

RIGHTS IN WATER AND IRRIGATION.

No. 98 of 1978.

AN ACT to amend the Rights in Water and
Irrigation Act, 1914-1976.

[Assented to 17th November, 1978.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Rights in Water and Irrigation Act Amendment Act, 1978.*

Short title.
and citation.

(2) In this Act the Rights in Water and Irrigation Act, 1914-1976, is referred to as the principal Act.

Reprinted as
approved for
reprint 12th
August, 1974,
as amended
by Acts Nos.
48 of 1974
and
100 of 1976.

(3) The principal Act as amended by this Act may be cited as the Rights in Water and Irrigation Act, 1914-1978.

Commence-
ment.

2. The provisions of this Act shall come into operation on such day or days as is, or are respectively, fixed by proclamation.

Long title
amended.

3. The long title of the principal Act is amended by inserting after the passage "Effluent," the passage "the licensing and control of certain dams,".

Section 1
amended.

4. Subsection (2) of section 1 of the principal Act is amended by inserting in its appropriate numerical sequence the passage "PART VIIA.—THE LICENSING AND CONTROL OF REFERABLE DAMS.".

Section 2
amended.

5. Section 2 of the principal Act is amended—

(a) by inserting after the definition of the term "Spring" a new definition as follows—

"the Department" means the department of the public service of the State known as the Public Works Department. ; and

(b) by inserting after the definition of the term "Water-course" a new definition as follows—

"well" includes a bore or drill-hole. .

Sub-heading
added.

6. The principal Act is amended by inserting after the heading preceding section 4, but before that section, a new sub-heading as follows—

Division 1.—Rights Generally. .

Section 11
amended.

7. Section 11 of the principal Act is amended—

(a) by inserting after the word "sources", in line seven, the words "and for any other purpose required by this Act";

(b) by deleting the words "the same", in line eight, and substituting the passage "that land and any dam, well, or other works thereon or therein";

- (c) by deleting the words "thought fit" in lines eight and nine, and substituting the passage "necessary or convenient, whether in general or to meet particular cases, to carry out the objects and purposes of this Act and their duties thereunder including measures"; and
- (d) by deleting the words "or pollution", in line seventeen, and substituting the passage ", drawing, use, or pollution".

8. The principal Act is amended by inserting immediately before section 14 a new sub-heading as follows—

Sub-heading added.

Division 2.—Riparian rights etc. .

9. Section 16 of the principal Act is repealed and re-enacted with amendments as follows—

Section 16 repealed and re-enacted.

16. (1) The Minister on the advice of the Commissioners may grant, and may from time to time thereafter in his discretion renew, a license in the prescribed form and subject to such terms, limitations and conditions, if any, as may be specified or referred to therein or as may be prescribed for the purposes of this section, to any owner or occupier of land to take, use, or dispose of water from any water-course, lake, lagoon, swamp or marsh.

Licenses, other than special licenses.

(2) Subject to the provisions of subsection (3) of this section a license granted pursuant to this section shall have effect for such period as may be specified therein.

(3) Subject to the provisions of subsection (4) of this section, the Minister at any time during the currency of a license granted pursuant to this section, by notice in writing served on the licensee, may—

- (a) vary the period for which the license is to have effect;

- (b) vary or add to the terms, limitations, or conditions imposed in relation to a license; or
- (c) in the case of a license which is not subject to any terms, limitations, or conditions, provide that it shall be subject to such terms, limitations or reasonable conditions as are specified in the notice.

(4) A person who is aggrieved by the refusal of his application for a license or the holder of a license who is aggrieved by any term, limitation or condition imposed in relation to a license granted or renewed under this section may, within thirty days after written notice of the decision appealed against is received, give to the Minister notice of his wish to be heard.

(5) Where the Minister receives a notice under subsection (4) of this section, the Minister after such inquiry into the subject matter of the notice as he thinks proper to direct may give such decision in the matter as he thinks fit and effect shall be given thereto.

(6) In so far as any license was granted or renewed, or purported to have been granted or renewed, under the provisions of this section as they were immediately prior to the coming into operation of section nine of the Rights in Water and Irrigation Act Amendment Act, 1978, that license shall be deemed to have been lawfully granted pursuant to this Act as though all necessary prerequisites and procedures to give full force and effect to that license had been duly carried out, but in respect of a period which expired on the thirtieth day of June, 1978. .

10. The principal Act is amended by inserting immediately before section 25 a new sub-heading as follows—

Sub-heading
added.

Division 3.—Regulations under this Part.

11. Section 25 of the principal Act is amended—

Section 25
amended.

(a) by deleting the word “forty” in line two of subsection (2) and substituting the words “two hundred”; and

(b) by adding a further subsection as follows—

(3) Without prejudice to the generality of subsection (1) of this section, regulations may be made as to—

(a) the conditions and provisions applicable to special licenses, the consideration of objections thereto, and the operation, modification, or termination thereof, pursuant to section fifteen of this Act;

(b) ordinary licenses, pursuant to section sixteen of this Act;

(c) the exercise of rights affected by section seventeen of this Act;

(d) well licenses, and artesian and non-artesian wells subject to licensing;

(e) the furnishing of information as to wells;

(f) the forms to be used and the fees payable in respect of applications and the grant, variation and renewal of licenses;

(g) the conduct and determination of inquiries and appeals under this Part of this Act; and

(h) generally, the implementation of the licensing schemes provided for in this Part of this Act.

Section 26
repealed and
re-enacted.

12. Section 26 of the principal Act is repealed and re-enacted to stand as subsection (4) of section 5.

Sub-heading
added.

13. The principal Act is amended by inserting immediately before section 27 a new sub-heading as follows—

Division 4.—Application of this Part. .

Section 33
amended.

14. Section 33 of the principal Act is amended by repealing subsections (2) to (6) and re-enacting those subsections with amendments, to stand as subsections (2) to (10) respectively, as follows—

(2) The Minister shall not undertake the construction of irrigation works pursuant to subsection (1) of this section, other than works consisting wholly of exempt works, unless he has complied with the requirements of subsections (3), (4), (5) and (6) of this section and the Governor has thereupon by Order in Council, a notice of which is published in the *Gazette*, authorised the construction of those works.

(3) The Minister shall, before submitting proposals to the Governor for the construction of irrigation works pursuant to subsection (1) of this section, other than works consisting wholly of exempt works,—

(a) cause to be prepared plans of the proposed works, and cause the same, or certified copies thereof, to be deposited in the office of the Minister and also in the office of the Board (if any); and

(b) cause an advertisement to be published in the *Gazette*, and in a newspaper generally circulating in the district, specifying—

(i) a description of the proposed works;

- (ii) the times when and places at which the plans may be inspected.

(4) The plans so deposited shall be open to inspection by any person interested at the advertised times and places, and every such person shall be allowed to make copies of and extracts from the same free of charge.

(5) Subject to subsection (6) of this section, where the Minister considers that the requirements of subsections (3) and (4) of this section have been complied with he shall submit the proposals to the Governor and shall furnish to the Governor such plans, specifications, estimates or other information as the Governor may require relating thereto.

(6) If within a period of one month after the publication of the advertisement referred to in paragraph (b) of subsection (3) of this section a petition against the proposed works is presented to the Minister, signed by persons who constitute a majority of the owners of irrigable land within the district, the Minister shall not submit the proposals to the Governor.

(7) After considering the proposals submitted to him the Governor may—

- (a) make an Order in Council pursuant to subsection (2) of this section; or
- (b) decline to make such an Order.

(8) For the purposes of this Part of this Act the Governor may from time to time by Order in Council declare that distributory works of the nature specified in the Order shall be exempt works not subject to the provisions of subsections (2), (3), (4), (5), (6) and (7) of this section notwithstanding that such works may form part of or be related to works comprised in proposals to which those provisions apply.

(9) For the construction and maintenance of irrigation works within a district, the Minister may exercise all the powers conferred on the Board by this Act, except the power to borrow money conferred by section fifty-two.

(10) Any moneys borrowed by a Board for the construction of works within its district may be applied by the Board to recoup the expenditure by the Minister in the construction of irrigation works within the district. .

Part VIIA
heading
added.

15. The principal Act is amended by inserting after section 45 a new heading as follows—

**PART VIIA.—THE LICENSING AND CONTROL
OF REFERABLE DAMS. .**

Section 45A
added.

16. The principal Act is amended by inserting after section 45 a new section, to stand as section 45A, as follows—

Interpre-
tation.

45A. In this Part of this Act—

“alteration” means an alteration determined by the Department as being likely to affect the safety of a dam or reservoir;

“appurtenant works” include, but are not limited to, such structures as spillways whether in the dam or separate therefrom, a reservoir and its rim, outlet works, and water conduits such as tunnels, pipelines, or penstocks either through the dam or its abutments, appurtenant to or used in connection with a dam;

“dam” includes any artificial barrier or levee, whether temporary or permanent, which does or could impound, divert or control water, silt, debris or other liquid borne materials, together with its appurtenant works;

“height” means the difference in level from the top of the dam and—

- (a) the natural bed of a stream or water course at the downstream toe of the barrier; or
- (b) where the barrier is not across a stream or water course, the lowest elevation of the outside limit of the barrier;

“normal top water level” means—

- (a) when used in relation to a dam with a fixed overflow sill, the lowest crest level of that sill; and
- (b) when used in relation to a dam the overflow of which is controlled wholly or partly by movable gates, siphons, or other means, the maximum level to which water is ordinarily intended to be stored except in times of flood or other abnormal conditions;

“owner”, when used in relation to a dam or referable works, includes any person who has an estate or interest in the land on which the referable works are constructed or the land on which the dam is constructed, is being, or is proposed to be, constructed, and any person who by himself, his servants, or his agents has the control or management of the dam or referable works;

“referable dam” means a dam which pursuant to subsection (1) of section forty-five B of this Act is a referable dam by reason of its size, or which is determined to be such pursuant to subsection (2) of that section;

“referable works” means a referable dam, and all its appurtenant works;

“repairs” means repairs determined by the Department as being likely to affect the safety of a dam or reservoir;

“reservoir” means any artificial lake, pond, basin or tank for the storage, regulation or control of water, silt, debris or liquid borne material;

“reservoir capacity” means the total storage capacity of a reservoir up to normal top or retention water level but not up to flood level,

and cognate expressions shall be construed accordingly. .

Section 45B
added.

17. The principal Act is amended by inserting after section 45 a new section, to stand as section 45B, as follows—

Referable
dams.

45B. (1) A dam is a referable dam if—

- (a) it is or will be ten metres or more in height and has a reservoir storage capacity of more than 20 000 cubic metres; or
- (b) it is or will be five metres or more in height and has a reservoir storage capacity of 50 000 cubic metres or more,

and the Department may thereupon issue a certificate that the dam is a referable dam by reason of its size.

(2) Irrespective of the height or reservoir capacity of a dam, where the Minister determines that a dam, or the reservoir created thereby, may constitute a danger to life or property in the event of its failure the Department may issue a certificate that the dam is a referable dam, but the Department shall cancel a certificate issued by it under this subsection where the Minister is satisfied that the dam or the reservoir created thereby is no longer likely to be of danger to life or property.

(3) Where, in the opinion of the Minister, the failure of a referable dam would not endanger life or property due to remoteness of location or other reason the Minister may, in writing, exempt that dam from such of the provisions of this Part of this Act as the Minister may therein specify for such period as is therein specified and any provision so specified shall not then apply thereto.

(4) An obstruction in a canal used to raise or lower the water therein or to divert water therefrom, or a tank constructed of steel or of concrete or of steel and concrete, shall not be a referable dam.

(5) Where the Department issues or cancels a certificate under this section it shall serve notice on an owner of the dam.

18. The principal Act is amended by inserting after section 45 a new section, to stand as section 45C, as follows—

Section 45C
added.

45C. (1) An owner of a dam or a person who is constructing or proposing to construct a dam may apply to the Department for a determination whether or not the dam is a referable dam.

Determinations, as to referable dams.

(2) An application may be made under subsection (1) of this section in respect of a dam that is proposed to be constructed or completed at a specified place in accordance with the plans and specifications accompanying the application.

(3) The Department may cancel a certificate issued by it under this section.

(4) Where the Department issues or cancels a certificate under this section it shall serve notice on an owner of the dam and, where the certificate relates to a dam being, or proposed to be, constructed, on the person constructing or proposing to construct the dam.

Section 45D
added.

19. The principal Act is amended by inserting after section 45 a new section, to stand as section 45D, as follows—

Effect of
certificates,
and
registration.

45D. (1) A dam in respect of which a certificate issued under this Part of this Act is in force is a referable dam.

(2) A certificate issued under this Part of this Act is conclusive evidence of the matter stated therein.

(3) The Department shall cause to be maintained in such form as the Minister approves records of the certificates and licenses issued under this Part of this Act and the cancellations of any such certificates or licenses, and the records so maintained are in this section referred to as “the register”.

(4) On making application to the Department and on payment of such fee (if any) as may be prescribed any person is entitled to inspect the register.

(5) A document purporting to be an extract from the register, certified correct by an officer of the Department on its behalf, is conclusive evidence of the matter contained therein.

Section 45E
added.

20. The principal Act is amended by inserting after section 45 a new section, to stand as section 45E, as follows—

Delegated
authority.

45E. (1) The Department may by instrument in writing delegate to—

- (a) a Board;
- (b) the Metropolitan Water Supply, Sewerage, and Drainage Board;
- (c) an officer of the Department of Mines;
- (d) an officer of the Department of Agriculture; or
- (e) any other prescribed authority,

any of its functions under this Part of this Act subject to such terms and conditions as may be agreed between the Department and the authority or person to whom the functions are delegated.

(2) The Governor may by Order published in the *Gazette* prescribe an authority for the purposes of subsection (1) of this section.

(3) Any functions delegated under subsection (1) of this section shall be performed on behalf of the Department.

(4) In relation to any functions delegated to an authority or person under subsection (1) of this section any reference in this Part of this Act to the Department shall, subject to the terms of the delegation and so far as the context does not otherwise require, be construed as including a reference to that authority or person.

(5) The Department, and any person to whom any function is delegated under subsection (1) of this section, shall submit such reports and information to the Minister as the Minister may require.

21. The principal Act is amended by inserting after section 45 a new section, to stand as section 45F, as follows—

Section 45F
added.

45F. (1) In this section “the appointed day” means such day as is for the purposes of this section fixed by proclamation.

Referable
dams to be
subject to
licensing.

(2) On and after the appointed day no referable dam shall be commenced, no referable dam then in being or thereafter constructed shall be altered, repaired, abandoned or removed and no operations affecting referable works shall be carried out, except pursuant to and in compliance in every respect with the provisions, terms and conditions contained or referred to in a license issued by the Department.

(3) No referable dam, whether constructed prior to or on or after the appointed day, shall be maintained or operated after the expiry of a period of twelve months from the appointed day except pursuant to and in compliance in every respect with the provisions, terms and conditions contained or referred to in a license issued by the Department.

(4) Any person who contravenes, or causes or permits any person to contravene, the provisions of subsection (2) or subsection (3) of this section commits an offence.

Penalty: Two thousand dollars.

(5) A license issued pursuant to this Part of this Act may make provision in respect of, and may contain or refer to terms and conditions relating to—

- (a) the designs, plans, and specifications of the construction, alteration, repair, enlargement, maintenance or operation of the dam or any referable works;
- (b) the supervision, direction and control of the construction, alteration, repair, enlargement, maintenance or operation of the dam or any referable works;
- (c) the making of reports of inspections and the notification to the Department of those reports;
- (d) the prohibiting of the carrying out of any operation without the approval of the Department;
- (e) the giving of information to the Department concerning the referable works;
- (f) the notification to the Department of the intention to carry out any operation; and

(g) such other requirements as the Department may determine in relation thereto.

(6) For the purposes of subsection (2) of this section—

(a) the alteration, repair or enlargement of any referable works; and

(b) operations likely to endanger the referable works,

shall be deemed to be operations affecting referable works.

22. The principal Act is amended by inserting after section 45 a new section, to stand as section 45G, as follows—

Section 45G
added.

45G. (1) If the Minister is of the opinion that measures should be taken to ensure the safety of any referable works, he may by notice in writing served on an owner of the referable works require the owner to take, within such time as may be specified in the notice, such measures as may be specified in that notice for ensuring the safety of the referable works.

Power of
Minister to
require
measures
to be taken
for ensuring
safety of
referable
works.

(2) Without prejudice to the provisions of subsection (1) of this section the measures that may be required to be taken under that subsection may be measures requiring the discontinuance or abandonment of the use, or the reconstruction, alteration, emptying, or repair of the referable works, and any notice served under this section may specify alternative measures that may be taken for ensuring the safety of the referable works.

(3) Any person on whom a notice is served under this section who fails to take any measures required to be taken under this section within the time specified commits an offence.

Penalty: Two thousand dollars.

(4) Where the requirements of a notice under this section are not complied with within the time specified in the notice the Department may cause to be taken such measures as the Minister considers necessary to give effect to the requirements of the notice.

(5) The expenses reasonably incurred in taking measures under subsection (4) of this section may be recovered from any owner of the referable works as a debt due to the Department. .

Section 45H
added.

23. The principal Act is amended by inserting after section 45 a new section, to stand as section 45H, as follows—

Powers of
Department
in
emergency,
etc.

45H. (1) Where, in the opinion of the Minister, an emergency or other special circumstances may endanger any referable works and time does not permit of the service and enforcement of a notice under section forty-five G of this Act the Department may, without any such notice being served, require the owner to take, or may itself take, such measures as it considers should immediately be taken to ensure the safety thereof.

(2) The expenses reasonably incurred in taking measures under subsection (1) of this section may be recovered from any owner of the referable works as a debt due to the Department. .

Section 45J
added.

24. The principal Act is amended by inserting after section 45 a new section, to stand as section 45J, as follows—

Licenses.

45J. (1) An application for the grant of a license under this Part of this Act shall be made to the Department in the prescribed manner accompanied by such fee, if any, as is prescribed.

(2) An application for the variation or transfer of a license shall be endorsed to show clearly the particulars of the license to which it relates, but in all other respects shall be dealt with as though it were an application for the grant of a license.

(3) An application shall be made in the name of the occupier for the time being of the land on which the referable works are or are to be situate.

(4) Where an application for a license or for the transfer of a license is refused, the applicant shall be notified in writing setting out the reasons for the refusal.

(5) A license shall be in the form prescribed.

(6) Where a license is lost or destroyed, a duplicate license may be issued on payment of the prescribed fee.

(7) Unless previously cancelled, a license has effect for so long as the holder of the license is the occupier of the land to which it relates.

(8) Where in the opinion of the Minister it is necessary in the public interest in consequence of a change of circumstance (which may include a change in the information available, or arise by reason of deterioration in any ground or structures or otherwise in any manner that was not foreseen at the time the license was granted) the Minister may, by notice in writing served on the licensee—

(a) vary or add to the conditions of a license; or

(b) in the case of an unconditional license, provide that it shall be subject to reasonable conditions specified in that notice.

(9) The Minister, on being satisfied—

- (a) that the provisions of any license or of any term or condition contained or referred to in the license have not been complied with; or
- (b) that any danger to life or property exists,

may cancel the license by notice in writing to the holder of that license setting out the reasons for so doing. .

Section 45K
added.

25. The principal Act is amended by inserting after section 45 a new section, to stand as section 45K, as follows—

Appeals.

45K. (1) A person who is aggrieved—

- (a) by a refusal to grant, vary or transfer a license;
- (b) by any provision of, or term or condition contained or referred to in, a license or any condition subsequently imposed in relation to a license;
- (c) by the cancellation of a license;
- (d) by measures required by the Minister, or taken by the Department, pursuant to section forty-five G of this Act; or
- (e) by measures taken by the Department pursuant to section forty-five H of this Act,

may, within thirty days after notice of the decision appealed against is received, give to the Minister notice of his wish to be heard.

(2) Where the Minister receives a notice under subsection (1) of this section, the Minister shall cause an enquiry to be conducted by a tribunal consisting of—

- (a) a chairman, appointed by the Minister with the agreement of the person aggrieved or in default of agreement on

the nomination of the President for the time being of the body known as the Institution of Engineers, Australia;

- (b) a person nominated by the permanent head of the Department; and
- (c) a person nominated by the person aggrieved,

and the person aggrieved shall be heard at the enquiry and the Minister shall thereafter give such decision as he thinks fit and effect shall be given thereto.

(3) A person who is aggrieved by a decision of the Minister made pursuant to subsection (2) of this section may, within the time and in the manner prescribed by rules of court, appeal against such decision to a Judge who may make such order in the matter as he thinks fit and the decision of the Judge shall be final and conclusive.

(4) Any appeal under subsection (3) of this section shall, unless the Judge otherwise orders, be heard by a Judge sitting in chambers.

26. The principal Act is amended by inserting after section 45 a new section, to stand as section 45L, as follows—

Section 45L
added.

45L. (1) The Department may, by notice in writing served on the owner of a dam or a person who is constructing, or proposing to construct, a dam, require within such time as may be specified in the notice such information concerning the dam as it considers necessary to determine whether the dam is, or will be, a referable dam.

Information.

(2) In respect of any application made under this Part of this Act the Department may, by notice in writing, require the applicant to furnish such data, design analyses, drawings, specifications, reports, and other information as may be needed for a proper review of the safety, adequacy and suitability of the proposal.

(3) A person who in relation to any application for the purposes of this Part of this Act wilfully conceals or omits to furnish any information which he is required to furnish under this Act or who knowingly makes or publishes or causes to be made or published any representation or statement which he knows or reasonably ought to know—

(a) is false or misleading in a material particular; or

(b) is likely to deceive in a material way, commits an offence.

Penalty: Five hundred dollars. .

Section 45M
added

27. The principal Act is amended by inserting after section 45 a new section, to stand as section 45M, as follows—

Safety.

45M. (1) For the purpose of ensuring the continued safety of referable dams the Department may, by notice in writing, require the owner of a referable dam—

(a) to furnish reports of periodical inspections of the dam and reservoir carried out by suitably qualified and experienced engineers in accordance with procedures and at intervals of time determined by the Department;

(b) to instal, maintain and utilise instruments and measuring devices for observing and monitoring the performance and conditions of the dam and its foundations, and to keep records of the readings of the instruments and measuring devices and make regular reports in accordance with procedures determined by the Department; and

- (c) to undertake a review of the design, construction or operation of a referable dam and reservoir when warranted by advances in technical knowledge or changes in local conditions.

(2) An officer authorised in writing for the purpose by the Department may carry out, or cause to be carried out by independent or consulting engineers or specialists, inspections from time to time of any referable works, or of any dam and its appurtenant works whether or not a referable dam, or of any works of construction related thereto or intended for the purposes of a proposed dam, and of any mining or other works adjacent thereto and a potential source of danger, and for that purpose may—

- (a) enter and re-enter upon the land pursuant to the provisions of section eleven of this Act;
- (b) be accompanied by such persons, vehicles, equipment or machinery as he may require; and
- (c) require the owner or any person authorised by the owner in charge of such dam or works to give to him such information as he may require for the purpose of such inspection.

(3) Any referable dam which is—

- (a) situate on a farming property;
 - (b) used for domestic purposes or for stock or irrigation; and
 - (c) does not exceed fifteen metres in height,
- shall, if requested by the owner, be inspected by the Department at no cost to the owner.

(4) Any person who, without just cause, refuses to give any information or gives information that is false or misleading to a person authorised by the Department to make an inspection commits an offence.

Penalty: Five hundred dollars.

Section 45N
added.

28. The principal Act is amended by inserting after section 45 a new section, to stand as section 45N, as follows—

Injunctions.

45N. (1) The Supreme Court or The District Court of Western Australia may, on the application of the Minister, grant an injunction restraining a person from engaging in any course of conduct, or doing any act, whether or not authorised by any other Act, that constitutes or would be likely to constitute a source of danger whereby the safety of any referable works may be imperilled.

(2) The Court may grant an interim injunction pending determination of an application made under subsection (1) of this section, and may rescind or vary any interim injunction or injunctions granted pursuant to this section.

Section 45P
added.

29. The principal Act is amended by inserting after section 45 a new section, to stand as section 45P, as follows—

Functions
of the
Department,
etc.

45P. (1) The Department is charged with the function of—

- (a) determining whether or not any dam is, or is likely to be, works to which the provisions of this Part of this Act will apply;
- (b) recording all referable works; and
- (c) ensuring that adequate measures are adopted for the safe design, construction, maintenance, and operation of referable works, and in respect of their alteration, repair, abandonment, or removal.

(2) No license shall be issued pursuant to this Part of this Act unless or until the Minister is satisfied that the preparation of designs, plans and specifications for the initial construction or

subsequent alteration, repair, abandonment or removal of any referable works and the supervision of such works in progress is directed by a suitably qualified engineer adequately experienced in dam design and construction, assisted by qualified engineering geologists and other specialists where necessary.

(3) Where the Minister is satisfied that a body has access to, or is comprised of, engineers and other specialists with adequate knowledge and experience that body may be authorised by the Minister to design, construct, alter, repair, maintain or operate referable works, or to remove any such works, notwithstanding the provisions of subsection (1) of this section, and any such body may be required to furnish only such data, drawings, reports and other information as is sufficient to enable the Department to maintain adequate records and to ensure that all requirements as to safety, inspections and reports are observed. .

30. The principal Act is amended by inserting after section 45 a new section, to stand as section 45Q, as follows—

Section 45Q
added.

45Q. The Minister, on such terms and conditions as he thinks fit, may establish an advisory committee or committees of suitably qualified and experienced engineers and specialists for the purpose of—

Advisory
committee.

- (a) inquiring into, reporting upon and making recommendations concerning such aspects of the investigation, design, proposed construction and operating procedure or other proposals submitted in relation to any referable dam or proposed referable dam as the Minister may require in each particular case; and
- (b) inquiring into, reporting upon and making recommendations concerning the implementation of the provisions of this Part of this Act. .

Section 45R
added.

31. The principal Act is amended by inserting after section 45 a new section, to stand as section 45R, as follows—

Relation-
ship with
Crown
instrumental-
ties, etc.

45R. (1) This Part of this Act binds the Crown.

(2) To the extent that a power conferred or requirement imposed by this Part of this Act is inconsistent with—

- (a) the operation of any other Act;
- (b) the implementation of any Agreement to which the State is a party and which, or the execution of which, is or has been ratified, authorised or approved by an Act; or
- (c) proposals made by the council of a municipality, or any instrumentality or agency of the Crown, established pursuant to any Act,

and gives rise, or may give rise, to a question, difference or dispute the Minister shall thereupon consult with the Minister charged with the administration of that other Act and thereafter shall direct the Department as to the matter. .

Section 45S
added.

32. The principal Act is amended by inserting after section 45 a new section, to stand as section 45S, as follows—

Fees and
costs.

45S. Subject to the provisions of subsection (3) of section forty-five M of this Act, the Minister may charge fees and recover from the owner all costs reasonably incurred in the making of inspections, the preparation and obtaining of reports and otherwise implementing the provisions of this Part of this Act insofar as they relate to the safety and surveillance of the referable works. .

33. The principal Act is amended by inserting after section 45 a new section, to stand as section 45T, as follows—

Section 45T
added.

45T. (1) No claim shall lie against the Crown, the Minister, the Department, or any person lawfully acting pursuant to a power conferred or duty imposed under the provisions of this Part of this Act, for compensation or damages for any loss howsoever caused or arising as a consequence of—

Liability
etc.

- (a) the partial or total failure of any referable works;
- (b) the operation of any referable works;
- (c) any failure to supervise or control any referable works or the design, construction, alteration, operation, maintenance, abandonment, or removal thereof;
- (d) any approval, direction, or notice given or omitted, or the carrying out of any works or the exercise of any function under the provisions of this Part of this Act.

(2) Nothing in this Part of this Act shall be construed to relieve an owner of any referable works of the legal duties, obligations, or liabilities incident to the ownership or operation of those works.

(3) No person is precluded by any agreement from doing such acts as are necessary for complying with any of the provisions of this Part of this Act, or is liable under any agreement to any penalty, damages, or forfeiture for doing such acts as are necessary for complying with this Part of this Act.

Section 45U
added.

34. The principal Act is amended by inserting after section 45 a new section, to stand as section 45U, as follows—

Damage to
works, etc.

45U. Any person who, without lawful excuse—

- (a) wilfully damages, or wilfully interferes with the construction, maintenance, alteration, or operation of, any referable works; or
- (b) wilfully damages or wilfully interferes with any survey mark or peg required in connection with the construction, maintenance, alteration, or operation of any referable works,

commits an offence.

Penalty: Five hundred dollars or six months' imprisonment, or both. .

Section 45V
added.

35. The principal Act is amended by inserting after section 45 a new section, to stand as section 45V, as follows—

Regulations.

45V. (1) The Governor may make regulations for the purposes of this Part of this Act.

(2) Without prejudice to the generality of subsection (1) of this section, the Governor may make regulations for or with respect to any of the following matters—

- (a) the alteration, enlargement, repair, management, inspection, maintenance, and control of referable works;
- (b) the removal and abandonment of referable works;
- (c) the powers, duties, responsibilities, and practices of owners of referable works; and
- (d) the procedures to apply in the event of an emergency affecting the safety of referable works.

(3) Regulations under this Part of this Act may—

- (a) prescribe the form of any certificate, license or notice issued or served under this Part; and
- (b) provide for the payment of fees in respect of the making of an application, the issue of any certificate or license, the making of any inspection, examination, or report under this Act.

(4) Regulations under this Part of this Act may provide for the imposition of penalties, not exceeding in any case five hundred dollars, in respect of any breach or non-observance thereof.

(5) The regulations made under this Part of this Act may incorporate or adopt by reference, either wholly or in part, any of the standard codes, rules, or specifications of the Standards Association of Australia, the Australian Committee on Large Dams, or any other specified body. .

36. Section 59 of the principal Act is amended— Section 59
amended.

- (a) by inserting after the section designation "59." the subsection designation "(1)";
- (b) by inserting after the word "proceedings", in line five, the passage ", including the establishment and functions of advisory and other committees in relation to the district and in relation to any specified area of the State of which, for the purposes of this Act, the district is a part"; and
- (c) by adding two new subsections as follows—

(2) By-laws made under this section may, where the powers and authorities conferred by this Act on a Board are

exercised by the Minister in respect of the districts to which those by-laws relate, or where the respective Boards so agree, be expressed to have effect and shall have effect in and in relation to one or more districts conjointly or in the district of any one of them or partly in the district of all or any of them.

(3) Differences arising between Boards, or any Board and the Minister, arising out of by-laws made pursuant to subsection (2) of this section, are determinable only by the Governor. .

Section 70
amended.

37. Section 70 of the principal Act is amended by inserting, immediately before the words "the Board" in line one, the passage "the Minister, the Department, or any person authorised pursuant to this Act by the Minister or the Department, or".
