10. Rural Lands, Soil and Water Laws

Farming covers much of Tasmania's land area and can have profound impacts on environmental quality. Rural industries use large quantities of chemicals and fertilisers and these are released directly into the open environment.

Farming activities can have major impacts on water quality, soils and erosion and can pose a significant threat to remnant patches of native vegetation.

Despite all these impacts, the farming sector is one of the least regulated. Tasmania now has some vegetation clearance controls, but it is the only state with no specific soil protection legislation.

Farmers often do not need land-use planning approval when undertaking agricultural activities as most of these activities are defined as a 'permitted use' in rural zones in Planning Schemes.

The *Primary Industry Activities Protection Act 1995* also prevents some common law 'nuisance' actions being taken against farmers for noise and other pollution caused by their activities.

Many of the environmental problems in rural areas have resulted from regressive historic attitudes and poor agricultural practices. However, the farming sector has itself been seriously affected by rapidly spreading soil salinity, rural tree decline and climate-induced drought. These factors have reduced the economic viability of many farms and continue to cause great distress in farming communities. Therefore, most farming communities today recognise the need to change to sustainable farming practices.

How are rural lands protected?

The *State Policy on the Protection of Agricultural Land* (often referred to as the 'PAL policy') relates mainly to overall land use and does not contain specific provisions that can be used to prevent environmentally harmful farming practices.

A new version of the PAL policy was released by the Tasmanian Planning Commission in 2009. Controversially, the new policy includes plantation forestry as a protected agricultural use. The TPC also issued a Guideline for non-agricultural use of prime agricultural land.

Along with all other State Policies, the PAL Policy is given effect through council Planning Schemes (☛ Go to Chapters 4 and 5 for more information).

The day-to-day use of rural lands is mostly regulated by a variety of pieces of legislation dealing with specific aspects of land and water use. The most important of these is the *Environmental Management and Pollution Control Act* (☛ Go to Chapter 6 for information about this).

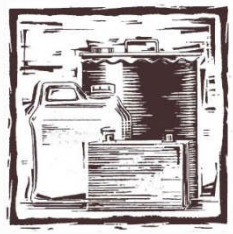
Vegetation Clearance Controls

☛ Go to Chapter 7 and 8 for information about the laws regulating small and large scale clearing of vegetation.

10.1 Farm Chemicals

The farming sector has become reliant on the use of chemicals, for both agricultural and veterinary purposes.

The use and abuse of these chemicals can have grave environmental consequences, so regulation of them is a very important component of environmental law.



Farm chemicals are regulated throughout their life cycle – from their manufacture to transport, sale, storage, use and disposal – by a variety of mechanisms.

Who regulates what chemicals can be used?

The Australian Pesticides & Veterinary Medicines Authority (**APVMA**) is responsible for assessing and registering chemical products for use in Australia. It is an offence under the*Tasmanian Agricultural and Veterinary Chemicals (Control of Use) Act 1995* to sell or use a chemical product that has not been approved by the APVMA.

The regulation and control of registered chemical products is administered throughout Australia under four Commonwealth Acts – known as the '*AgVet Acts*'.

An amendment to one of these Commonwealth Acts, the *Agricultural and Veterinary Chemicals Code Act 1994*, is currently before Parliament. If passed, the Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012 will give APVMA the power to periodically review active constituents in already approved chemicals. The new legislation would also require APVMA to implement the Code by issuing guidelines and taking enforcement action in relation to unauthorised chemical use.

In Tasmania, these national acts have been adopted by the *Agricultural and Veterinary Chemicals (Tasmania) Act 1994*, which enables state government officers, agencies and courts to administer the provisions of the federal Acts.

The APVMA has a variety of powers that it can use to protect the public. For example, if the Authority was convinced that there was an undue risk to the safety of people exposed to a chemical product or its residues, or if the product was discovered to have an unintended harmful impact on exposed animals, plants or ecosystems, the Authority could require any person who has stocks of the chemical products to stop supplying the products and/or to take other directed actions.

The Australian Competition and Consumer Commission (**ACCC**) also has powers to issue product recall notices, under the Commonwealth *Competition and Consumer Act 2010*. For example, if you were able to show that a product was mislabelled, or contained a chemical that was not registered for use in Australia, you could request that the APVMA and the ACCC investigate whether the product should be removed from the market.

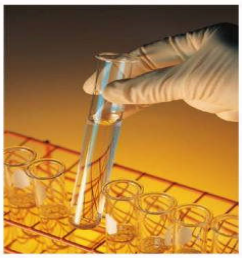
Where can I find information about farm chemicals?

The Australian Pesticides & Veterinary Medicines Authority keeps a register of all agricultural and veterinary chemical products and approved active constituents. The website also contains a lot of useful information about specific chemical agents and controls. It also tells you what chemicals are prohibited or restricted, and how they are restricted. You can request further specific information from the APVMA.

In Tasmania, the Spray Referral and Information Unit (the 'Spray Unit') within the Department of Primary Industries, Parks, Water and Environment (**DPIPWE**) functions as a point of contact for information and complaints. The Spray Unit can inform you about 'maximum prescribed levels' of chemicals in foods, soils or water and can also assist you with tests of water, soil or produce in order to detect levels of contamination.

- If you still have concerns about a specific chemical or chemical pollution, you may be able to make a Right to Information (**RTI**) request to relevant federal or state government authorities to find out more (☛ go to Chapter 13 for information about RTI requests).

How are chemicals regulated within Tasmania?



The use, storage and disposal of agricultural and veterinary chemicals is regulated in Tasmania by the Department of Primary Industries, Parks, Water and Environment. The main legislation dealing with farm chemicals is the Agricultural and Veterinary Chemicals (Control of Use) Act 1995, and the Regulations and Orders made under the Act. The most important of these regulations is the Agricultural and Veterinary Chemicals (Control of Use) Regulations 2012.

Under these laws, anyone using, transporting or disposing of chemicals must do so strictly in accordance with the label. If you do not follow the directions on the label, you could face a fine of up to $26,000 (see section 18).

The Minister for Primary Industries can also issue orders:

- regulating the handling of a chemical product (section 20); or
- prohibiting the use of a particular chemical product for any purpose.

In particular, it is an offence to handle or dispose of a chemical product that is or is likely to be an "injurious presence" in a body of water, unless you have a permit (clause 5, Agricultural and Veterinary Chemicals (Control of Use) (Handling of Chemical Products) Order 1996). Anyone who does not comply with an order, can be prosecuted and could face a fine of up to $26,000.

The Act also sets up a system of permits and licences that commercial operators (including aircraft operators who conduct aerial spraying) must obtain in order to be able to lawfully use chemicals. For example, if you intend to use an agricultural or veterinary chemical for commercial purposes, you must have a commercial chemical operator licence (see sections 8 and 21 of the Regulations).

The Registrar of Chemical Products (see contact list) controls permits and licences and has extensive responsibilities under the Act.

Chemicals in drinking water and food

The acceptable limits for agricultural chemicals in drinking water are listed in Chapter 6 (section 6.3.3) of the Australian Drinking Water Guidelines 2011 published by the National Health and Medical Research Council (**NHMRC**).

To download the *Tasmanian Drinking Water Quality Guidelines,* go to the Department of Health and Human Services website. These guidelines are linked to Tasmania's Public Health Act 1997.

If chemical levels in water used for domestic purposes or stock watering are higher than the levels set out in the Guidelines, there may be a breach of the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*. If Guideline levels have been, or are likely to be, exceeded, inspectors can order a person using agricultural chemicals to stop using them or change the way that they are used.

The *Public Health Act 1997* also contains provisions requiring the Director of Public Health to be informed about contamination of water supplies causing a threat to public health (see section 128).

Under s150 of the *Public Health Act 1997*, the Director can order that any substance which is, or is likely to be, a threat to public health not be manufactured, sold, used or transported. Part 5 of the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995* also provides powers for an inspector to require contaminated stock or produce to be destroyed.

The Food Act 2003 adopts the Australia and New Zealand Food Standards Code, which sets maximum allowable limits for pesticide contamination of water and human and stock food. It is an offence to sell any food that does not comply with these Standards.

What do I do if I want laws to be changed?

If you believe that chemical control regulations are deficient and need upgrading, then you should:

- Lobby the Minister for Primary Industries or the Tasmanian Agricultural and Veterinary Chemicals Advisory Committee, a statutory body which gives advice to the Minister on such issues.
- Lobby the Ministers responsible for the *Public Health Act 1997* and the *Environmental Management & Pollution Control Act 1994*.
- For changes to Federal laws, lobby the Minister administering the AgVet code, the APVMA, or the Minister for the Environment.
- Look out for notices about opportunities to make submissions into reviews of the Drinking Water Guidelines or Food Standards Code.

10.2 How is chemical spraying regulated?

Drift or seepage of chemicals from one property to another (or into waterways and catchments) may cause immense anxiety and frustration to those who are affected. Therefore, a number of controls exist to manage the impact of chemical spraying on nearby properties.

Under the Agricultural and Veterinary Chemicals (Control of Use) Act 1995, commercial ground and aircraft spraying operators must have a permit, and the aircraft be licensed to conduct spraying. It is illegal to attach aerial spraying equipment to any aircraft unless the aircraft is approved by the Civil Aviation Safety Authority for agricultural operations.

Agricultural spraying is regulated under:

- Code of Practice for Aerial Spraying
- Code of Practice for Ground Spraying
- Agricultural and Veterinary Chemicals (Control of Use) Regulations 2012

These codes and regulations spell out comprehensive rules that operators and contractors must comply with when carrying out spraying operations. These include requirements to inform neighbours likely to be affected, weather conditions in which operations may need to be abandoned or changed and setting out areas which must not be sprayed, eg over water bodies or within buffer zones of sensitive sites such as schools. In general, chemicals must not be allowed to move "off target to the extent that it may adversely affect any persons, their land, water, plants or animals."

If you are affected by spray drift, you should lodge a complaint as early as possible with the operator, the owner of the land being sprayed and the Spray Unit and demand that action be taken. If possible, identify any specific breaches of the relevant Spraying Code or Regulations– for example, are the operator and the aircraft properly licensed? Was spraying carried out too close to sensitive sites? Does your neighbour have a permit authorising them to apply the chemical via irrigation?

The forestry industry also uses significant quantities of pesticides and herbicides. Forestry operators are required to comply with the Forest Practices Code when applying chemicals. The exclusion zones around waterways in the *Forest Practices Code* are currently stricter than

those in the Code of Practice for Aerial Spraying – in future the spraying codes could be amended to adopt the stricter exclusion zones set out in the *Forest Practices Code*.

☛ Go to Chapter 8 for more information about forestry controls.

Can spraying be prohibited?

Yes. Under the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*, the Minister can issue orders controlling or prohibiting agricultural spraying, in order to protect susceptible plants, stock, public health, the environment or trade. A person must comply with such an order, or face a fine of up to $26,000 ($52,000 for a corporation).

What legal remedies are available?

A variety of remedies is available if you can show that the harm you have suffered (such as poor health, stock deaths or increased pollution levels in your water supply) was caused by a particular spraying event:

Under *common law*

☛ Go to Chapter 6, for information about common law actions for chemical trespass and nuisance. The court could issue an injunction to prevent the neighbouring landowner from future spraying. The court could also award damages for any harm suffered due to the spraying.

Under the *Environmental Management and Pollution Control Act* (EMPCA)

If the spraying has caused environmental harm (including environmental nuisance), and was not carried out in accordance with a permit, it may be an offence under EMPCA.

☛ Go to Chapter 6, for information about how your local council, the EPA Director or yourself can take action for offences under EMPCA – including issuing infringement notices, prosecuting the offender or taking civil action in the Tribunal. If you take action in the Tribunal, the Tribunal may make orders such as the prohibition of future spraying and/or the payment of compensation for any injury, loss and damage that you have suffered as a consequence of unlawful spraying activities.

You have 3 years from the date of being sprayed to take 'nuisance' actions under EMPCA.

Under the *Agricultural and Veterinary Chemicals (Control of Use) Act*

This Act makes it an offence for a person to carry out (or cause to be carried out) agricultural spraying which 'adversely affects' any person, plants, stock, agricultural produce, water bodies, groundwater or soil on another person's premises unless that person has obtained permission of the owner of those premises (Section 30(1)).

'Adversely affects' is defined to mean a residue of an agricultural chemical product 'in excess of the prescribed level' – Regulation 44 of the *Agricultural and Veterinary Chemicals (Control of Use) Regulations 2012* prescribes specific limits for various situations, including limits set out in the Drinking Water Guidelines, groundwater residue limits set by the Registrar for a particular region or maximum residue levels set out in the *Food Act 2003*. The penalty for contravention is a fine of up to $26,000. The Registrar or an inspector can also issue infringement notices on the spot.

Regulation 5 of the Agricultural and Veterinary Chemicals (Control of Use) (Handling of Chemical Products) Order 1996, prohibits the handling or disposal of a chemical product that causes the chemical product to be an "injurious presence" in any body of water. You should report any breaches of this Order to the Spray Unit.

When making a complaint to the Spray Unit, you should remind them that they are obliged to act in a way that furthers the objectives of the Act, including to "avoid the presence of chemical products in food for human consumption, feed for animal consumption and drinking water supplies".

Farmers and forestry operators ***must*** notify all occupiers of properties within 100 metres of the target area of aerial spraying activities and ***should*** advise neighbours of ground spraying activities. Under section 31 of the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*, you can also apply to DPIPWE for a direction to be notified of chemical spraying in the vicinity of your home.

You can only apply if:

- you have been living at your premises for at least 12 months; and
- your home is within 1 kilometre of an area that is likely to be sprayed using aerial spraying, or within 100 metres of an area likely to be sprayed using ground spraying techniques; and
- you pay an application fee.

The Secretary of DPIPWE can issue a direction to the landowner that you must be given adequate notice of spraying activities, including the types of chemicals that will be used. If the landowner does not comply, he/she is guilty of an offence and could face a fine of up to $26,000.

Under the *Police Offences Act 1935*

Section 19 of the Act prohibits placing anything mixed with poison on public or private land if it may be "destructive to life".

Under the *Inland Fisheries Act 1995*

Under this Act, it is an offence for any person (including a corporation) to:

- put, or allow to flow, into any inland waters containing fish any liquid, gaseous or solid matter which is likely to be poisonous or injurious to fish, the spawning grounds of fish or the food of fish (section 126 (1)); or
- put into any inland waters any fertiliser or any other chemical substance, unless they have consent from the Director (section 126(3)).

Maximum penalties for offences are $6,500.

If farm chemicals have been released into a river system, you should approach the Inland Fisheries Service and ask them to investigate.

Under the *Public Health Act 1997*

Section 128 provides that an agency, public authority or person responsible for managing a water supply (such as a local council) must manage the water in a manner that does not pose a threat to public health. On becoming aware that the quality of the water is or is likely to become, a threat to public health, they must notify the Director. The maximum penalty for failing to notify the Director is $3,250.

The section also requires councils to take appropriate action if water contamination is, or is likely to be, a threat to public health. This can range from issuing 'Boil Water' notices, to providing alternative water supplies for the community until the contamination is addressed. Under section 129, the Director may also issue orders restricting the use or supply of water – any person who fails to comply with an order can be prosecuted and face a maximum penalty of $13,000.

What can I do if my property or water supply is affected by spray drift?

Notify authorities:

- Immediately contact the Spray Unit within DPIPWE on **1800 005 244**. The Spray Unit will investigate complaints and can initiate prosecutions if there is sufficient evidence of a breach.
- If the problem is likely to persist, it is a good idea to also lodge a complaint with the state pollution hotline (1800 005 171) and request that action be taken to restrict the operator's activities. The Director of the EPA can serve an Environment Protection Notice (**EPN**) on someone who is breaching a Code of Practice and, if the breach continues, commence legal proceedings (☛ Go to Chapter 6).
- If you are concerned about water quality, contact the Director of Public Health for advice. The Director has powers to make orders against individuals and public authorities to ensure that water quality does not present a public health risk.
- Contact the Environmental Health Officer (**EHO**) at your local council and ask them to take a water sample. EHOs are experienced in proper sampling techniques and can arrange for the sample to be analysed. If the sample is contaminated, ask the EHO to take action against the polluter.

The EPA and the Registrar have signed an Memorandum of Understanding outlining their respective responsibilities for investigating and addressing chemical spraying and spill incidents.

Record information:

- For ongoing issues, it is important to maintain baseline information so that you can investigate suspected contamination and show that chemical levels are higher than normal. Contact your local Landcare or Water Watch group from information about basic chemical monitoring in your area.
- If your property has been sprayed or affected by chemical run-off, you will need evidence of this, and be able to link the event to a particular operator or landowner. It is advisable to take photos of spraying (if possible), make diary notes, take samples and have them tested for chemical residues as soon as possible.
- Take reliable samples of water, soil or produce and have them tested by an accredited laboratory.
- Tests would need to show that the levels of the chemicals in your soil, water or produce exceed the maximum levels allowed under the Regulations (e.g the Drinking Water Guidelines). It may be necessary to conduct several tests over a number of months.
- If you are concerned about health impacts, go for a medical check up. Keep medical records showing any abnormally high chemical residues in your body or other symptoms that may be related to exposure to chemicals.

☛ Go to Chapter 13 for general information about taking action.

10.3 1080 poison

1080 (sodium monofluoroacetate) is a poison frequently used to control pest species in rural areas. Since January 2006, 1080 poison has not been used in State forests. However, private forestry operators and farmers continue to use 1080 to target browsing animals such as possums and wallabies.

Use of 1080 is regulated by DPIPWE under the *Poisons Act 1971* and the Code of Practice for the Use of 1080 for Native Browsing Animal Management (**1080 Code**). All use of 1080 poison is supervised by a DPIPWE Wildlife Management Officer.

In May 2011, a Report was released as part of the Tasmanian Community Forest Agreement that focussed upon finding alternatives strategies for 1080 use. The Report recommended a number of alternatives to 1080 use be adopted, such as wallaby grids, wildlife-proof fencing and a potentially more humane poison called 'Feratox'.

Required permits

Before 1080 baits can be laid, the operator must obtain several permits:

- Permits for use of a controlled poison under the *Agricultural And Veterinary Chemicals (Control of Use) Act 1995*
- A permit to 'take' (that is, to kill) specified wildlife under the *Nature Conservation Act 2002*
- If any threatened species may be affected, a permit under the *Threatened Species Protection Act 1995*.

A permit to lay 1080 must not be issued unless an authorised officer is satisfied that a damage assessment has been carried out which shows that:

- Wildlife poses an unacceptable risk to existing crops or pasture (determined by a formal damage assessment); and
- The poison will not pose an unacceptable risk to non-target species (a risk assessment must be completed); and
- Alternative control measures (e.g. shooting and fencing) have been tried and are not effective.

In general, only one permit will be issued for the same site within three years.

Restrictions on the use of 1080 poison

The 1080 Code provides that poison baits must not be laid within:

- 200 metres of an occupied house or a public picnic facility
- 20 metres of a permanent stream
- 5 metres of a property boundary or public road.

The permits can also impose additional restrictions, for instance in areas occupied by large numbers of non-target species. If you are aware of some affected areas that may be highly sensitive to 1080 poison (wet areas, feeding grounds), you should notify DPIPWE and ask them to make sure that the conditions do not allow 1080 to be laid in these areas.

The permit holder is required to:

- give written notice to all landholders within 500 metres of the poison line (DPIPWE can also require notification to be given to landowners within a larger radius). Notice must be given at least 4 working days prior to the poison being laid.
- dispose of all uneaten bait and all animal carcasses, including those on neighbouring properties.
- display '1080 poison' notices on gates and fence lines, for at least 28 days after laying the poison.

10.4 Chemicals affecting organic farms

In the case of organic farming, contamination by any chemical at all could have an adverse effect on your business and possibly cause you to lose your accreditation. Therefore, it is important to be aware of the activities around you and how they may affect your organic status.

The very first step is to notify the relevant landowner (or business / forestry operator) that you operate an organic farming enterprise. Inform them of your position with regard to soil and water quality and seek assurances from them that their operations will not affect the viability of your business.

If you are concerned about nearby logging operations, ask for a copy of the Forest Practices Plan for the land – check for buffer zones and conditions regarding chemical use, including herbicides and fertilisers. If you have questions about how the forestry operations will be carried out, ask the operators.

You can also contact the Minister for Primary Industries and Water and ask her or him to issue a specific order controlling or prohibiting agricultural spraying on the property. You will need to justify the order on the grounds of protecting "susceptible plants and stock, public health, the environment and trade". The Minister will consult with the Minister for the Environment before making a decision about whether to issue an order.

For information about certification or government assistance for organic farming, contact the Tasmanian Food Opportunities Unit within DPIPWE. You can also visit the Organic Coalition Tasmania website for details of current projects.

10.5 Genetically Modified Crops

GMO crops are causing considerable concern throughout the world because they have been developed at a faster rate than governments have been able to regulate them and assess their effects.

All three levels of government in Australia have been trying to grapple with this issue.

At the federal level:

The federal Gene Technology Act 2000 came into force in June 2001. This Act institutes a set of regulations that are applied nationally, administered by the Gene Technology Regulator.

At the state government level:

There is currently a moratorium on the commercial release of genetically modified plant crops in Tasmania under the Plant Quarantine Act 1997. Though similar moratoriums have recently been lifted in NSW and Victoria, the Tasmanian government's Policy Statement on Gene Technology and Tasmanian Primary Industries 2009 - 2014 confirms that the moratorium will remain in place until at least November 2014.

Provisions have been made for limited exemptions to the moratorium under section 99 of that Act – principally for existing poppy crops and open-air trials for non-food crops, and enclosed food and animal trials.

In January 2014, the government announced the moratorium would continue indefinitely.

- Since November 2005, the whole state has also been declared a GMO-free area under the *Genetically Modified Organisms Control Act 2004*. This Act also provides for a strict licensing regime for research into GMOs within Tasmania. Under the Act, any person producing, selling or otherwise dealing with a GMO in a designated GMO-free area, without both a permit and a GMO licence will face a fine of up to $260,000 (s.7).
- GMOs are also regulated under the Gene Technology (Tasmania) Act 2012. This Act was introduced to align state laws with the Commonwealth *Gene Technology Act 2000*, which uses the Precautionary Principle as a basis for its regulatory framework and includes a range of strict liability offences.
- The Biosecurity Policy and Strategy was developed by the state government in 2006. It sets out a number of policy objectives for maintaining the low level of pests, diseases and weeds in Tasmania. The Policy provides that before a potential disease/pest is imported to Tasmania, it must be assessed against particular criteria, including whether it poses a suitably 'very low risk'.

  ⇝ Download the *Biosecurity Strategy 2013-2017*, which seeks to implement the Policy, from the DPIPWE website.

Opportunities for Public Participation:

- **Under the *GMO Control Act*,** a "person aggrieved" may appeal against permit conditions (☛ see Section 30).
- **Under the *Gene Technology Act 2000*,** where significant risks are posed to the health and safety of people and the environment, the public may make written submissions about applications for licences and risk management plans. The Regulator may hold public hearings (section 47) and, after considering submissions, may issue a licence only if satisfied that satisfactory risk management measures are in place.
- an aggrieved person or the Regulator may apply to the Federal Court for an injunction where a person is about to contravene or is contravening the Act or regulations (☛ see Section 147).
- The Regulator must keep a register of low risk 'product dealings' (see section 74 and 75) and a record of all GMO and GM 'product dealings' (see section 77 and 78).

  ⇝ Contact DPIPWE or look on its website for information about policies and rules on GMO crops and organisms.

10.6 Contaminated Land

As residential areas expand, there has been increasing redevelopment of land that was previously used for industrial activities, such as petrol stations and landfills.

This has made land contamination a major urban issue, and has increased awareness of the health and environmental risks associated with such sites.

Part 5A of the *Environmental Management and Pollution Control Act* provides a comprehensive system for the management of land contamination in Tasmania.

What are contaminated sites?

An area of land (including water in or under the land) will be a "contaminated site" if:

- The land contains a pollutant in a concentration above naturally occurring levels, which is (or is likely to be) causing environmental harm (including serious or material environmental harm and environmental nuisance); or
- The land contains a pollutant in a concentration above naturally occurring levels, which is likely to cause environmental harm if not managed appropriately; or
- A site management notice is registered on the title for the land (see section 74A(2)).

However, land is not a 'contaminated site' if the relevant pollutant is a 'prescribed pollutant' or is present on the land because of 'prescribed circumstances' (see section 74A(3)). To date, no pollutants or circumstances have been prescribed under the Act.

Who is responsible for managing contaminated sites?

The management of contaminated sites is shared by the Contaminated Sites Unit (within the EPA Division), and local councils.

Generally, the Contaminated Sites Unit is responsible for managing known contaminated sites, investigating potentially contaminating activities and dealing with specific pollution incidents.

Local councils are responsible for regulating development through their Planning Schemes to ensure that sensitive uses are not located on or near contaminated sites.

The Tasmanian Planning Commission has prepared a 'Planning Advisory Note – Contaminated Land' to assist councils to assess applications to amend planning schemes where land is, or may be, contaminated. The Commission is currently developing a statewide Planning Directive to ensure that all planning schemes in Tasmania contain the same provisions in relation to the assessment and management of development on contaminated land.

How is contaminated land regulated?

If a person causes land to become contaminated, they could be prosecuted for causing environmental harm under EMPCA (☛ see Chapter 6). It is also an offence not to report any pollution incident.

If you believe that land has been or is being contaminated, contact the Contaminated Sites Unit and ask them to investigate (see below).

Under the *Building Act 2000* you must not carry out any building work on land that is

> *"…contaminated, unhealthy and not suitable for the purpose until the land is cleaned or remedied…".*

If a council suspects that a development site may not be suitable for its proposed use, the council may require a developer to demonstrate that the land is not contaminated. For example, if the council is aware that a potentially contaminating activity was carried out on the site a decade ago, the council may ask the developer to investigate whether any residual contamination exists and carry out work to rehabilitate the land before any further development can take place.

Reporting contaminated land

Any owner or occupier who knows or should reasonably know that land is likely to be contaminated:

- Must not commence or continue any activity that is likely to cause or continue to cause the release or escape of pollutants; and

- Must notify the Director of details of the pollutant present on the property and any actions they have taken to manage or mitigate the impacts of the pollution (section 74B).

Landowners and occupiers are required to notify the Director even if it means that they will incriminate themselves for having caused environmental harm (section 74B(3)).

For new contamination, notice must be given within 24 hours of discovering that the land is contaminated (such as when you receive test results showing contamination). If the contamination already exists, the owner or occupier must notify the Director within 6 months of the date that the new provisions commence (section 74B(1)(b)).

Strict penalties will apply for failing to notify the Director that land may be contaminated - maximum fines will be up to $65,000 for an individual and $130,000 for a company.

There are no specific provisions allowing third parties to report that land is, or may be, contaminated. If you are concerned about land in your area, you should contact the Contaminated Sites Unit and ask them to issue an investigation notice (see below).

Investigation, remediation and management of contaminated sites

Under Part 5A, three different types of notices may be issued in relation to contaminated sites:

- **Investigation notice** - can require work to determine whether land is contaminated, the types of pollutants that are present and the extent of the contamination, the extent of environmental harm that has already been caused and what site management measures are required. (section 74E)

  For example, an investigation notice can require one or more people to take samples from the land, carry out tests and analyse data, install groundwater bores and submit progress reports to the Director.

- **Remediation Notice** - can require one or more people to take action to ensure that people, animals and the environment are protected from harm, or further harm, as a result of the contamination. (section 74F)

  For example, a remediation notice can require one or more people to carry out testing, to erect fences, wall or bunds to contain the pollutant, to remove the pollutant and remove or treat any contaminated soil, water or rock. The notice can also require the site to be wholly or partly vacated or entry to the site to be restricted.

- **Site Management Notice** - can be issued to ensure the safe management of a contaminated site. (section 74G)

  Site management notices can require ongoing monitoring for the site, restricted access to the site and any other action to minimise the risk of the pollutant escaping or causing harm to any person or the environment.

For each kind of notice, the Director can also require the responsible person to hold public meetings to inform the public about the progress or the investigation or remediation and the ongoing management of the site.

How are investigations carried out?

The National Environment Protection (Assessment of Site Contamination) Measure 1999 adopts national best practice standards for technical assessment of land contamination. This *Measure* (the 'NEPM') has the force of a State Policy in Tasmania (☛ see Chapter 4).

The NEPM (Assessment of Site Contamination) was updated in May 2013. Make sure that you are referring to the most current version of the NEPM when dealing with site contamination.

If a potential contaminated site has been reported to the Contaminated Sites Unit, an investigation is carried out in a staged approach. The contaminated site investigation process has five stages:

1. Environmental Site Assessment - the first stage sees the site being subject to an Environmental Site Assessment or 'ESA'. This is done in order to find out the status of the contamination and the potential risks it may pose to human health and the environment. This evaluation is done in accordance with both the NEPM and the EPA reporting standards.

2. Detailed ESA - the second stage involves taking a number of samples from the contaminated site that measure the extent of the contamination in the air, soil and water sources.

3. Remediation - the third stage focusses on cleaning up the affected area by either treating the site or excavating the contaminated soil.

4. Validation - the fourth stage of the process makes sure that remediation has been successful and that there is no risk to the land based on either the current or proposed land use.

5. Monitoring - this final stage ensures that the site is monitored to ensure that contamination levels are decreasing and that remediation is working.

For more details about the investigation process, go to the EPA website.

Who is responsible for dealing with contaminated sites?

'Investigation' and 'Remediation' notices can be served on any person that the Director reasonably believes is likely to be wholly or partly responsible for the contamination. This could include the current and former owners or tenants and any other person whose activities may have caused the contamination.

The current or former owner, occupier or person in charge is taken to be responsible for the contamination if the person knew, suspected or should reasonably have suspected that the land was contaminated AND allowed or possibly allowed the pollutant to continue to be discharged (sections 74E(3) & 74F(3)).

'Site Management' notices can be served on any person that the Director reasonably believes is likely to be responsible for the contamination, or the current owner or occupier (even if they were not responsible for the contamination) (section 74G(2)).

Each notice must specify what actions must be taken and who is responsible for taking them. If notices are issued to more than one person, the notice must set out what proportion each person is responsible for, having regard to their contribution to the contamination (section 74D).

Notices bind the person that they are served on, even if they sell the land (section 74I(6)(b)). The notice may also state that the obligations under the notice can be passed on to future owners of the land (sections 74D(3) & 74I(6)©).

Copies of all notices must be served on the current owner and occupier, the local council and anyone with a registered interest in the land. If the person who is required to carry out work under a notice is not the current owner of the land, the current owner or occupier must

let them on to the land to carry out the work (as long as they are given at least 3 days notice). They must carry out the work with as little interference to the current owner as possible, and must make good any damage to the land (section 74R).

Sign off process

The 'sign off' process is essentially written confirmation that certain guidelines have been met in relation to the investigation of a site. The process also involves an assessment as to whether the site is fit for its intended use.

When dealing with some issues such as sensitive land use re-zoning or development approval for works that could impact human health and the environment, planning authorities such as local councils can write to the Director of the EPA and the sign-off process is triggered.

However, as planning authorities are ultimately responsible for ensuring whether a particular site is appropriate for its intended use, they can also independently make a decision about whether the site is suitable and if conditions need to be imposed on the applicant.

For an information bulletin about the Site Contamination Sign-Off process, read Information Bulletin 112 on the EPA website.

What if the person responsible for the contamination cannot be found?

- Investigation and remediation notices can only be served on a current owner who was not responsible for the contamination if:
- they became the owner after the new provisions commence and knew or should have known that the land was contaminated; and
- the Director has taken all reasonable steps but cannot successfully identify the person who is responsible for the contamination or the person who was responsible for the contamination is bankrupt (sections 74E(4) & 74F(4)).

Site management notices can be served on the current owner or occupier, even if they did not cause the contamination or know about it when they purchased the land (section 74G(2)(b)).

If a company that was responsible for the contamination has, within the past two years, been wound up or transferred its assets to another company, a notice can be served on any related company (section 74Y).

If no owner or responsible person can be identified, the Director can carry out investigation and remediation work and try to recover the costs later (s.74T).

Appeal rights

Anyone who is served with an Investigation, Remediation or Site Management notice can appeal to the Resource Management and Planning Appeal Tribunal within 14 days (section 74O).

Appeals must be lodged within 14 days.

Lodging an appeal does not automatically suspend the notice. Unless the Director consents to the notice being suspended, the person served with the notice must still comply with the obligations under the notice (including action to prevent the escape of the pollutant). If their appeal is successful, they can recover the costs of any actions they took under the notice from the government (section 74O(3)).

Enforcement

Any person who is served with a notice must comply with it, or face a fine of up to $65,000 for an individual and $130,000 for a company (section 74P).

If the person does not take the action required by the notice, the Director can take action and recover the costs from the responsible person. The Director can also require any person served with a notice to pay the costs of investigation and monitoring compliance (such as reviewing progress reports) (section 74N).

The Director, a council officer or any person with a 'proper interest' (such as an affected neighbour) can take civil enforcement proceedings in the Tribunal against a person who is not complying with a notice under Part 5A (☛ See Civil Enforcement).

If all the actions specified in the notice are complied with, the Director can issue a Completion Certificate. The Director can also revoke a notice at any time. If a notice is revoked or a certificate is issued, the Registrar of Titles will remove the notation on the title for the property (section 74K).

Where can I find out more about contaminated sites?

Once a notice is served, a notation will be recorded on the Title for the contaminated site (section 74I). Anyone who does a title search for the property will see that it is contaminated, or being investigated to see if it is contaminated.

Owners must notify the Director if they plan to sell any property that is subject to an investigation, remediation or site management notice (section 74Q).

The Contaminated Sites Unit will conduct searches for information relating to land and groundwater pollution on a property. There is a charge for this service, and it will take 10 business days to complete.

↝ Further information about contaminated site searches is available from the EPA website.

10.7 Water & Water Catchment Laws

Water is a contentious area of policy, both locally and nationally. It is a critical natural resource, having many competing uses. Maintaining water quality and sustainable water development is essential for environmental reasons as well as for human uses.

Throughout the 1900s, lack of water management resulted in extensive pollution and degradation of Tasmania's inland waterways and estuaries, and numerous related problems. There was previously little integration of water management in the state, no guiding policy, too many water managers, little accountability and virtually no opportunity for public input.

However, in 1999 the *Water Management Act* was passed in order to bring water management into the Resource Management and Planning System and to comply with the nationwide COAG agreements on water policy.

The Act encourages sustainable use of water, and provides mechanisms to protect the health of Tasmania's valuable freshwater resources, including all dispersed surface water, all water in watercourses, lakes, wetlands and groundwater resources. The Act also allows the Minister to control the taking and use of water from declared tidal areas.

What does the Water Management Act do?

- Establishes a consistent system of water licensing and allocations. All water users must comply with the licensing regime, including major water users such as councils and *Hydro Tasmania* (who have a special licence for hydro-generation).
- Separates water entitlements from land titles. This allows water licences and allocations to be transferred.
- Provides for the development of Water Management Plans (see below).
- Establishes mechanisms to ensure enough water is available for the natural environment (*Environmental Flows*).
- Sets out the procedures for dealing with applications for dam permits.
- Creates *Water Districts*.
- Provides opportunities for the community to have a say in water management issues.

Which state agency administers water laws?

The overseeing of water management in Tasmania is generally handled by the *Water Resources Division* of *DPIPWE*. All other agencies that are involved with water management are accountable to this department. Other agencies include:

- the *EPA Division* plays a major role because it is generally responsible for environmental protection, including water pollution. It administers and enforces the *Environmental Management and Pollution Control Act* and the *State Policy on Water Quality Management*. (☛ Go to Chapter 4 & 5 for details).
- The *Department of Health and Human Services* is responsible for regulating the quality of drinking water under the *Public Health Act 1997*.
- *Tasmanian Irrigation* is a government business entity (***GBE***) that manages government-owned water irrigation schemes and major projects such as the *Meander Dam*.
- The independent *Tasmanian Planning Commission* has the role of investigating and approving *Water Management Plans* for Tasmania's water resources.

Can I be involved?

Yes. Water management is of vital importance to the health of our rivers and to the whole community, including landowners, farmers, fishing enthusiasts… anyone who drinks water, for that matter! As you will see below, the *Water Management Act* provides opportunities for public involvement in the development of water policies, appeals against dam permits and civil enforcement to make sure that the Act is complied with.

If you have an interest in water management, it is a good idea to get involved early and have your say while water management policies and practices are progressively implemented. Look out for public notices inviting public input.

↝ You can see policies available for public comment on the DPIPWE website.

↝ To check the status of Water Management Plans under review, go to the Planning Commission website.

Who owns water resources?

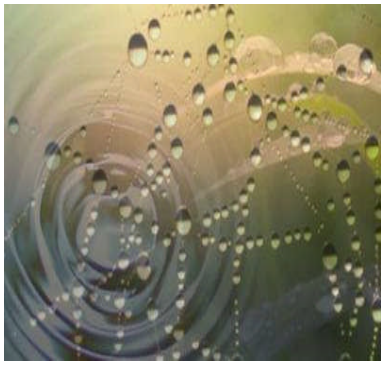
All rights to the use of water are vested in the Crown.

How are Tasmania's water resources managed?

State Water Policy

Tasmanian State Policies have an important role in environmental protection. The *State Policy on Water Quality Management* identifies activities which may impact on various water resources and provides guidance about managing these activities, such as setting emission limits for pollution discharged to watercourses.

Agencies using and managing water resources must make sure that their activities do not compromise the water quality objectives and protected environmental values set out under the *State Policy on Water Quality Management*.



You can download the Policy from the EPA website.

The State Policy has been subject to a 10 year review. The EPA Division recently released its Response to Public Submissions and Preferred Options Paper.

Water Management Plans

The *Water Management Act* provides for *Water Management Plans* to be developed for each of Tasmania's 48 catchment areas.

To date, Water Management Plans have been finalised for the following catchments:

- Greater Forester
- River Clyde
- Little Swanport
- Ansons
- Boobyalla
- South Esk
- Mersey
- Lakes Sorell and Crescent
- Clyde
- Sassafras Wesley Vale
- Tomahawk

At the date of writing, draft water management plans have also been released in relation to the Macquarie and Ringarooma Catchments.

About Water Management Plans

Water Management Plans determine how a water resource or group of water resources will be used and looked after.

These plans should include:

- a clear statement of the community's environmental, social and economic objectives for the particular water resources;
- a description of the water management regime that best gives effect to these objectives. This may include limits to water allocation in order to guarantee the volume and timing of water that is needed to sustain natural ecosystems. The plan should also for ongoing monitoring and review to see if the management regime IS achieving its objectives; and
- an assessment of the potential detrimental impacts on water quality.

Plans may also provide for water allocations and licensing (including conditions for transferring allocations) and specify issues to be considered when assessing applications for dam permits. A water management plan should also set out measures to mitigate possible impacts resulting from the taking of water.

The development of these plans is obviously very important to the general public, especially for water users. They are also very important for environmental protection, because they set out the *Minimum Environmental Flows* which are guaranteed under the Act.

Once approved, the *Water Management Plan* for each particular area becomes 'statutory' (has force of law under the Act) and is binding on water managers.

How is a Water Management Plan developed?

The process for preparing and implementing *Water Management Plans* is detailed in Part 4 of the Water Management Act.

↝ You can find out more about this process on the DPIPWE website.

The WMPs are required to be developed in consultation with catchment communities. Local stakeholders are involved in their development – including commercial water users, council officers and local community members.

The Plans must be consistent with the Objectives of the Water Management Act - which include the primary Objectives of the Resource Management and Planning System. They must also be consistent with the State Policy on Water Quality Management 1997.

To assist with the development of *Water Management Plans*, DPIPWE has also developed Generic Principles for Water Management Planning and Standard Operating Procedures for the Development of Statutory Water Management Plans. These documents provide guidance on a number of matters that are common to most catchments, including how community consultation is carried out, what water resources are included in the plan, water quality issues that must be considered when assessing applications, licensing provisions for stock and domestic use and useful measures to monitor the implementation of the Plan.

Once a draft *Water Management Plan* has been developed, the public will be invited to make submissions about the draft plan. This is an excellent opportunity to have a say in how water resources in your area are managed, so keep an eye out for public notices advertising the draft management plan.

Draft *Water Management Plans*, including any submissions made by the public, are then reviewed by the *Tasmanian Planning Commission*. The Commission may hold a public hearing before deciding whether to approve the plan.

↝ You can see current Draft Water Management Plans on the DPIPWE website.

How are 'minimum water flows' guaranteed?

It is necessary to ensure adequate river flows in order to maintain or improve the ecological health of our rivers. *Minimum Flows* are therefore legally protected by the Act.

Minimum flow levels for each river/stream are determined by the *Water Management Plan* being established for that system. Once established, water managers will then be responsible and accountable for ensuring that these flows are maintained.

The Tasmanian Environmental Flows Framework (***TEFF***) provides guidance on how minimum environmental flows are assessed for a range of different scenarios in stressed and unstressed aquatic ecosystems. It is used for the purposes of water planning and for day-to-day management decisions in catchments that do not have water management plans.

↝ More information about the TEFF is available on the DPIPWE website.

An issue of public concern is whether or not the declared minimum flow for any particular river or stream will be high enough to sustain or improve river health. Concerned citizens should therefore make sure they have their say in the early stages, to ensure that the required minimum flows for their local river system are adequate.

How are our wetlands managed?

Wetlands are dealt with in the same way as other water resources in Tasmania. The Minister can require a draft water management plan to be developed for any water course, including a wetland area. All management and planning decisions affecting wetlands should also have regard to the Tasmanian Wetland Strategy.

For management purposes, Tasmania's wetlands are classified into eight bioregions. The Wetlands & Waterways Works Manual also provides guidelines for work undertaken in wetlands.

↝ More information about the management of wetlands is available on the DPIPWE website.

Integrated Catchment Management

A number of years ago, the Tasmanian government began work on a *State Policy on Integrated Catchment Management*. However, the policy was never finalised and management issues were subsumed by the water management planning process.

As a result, catchment management remains ad hoc in Tasmania. Relevant issues are dealt with through *Water Management Plans*, the *Natural Resource Management Strategy*, soil and salinity risk assessment programmes, the State Coastal Policy and Planning Schemes.

Tasmania would benefit from a more consistent approach to integrated catchment management. The current review of the coastal planning and management framework and the development of Statewide planning codes provides an opportunity to develop such an approach.

Who can 'take water' from a watercourse?

Under previous legislation, *Water Rights* were legally annexed to the land and could only be transferred with the land title (that is, if you bought the land). This made it difficult to obtain water rights unless you were lucky enough to be buying a property with a pre-existing water right attached.

Under the *Water Management Act*, water rights are no longer attached to land titles, but are 'owned' by a person. DPIPWE has the power to grant water licences to any person to take water from rivers and lakes and this water right can be traded (for example, sold or leased to another landowner). However, if you want to sell your water right, you will need to get approval from DPIPWE.

Can landowners still take water from adjoining rivers and lakes?

Under common law, landowners have long enjoyed what is called riparian rights – the right of free access to water in rivers and lakes flowing within their property or along its boundary.

Under Part 5 of the *Water Management Act*, certain people still have a right to take water without a licence (known as "Part 5 rights"). Owners of land adjoining watercourses or lakes ("riparian" or "quasi-riparian" landowners), as well as casual users of land, may take water for human consumption, domestic purposes, stock watering and fire fighting (these are known as "riparian rights"). In addition, you can take water for private electricity generation as long as taking the water does not adversely affect other users or the environment.

A landowner can take groundwater or dispersed surface water from their land for any purpose.

Recently, the Water Management Regulations 2009 introduced restrictions on some riparian rights. For example, domestic use is now limited to 440L per day for each dwelling and a maximum of 90L per head of cattle is available to water. DPIPWE may also introduce other restrictions to regulate water usage where it is necessary to ensure water is used equitably and sustainably.

Water licences

Subject to some exemptions, anyone who takes water for agricultural or commercial purposes must have a *Water Licence*. A water licence enables the holder to take an allocated quantity of water from a named water course.

Councils and government-owned agencies such as *Hydro Tasmania* are also subject to the Act and must apply for water licences.

Water licences must only be granted when DPIPWE has been determined that the volume to be taken, and the method of taking the water, is not likely to cause environmental harm or adversely impact other people who use the watercourse or downstream commercial operations (such as oyster farms). Water licences are normally issued for ten years, but can be periodically renewed.

Section 56 of the Act empowers the Minister to specify the conditions under which water can be taken. Conditions can be imposed to manage environmental impacts; including impacts on water dependent ecosystems, deterioration of water quality, soil waterlogging, increased salinity and erosion, delivery constraints, destabilisation of bed and banks of a river or impacts on other water users.

Any person who takes water from a watercourse or a declared tidal area without a licence, in greater quantity than the licence permits, or in breach of the licence conditions or the *Water Management Plan* commits an offence.

Whether you have a water licence or not, it is an offence to take water if doing so leads to material or serious environmental harm.

When can you not take water?

Sometimes there will not be sufficient water available for everyone with a licence to take water from the watercourse (for example, during a drought). In these situations, the Minister can impose restrictions on water use, according to a hierarchy of priority uses set out in the *Water Management Act*.

Essential purposes, such as town water supplies and watering livestock, have first priority. Preserving environmental values has second priority. All other uses, such as irrigation and commercial uses, can be subjected to restrictions of water supply in order to guarantee adequate supplies for the two priority purposes.

Conveying water via a watercourse

Under Part 6A of the *Water Management Act*, a person cannot transfer water taken from another source, or stored (for example, in a dam) via a natural watercourse without authority from the Minister. The Minister will grant an authority to transport water from another source via a watercourse if she or he is satisfied that the water will not cause environmental harm, significantly impact on other users or adjoining landowners, and will not affect public safety.

Entities specified in the *Water Management (Watercourse Authority Exemption) Order 2009* do not require an authority to convey water in a watercourse. These entities include councils, Hydro Tasmania and water corporations.

Interfering with a watercourse

A permit is also generally required if you undertake any activity that may affect the natural flow of water in a watercourse or lake or of surface water, or adversely affects the water resource (including a groundwater resource) or ecosystems associated with that water resource.

How can water offences be prosecuted or remedied?

1. 'Water Infringement Notice'

An authorised officer can serve a *Water Infringement Notice* on a person who has committed an offence under the Act (see Part 13 and Schedule 5 of the *Water Management Regulations 1999*). *Water Infringement Notices* generally impose a fine and demerit points.

It is an offence to ignore an infringement notice, and you may be prosecuted if the fine is not paid.

2. Ministerial direction

Any person taking water is required to take reasonable steps to prevent damage to the watercourse or broader ecosystems. The Minister may direct a person to rectify any damage that is caused. It is an offence not to comply with these directions.

3. Suspension or cancellation of water licence

If a licensee accrues a prescribed number of demerit points (currently 12), their water licence can be suspended or cancelled.

The Minister can also suspend or cancel a water licence if the licensee is convicted of an offence under EMPCA (see below) or fails to pay licence fees.

4. Prosecution under the Water Management Act

The Minister or a local council can initiate a prosecution against any person who does not comply with a provision of the Act, or the conditions of a permit.

If the prosecution is successful, the court can impose a fine (the maximum penalty is currently $65,000), or order that the offender's water licence be varied, suspended or cancelled.

5. Taking action in the Tribunal

Where a person engages in an activity that breaches the *Water Management Act 1999* or has refused to take any action required by the Act, the Minister, the local council or any other person with permission from the Tribunal (known as "leave") may apply to the *Resource Management and Planning Appeal Tribunal* for an order.

☛ Go to Chapter 14 for information about taking action in the Tribunal.

After a hearing of the matter, the Tribunal may issue an order to:

- require the person cease the activity temporarily or permanently; or
- prevent the person from carrying out any use or development in relation to relevant land; or
- require the person to make good any relevant injury, loss or damage resulting from the contravention.

The Tribunal may also issue a temporary order to restrict an activity during a hearing on an application for an order.

Contravention of an order issued by the Tribunal may result in a fine of up to $65,000. In addition, the government can do any work required by the order to fix damage caused by the breach and recover the cost of the work from the person who contravened the order.

6. Actions under pollution laws

For information about water pollution offences and remedies, see the sections on:

- Chemical spraying

- Enforcing environment protection laws
- Inland fisheries

If a person is causing 'environmental harm', civil enforcement proceedings could be taken under section 48 of the *Environmental Management and Pollution Control Act* to prevent the harm.

☛ For more information about civil enforcement options go to Chapter 13.

7. Actions under the Public Health Act

An infringement notice may be issued under the *Public Health Act 1997* for failure to register as a user or supplier of private water. A person may also be prosecuted for failure to comply with an order of the *Director of Public Health* relating to water quality. These offences carry a penalty of up to $6,500.

☛ Go to Chapter 6 for further information.

8. Reviewing a decision

A person with sufficient interest in a decision that has been made under the *Water Management Act* (known as an "interested person") has a number of options to challenge the decision.

"Interested person" generally means a person who is directly affected by a decision. You should consider Section 270 of the *Water Management Act* to see if you fall within the definition.

If you are an interested person, you can:

- **Apply to the Minister for a review of the decision**
  To do this, write to the Minister requesting a review and explaining why you think that the original decision was incorrect.

  💧 Applications must be made within 14 days of the decision.
- **Appeal to the Resource Management and Planning Appeal Tribunal**
  ☛ Go to Chapter 14 to see how to do this)

  💧 *Appeals must be lodged within **14 days** of the decision that you would like to challenge.*

- **Apply to the Supreme Court for judicial review of the decision**

  💧 *Applications for judicial review must be made within **28 days** of the date of the relevant decision.*

What do I do if someone has breached water laws?

- Immediately notify the *Water Management Branch* of DPIPWE (Ph: 1300 368 550), giving details of the breach.
- If pollution is an issue, also phone 1800 005 171 (pollution hotline).
  ☛ Go to Chapter 6 for information about what to do if there is a problem with water pollution.
- If public health is an issue, also phone 1800 671 738 (health hotline).
- If necessary, consider initiating legal action yourself.
  ☛ Go to Chapters 13 and 14 for general information about taking action.

10.8 Irrigation and farm dams

Irrigation can have significant impacts on the natural environment – including pollution of water courses, soil degradation, salinity and water-logging. The need to manage these issues effectively, and consistently, increases as the demand for irrigation grows.

There are around 8,700 registered dams in Tasmania and over 9,000 bores and wells.

Less than 20% of irrigation water is currently sourced from publicly owned infrastructure. The vast majority of irrigation water is sourced from unregulated streams or on-farm storages, using private infrastructure. Work currently being done by *Irrigation Tasmania* (see below) aims to change this.

How is irrigation regulated?

The *Water Management Act* provides for the establishment of 'irrigation districts'. These are administered by a 'responsible water entity' – such as a *Government Business Enterprise*, a council, a company or a co-operative.

The *Irrigation Clauses Act 1973* provides a legal basis for the construction, operation and funding of irrigation schemes by a *responsible water entity* and also the supply and trading of irrigation water.

In May 2013, the *Water Legislation Amendment Bill 2013* was introduced to parliament. The Bill proposes a range of changes to the legislation, and the repeal of the *Irrigation Clauses Act 1973*. To check the progress of this Bill, go to the Parliament website.

Tasmanian Irrigation

Irrigation Tasmania Pty Ltd (Tasmanian Irrigation) was formed in July 2011 to develop and operate publicly subsidised irrigation schemes. Irrigation Tasmania replaced the former Rivers and Water Supply Commission, and subsumed the Tasmanian Irrigation Development Board.

Tasmanian Irrigation has been involved in the establishment of a number of irrigation schemes in Tasmania. Schemes operate under a system of water 'entitlements' that define the quantity of water that the holder is entitled to. You can buy a water entitlement in two ways:

1. Pay a binding deposit – this will cost 10% of the total water entitlements that you are seeking; OR

2. Pay a non-binding deposit – this will cost 25% of the total water entitlements that you are seeking.

Upon buying water entitlements in one of the above ways, you enter a contract with Irrigation Tasmania Pty Ltd. Your water entitlement contains both an Irrigation Right and a Zoned Flow Delivery Right.

An *Irrigation Right* gives you an allocation of water during the irrigation season. A *Zoned Flow Delivery Right* is the right to deliver water to a specified zone. Both Irrigation and Zoned Flow Delivery Rights are granted in megalitres and recorded in a searchable registry. These rights can be traded either jointly or separately.

To find out more information about current irrigation schemes go to the Tasmanian Irrigation website.

Irrigation rights

As discussed above, water rights are now 'personal' property and are not attached to land titles. Therefore, you may need to get a water licence to carry out irrigation activities on your property – either by applying for a licence, or buying a water allocation from someone else.

Temporary water rights are also available for occasions when rivers and streams contain excess water. However, these rights are limited and are not suitable for long term irrigation practices.

Any irrigation scheme using recycled water (such as greywater) must comply with environmental and health legislation, including the State Policy on Water Quality Management. You should make sure that your irrigation scheme complies with the Environmental Guidelines for the Use of Recycled Water in Tasmania.

Approval under the EPBC Act

Irrigation schemes may also need to be approved under s.146B of the Environment Protection and Biodiversity Conservation Act 1999 if they are likely to have a significant impact on matters of national environmental significance (such as threatened species, vegetation communities or Ramsar wetlands). For example, the recently approved Lower South Esk River Irrigation Scheme was assessed under the EPBC Act as a result of potential impacts upon important wetlands, national and international heritage places and threatened migratory species. The Irrigation Scheme was approved in May 2012, subject to a range of conditions to address impacts on those matters.

Illegal irrigation

To avoid the risk of prosecution, if you have any doubt about whether or not you can take water and if so, how much, contact the *Water Resources Division* of DPIPWE.

How are farm dams regulated?

The construction of dams and weirs in Tasmania are not generally subject to the normal planning approval processes that apply to most other developments (☛ described in Chapter 5).

Instead, Part 8 of the Water Management Act contains special provisions for assessing an application for a dam structure, as outlined below.

Do I need approval to put in a farm dam?

With a few exceptions, it is an offence to build a dam or weir without approval. You could also be prosecuted for environmental harm resulting from your unlawful construction or use of a dam or weir. So it is essential to gain any necessary approvals and advice beforehand. You can contact a regional water manager for advice.

1. Approval from your local council

Generally, a dam or weir will be considered to be a 'permitted development' on land that is zoned rural, so you may not be required to get normal planning approval. However, in the first instance, you should contact your local council to see if you require a permit under the council's planning scheme. (☛ Go to Chapter 5 for details).

If the dam requires a permit under Pt 8 of the *Water Management Act 1999*, no additional planning permit is required (s.60A of the *Land Use Planning and Approvals Act 1993*).

2. Approval from Dam Committee

A statutory committee, *the Assessment Committee for Dam Construction*, is specifically responsible for assessing applications for the construction of dams. Before making an application, contact your Regional Water Manager to discuss your proposal.

A dam permit is required for all dams, except in the following circumstances:

- The dam is on a watercourse that will hold less than 1 megalitre of water; or
- The dam is constructed for the primary purpose of storing waste, in which case an approval from the *Environment Protection Authority* will be required; or
- To construct an emergency temporary levee or bank during flood.

If you build a dam without a permit, or fail to comply with the conditions of a dam permit, you could be prosecuted and fined up to $26,000.

The *Water Resources Division* provides technical resources and support to the Committee. The Committee can delegate the assessment of some dam permit applications to the *Water Resources Division*, provided the proposed dam will not have a significant adverse impact on another person, cause material or serious environmental harm or be located within a pipeline planning corridor.

Depending on the scale and potential environmental impact of the proposed dam, one of the following assessment procedures will be followed:

- **The *standard approvals process*** (for the majority of applications).
- **The *enhanced approvals process*** (for dam proposals that are expected to have significant potential environmental impacts and/or significant issues raised in representations).

If the Committee believes that a proposed dam is not likely to have a significant adverse impact on another person or cause material or serious environmental harm, the standard approval process will apply. The dam permit application is not publicly advertised and the Committee can delegate its assessment and approval powers to the Water Resources Division.

Where the proposed dam or weir is likely to have significant local environmental effects, including on threatened species or Aboriginal Heritage, the enhanced approval process will be followed. Notice of the dam permit application is publicly advertised and any concerned members of the public can make a representation.

Representations must be made within 14 days of the public advertisement.

If the proposed dam has the potential to create a significant environmental impact then an Environmental Impact Assessment may be required before the Committee makes its decision.

In making its decision, the Assessment Committee must have regard to the objectives of the Act (including the RMPS objectives), any water management plan, matters raised in representations, the effect of the dam on water flows and dam safety. Issues that you could raise in a representation include the impact of the dam on fish passage in the watercourse, future use of water for agriculture and forestry, effects on land drainage and potential damage to cultivated pastures, forests, fisheries, riparian vegetation and local scenery.

If you made a representation, you can appeal against the Committee's decision in the Tribunal (☛ see Chapter 14). However, appeals are restricted - you can only appeal on the grounds that the approval process did not follow the correct procedure or was unfair. You cannot appeal on the grounds any technical information taken into account or technical finding of the Committee was incorrect.

Appeals must be lodged within 14 days of being notified of the Committee's decision.

3. Approval from Inland Fisheries

In some situations, the *Inland Fisheries Service* may require the owner of a dam placed across a river to make a 'fish-pass' if the dam does not allow the free passage of fish. If the owner fails to create a 'fish-pass' the *Inland Fisheries Service* has the authority either to do the work or have the work done.