

Water (Irrigation Farm Dams) Act 2002

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Act No. 5/2002

TABLE OF PROVISIONS

Victoria

No. 5 of 2002

Water (Irrigation Farm Dams) Act 2002

[Assented to 3 April 2002]

The Parliament of Victoria enacts as follows:

1. *Purpose*

The purpose of this Act is to amend the **Water Act 1989**

- (a) to require the use of water in private dams or from springs or soaks for commercial and irrigation purposes to be licensed;
- (b) to provide for the declaration of water supply protection areas and the preparation and implementation of management plans for those areas;
- (c) to require certain dams to be licensed;
- (d) to require licensed drillers to comply with the conditions of bore construction licences;
- (e) to make other miscellaneous amendments.

2. *Commencement*

- (1) This Act (except sections 19(2), 19(4), 20, 25(1), 26, 27, 28 and 31) comes into operation on the day after the day on which it receives the Royal Assent.
- (2) Sections 19(2), 19(4), 20, 25(1), 26, 27, 28 and 31 come into operation on 1 February 2002.

3. Principal Act

See:

Act No.

80/1989.

Reprint No. 5

as at

18 May 1999

and amending

Act Nos

22/1999, 65/1999, 30/2000, 59/2000, 66/2000, 69/2000, 25/2001 and 44/2001.

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In this Act, the **Water Act 1989** is called the Principal Act.

4. New definitions inserted

In section 3(1) of the Principal Act

(a) **insert** the following definitions

' **"dam"** means anything in which by means of an excavation, a bank, a barrier or other works water is collected, stored or concentrated;

"Melbourne Water" means the Melbourne Water Corporation constituted under the **Melbourne Water Corporation Act 1992**;

"permissible annual volume", in relation to an area, means the volume specified by the Minister under section 22A;

"registration licence" means a licence issued under section 51(1A); **"State observation bore"** means a bore constructed at any time, whether before or after the commencement of section 4(a) of the **Water (Irrigation Farm Dams) Act 2002**, by or on behalf of the department that is used or intended to be used to monitor the level, quantity or quality of groundwater;

"water supply protection area" means an area declared to be a water supply protection area by an Order made under section 27(1);';

- (b) in the definition of "domestic and stock use", after paragraph (c) **insert** "(ca) in the case of the curtilage of a house and any outbuilding, watering an area not exceeding 1.2 hectares for fire prevention purposes with water obtained from a spring or soak or water from a dam; or";
- (c) the definition of "groundwater supply protection area" is **repealed**;
- (d) in paragraph (a) of the definition of "works", after "dams," **insert** "bores,".

5. Interstate agreements

- (1) In section 6 of the Principal Act, for sub-section (1) **substitute** "(1) Every power, discretion, function, authority and duty of the Minister, the Authority and the Tribunal under this Act must be construed subject to (a) the **Groundwater (Border Agreement) Act 1985** and the agreement approved by that Act; and (b) the **Murray-Darling Basin Act 1993** and the agreement approved by that Act."
- (2) In section 6(2) of the Principal Act
 - (a) for "power, duty or function" **substitute** "power, discretion, function, authority or duty"; and
 - (b) after "Minister" **insert** ", an Authority".
- (3) In section 6 of the Principal Act, after sub-section (2) **insert** "(3) An agreement referred to in sub-section (1) prevails over a right to take or to use water conferred by or under this Act, other than section 7(1), 8(1) or 8(4)(c)."
- (4) The Minister, an Authority or the Tribunal, in exercising a power, discretion, function, authority or duty under this Act, must not act in a manner detrimental to or inconsistent with the operation of an agreement referred to in sub-section (1)."

6. Private rights to water

- (1) In section 8(1)(d) of the Principal Act, after "(d)" **insert** "subject to section 33C,".
- (2) In section 8 of the Principal Act, after sub-section (5) **insert** "(5A) Sub-sections (4)(c) and (5) do not apply to the use, other than domestic and stock use, of water from a spring or soak or water from a private dam (to the extent that it is not rainwater supplied to the dam from the roof of a building)."
- (3) In section 8(6)(d) of the Principal Act, for "groundwater" **substitute** "water".

7. Allocation of water right on subdivision

- (1) In section 11(8)(b) of the Principal Act, after "40" **insert** "(1)".
- (2) In section 11 of the Principal Act, after sub-section (8) **insert** "(9) In considering an application under sub-section (3), the Minister must give effect to an approved management plan for any relevant water supply protection area."

8. New Division 1A inserted in Part 3

In Part 3 of the Principal Act, after Division 1 **insert**

'Division 1A Permissible Annual Volumes

22A. Permissible annual volume for an area

(1) The Minister may from time to time, by Order published in the Government Gazette, declare, in respect of an area specified in the Order, that the total volume of water, whether surface water, groundwater or both, which may be taken in the area, whether used in that area or elsewhere, under this or any other Act during a period of 12 months commencing on 1 January must not exceed the volume specified in the Order.

(2) If

(a) an annual reserve volume of groundwater has been specified for the area under section 49A of the **Groundwater Act 1969**; or

(b) a prescription has been made under section 62(1) of the **Groundwater Act 1969** of the maximum total amounts of water to be extracted per annum from all licensed bores within the area

a volume specified in an Order under sub-section (1) of this section must not affect the volume referred to in paragraph (a) and must not be less than the amounts referred to in paragraph (b).

(3) The Minister may make an Order under sub-section (1) on the Minister's initiative or at the request of an Authority.

(4) In this section, "**area**" includes a sub-surface stratum of land or geological formation.'

9. Power of Minister re water resources assessment program

(1) In section 23(2)(a) of the Principal Act, after "works" **insert** "or State observation bores".

(2) In section 23 of the Principal Act, after sub-section (4) **insert**

"(5) A person must not, without the consent of the Minister, destroy, damage, remove, alter or in any way interfere with any works established under sub-section (1)(h).

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

(6) A person who is guilty of an offence under sub-section (5) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that sub-section, to a further penalty of not more than 5 penalty units for each day during which the offence continues

(a) after service of a notice of contravention on the person under section 151; or

(b) if no notice of contravention is served, after conviction."

10. New Division 3 of Part 3 substituted

In Part 3 of the Principal Act, for Division 3 substitute

"Division 3 Water Supply Protection Areas

27. Declaration of water supply protection area

(1) The Minister, on the Minister's initiative or on an application from a person referred to in sub-section (3), may, by Order published in the Government Gazette, declare an area to be a water supply protection area.

(2) An area may be declared under sub-section (1) to be a water supply protection area for the protection of the groundwater resources in the area or the surface water resources in the area or both.

(3) An application for a declaration under sub-section (1) may be made by

(a) a person authorised to use groundwater or surface water under this Act; or

(b) an Authority that

(i) holds a bulk entitlement; or

(ii) uses groundwater; or

(iii) supplies water; or

(c) a body that has responsibilities under any Act relating to the conservation or management of water, or of land

in the area concerned or in an area where the water supply is affected by the taking and use of groundwater or surface water (as the case requires) in the area concerned.

(4) The Minister may only make a declaration under sub-section (1) if

(a) the Minister has first caused notice of the proposed declaration to be

(i) published in a newspaper circulating generally in the area concerned; and

(ii) given by post to the relevant persons listed in sub-section (5); and

(b) the Minister has considered any submissions made within 60 days after the publication or giving of notice of the proposed declaration under sub-paragraph (i) or (ii) of paragraph (a), whichever is the later.

(5) For the purposes of sub-section (4)(a)(ii) the relevant persons are

(a) the Minister administering the **Conservation, Forests and Lands Act 1987**; and

(b) the Minister administering the **Planning and Environment Act 1987**; and

(c) any Authority exercising a function under Part 8 or 11 in the area concerned; and

(d) any Authority that holds a bulk entitlement to water from a source in the area concerned; and

(e) any public statutory body which the Minister considers may be directly affected by the declaration; and (f) any council in whose municipal district the area concerned is wholly or partly situated; and

(g) the responsible authority under the **Planning and Environment Act 1987** in relation to a planning scheme for the whole or any part of the area concerned.

(6) If an application under sub-section (1) is made for a declaration, the publication or giving notice of the proposed declaration is to be at the expense of the applicant.

(7) The Minister may require further information with respect to the proposed declaration to be provided by the applicant for the declaration or any Authority with a function under this Act in the area concerned.

(8) The Minister must make a decision whether to declare an area to be a water supply protection area within 60 days after the period of 60 days referred to in sub-section (4)(b).

(9) If the Minister decides to declare an area to be a water supply protection area, the Minister must cause a notice to that effect to be published in a newspaper circulating generally in the area.

(10) If the Minister decides not to declare an area to be a water supply protection area, the Minister must cause a notice to that effect to be published in a newspaper circulating generally in the area.

(11) The Minister must cause a declaration under sub-section (1) to be laid before each House of Parliament within 5 sitting days of that House after it is made.

28. *Amendment or abolition of water supply protection area*

(1) The Minister may, by a subsequent Order published in the Government Gazette, amend the boundaries of, or abolish, a water supply protection area.

(2) Section 27 applies (with any necessary modifications) to an Order under sub-section (1) as if it were a declaration under section 27(1).

29. *Consultative committee*

(1) If the Minister makes a declaration under section 27(1), the Minister must appoint a consultative committee to prepare a draft management plan for the area that is the subject of the declaration.

(2) The following provisions apply with respect to the membership of a consultative committee appointed under this section

(a) the Minister must make sure that, so far as is possible

(i) all relevant interests are fairly represented on the committee;

(ii) the membership consists of persons who have knowledge or experience in the matters to be covered in the management plan;

(b) at least one half of the membership must consist of persons who are owners or occupiers of land in the area concerned appointed after consultation by the Minister with bodies representative of those persons; (c) any public statutory body which the Minister considers to be directly affected by the declaration must, after consultation by the Minister with it, be represented on the committee.

(3) Unless the area that is the subject of the declaration is wholly within an urban area, the persons referred to in sub-section (2)(b) must be farmers who own or occupy farming land in the area, appointed by the Minister after consultation with the Victorian Farmers Federation.

(4) Section 318(2) to (6) applies to a consultative committee appointed under this section.

30. *Guidelines for preparation of draft management plans*

(1) The Minister may prepare guidelines for the preparation of a draft management plan for an area that is the subject of a declaration under section 27(1).

(2) The Minister may from time to time amend or revoke any guidelines prepared under sub-section (1).

(3) The Minister, as soon as practicable after preparing, amending or revoking guidelines under this section must give the relevant consultative committee

(a) a copy of the guidelines or the amendment; or

(b) notice of the revocation of the guidelines.

31. *Preparation of draft management plan*

(1) A consultative committee appointed under section 29 must, within 18 months after its appointment

(a) prepare a draft management plan in accordance with any guidelines prepared by the Minister under section 30; and

- (b) make the draft management plan available for comment by interested persons.
- (2) If the consultative committee does not prepare a draft management plan within the period referred to in sub-section (1), the Minister may
 - (a) from time to time extend the time within which the draft management plan may be prepared and made available for comment by interested persons; or
 - (b) prepare the draft management plan.
- (3) If, under sub-section (2), the Minister prepares the draft management plan, the Minister must make that plan available for comment by interested persons.

32. *Overlapping management plans to be taken into account*

In preparing a draft management plan for an area declared to be a water supply protection area, the consultative committee must take into account any other draft or approved management plan that applies to the area or part of the area under this Division.

32A. *Management plan*

- (1) The object of a management plan is to make sure that the water resources of the relevant water supply protection area are managed in an equitable manner and so as to ensure the long-term sustainability of those resources.
- (2) A management plan may relate to groundwater resources, surface water resources or both in the relevant water supply protection area.
- (3) A management plan may prescribe for the relevant water supply protection area or any part of that area
 - (a) requirements for metering, monitoring and accounting for groundwater or surface water or both; or
 - (b) requirements to notify the Authority that has the duty of administering and enforcing the plan of the taking of groundwater from any specified bore or group of bores under a right conferred by section 8(1); or
 - (c) requirements for the location, capacity and operation of private dams which are
 - (i) not licensed under section 51; and
 - (ii) not for domestic and stock use; or
 - (d) restrictions or prohibitions on the issue of licences under section 51 or 67; or
 - (e) restrictions or prohibitions on the renewal of registration licences; or
 - (f) restrictions to be imposed on the taking of groundwater from any specified bore, group of bores or aquifer, if necessary to prevent
 - (i) a specified maximum groundwater table decline being exceeded; or
 - (ii) a relevant permissible annual volume being exceeded; or
 - (g) restrictions to be imposed on the taking of surface water at any location specified in the area, if necessary to ensure that
 - (i) specified flows at any particular time or for any particular circumstances are maintained; or
 - (ii) the permissible annual volume for the area is not exceeded; or
 - (h) restrictions to be imposed on the supply of groundwater by an Authority that takes groundwater from a source in the area or part; or
 - (i) conditions relating to the protection of the environment, including the riverine and riparian environment; or

- (j) conditions relating to payment for the amount of groundwater taken and used from any specified bore or group of bores under a right conferred by section 8(1); or
 - (k) conditions to which licences issued under section 51 are to be subject; or
 - (l) without derogating from rights to water for domestic and stock use conferred by section 8, conditions to which licences issued under section 67 are to be subject; or
 - (m) conditions to which licences issued under section 51 to take and use groundwater or surface water, and transferred under section 62, are to be subject, including a condition relating to the maximum volume of water which may be taken and used under the transferred licence; or (n) the maximum volume of water that may be retained
 - (i) in each private dam on a particular lot in a plan of subdivision in the area concerned; or
 - (ii) in all private dams on every lot in a plan of subdivision in the area concerned; or
 - (o) any matter relevant to the object of the management plan or its implementation.
- (4) A draft management plan may make a recommendation to the Minister as to the total volume of water that should be declared to be the permissible annual volume for the area concerned.
- (5) A draft management plan must name the Authority which is to have the duty of administering and enforcing the plan if it is approved.
- (6) The Minister may
- (a) approve a draft management plan; or
 - (b) refuse to approve a draft management plan.
- (7) The Minister must cause
- (a) notice of the approval or refusal (as the case requires) of a draft management plan to be published and given in accordance with section 27(4)(a); and
 - (b) if the draft management plan is refused, the reasons for the refusal to be published with that notice.
- (8) The Minister must cause an approved management plan to be laid before each House of Parliament within 5 sitting days of that House after it is approved under sub-section (6).
- (9) Sections 23, 24 and 25 of the **Subordinate Legislation Act 1994** apply to an approved management plan as if the approved management plan were a statutory rule within the meaning of that Act.
- (10) An approved management plan may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23 of the **Subordinate Legislation Act 1994**.
- (11) An approved management plan is binding on every person (including every public statutory body) except to the extent that the Minister otherwise specifies by notice published in the Government Gazette.
- (12) On the approval of a draft management plan that prescribes a requirement, restriction or condition to which a licence issued under section 51 or 67 is to be subject, every licence issued under section 51 or 67, whether issued before or

after the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**, is deemed to be subject to that requirement, restriction or condition, despite anything to the contrary specified in the licence or any condition that is prescribed or fixed or imposed by the Minister under section 56 or 71 (as the case requires) in relation to the licence.

(13) A person must not contravene an approved management plan.

Penalty: 20 penalty units.

32B. *Administration and enforcement of management plan*

(1) The Authority that has the duty of administering and enforcing an approved management plan may

(a) direct that any specified works be carried out or any specified equipment be installed; or

(b) order the removal of any specified works (other than a private dam) or the discontinuance of any specified action

if, in the opinion of the Authority, it is necessary to do so in order to secure compliance with the plan.

(2) A person whose interests are affected by a decision of an Authority under sub-section (1) to give a direction or make an order may apply to the Tribunal for review of the decision.

(3) An application for review must be made within 28 days after the later of

(a) the day on which the decision is made; (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

(4) A person must not contravene a direction given or order made by an Authority under sub-section (1).

Penalty: 20 penalty units.

32C. *Report on administration and enforcement of management plan*

(1) The Authority that has the duty of administering and enforcing an approved management plan must prepare a report in respect of its activities in carrying out its duties in relation to the plan

(a) for the period commencing on the day the management plan is approved and ending on 30 June next following; and

(b) from then on, for each year ending on 30 June or for such other period of time requested by the Authority and approved by the Minister.

(2) The Authority must, on or before 30 September in each year, give a copy of the report to

(a) the Minister; and

(b) every Catchment Management Authority whose catchment and land protection region is wholly or partly in the area.

32D. *Public availability of report*

An Authority that has prepared a report in accordance with section 32C must, as soon as practicable after giving a copy of the report to the Minister

- (a) make a copy of the report available for inspection, during business hours, free of charge at the offices of the Authority; and
- (b) publish a notice of that availability in a newspaper circulating generally in the area to which the approved management plan applies.

32E. *Certain plans deemed to be approved management plans*

(1) Despite anything to the contrary in this Division but subject to this section, the Minister may approve a plan for the management of surface water resources that has been prepared or partly prepared by or for the department for a particular area before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**.

(2) Before approving a plan as a management plan under sub-section (1), the Minister may

- (a) review or revise the plan; or
 - (b) appoint an advisory committee to assist in developing or completing the plan.
- (3) An advisory committee is to consist of such persons as the Minister thinks fit.
- (4) The Minister must not approve the plan unless the Minister is satisfied that the plan complies with section 32A(1) to (5).

(5) On the approval by the Minister of a plan under sub-section (1)

- (a) the particular area to which the plan relates is deemed to be a water supply protection area for the protection of surface water resources; and
- (b) the plan is deemed to be an approved management plan for the surface water resources of the relevant water supply protection area and may be amended or revoked in accordance with this Division.

32F. *Compensation in certain circumstances*

(1) The owner and occupier of any works is entitled to be paid, by the person specified by the consultative committee that prepared the plan, or specified by the Minister in a plan referred to in section 32E, compensation for any loss suffered or expenses sustained as a result of

- (a) being directed under section 32B(1)(a) to carry out works or install equipment; or
- (b) being ordered under section 32B(1)(b) to remove works.

(2) If as a result of the enforcement of an approved management plan a benefit is conferred on one person and a detriment is suffered by another person, the second-mentioned person is entitled to be paid by the first-mentioned person compensation for the detriment suffered.

(3) The amount of compensation payable under sub-section (1) or (2) is as agreed by the parties or, in the absence of agreement, as determined by the Authority that has the duty of administering and enforcing the plan, and that amount may be enforced as a debt in a court of competent jurisdiction. (4) A person whose interests are affected by a decision

- (a) of an Authority under sub-section (3) as to the amount of compensation payable; or
 - (b) of a consultative committee or the Minister under sub-section (1)
 - (i) that a specified person must pay compensation; or
 - (ii) that no compensation is payable
- may apply to the Tribunal for review of the decision.

- (5) An application for review must be made within 28 days after the later of
- (a) the day on which the decision is made;
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

32G. *Amendment or revocation of approved management plan*

- (1) The Minister may amend or revoke an approved management plan.
- (2) The Minister may only amend or revoke an approved management plan if
- (a) the Minister has caused notice of the proposed amendment or revocation to be published and given in accordance with section 27(4)(a); and
 - (b) the Minister has considered any submissions made on the proposed amendment or revocation within 60 days after the publication or giving of notice of it in accordance with section 27(4)(a)(i) or (ii), whichever is the later; and
 - (c) in the case of a proposed amendment of the plan, the Minister has appointed a consultative committee to advise on the that amendment.
- (3) Sections 29 and 31 apply in the case of a proposed amendment to an approved management plan with any necessary modifications, and as if in those sections
- (a) a reference to a consultative committee appointed for the preparation of a draft management plan were a reference to a consultative committee appointed under this section for the amendment of the plan; and
 - (b) a reference to a draft management plan were a reference to the proposed amendment of the plan.

32H. *Plan must be available for inspection*

The following must keep a copy of an approved management plan (as amended from time to time) available at their offices for any person to inspect during office hours free of charge

- (a) any Authority exercising a function under this Act in the area concerned;
- (b) any council in whose municipal district the area concerned is wholly or partly situated;
- (c) the responsible authority under the **Planning and Environment Act 1987** in relation to a planning scheme for the whole or any part of the area concerned."

11. *New Division 5 inserted in Part 3*

In Part 3 of the Principal Act, after section 33 insert

"Division 5 State Observation Bores

33A. *Power to enter land*

- (1) The Minister, or a person authorised in writing by the Minister for the purpose, may enter, in accordance with sub-section (2), any land on which a State observation bore is located for the purpose of
- (a) carrying out observations (including taking water samples); or
 - (b) operating, maintaining, altering or decommissioning the bore.
- (2) The power of entry under sub-section (1) may be exercised
- (a) in the case of Crown land, at any time; or
 - (b) in the case of land other than Crown land, between 7 a.m. and 7 p.m. or, during an emergency, at any time.

33B. *Compensation*

(1) The Minister, or a person authorised in writing by the Minister for a purpose referred to in section 33A, must cause as little damage and inconvenience as possible in the performance of his or her functions under this Division.

(2) The Minister is liable to compensate any person who has

(a) sustained any pecuniary loss; or

(b) incurred any expense

as a direct, natural and reasonable consequence of the performance of a function under this Division by the Minister, or a person authorised in writing by the Minister for a purpose referred to in section 33A.

(3) The Minister is not liable to compensate a person for consequential loss.

(4) Any claim for compensation must be made and dealt with in accordance with the **Land Acquisition and Compensation Act 1986** as if it were a claim under section 47(1) of that Act.

33C. *Right to take water for domestic and stock use from a State observation bore*

A person may only exercise the right conferred by section 8(1)(d) in relation to a State observation bore if the person first obtains the written permission of the Minister.

33D. *Offence to interfere etc. with State observation bore*

(1) A person must not, without the consent of the Minister, destroy, damage, remove, alter or in any way interfere with any State observation bore.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months.

(2) A person who is guilty of an offence under sub-section (1) that is of a continuing nature is liable, in addition to the penalty set out at the foot of that sub-section, to a further penalty of not more than 5 penalty units for each day during which the offence continues

(a) after service of a notice of contravention on the person under section 151; or

(b) if no notice of contravention is served, after conviction."

12. *Application for bulk entitlement*

In section 36(2)(b)(iii) of the Principal Act, after "40" **insert** "(1) and in section 40(2)".

13. *Matters to be taken into account in application for bulk entitlement*

(1) In section 40 of the Principal Act

(a) after paragraph (b) **insert**

"(ba) the permissible annual volume, if any, for the area;"

(b) in paragraph (d)

(i) in sub-paragraph (iii), **omit** "or";

(ii) sub-paragraph (iv) is **repealed**;

(c) **omit** paragraph (h).

(2) In section 40 of the Principal Act, at the end of the section **insert**

"(2) In considering an application under section 36(1), the Minister or Governor in Council (as the case requires) must give effect to an approved management plan for any relevant water supply protection area."

14. *Deferral of application*

In section 41 of the Principal Act

- (a) in paragraph (a), for "section 27(2)(b)(i)" **substitute** "section 27(4)(a)(i)";
- (b) in paragraph (d), for "section 27(7)" **substitute** "section 27(10)".

15. *Determination of application for bulk entitlement*

In section 42(2) of the Principal Act, after "considered" **insert** "and given effect to".

16. *Transfer of bulk entitlement*

- (1) In section 46(5) of the Principal Act
 - (a) after "40" (where first occurring) **insert** "(1)";
 - (b) for "40(d)" **substitute** "40(1)(d) or (g)".
- (2) In section 46 of the Principal Act, after sub-section (5) **insert**
"(5A) In considering an application, the Minister must give effect to an approved management plan for any relevant water supply protection area."

17. *Temporary transfer to person outside Victoria*

In section 46B(5) of the Principal Act, for "40(d)" **substitute** "40(1)(d) or (g)".

18. *Conversion of licences or water rights to bulk entitlement*

- (1) In section 47C(7) of the Principal Act, after "40" **insert** "(1)".
- (2) In section 47C of the Principal Act, after sub-section (7) **insert**
"(7A) In considering an application under this section, the Minister must give effect to an approved management plan for any relevant water supply protection area."

19. *Licence to take and use water for a use other than domestic and stock use*

- (1) In section 51(1) of the Principal Act, after paragraph (b) **insert**
"(ba) water from a spring or soak or water from a dam (to the extent that it is not rainwater supplied to the dam from the roof of a building or water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or".
- (2) In section 51 of the Principal Act, after sub-section (1) **insert**
"(1A) During the period commencing on 1 February 2002 and ending on 31 January 2003, a person may apply, without payment of an application fee, to the Minister for the issue of a registration licence to take and use
 - (a) water from a spring or soak or water from a dam (to the extent that it is not rainwater supplied to the dam from the roof of a building or water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or
 - (b) water from a dam on a waterway other than a river, creek, stream or watercourse, for a use other than domestic and stock use.
- (1B) Sub-section (1A) only applies, in relation to a spring or soak or dam, to a person who at any time during the period of 10 years immediately before the

commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using

(a) water from the spring or soak or water from the dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or

(b) water from the dam on a waterway other than a river, creek, stream or watercourse, for a use other than domestic and stock use for which a licence under sub-section (1)(a) is not in force as the case may be."

(3) In section 51 of the Principal Act, before sub-section (2) **insert**

"(1C) Nothing in this section requires a person to hold a licence issued under this section to re-use water that

(a) is stored in a dam that complies with design criteria specified by the Minister under section 80A; and (b) does not exceed the volume determined in accordance with the formula specified by the Minister under section 80A; and

(c) is supplied to the person under a licence issued under this section, under section 124(7) or in accordance with section 222."

(4) In section 51(2) of the Principal Act

(a) after "application" (where first occurring) **insert** "under this section";

(b) after paragraph (b) **insert**

"(ba) in the case of an application under sub-section (1)(ba) or (1A) in relation to a spring or soak or dam by a person who at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using

(i) water from the spring or soak or water from the dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; or

(ii) water from a dam on a waterway other than a river, creek, stream or watercourse, for a use other than domestic and stock use

as the case may be, set out the maximum volume of water to be used by the applicant in each year during the period of the licence, determined in accordance with the criteria specified by Order under section 52A; and";

(c) for paragraph (c) **substitute**

"(c) be accompanied by the application fee, if any, fixed by the Minister for that type of application."

20. New section 51A inserted

After section 51 of the Principal Act **insert**

"51A. Surrender of registration licence

(1) The holder of a registration licence may, during the term of the licence, surrender the licence to the Minister and apply, without payment of an application fee, for the issue of a licence under section 51(1)(a) or (ba).

(2) Sections 51B and 51C do not apply to an application made under sub-section (1).

(3) On an application made under sub-section (1), the Minister must issue, within 14 days after the application is made, a licence under section 51(1)(a) or (ba), as the case may be, for the same maximum volume of water to be used in each year

during the period of the licence as that which applied to the registration licence formerly held by the applicant.

(4) A registration licence surrendered under sub-section (1) is deemed to continue in operation until the issue of a licence under section 51(1)(a) or (ba) in accordance with sub-section (3)."

21. *New sections 51B and 51C inserted*

Before section 52 of the Principal Act **insert**

"51B. *Application to go to certain bodies*

The Minister must, without delay, give a copy of an application under section 51 in respect of a dam, whether or not on a waterway, to

- (a) the Department Head; and
- (b) the relevant Catchment Management Authority; and
- (c) Melbourne Water, if the dam is or will be located in an area over which Melbourne Water has power under Part 10 of the **Melbourne and Metropolitan Board of Works Act 1958**; and
- (d) any Authority holding a bulk entitlement that may be affected by the approval of the application.

51C. *Bodies must consider application*

(1) Within 30 days after receipt of an application referred to a body under section 51B, the body

- (a) must consider the application; and
 - (b) may advise the Minister in writing that
 - (i) it does not object to the issue of a licence; or
 - (ii) it does not object if the licence is issued subject to the conditions specified by the body; or
 - (iii) it objects to the issue of the licence on any specified ground; and
 - (c) may give to the Minister its comments on the application.
- (2) If a body makes no response to the Minister within 30 days after receipt of an application referred to it under section 51B, the Minister may proceed to determine the application."

22. *New section 52A inserted*

After section 52 of the Principal Act **insert**

"52A. *Criteria to determine maximum volume of water use for certain licence applications*

The Minister may, by Order published in the Government Gazette, specify the criteria for determining the maximum volume of water to be used each year during the period of

- (a) a registration licence; or
- (b) a licence issued under section 51(1)(ba), in respect of a spring or soak or dam, to a person who at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using water from the spring or soak or water from the dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use.

23. *Matters to be taken into account*

- (1) In section 53 of the Principal Act
 - (a) after paragraph (a) **insert**
"(ab) any advice and comments received within the period of 30 days referred to in section 51C(1);";
 - (b) in paragraph (b), after "40" **insert** "(1)";
 - (c) **omit** paragraphs (c), (d) and (da).
- (2) In section 53 of the Principal Act, at the end of the section **insert**
"(2) In considering an application under section 51 or 52, the Minister must give effect to
 - (a) any relevant Order under section 52A; and
 - (b) any relevant Order made by the Governor in Council under section 49A of the **Groundwater Act 1969** specifying an annual reserve volume of groundwater; and
 - (c) any relevant prescription made under section 62(1) of the **Groundwater Act 1969** in respect of a groundwater conservation area declared under section 61 of that Act; and
 - (d) any water resource management plan for the area approved under section 64A; and
 - (e) an approved management plan for any relevant water supply protection area."

24. *Certain applications must be deferred*

- (1) In section 54 of the Principal Act
 - (a) in paragraph (a), for "section 27(2)(b)(i)" **substitute** "section 27(4)(a)(i)";
 - (b) for paragraph (b) **substitute**
"(b) a relevant application is subsequently made under
 - (i) section 51 or 52 in respect of an area that is the subject of the proposed declaration; or
 - (ii) section 62 for approval of the permanent transfer of a licence issued under section 51 or 52 into or within that area";
 - (c) in paragraph (d), for "27(8)" **substitute** "27(10)".
- (2) In section 54 of the Principal Act, at the end of the section **insert**
'(2) If
 - (a) an Order is made under section 27(1); and
 - (b) no management plan for the area has been approved under section 32A(6) the Minister must defer consideration of a relevant application
 - (c) under section 51 or 52 in respect of the area; or
 - (d) under section 62 for approval of the permanent transfer of a licence issued under section 51 or 52 into or within the area until notice of the approval or refusal of a draft management plan has been published under section 32A(7).
- (3) This section does not apply to
 - (a) an application for a registration licence; or
 - (b) an application for a licence under section 51(1)(a) or (ba) on the surrender of a registration licence; or

(c) an application under section 62 for approval of the transfer of a licence issued under section 51 if the application arises as a result of the transfer or conveyance of land on which the water is taken or used under the licence.

(4) For the purposes of this section, a relevant application in relation to an area proposed to be declared or declared as a water supply protection area

(a) for the protection of the groundwater resources, is an application relating to groundwater; and

(b) for the protection of the surface water resources, is an application relating to surface water; and

(c) for the protection of both groundwater resources and surface water resources, is an application relating to either groundwater or surface water

made on or after the commencement of section 24 of the **Water (Irrigation Farm Dams) Act 2002**.

25. Licence to take and use water - determination of application

(1) In section 55(1) and (2) of the Principal Act, for "The Minister" **substitute** "Subject to section 51A, the Minister".

(2) In section 55(2) of the Principal Act, for "groundwater" **substitute** "water".

(3) In section 55 of the Principal Act, after sub-section (2) **insert**

"(2A) If an application under section 51 relates to a State observation bore, the Minister must refuse the application if, in the Minister's opinion, the exercise of rights under the proposed licence will or may interfere with the function of the bore as a State observation bore."

(4) In section 55 of the Principal Act, after sub-section (2A) **insert**

"(2B) Subject to section 51A, the Minister must refuse an application under section 51 if, in the Minister's opinion, the allocation or use of water under the licence will or may result in the permissible annual volume for the area for that year or a future year being exceeded."

26. Period of licences

(1) In section 56(1)(a) of the Principal Act, after sub-paragraph (xii) **insert** "(xiii) notification of change of ownership of land on which water is taken under a licence issued under section 51(1A); and".

(2) In section 56(3) of the Principal Act, for "section 51" **substitute** "section 51(1)".

(3) In section 56 of the Principal Act, after sub-section (3) **insert**

"(3A) Unless sooner revoked, cancelled or surrendered, a licence issued under section 51(1A) remains in force for an unlimited period."

(4) In section 56(4) of the Principal Act, for "section 51" **substitute** "section 51(1)".

27. *Sale of licence by Minister*

In section 57 of the Principal Act

- (a) in sub-section (1), after "51" **insert** "(1)";
- (b) in sub-section (3), after "51" **insert** "(1)".

28. *Renewal of licence*

- (1) In section 58(1) of the Principal Act, for "51" **substitute** "51(1)".
- (2) In section 58(2) of the Principal Act, for paragraph (c) **substitute** "(c) be accompanied by
 - (i) in the case of a registration licence, the prescribed fee, if any;
 - (ii) in the case of any other licence, the application fee, if any, fixed by the Minister for that kind of licence."
- (3) In section 58(3) of the Principal Act, for "51" **substitute** "51(1)".
- (4) In section 58(5) and (6) of the Principal Act, after "licence" **insert** "issued under section 51(1) or 52".

29. *Amendment of licence*

In section 59(1) of the Principal Act, for "groundwater" (wherever occurring) **substitute** "water".

30. *Revocation of licence*

In section 60(1)(b) of the Principal Act

- (a) **omit** "to a bore or";
- (b) for "the bore is, or the works are," **substitute** "the works are".

31. *Transfer of licence*

- (1) In section 62(1) of the Principal Act, after "section 51 or 52" **insert** "(other than a registration licence)".
- (2) In section 62 of the Principal Act, after sub-section (2) **insert** "(2AA) On the transfer or conveyance of land on which water is taken under a registration licence, the registration licence is deemed to be transferred to the successor in title of that land."

32. *New offence inserted*

- (1) In section 63 of the Principal Act, after sub-section (1) **insert** "(1A) A person must not take or use
 - (a) water from a spring or soak; or
 - (b) water from a dam (to the extent that it is not rainwater supplied to the dam from the roof of a building or water supplied to the dam from a waterway or a bore)for a use other than domestic and stock use, unless authorised to do so by or under this Act or any other Act.

Penalty: For a first offence, 20 penalty units or imprisonment for 3 months.

For a subsequent offence, 40 penalty units or imprisonment for 6 months."

- (2) In section 63 of the Principal Act
- (a) in sub-section (2), after "sub-section (1)" **insert** "or (1A)";
- (b) in sub-section (3), for "sub-section (1)" **substitute** "sub-sections (1) and (1A)".
- (3) In section 63 of the Principal Act, after sub-section (3) **insert**
- "(4) If, at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002**, a person was taking and using water from a spring or soak or water from a dam not on a waterway, sub-section (1A) does not apply to that person in respect of that spring or soak or dam until 1 February 2003."

33. *Water resource management plan*

- (1) In section 64A(2) of the Principal Act, for "section 27(2)(b)(i) and (ii)" **substitute** "section 27(4)(a)(i) and (ii)".
- (2) In section 64A(4) of the Principal Act, after "40" **insert** "(1) and giving effect to an approved management plan for any relevant water supply protection area".

34. *Advertisement of application*

In section 65(1)(a) of the Principal Act

- (a) for "67(1)" **substitute** "67";
- (b) for "abandon works or a bore" **substitute** "decommission works, a bore or a private dam".

35. *Licence to construct etc. private dam*

- (1) In section 67(1) of the Principal Act, for "abandon" **substitute** "decommission".
- (2) In section 67 of the Principal Act, after sub-section (1) **insert**
- "(1A) A person may apply to the Minister for the issue of a licence to construct, alter, operate, remove or decommission a private dam, other than on a waterway, that
- (a) has a wall that is 5 metres or more high above ground level at the downstream end of the dam and a capacity of 50 megalitres or more; or
- (b) has a wall that is 10 metres or more high above ground level at the downstream end of the dam and a capacity of 20 megalitres or more; or
- (c) has a wall that is 15 metres or more high above ground level at the downstream end of the dam, regardless of the capacity; or
- (d) is a dam belonging to a prescribed class of dams."
- (3) In section 67(2)(c)(ii) of the Principal Act, for "or bore are or is, or are or is proposed" **substitute** "are, or are proposed".

36. *New sections 67A and 67B inserted*

After section 67 of the Principal Act **insert**

"67A. *Application to go to certain bodies*

The Minister must, without delay, give a copy of an application under section 67 in respect of a dam, whether or not on a waterway, to

- (a) the Department Head; and

- (b) the relevant Catchment Management Authority; and
- (c) the relevant Council; and
- (d) Melbourne Water, if the dam is or will be located in an area over which Melbourne Water has power under Part 10 of the **Melbourne and Metropolitan Board of Works Act 1958**; and
- (e) any Authority holding a bulk entitlement that may be affected by the approval of the application.

67B. Bodies must consider application

(1) Within 30 days after receipt of an application referred to a body under section 67A, the body

- (a) must consider the application; and
 - (b) may advise the Minister in writing that
 - (i) it does not object to the issue of a licence; or
 - (ii) it does not object if the licence is issued subject to the conditions specified by the body; or
 - (iii) it objects to the issue of the licence on any specified ground; and
 - (c) may give to the Minister its comments on the application.
- (2) If a body makes no response to the Minister within 30 days after receipt of an application referred to it under section 67A, the Minister may proceed to determine the application."

37. Matters to be taken into account

In section 68 of the Principal Act

- (a) for "67(1)" **substitute** "67";
- (b) after paragraph (a) **insert**

"(ab) have regard to any advice and comments received within the period of 30 days referred to in section 67B(1); and";
- (c) after paragraph (b) **insert**

"(ba) have regard to the matters mentioned in paragraphs (b) to (n) of section 40(1); and

(bb) give effect to an approved management plan for any relevant water supply protection area; and";
- (d) for paragraph (c) **substitute**

"(c) consider the likely effects of the escape of water from the works; and";
- (e) in paragraph (d) for "Act." (where last occurring) **substitute** "Act; and";
- (f) after paragraph (d) **insert**

"(e) have regard to any other matter that the Minister thinks fit."

38. Determination of application

- (1) In section 69(1) of the Principal Act, for "67(1)" **substitute** "67".
- (2) In section 69(4) of the Principal Act, for "abandoned" **substitute** "decommissioned".

39. Conditions of construction licence

In section 71(1) of the Principal Act

- (a) after paragraph (a) **insert**

"(ab) a condition requiring payment of any annual charge fixed by the Minister in accordance with section 74A; and";

(b) after paragraph (b)(ix) **insert**

"(ixa) without limiting sub-paragraph (ix), in the case of any dam, whether or not on a waterway

(A) surveillance of the dam, including surveillance by the Minister or a person holding one or more qualifications approved by the Minister and engaged by the licensee; or

(B) the procedures for management of dam safety; or

(C) the procuring of water, by transfer or otherwise, for every year that the dam is in operation; or";

(c) at the end of paragraph (b)(x)(C), for "driller." **substitute** "driller; and";

(d) after paragraph (b) **insert**

"(c) without derogating from rights to water for domestic and stock use conferred by section 8, any other conditions that the Minister thinks fit and specifies in the licence.".

40. *Amendment of licence*

(1) In section 73(1) of the Principal Act, for "groundwater" **substitute** "water".

(2) In section 73 of the Principal Act, after sub-section (1) **insert**

"(1A) Within 12 months after the commencement of section 40 of the **Water (Irrigation Farm Dams) Act 2002**, the Minister may amend a licence in respect of a private dam issued under section 67 before that commencement to impose conditions referred to in section 71(1)(b)(ixa) if

(a) the dam has the dimensions referred to in paragraph (a), (b) or (c) of section 67(1A); or

(b) the dam belongs to a class of dams prescribed under section 67(1A)(d).

(1B) The Minister may amend a licence in respect of a private dam issued under section 67 to include conditions relating to the management of dam safety.".

41. *New section 74A inserted*

After section 74 of the Principal Act **insert**

"74A. *Annual charge for surveillance etc.*

The Minister may fix an annual charge in respect of

(a) a licence to operate a dam referred to in section 67(1A); or

(b) a licence amended under section 73(1A)

by reference to the surveillance of the dam, the procedures for management of dam safety or any other operations or work required for the dam.".

42. *Offences*

(1) In section 75(1)(b) of the Principal Act, after "constructs" **insert** ", alters, operates, removes or decommissions".

(2) In section 75 of the Principal Act, after sub-section (1) **insert**

"(1A) A person who constructs, alters, operates, removes or decommissions a private dam referred to in section 67 without being authorised to do so by or under this or any other Act is guilty of an offence.".

(3) In section 75 of the Principal Act, for sub-section (4) **substitute**

"(4) If a licence is issued under section 67 to construct or alter any works and the licence is subject to any condition relating to the future maintenance or operation of the works, a person who operates the works without complying with that condition is guilty of an offence."

(4) In section 75 of the Principal Act, after sub-section (4) **insert**

"(5) Sub-section (1A) does not apply until 1 February 2003 in relation to a dam which exists immediately before the commencement of section 42(4) of the **Water (Irrigation Farm Dams) Act 2002**."

43. Underground disposal

In section 76 of the Principal Act, after sub-section (5) **insert**

"(5A) The Minister must not approve an application in respect of a disposal by means of a State observation bore if, in the opinion of the Minister, the disposal would interfere with the function of the bore as a State observation bore."

44. Ministerial directions

(1) In section 80 of the Principal Act

(a) in sub-section (1), **omit** "on the application of any person,";

(b) in sub-section (3A), for paragraphs (a) and (b) **substitute** "any dam or class of dams".

(2) In section 80 of the Principal Act, after sub-section (3B) **insert**

"(3C) Without limiting sub-section (3A), the regulations made under that sub-section may provide for any matter that may be the subject of conditions under section 71."

(3) In section 80 of the Principal Act, sub-section (4) is **repealed**.

45. New section 80A inserted

After section 80 of the Principal Act **insert**

"80A. ***Design criteria etc. for re-use dams***

The Minister may, by Order published in the Government Gazette, specify

(a) design criteria for private dams for the re-use of water; and

(b) a formula to determine the maximum volume of water that may be re-used each year by a person by means of such dams."

46. Minister may carry out works

In section 81 of the Principal Act, after sub-section (2) **insert**

"(3) Any costs incurred by the Minister under this section are a charge on the land.

(4) Land is so charged when the Minister deposits with the Registrar of Titles a certificate under seal describing the land to be charged and stating the amount of the charge.

(5) The Registrar of Titles must make in the Register a recording of the certificate lodged under this section.

(6) The Minister must notify the land owner in writing that

(a) the certificate has been deposited under this section; and

(b) the land is charged with the amount stated in the notice.

(7) When an amount due is paid or recovered the Registrar of Titles must, if so required by the Minister, delete the recording of the charge from the Register or make a recording in the Register of the payment or recovery of the charge."

47. *Review by VCAT*

In section 83(1) of the Principal Act

- (a) in paragraph (a), for "67(1)" **substitute** "67";
- (b) in paragraph (b), for "67(1)" **substitute** "67";
- (c) in paragraph (g), after "73(1)" **insert** ", (1A) or (1B)".

48. *Particular powers of Authorities*

In section 124(8) of the Principal Act, for "40(b)" **substitute** "40(1)(b)".

49. *Abandonment of major works*

In section 139(1) of the Principal Act, after "abandon" **insert** "or decommission".

50. *Notice of contravention*

In section 151(1)(d) of the Principal Act, for "groundwater" **substitute** "water".

51. *Wrongful taking etc. of water*

In section 289(1)(b) of the Principal Act, **omit** "bore,".

52. *Ministerial delegation*

In section 306(1)(b) of the Principal Act

- (a) after "4," **insert** "22A,";
- (b) for "27 to 31" **substitute** "27 to 32A, 32E to 32G";
- (c) **omit** "80,".

53. *Ministerial exemption*

In section 308 of the Principal Act

- (a) in paragraph (b), for "works; or" **substitute** "works";
- (b) **omit** paragraph (c).

54. *Failure of licensed driller etc. to comply with conditions of construction licence*

In section 313(1) of the Principal Act

- (a) in paragraph (b) for "licence" **substitute** "licence; or";
- (b) after paragraph (b) **insert**
"(c) contravened a condition of a licence issued under section 67".

55. *Offence by licensed driller*

In section 316 of the Principal Act, after sub-section (2) **insert**

"(3) If it is a condition of a licence issued under section 67 that all or any part of the work authorised by the licence must be carried out by, or under the direction of, a licensed driller, the licensed driller must ensure that the work, or that part of the work, carried out by, or under the direction of, the licensed driller complies with the conditions of the licence.

Penalty: 20 penalty units."

56. New section 331 inserted

After section 330 of the Principal Act **insert**

"331. Transitional provisions - Water (Irrigation Farm Dams) Act 2002

(1) A groundwater supply protection area declared by Order under section 27(1) that is in force immediately before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002** is deemed, on and from that commencement, to be a water supply protection area for the protection of the groundwater resources in the area concerned and may be abolished, or its boundaries amended, in accordance with Division 3 of Part 3 accordingly.

(2) A management plan approved by the Minister under section 30(4) that is in force immediately before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002** is deemed, on and from that commencement, to be an approved management plan for groundwater resources for the relevant water supply protection area and may be amended or revoked in accordance with Division 3 of Part 3 accordingly.

(3) A notice of an application for the declaration of an area to be a groundwater supply protection area

(a) that was published under section 27(3)(b)(i) as in force at any time before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**; and

(b) in relation to which an Order declaring the area to be a groundwater supply protection area had not been made before that commencement is deemed, on that commencement, to be a notice published under section 27(4)(a)(i).

(4) A notice to amend the boundaries of, or abolish, a groundwater supply protection area

(a) that was published in accordance with section 28(2) as in force at any time before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**; and

(b) in relation to which an Order amending the boundaries of, or abolishing, the groundwater supply protection area (as the case requires) had not been made before that commencement

is deemed, on that commencement, to be a notice published under section 28(2) (as substituted by section 10 of the **Water (Irrigation Farm Dams) Act 2002**).

(5) A consultative committee appointed under section 29(1), as in force before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**, and existing immediately before that commencement is deemed, on that

commencement, to be a consultative committee appointed under section 29(1) (as substituted by section 10 of the **Water (Irrigation Farm Dams) Act 2002**).

(6) A draft management plan that

(a) had been prepared under Division 3 of Part 3 at any time before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002**; and

(b) had not been approved by the Minister under section 30(5) before that commencement

is deemed, on that commencement, to be a draft management plan prepared under Division 3 of Part 3 (as substituted by section 10 of the **Water (Irrigation Farm Dams) Act 2002**).

(7) An Authority that immediately before the commencement of section 10 of the **Water (Irrigation Farm Dams) Act 2002** had the duty of administering and enforcing an approved management plan under section 30 as in force immediately before that commencement must

(a) prepare a report in respect of its activities in carrying out its duties for the period beginning on that commencement and ending on 30 June next; and

(b) give a copy of that report to the Minister and any relevant Catchment Management Authority in accordance with section 32C(2); and

(c) release and make available the report in accordance with section 32D.

(8) A person who

(a) at any time during the period of 10 years immediately before the commencement of section 32 of the **Water (Irrigation Farm Dams) Act 2002** was taking and using water from a spring or soak or water from a dam (other than water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use; and

(b) before 1 February 2003 applies for a licence under section 51(1)(ba) in relation to the spring or soak or dam

is not liable to pay an application fee in respect of the application.

(9) A licence issued under section 67 to abandon any works, private dam or a bore that is in force immediately before the commencement of section 35 of the **Water (Irrigation Farm Dams) Act 2002** is, on and from that commencement, deemed to be a licence to decommission those works, or that private dam or bore."
