



Queensland

# **Water Legislation (Dam Safety) Amendment Act 2017**

**Act No. 11 of 2017**

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**An Act to amend the Water Act 2000 and the Water Supply (Safety and Reliability) Act 2008 for particular purposes**

**[Assented to 19 May 2017]**





Queensland

# Water Legislation (Dam Safety) Amendment Act 2017

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Water Legislation (Dam Safety) Amendment Act 2017*.

### **2 Commencement**

This Act commences on 1 July 2017.

## **Part 2 Amendment of Water Act 2000**

### **3 Act amended**

This part amends the *Water Act 2000*.

### **4 Amendment of s 813 (Contravening licence condition)**

(1) Section 813(3)(c) and (d)—

*omit, insert—*

(c) under the Water Supply Act—

(i) a declaration is in force for a temporary full supply level for the dam under chapter 4, part 3 of that Act; or

(ii) the full supply level for the dam is reduced under chapter 4, part 4 of that Act.

(2) Section 813(4)—

*omit, insert—*





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service

(3) Section 36—

*insert—*

(2A) Subsection (2) does not apply to an authorised person entering public land under subsection (1)(c) if there is no person in actual occupation of the land.

(4) Section 36—

*insert—*

(7) In this section—

***public land*** means land that is under the management or control of—

(a) the State; or

(b) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.

(5) Section 36(2A) to (7)—

*renumber* as section 36(3) to (8).

## 7 **Amendment of s 341 (What is a referable dam)**

(1) Section 341(1)(a), ‘required to be’—

*omit.*

(2) Section 341—

*insert—*

(1A) Also, a dam is a ***referable dam*** if—

(a) under section 342B, the dam becomes a referable dam; and

(b) the chief executive has not, under section 349, accepted a failure impact assessment of the dam.

(3) Section 341(1A) and (2)—

[s 8]

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*renumber* as section 341(2) and (3).

## **8 Insertion of new ch 4, pt 1, div 1A**

Chapter 4, part 1—

*insert—*

### **Division 1A Referable dam notices**

#### **342A Chief executive may give referable dam notice to particular dam owners**

- (1) This section applies if the chief executive reasonably believes a dam would, if it were failure impact assessed, have a category 1 or category 2 failure impact rating.
- (2) The chief executive may give the owner of the dam a notice (a *referable dam notice*) stating—
  - (a) the failure impact rating the chief executive believes the dam would have if it were failure impact assessed; and
  - (b) the reasons for the belief; and
  - (c) that the dam will be a referable dam with the stated failure impact rating on and from a stated day (the *effective day*), unless the owner gives the chief executive a failure impact assessment for the dam; and
  - (d) that if a failure impact assessment for the dam is not given to the chief executive before the effective day, the owner must have the dam failure impact assessed within a stated period of at least 5 years after the effective day; and
  - (e) any safety conditions the chief executive proposes to apply to the dam under division 3.

- (3) The effective day must be at least 60 business days after the notice is given.
- (4) The referable dam notice must include or be accompanied by an information notice for the decision to give the notice.
- (5) This section does not apply to a dam that must be failure impact assessed under section 343.

### **342B Effect of referable dam notice if dam is not failure impact assessed**

- (1) This section applies if the owner of a dam is given a referable dam notice and, before the effective day for the notice, does not give the chief executive a failure impact assessment for the dam.
- (2) The dam becomes a referable dam with the failure impact rating stated in the notice on the effective day.

## **9 Amendment of s 344 (Process for failure impact assessment)**

- (1) Section 344, heading—

*omit, insert—*

### **344 Requirements for giving failure impact assessment to chief executive**

- (2) Section 344(3), after ‘chief executive’—

*insert—*

under this part

## **10 Replacement of s 345 (Requirement for other failure impact assessments)**

Section 345—

*omit, insert—*

[s 11]

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### **345 Obligation to complete later failure impact assessment**

- (1) This section applies if—
  - (a) the owner of a dam is given a referable dam notice for the dam and, before the effective day for the notice, the owner does not give the chief executive a failure impact assessment for the dam; or
  - (b) a dam has been failure impact assessed under this part, including under subsection (2).
- (2) The owner must—
  - (a) if subsection (1)(a) applies—ensure a failure impact assessment of the dam is completed and given to the chief executive within the period stated in the referable dam notice under section 342A(2)(d); or
  - (b) otherwise—ensure another failure impact assessment of the dam is completed and given to the chief executive within the period stated in the notice given to the owner under section 350.

Maximum penalty—1665 penalty units.

*Note—*

This provision is an executive liability provision—see section 487.

## **11 Replacement of s 346 (Failure impact ratings for dams)**

Section 346—

*omit, insert—*

### **346 Failure impact ratings for dams**

- (1) A dam has, or a proposed dam after its construction will have, a category 1 failure impact rating if—

- (a) a failure impact assessment for the dam states that the population at risk is 2 or more persons but not more than 100 persons; and
  - (b) the chief executive, under section 349, accepts the failure impact assessment.
- (2) A dam has, or a proposed dam after its construction will have, a category 2 failure impact rating if—
- (a) a failure impact assessment for the dam states that the population at risk is more than 100 persons; and
  - (b) the chief executive, under section 349, accepts the failure impact assessment.
- (3) In this section—
- population at risk***—
- (a) means the number of persons, worked out under the failure impact assessment guidelines, whose safety will be at risk if the dam or the proposed dam after its construction fails; but
  - (b) does not include—
    - (i) a resident on the parcel of land on which the dam is situated; or
    - (ii) if the dam is situated at a workplace under the *Work Health and Safety Act 2011*— a person at the workplace; or
    - (iii) if the dam is situated at a place that is a mine under the *Mining and Quarrying Safety and Health Act 1999* or coal mine under the *Coal Mining Safety and Health Act 1999*— a person at the mine or coal mine.

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## 12 Amendment of s 348 (Cost of failure impact assessment)

- (1) Section 348(2), after ‘section 343(5)’—

*insert—*

or carried out by an owner of a dam for which a referable dam notice is given

- (2) Section 348(2)(a)(ii)—

*omit, insert—*

(ii) the dam, or the proposed dam, is assessed as having neither a category 1 nor a category 2 failure impact rating; and

- (3) Section 348(2)(a)(iii), ‘the dam’—

*omit, insert—*

for a failure impact assessment required under section 343(5)—the dam

## 13 Amendment of s 352A (Definitions for div 2A)

- (1) Section 352A, heading, ‘div 2A’—

*omit, insert—*

### **division**

- (2) Section 352A, definitions *dam failure hazard, disaster management plan, disaster management review report, disaster management review response, district group, downstream release hazard, emergency condition, emergency event, local disaster management plan, local group, relevant disaster management group, relevant district group* and *relevant local group*—

*omit.*

- (3) Section 352A—

*insert—*

***dam hazard***, for a dam, means a reasonably foreseeable situation or condition that may—

- (a) cause or contribute to the failure of the dam, if the failure may cause harm to persons or property; or
- (b) require an automatic or controlled release of water from the dam, if the release of the water may cause harm to persons or property.

**dam hazard event**, for a dam, means an event arising from a dam hazard if—

- (a) persons or property may be harmed because of the event; and
- (b) a coordinated response involving 2 or more of the relevant entities mentioned in paragraphs (b) to (d) of the definition *relevant entity* is unlikely to be required to respond to the event; and
- (c) the event is not an emergency event.

**disaster management plan**, of a district group or local government, means the group's or local government's disaster management plan under the Disaster Management Act.

**district group**, for an emergency action plan, means a district group established under the Disaster Management Act, section 22 whose disaster district under that Act could, under the plan, be affected by a dam hazard.

**emergency event**, for a dam, means an event arising from a dam hazard if—

- (a) persons or property may be harmed because of the event; and
- (b) any of the following apply—
  - (i) a coordinated response involving 2 or more of the relevant entities mentioned in paragraphs (b) to (d) of the

[s 13]

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definition *relevant entity* is likely to be required to respond to the event;

- (ii) the event may arise because of a disaster situation declared under the Disaster Management Act;
- (iii) an entity performing functions under the State disaster management plan may, under that plan, require the owner of the dam to give the entity information about the event.

***local group***, for an emergency action plan, means a local group established under the Disaster Management Act, section 29 whose local government area could, under the plan, be affected by a dam hazard.

***notice response*** see sections 352HB(4) and 352HC(3).

***relevant entity***, for a dam, means each of the following under the emergency action plan for the dam—

- (a) the persons who may be affected, or whose property may be affected, if a dam hazard event or emergency event were to happen for the dam;

*Examples for paragraph (a)—*

- the owners of parcels of farm land adjacent to the dam
- residents of a township

- (b) each local group and district group for the emergency action plan;

- (ba) each local government whose local government area may be affected if a dam hazard event or emergency event were to happen for the dam;

- (c) the chief executive;



- (d) another entity the owner of the dam considers appropriate.

*Example for paragraph (d)—*

the Queensland Police Service

- (4) Section 352A, definition *approval period*, ‘section 352K(2)’—

*omit, insert—*

section 352K(7)

- (5) Section 352A, definition *chairperson*, ‘, of a relevant disaster management group,’—

*omit.*

#### **14 Omission of ss 352B–352D**

Sections 352B to 352D—

*omit.*

#### **15 Replacement of s 352E (Requirement for approved emergency action plan)**

Section 352E—

*omit, insert—*

##### **352E Requirement for, and main purpose of, emergency action plan**

- (1) The owner of a referable dam must have an approved emergency action plan for the dam.
- (2) The main purpose of an emergency action plan for a dam is to minimise the risk of harm to persons or property if a dam hazard event or emergency event for the dam happens.

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**16 Amendment of s 352F (Requirement to prepare emergency action plan)**

Section 352F, before penalty—

*insert—*

- (c) if the dam becomes a referable dam under section 342B—within 4 months after the day it becomes a referable dam.

**17 Omission of s 352G (Disaster management review of plan)**

Section 352G—

*omit.*

**18 Replacement of s 352H (Content of plan)**

Section 352H—

*omit, insert—*

**352H Requirements for plan**

- (1) The emergency action plan must—
  - (a) identify each dam hazard for the dam; and
  - (b) for each dam hazard—
    - (i) identify the area likely to be affected by a dam hazard event or emergency event arising from the dam hazard, including, for example, by attaching to the plan maps showing areas vulnerable to flooding if the event were to happen; and
    - (ii) identify each circumstance that indicates a material increase in the likelihood of the dam hazard event or emergency event happening; and

*Examples for subparagraph (ii)—*

- an unusual amount of seepage from the dam
  - rainfall in the catchment area of the dam
- (iii) state when and how the owner of the dam plans to warn persons who may be harmed, or whose property may be harmed, by the dam hazard event or emergency event, if a circumstance mentioned in subparagraph (ii) arises or the dam hazard event or emergency event happens, including the order of priority in which the persons or categories of persons are to be warned; and
- (iv) state when and how the owner plans to notify the relevant entities for the dam if a circumstance mentioned in subparagraph (ii) arises or the dam hazard event or emergency event happens, including the order of priority in which the relevant entities are to be notified; and
- (v) state the actions the owner plans to take in response to a dam hazard event or emergency event; and
- (c) be accompanied by each notice given by a local government or district group under section 352HB(3) or 352HC(2) for the plan, and any notice responses by the owner; and
- (d) include any other relevant matter prescribed by regulation.
- (2) For subsection (1)(b)(iii) the emergency action plan may provide for the dam owner to make arrangements with a relevant entity for warnings to be given by the relevant entity on behalf of the

dam owner in appropriate circumstances.

### **352HA Requirement to give emergency action plan to local governments and district groups**

Before giving the chief executive an emergency action plan for a dam, the owner of the dam must give a copy of the plan to—

- (a) each local government whose local government area may be affected by a dam hazard identified in the plan; and
- (b) each district group for the plan.

### **352HB Assessment by local government**

- (1) If a local government is given a copy of an emergency action plan under section 352HA(a), the local government must assess the emergency action plan for consistency with its disaster management plan.
- (2) In assessing the emergency action plan, the local government must consult with its local group for the plan.
- (3) The local government must, within 30 business days after receiving the emergency action plan, give the owner of the dam a notice stating—
  - (a) whether the local government considers the plan is consistent with its disaster management plan; and
  - (b) if it considers the plan is not consistent with its disaster management plan, the reasons why it considers the plan is not consistent.
- (4) The owner of the dam may prepare a written response to the notice (a *notice response*) and attach it to the notice.

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### **352HC Review by district group**

- (1) If a district group is given a copy of an emergency action plan under section 352HA(b), the chairperson of the group may review the plan for consistency with the group's disaster management plan.
- (2) The chairperson may, within 30 business days after receiving the emergency action plan, give the owner of the dam a notice stating—
  - (a) whether the group considers the plan is consistent with the group's disaster management plan; and
  - (b) if the group considers the plan is not consistent with its disaster management plan, the reasons why it considers the plan is not consistent.
- (3) If the chairperson gives a notice under subsection (2), the owner of the dam may prepare a written response to the notice (a *notice response*) and attach it to the notice.

## **19 Amendment of s 352I (Chief executive to consider plan)**

- (1) Section 352I(1), 'and decide'—

*omit, insert—*

and, within 30 business days after receiving the plan, decide
- (2) Section 352I(2)—

*omit, insert—*

  - (2) In considering the emergency action plan, the chief executive must have regard to—
    - (a) each notice given by a local government under section 352HB(3) for the plan; and

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- (b) each notice given by the chairperson of a district group under section 352HC(2) for the plan; and
- (c) any notice responses prepared by the owner of the dam; and
- (d) any disaster management standards under the Disaster Management Act.

**20 Amendment of s 352J (Criteria for approving plan)**

Section 352J(b), ‘emergency condition’—

*omit, insert—*

dam hazard

**21 Amendment of s 352K (Approval of plan)**

(1) Section 352K(2), ‘(the *approval period*)’—

*omit.*

(2) Section 352K—

*insert—*

- (3) Subsection (4) applies if, within 30 business days after the emergency action plan is given to the chief executive for approval under section 352F, the chief executive has not approved the plan.
- (4) The chief executive is taken to have approved the plan on the day that is 30 business days after the plan was given to the chief executive (the *deemed approval day*).
- (5) If subsection (4) applies to an emergency action plan—
  - (a) the approval is—
    - (i) for 2 years after the deemed approval day; or

- 
- (ii) if the chief executive gives the dam owner notice of a longer period—the longer period; and
  - (b) the chief executive must comply with subsection (1) in relation to the plan as soon as practicable after the deemed approval day.
- (6) For subsection (5)(a)(ii)—
- (a) the notice must be given within 2 years after the deemed approval day; and
  - (b) the longer period must not be more than 5 years after the deemed approval day.
- (7) The period mentioned in subsection (2) or (5)(a) for an emergency action plan is the ***approval period*** for the approved plan.

**22 Amendment of s 352N (Dam owner must ensure particular individuals have access to plan)**

Section 352N(b)(ii), ‘an emergency condition’—

*omit, insert—*

a dam hazard event or emergency event

**23 Amendment of s 352O (Review by chief executive and direction to prepare and submit new plan)**

(1) Section 352O(1), ‘an emergency condition’—

*omit, insert—*

a dam hazard

(2) Section 352O(1), example, item 2, ‘the relevant disaster management group’—

*omit, insert—*

a local group or district group

[s 24]

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- (3) Section 352O(2), ‘emergency condition’—  
*omit, insert—*  
dam hazard

## **24 Replacement of s 352Q (Amending plan by agreement)**

Section 352Q—

*omit, insert—*

### **352Q Amending plan by agreement**

- (1) The owner of a referable dam may ask the chief executive to amend the approved emergency action plan for the dam to—
  - (a) correct a minor error; or
  - (b) make another change that is not a change of substance.
- (2) The request must be in writing and accompanied by a copy of the plan showing the proposed amendment.
- (3) The chief executive may—
  - (a) decide to approve or refuse the amendment; and
  - (b) give the owner notice of the decision.
- (4) If, within 10 business days after the request is made, the chief executive has not given the owner notice of the decision, the chief executive is taken to have approved the amendment.
- (5) If the amendment is approved under this section, the plan as amended is taken to be the approved emergency action plan.



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**25 Amendment of s 352T (Preparation and submission of emergency event report)**

(1) Section 352T—

*insert—*

(1A) For subsection (1), an emergency event relating to the dam happens if—

(a) a person or property has been or may be harmed because of the event; and

(b) any of the following applies—

(i) a coordinated response involving 2 or more of the relevant entities mentioned in paragraphs (b) to (d) of the definition *relevant entity* was required to respond to the event;

(ii) the event arose because of a disaster situation declared under the Disaster Management Act;

(iii) an entity performing functions under the State disaster management plan has, under that plan, required the owner of the dam to give the entity information about the event.

(2) Section 352T(3), definition *end*—

*omit, insert—*

*end*, of an emergency event, means when the dam hazard giving rise to the event is no longer a material risk to persons or property.

**25A Amendment of s 352U (Preparation and submission of emergency event interim report)**

Section 352U—

*insert—*

(1A) For subsection (1)(a), an emergency event

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relating to the referable dam happens if—

- (a) a person or property has been or may be harmed because of the event; and
- (b) any of the following applies—
  - (i) a coordinated response involving 2 or more of the relevant entities mentioned in paragraphs (b) to (d) of the definition *relevant entity* was required to respond to the event;
  - (ii) the event arose because of a disaster situation declared under the Disaster Management Act;
  - (iii) an entity performing functions under the State disaster management plan has, under that plan, required the owner of the dam to give the entity information about the event.

## **26 Amendment of s 354 (Deciding safety conditions)**

Section 354(4)—

*omit, insert—*

- (4) The safety conditions must be relevant to, but not an unreasonable imposition on, the dam or be reasonably required for the dam.

## **27 Replacement of ch 4, pt 3, divs 1–3**

Chapter 4, part 3, divisions 1 to 3—

*omit, insert—*

### **Division 1 Preliminary**

#### **388 Definition for part**

In this part—

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*safety requirements* see section 396(2).

### **389 Application of part**

This part applies to a dam for which an approved flood mitigation manual is in force.

## **Division 2      Declaring temporary full supply level**

### **390 Minister may declare temporary full supply level**

- (1) This section applies if the Minister considers the impacts of a potential flood or drought may be mitigated by having a full supply level for a dam that is different from the full supply level stated in the resource operations licence.
- (2) The Minister may, by notice given to the owner of the dam, declare a new full supply level (a *temporary full supply level*) for the dam.

*Note—*

For the effect of the declaration of a temporary full supply level on the resource operations licence under which the dam operates, see the Water Act, section 813.

- (3) In deciding whether to make the declaration, the Minister—
  - (a) must have regard to—
    - (i) the outcome of any consultation between the chief executive and the owner of the dam about the full supply level for the dam; and
    - (ii) the extent to which the temporary full supply level is likely to mitigate the

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- impacts of a potential flood or drought;  
and
  - (iii) impacts the temporary full supply level may have on the water security of the dam; and
  - (iv) whether the temporary full supply level would affect the safety of the dam; and
  - (v) any other positive or negative impacts of the temporary full supply level the Minister considers relevant; and
- (b) may have regard to any matter the Minister considers appropriate, including, for example—
- (i) meteorological forecasts; and
  - (ii) the public interest.
- (4) A declaration under this section—
- (a) takes effect on the day stated in the declaration; and
  - (b) ceases to have effect on the earlier of the following days—
    - (i) the day stated in the declaration;
    - (ii) the day that is 6 months after the declaration is made;
    - (iii) the day the declaration is revoked.
- (5) A copy of a notice given to an owner of a dam under subsection (2) must be published in the gazette as soon as practicable after it is given.
- (6) The Minister may declare a temporary full supply level more than once for a particular dam.
- (7) In this section—
- water security**, of a dam, includes the reliability of water supply having regard to the availability

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of water stored in, and the cost of supplying water from, the dam.

## 28 Insertion of new ch 4, pt 4

Chapter 4—

*insert—*

### **Part 4 Reducing full supply level for safety purposes**

#### **399A Application of part**

This part applies to a dam to which a resource operations licence applies.

#### **399B Dam owner may reduce full supply level in certain circumstances**

- (1) This section applies if a dam owner believes, based on advice of a registered professional engineer, that there is an unacceptable risk of a failure of a dam if it operates at the full supply level stated in the resource operations licence for the dam.
- (2) The owner may reduce the full supply level of the dam to the level (the *reduced full supply level*) that lowers the risk of a failure of the dam to a level acceptable to the owner, having regard to the advice of the registered professional engineer.

*Note—*

For the effect of the reduced full supply level on the resource operations licence under which the dam operates, see the Water Act, section 813.

- (3) The owner must, as soon as practicable after reducing the full supply level, give notice of the

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reduced full supply level to—

- (a) the chief executive; and
  - (b) if the Water Act, section 813 is not administered in the department—the chief executive of the department in which the section is administered.
- (4) The notice must—
- (a) include the reasons why it is necessary to operate the dam at the reduced full supply level; and
  - (b) include the period for which it is necessary to operate the dam at the reduced full supply level; and
  - (c) be accompanied by a copy of the registered professional engineer’s advice about the reduced full supply level.
- (5) No compensation is payable to any person because of the operation of this section.
- (6) In this section—
- unacceptable risk*, of a failure of a dam, means a risk that is not acceptable under a guideline about the flood capacity of dams made under section 572.

### **399C Reporting requirements while full supply level reduced**

- (1) This section applies if a dam continues to operate at a reduced full supply level under section 399B for more than 1 year.
- (2) The owner of the dam must, within 1 month after the end of each 1 year period after the full supply level is reduced, give a report to—
  - (a) the chief executive; and

- 
- (b) if the Water Act, section 813 is not administered in the department—the chief executive of the department in which the section is administered.
  - (3) The report must state—
    - (a) when the owner intends to allow the dam to return to the full supply level stated in the resource operations licence for the dam; and
    - (b) if the owner is a service provider—
      - (i) the impacts the reduced full supply level has had on the provider’s customers since its reduction; and
      - (ii) the likely future impacts on customers for the period for which the provider proposes to keep the dam at a reduced full supply level; and
      - (iii) the impacts the reduced full supply level has had or is likely to have on achieving the water plan outcomes for a water plan under the Water Act.

## 29 Insertion of new ch 10, pt 11

Chapter 10—

*insert—*

### **Part 11                      Transitional provision for Water Legislation (Dam Safety) Amendment Act 2017**

#### **674 Application of s 352K for emergency action plans given to chief executive before commencement**

- (1) This section applies to an emergency action plan

[s 30]

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given to the chief executive under previous chapter 4, part 1, division 2A if, immediately before the commencement, the chief executive had not decided to approve or refuse to approve the plan under previous section 352I.

(2) For section 352K(4), the plan is taken to have been given to the chief executive on the commencement.

(3) In this section—

*previous*, followed by a provision number, means the provision as in force immediately before the commencement.

### 30 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definitions *dam failure hazard*, *disaster management review report*, *disaster management review response*, *downstream release hazard*, *emergency condition*, *feasibility advice*, *full supply level*, *impact information*, *impact information notice*, *local disaster management plan*, *proposed temporary full supply level*, *relevant disaster management group*, *relevant district group*, *relevant local group* and *water security*—

*omit.*

(2) Schedule 3—

*insert—*

*dam hazard*, for chapter 4, part 1, division 2A, see section 352A.

*dam hazard event*, for chapter 4, part 1, division 2A, see section 352A.

*effective day*, for a referable dam notice, see section 342A(2)(c).

*full supply level* means for a dam generally, the level of the dam's water surface when water storage is at maximum operating level without



being affected by flood.

**notice response**, for chapter 4, part 1, division 2A, see sections 352HB(4) and 352HC(3).

**reduced full supply level**, for a dam, see section 399B(2).

**referable dam notice**, for chapter 4, part 1, division 1A, see section 342A(2).

**State disaster management plan** see the Disaster Management Act, section 49(1).

**water security** includes the reliability of water supply.

- (3) Schedule 3, definition *approval period*, paragraph (a), ‘section 352K(2)’—

*omit, insert*—

section 352K(7)

- (4) Schedule 3, definition *temporary full supply level*, ‘section 388’—

*omit, insert*—

section 390(2)

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