subsection (3):
 - (e) concessions, waivers, rebates or exemptions related to fees; and
 - (f) refunds (or partial refunds) of fees.

125. Section 304A amended (Regulations relating to dams safety)

Section 304A of the Principal Act is amended by omitting “Governor may make regulations prescribing” and substituting “regulations may prescribe”.

126. Section 305 amended (Miscellaneous matters)

Section 305 of the Principal Act is amended by omitting “Governor may make regulations in

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respect of” and substituting “regulations may provide for”.

127. Section 307A inserted

After section 307 of the Principal Act, the following section is inserted in Division 5:

307A. Savings and transitional provisions consequent on *Water Legislation Amendment Act 2008*

Schedule 4A has effect with respect to savings and transitional matters consequent on the *Water Legislation Amendment Act 2008*.

128. Section 310 repealed

Section 310 of the Principal Act is repealed.

129. Schedule 3 substituted

Schedule 3 to the Principal Act is repealed and the following Schedule is substituted:

**SCHEDULE 3 – MEMBERSHIP AND PROCEEDINGS
OF TRUSTS**

Section 207

PART 1 – MEMBERSHIP

1. Retirement of trustees

- (1) A trustee appointed by a Minister under section 211(2)(b) or (c) holds office during the Minister's pleasure.
- (2) Unless the Minister by instrument in writing determines otherwise, trustees are to retire as prescribed by the regulations.
- (3) However, in any case where from any cause an election is delayed, the retiring trustees are to hold office until the election of their successors.

2. Vacation of office

The office of a trustee becomes vacant if the trustee –

- (a) dies; or
- (b) becomes bankrupt; or
- (c) resigns his or her office in writing addressed to the trust and the resignation is accepted by the trust; or

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- (d) accepts an office of profit under the trust; or
- (e) is absent without leave of the trust from 3 consecutive meetings of the trust of which he or she had due notice; or
- (f) is convicted in Tasmania of an offence which is punishable by imprisonment for a term of 12 months or more, or if the trustee is convicted elsewhere than in Tasmania of an offence which, if committed in Tasmania, would be so punishable.

PART 2 – PROCEEDINGS

1. Interpretation of Part

In this Part –

“**board**” means the board of trustees of a trust;

“**concerned water entity**”, in relation to a trust, means a water entity that administers a water supply district and has a right under this Act or the special Act to take water for domestic purposes from a watercourse over which the trust exercises any responsibility;

“**meeting**” means a meeting of a board;

“special Act” has the same meaning as in section 190.

2. Convening meetings

A meeting may be convened by the chairperson or any 2 trustees.

3. Quorum

A quorum is a majority of the trustees.

4. Chairing of meetings

- (1) The chairperson is to preside at all meetings at which he or she is present.
- (2) If the chairperson is not present at a meeting, the deputy chairperson is to preside at that meeting if he or she is present.
- (3) If the chairperson and deputy chairperson are both absent from a meeting, the trustees present are to elect one of their number to preside at the meeting.

5. Procedure at meetings

- (1) Any duly convened meeting at which a quorum is present is competent to transact any trust business.

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- (2) In a meeting a trustee may vote –
 - (a) in person; or
 - (b) by proxy.
- (3) Each trustee, including the chairperson and deputy chairperson, has only one vote.
- (4) A question arising at a meeting is to be determined by a majority of the votes cast.
- (5) In the event of an equality of votes on a question arising at a meeting, the question stands adjourned until the next meeting.

6. Proxies

- (1) A trustee is not entitled to use a proxy for more than 2 consecutive meetings without leave of the board.
- (2) A vote that a trustee casts by proxy is as valid as if it were cast by the member in person.

7. Trustee with pecuniary interest not to vote

A trustee must not vote on any question arising before the trust in which he or she has any direct or indirect pecuniary interest otherwise than as –

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- (a) an owner or occupier of land in the relevant area; or
- (b) the holder of a right under this Act or the special Act to take water from a relevant water resource.

Penalty: Fine not exceeding 5 penalty units.

8. Minutes

- (1) A board is to keep accurate minutes of each of its meetings; and
- (2) A concerned water entity is entitled to inspect the minutes at any reasonable time.

9. Special attendance

- (1) A board may permit a trustee to participate in a particular meeting by –
 - (a) telephone; or
 - (b) television conference; or
 - (c) another means of communication approved by the trust.
- (2) A trustee who participates in a meeting under a permission granted under this

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clause is taken to be present at the meeting.

- (3) A board may permit a person to attend a meeting for the purpose of advising or informing it on any matter.

10. Attendance of other water entities at meetings

Unless the Minister directs a trust otherwise, the representatives of any concerned water entity may attend a meeting.

11. General procedure

Except as provided by this Act or the regulations, a board may regulate its own proceedings.

130. Schedule 4 amended (Savings and transitional provisions)

Schedule 4 to the Principal Act is amended as follows:

- (a) by omitting from clause 9A(3) “published in the *Gazette*”;
- (b) by inserting the following subclause after subclause (3) in clause 9A:

(3A) The order is a statutory rule.

(c) by omitting from clause 10(3)(c)(iii) “of councils to take water as”.

131. Schedule 4A inserted

After Schedule 4 to the Principal Act, the following Schedule is inserted:

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

Section 307A

1. Interpretation

In this Schedule –

“**amended Act**” means this Act as amended by the *Water Legislation Amendment Act 2008*.

2. Temporary water allocations

- (1) This clause applies to a permission in force under section 90 of this Act as in force immediately before the day on which section 43 of the *Water Legislation Amendment Act 2008* commences.
- (2) The permission continues in force according to its terms on and after the

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day referred to in subclause (1) until the expiry of the period not exceeding 3 months for which the permission was granted.

3. Well drilling offences

(1) Notwithstanding section 136A(1) of the amended Act –

- (a) it is not an offence for a person to physically undertake well works contrary to that section during the first 2 months of the lead-in period; and
- (b) it is not an offence for a person to physically undertake well works contrary to paragraph (a) of that section during the last 4 months of the lead-in period if the person –
 - (i) has applied for a well driller's licence in accordance with section 136B; and
 - (ii) has not been given notice that the application has been refused; and
- (c) it is not an offence for a person to physically undertake well works contrary to paragraph (b) of that

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section during the last 4 months of the lead-in period if the person is an employee of, and working under the on-site supervision of, someone who has or is reasonably believed by the first-mentioned person to have –

- (i) applied for a well driller’s licence in accordance with section 136B; and
- (ii) not been given notice that the application has been refused.

(2) In this clause –

“lead-in period” means the 6-month period immediately following the day on which section 62 of the *Water Legislation Amendment Act 2008* commences.

4. Well works offences

Notwithstanding section 135 of the amended Act, it is not an offence for a person to cause any well works to be undertaken contrary to that section during the first 2 months immediately following the day on which section 62 of the *Water Legislation Amendment Act 2008* commences.

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5. Trust elections

- (1) This clause applies if any elections of trustees are in the process of being conducted immediately before the day on which section 96 of the *Water Legislation Amendment Act 2008* commences.
- (2) The elections are to proceed as if the former Act and the former electoral regulations were still in force.
- (3) The elections have effect under and for the amended Act.
- (4) For the purposes of this clause, an election of trustees is taken to be in the process of being conducted if the returning officer has not issued a certificate of the result of the election.
- (5) In this clause –

“former Act” means this Act as in force immediately before the day referred to in subclause (1);

“former electoral regulations” means the provisions of Part 5 of the *Water Management Regulations 1999* as in force immediately before the day referred to in subclause (1).

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6. Trust polls

- (1) This clause applies if any polls under section 213 are in the process of being taken immediately before the day on which section 97 of the *Water Legislation Amendment Act 2008* commences.
- (2) The polls are to proceed as if the former Act and the former polling regulations were still in force.
- (3) The polls have effect under and for the amended Act.
- (4) For the purposes of this clause, a poll is taken to be in the process of being taken if the returning officer has not finished counting the ballot papers.
- (5) In this clause –

“former Act” means this Act as in force immediately before the day referred to in subclause (1);

“former polling regulations” means the provisions of Part 5 of the *Water Management Regulations 1999* as in force immediately before the day referred to in subclause (1).

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Part 2 – Water Management Act 1999 Amended

7. Trust membership

(1) Subject to clause 2 of Part 1 of Schedule 3 to the amended Act, a person who was an elected trustee under the former Act retires at the same time as he or she would have retired had the *Water Legislation Amendment Act 2008* not been enacted.

(2) In this clause –

“former Act” means this Act as in force immediately before the commencement of section 96 of the *Water Legislation Amendment Act 2008*.

8. Regulations

(1) The Governor may make regulations of a savings and transitional nature consequent on the enactment of the *Water Legislation Amendment Act 2008*.

(2) A regulation made under subclause (1) in respect of any matter may take effect on a day on which any provision of the *Water Legislation Amendment Act 2008* relating to that matter commences or a later day.

(3) The provisions of Division 4 of Part 15 have, subject to any necessary modification, the same application to

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regulations made under subclause (1) as they have to any of the regulations to which that Division applies.

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Part 3 – Approvals (Deadlines) Act 1993 Amended

**PART 3 – APPROVALS (DEADLINES) ACT 1993
AMENDED**

132. Principal Act

In this Part, the *Approvals (Deadlines) Act 1993** is referred to as the Principal Act.

133. Schedule 1 amended (Approval Time Limits)

Schedule 1 to the Principal Act is amended by omitting

Water Act 1957

Commissional water right under section 94 of the <i>Water Act 1957</i>	60 days from the day on which an application is received by the Rivers and Water Supply Commission.
Certificate of qualification (Hydraulic Engineer)	60 days from the day on which a recommendation from the appropriate examiners under regulation 6 of the <i>Water, Sewerage, and Drainage Board Regulations 1957</i> is received by the Rivers and Water Supply Commission.

*No. 41 of 1993

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Part 4 – Farm Water Development Act 1985 Amended

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**PART 4 – FARM WATER DEVELOPMENT ACT 1985
AMENDED**

134. Principal Act

In this Part, the *Farm Water Development Act 1985** is referred to as the Principal Act.

135. Section 5 amended (Loans for development of farm water)

Section 5 of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

- (a) undertaking, in accordance with a permit under the *Water Management Act 1999*, dam works that are to be used in connection with the taking of water into storage, pursuant to a licence under that Act, for irrigation on a farm owned or occupied by that eligible person; or

*No. 42 of 1985

**PART 5 – IRRIGATION CLAUSES ACT 1973
AMENDED**

136. Principal Act

In this Part, the *Irrigation Clauses Act 1973** is referred to as the Principal Act.

137. Section 23 amended (Right to a supply for irrigation)

Section 23 of the Principal Act is amended by inserting after subsection (3A) the following subsections:

- (3B) The undertakers must keep a register of all irrigation rights in the undertakers' irrigation district.
- (3C) The register of irrigation rights is to be in such form and contain such information as the Minister, by notice, from time to time directs.
- (3D) The Minister, by notice, may –
 - (a) require that the undertakers provide the Minister or another person with a copy of the register (or the register as it existed on a specified date); and

*No. 39 of 1973

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Part 5 – Irrigation Clauses Act 1973 Amended

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(b) require that that copy be provided in a particular format.

(3E) The undertakers must comply with the Minister's notice.

Penalty: Fine not exceeding 5 penalty units.

138. Section 23A amended (Transfer of irrigation rights)

Section 23A of the Principal Act is amended by inserting after subsection (3) the following subsections:

(4) The undertakers must not approve the transfer unless satisfied, from written evidence, that each person with a financial interest in the relevant irrigation right consents to the transfer.

(5) However, subsection (4) does not apply if –

(a) the undertakers are satisfied that the transfer will be only for a period not exceeding 12 months and the relevant irrigation right will revert to the transferor immediately after that period expires; or

(b) the transferor and transferee are the same person.

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Part 5 – Irrigation Clauses Act 1973 Amended

139. Section 24 amended (Domestic rights)

Section 24 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

- (2) Notwithstanding anything in this Act or the *Water Management Act 1999*, the undertakers may grant, to any water entity that administers a water district under that Act, a right to take water for domestic purposes from a declared water supply channel.
- (3) However, nothing in this section is to be taken as requiring any water supply channel to be declared.
- (4) In this section –

“declared” means declared under section 192(1) of the *Water Management Act 1999*.

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Part 6 – Inland Fisheries (Commercial Nets and Fees) Regulations 1999
Amended

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

140. Principal Regulations

In this Part, the *Inland Fisheries (Commercial Nets and Fees) Regulations 1999** are referred to as the Principal Regulations.

141. Regulation 3 amended (Interpretation)

Regulation 3 of the Principal Regulations is amended by omitting the definitions of “commissional water rights” and “fee unit”.

142. Schedule 1 amended (Fees)

Part 1 of Schedule 1 to the Principal Regulations is amended as follows:

- (a) by omitting paragraph (b) first occurring from item 5 and substituting the following:
- (b) each megalitre of a water allocation on a licence under the *Water Management Act 1999* | 20

*S.R. 1999, No. 156

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Amended

(b) by omitting paragraph (b) second occurring from item 5 and substituting the following:

(b) each megalitre of a water allocation on a licence under the <i>Water Management Act 1999</i>	20
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Part 7 – Legislation repealed

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PART 7 – LEGISLATION REPEALED

143. Legislation repealed

The legislation specified in Schedule 1 is repealed.

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SCHEDULE 1 – LEGISLATION REPEALED

Regulation 143

Cressy-Longford Irrigation Act 1969 (No. 39 of 1969)

Cressy-Longford Irrigation Water Act 1972 (No. 42 of 1972)