**WATER RESOURCES BILL 1990**

**Legislative Assembly, 8 February 1990, pages 29-32**

Second reading

**The Hon. S.M. LENEHAN (Minister of Water Resources)** obtained leave and introduced a Bill for an Act to provide for the management of the water resources of the State; to preserve water quality; to provide for the sharing of available water on a fair basis; to repeal the Water Resources Act 1976; and for other purposes. Read a first time.

The Hon. S.M. LENEHAN: I move: That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it. Leave granted.

Explanation of Bill

A Water Resources Bill was presented to this House and passed in October last year. Further consideration of this legislation was curtailed however when Parliament was prorogued in consequence of the calling of the last election. The Bill now introduced is a modification of the previous Bill taking account of the debate which took place in this House and comments which have been received from the community. Nevertheless the fundamentals remain unchanged and I reitterate substantially the explanation which I previously gave.

The proper management of our water resources is as essential to the State as the resource is to survival. It is widely recognised that such management will face many and diverse challenges in the 1990’s and beyond. Indeed, with a resource which is so vital to the State’s welfare it is essential to cast one’s mind forward for several decades in considering arrangements for proper water resource management. The integration of the management of land, water and the environment must progress to more practical implementation. Careful consideration must be given to the most appropriate supplies of water for domestic, irrigation, industrial and commercial purposes. The protection of water quality, particularly as regards diffuse source pollution, but also with point source discharges, is a problem both of detection and proof. The need to protect our wetlands and the ecosystems which depend upon them is not only evident out is also demanded by a more informed community.

These factors combined with the fiscal pressures to achieve more with less dictate the need for a comprehensive review of all water related legislation to provide a legislative framework capable of dealing with today’s problems and yet have the flexibility to cope with the needs of the future.

This Bill is the first step in the review process. It is the management component forming the umbrella for legislation governing water, sewerage and irrigation activities which are more business oriented and are to follow later. It builds on the significant legislative reform which took place in 1976. The Water Resources Act was then the most advanced of its kind and many of its provisions have been adopted by other Governments.

The administration of this Act over the last 13 years has identified a number of areas where improvements can be made. While flexibility, clarity and proactivity are all elements of these changes, the fundamental objective is to make it easier for the genuine, conscientious and fair water user and as tough as possible for those who through indifference, negligence or self-interest are putting our water resources at risk.

The review of this Act has involved public consultation. A Green Paper was released in October 1988 and 46 submissions were received from a broad cross-section of the community. A copy of the Bill has been sent to all who responded to the Green Paper (including organisations such as the United Farmers and Stockowners of South Australia Inc., the Local Government Association, etc.) as well as the Water Resources Council and all regional advisory committees. Reaction to the proposals was generally favourable. This Bill takes account of all comments received.

Many of the concepts of the exisiting Water Resources Act have been retained in this Bill. I now proceed to explain those areas where the reasons for change are not self-evident. In keeping with recent trends in legislation, the objects of the Bill are stated to provide focus and direction in its administration. The key elements include the sustainable use of water, its protection from pollution, its equitable distribution as well as the protection of wetlands and ecosystems.

The functions of the Minister are also clearly identified. I draw attention particularly to the responsibility to endeavour to integrate the policies relating to the management of land, water and the environment. Members will be aware that there has been much talk about integrated catchment management over the last few years. This is the first time in this State that this concept has received legislative expression by incorporating it as part of the Minister’s functions.

The need for increased interaction with the community has two facets. The Minister is required to undertake public awareness programs as well as to involve the community in the preparation of regional management plans. Another important aspect of the Minister’s functions is to adopt policies which encourage the attainment of the objects of the legislation. This will ensure that there is not the need for constant recourse to the punitive measures provided.

The establishment of the advisory network has been one of the most innovative aspects of the current Act. At present, in addition to the Water Resources Council there are nine Regional Advisory Committees widely dispersed throughout the State as well as the Well Drillers Examination Committee. While there may have been some criticism from time to time about the composition of some committees or their method of operation, it is generally accepted that the network has been useful in ensuring that the local and regional concerns have been properly addressed.

In considering the future of the council and the role of committees, it is important to recognise that—

(a) over the past 13 years, most of the policies required to assist the management of water usage for irrigated agriculture have been formulated;

(b) there is acceptance that local people with practical experience can make a more significant contribution in water resource management. There is merit in introducing some level of self-management and hence more responsibility to committees;

(c) greater efficiencies will be achieved if recommendations or decisions made by committees within approved policies did not have to be submitted to council;

(d) the broad-based expertise of council should be available to assist in the development of policies in all aspects of water management rather than limited to issues arising under the Water Resources Act only.

The responsibilities of council will evolve over the next few years. The type of policies in which it could become involved could include matters such as domestic water usage, pricing policies, standards for water services, strategies for water conservation and wastewater reduction.

A degree of flexibility is required in the composition of council. This is achieved in the Bill by firstly diversifying membership and by providing scope to appoint up to four members with unspecified qualification. The council itself will have the opportunity to periodically assess the type of skills required for it to discharge its responsibilities. This will assist the Minister in deciding whether to recommend the appointment of additional members and if so will identify the attributes they should have. As a general rule, selection will be either by inviting appropriate organisations to submit a panel of names or by inviting applications publicly. Two of the most important changes relating to committees are:

(a) a stipulation that they should, as part of their function, have a closer liaison with the community;

b) the capacity to delegate to them some executive functions.

It is important to recognise that such delegation of powers will occur after full consultation with the committee concerned; executive powers will not be forced on unwilling committees. Quite a lot has happened in the regulation of the quantity of water taken particularly for irrigation purposes. Currently there are three watercourses and 12 regions covering the most critical underground water basins which have been proclaimed for water quantity control. This aspect of the legislation has worked quite well.

 At the administrative level, the Bill removes the artificial separation of provisions between surface and underground water in the water quantity section in the current Act. The new provisions recognise that even in proclaimed regions, there are some activities such as domestic, holiday homes or stock watering where the use of water is small and where it is unreasonable to require that a licence be obtained. The Minister is empowered to exempt water taken for certain purposes by gazettal.

The Bill also provides some power even in unproclaimed areas for the Minister to act in cases where there are blatant abuses in the taking of water by any individual. This provides much quicker remedy for those affected and obviates the delays and costs of having recourse to the common law. A person aggrieved by an action of the Minister has a right of appeal to the Tribunal.

The provisions relating to water quality have been significantly modified. Underpinning this reform are some fundamental concepts— .

(a) it is unrealistic to expect that the same level of stringent restrictions should apply throughout the State; although the minimum requirement should ensure that material should not be released into our waters if this would endanger plant, animal or fish life or the environment;

(b) there will inevitably be some sensitive locations such as the public water supply catchment area of the Mount Lofty Ranges where more stringent controls will be essential. This might include controls on the type of material which can be released and could extend to acts or activities on land (similar to those applying currently under the Waterworks regulations);

(c) it is important that any system of management should have the flexibility to exempt certain types of wastes where beneficial uses of water resources are not jeopardised and to grant licences for the discharge of other pollutants subject to appropriate conditions;

(d) more proactivity is required. Taking action after pollution has occurred is not the answer. It is important that action commence as soon as the potential for problem has been identified;

(e) the level of maximum penalties must be commensurate with the worst offence which can be committed. For instance, what penalty would be appropriate if someone released material which rendered a domestic water supply unuseable?

 Courts can be relied upon to impose fines which are not excessive for the offence committed. Where blatant pollution occurs, persons who offend should be required to pay for any damage done. The Bill incorporates these concepts. The provisions relating to wells have been modified to incorporate some key exemptions which are currently specified by proclamation. The Bill, nevertheless, provides for further exemptions to be granted by proclamation. It is intended that immediately this Bill becomes law, a number of activities (including trenches, excavations or other construction works associated with building, public services, experimentation, etc.) will be exempted, provided the excavation is not to be used as a source of underground water supply.

Members will note that the current flood management measures have not been retained, because in their current form they are of little effect. In addition, flood forecasting and warning in some areas is to be undertaken by the Bureau of Meteorology. While acknowledging the important role of local government authorities in planning land use which takes into account flood risk, nevertheless regulation making powers have been retained in case legal status must be given to some flood maps, or for other contingencies.

Finally, members will note that the range of matters which can be appealed against have been expanded. Ministerial decisions which impact on individuals are all now open to appeal. This is considered necessary to balance the greater powers sought.

This Bill, in providing a wider and more flexible range of powers and in clearly enunciating its objectives as well as the Minister’s powers, provides a legislative framework which will enable sound water resource management to continue in the future, building on the excellent foundation established with the Water Resources Act 1976.

Clauses 1 and 2 are formal.

Clause 3 repeals the Water Resource Act 1976.

Clause 4 defines terms used in the Bill.

Clause 5 provides that the Bill will bind the Crown.

Clause 6 makes the Bill subject to the Acts and agreements set out in schedule 1.

Clause 7 sets out the objects of the Bill.

Clause 8 requires that the Act be administered in accordance with its objects.

Clause 9 enumerates the functions of the Minister.

Clause 10 sets out the Minister’s powers.

Clause 11 is a power of delegation.

Clause 12 provides for the establishment of the South Australian Water Resources Council.

Clauses 13 to 16 are machinery provisions.

Clause 17 sets out the function of the council.

Clause 18 excludes a member of the council with a personal or pecuniary interest from participating in the council’s deliberations.

Clause 19 provides for the establishment of water resources committees. Subclauses (1) to (3) deal with committees established in relation to a watercourse or lake or proclaimed part of the State. Subclauses (4) and (5) deal with committees established for any other purpose and subclauses (6) and (7) provide for both categories of committees. Subclause (8) provides for the establishment of the Water Well Drilling Committee.

Clause 20 provides for payment of allowances and expenses.

Clause 21 continues the Water Resources Appeal Tribunal in existence and sets out its composition.

Clause 22 makes provisions in relation to permanent members of the tribunal.

Clause 23 provides for payment of allowances and expenses.

Clause 24 provides for the determination of questions by the tribunal.

Clause 25 provides for a Registrar.

Clause 26 excludes a member of the tribunal from participation in the hearing of a matter in which the member has a personal or pecuniary interest. The deputy of a permanent member can act if his or her member is disqualified under this clause. The other members are not a problem because they are selected from a pool of judges or magistrates or from the panel appointed under clause 21 (4).

Clause 27 sets out the powers of the tribunal.

Clause 28 provides for the appointment of authorised officers.

Clause 29 sets out their powers.

Clause 30 makes it an offence to hinder or obstruct an authorised officer.

Clause 31 sets out the Minister’s right to take water.

Clause 32 preserves riparian rights subject to the overriding provisions of the Bill.

Clause 33 provides for the proclamation of watercourses, lakes and wells.

Clause 34 restricts the right to take water from proclaimed watercourses, lakes or wells.

Clause 35 provides for the granting of licences to take water.

Clause 36 provides for renewal of licences.

Clause 37 provides for the variation and surrender of licences.

Clause 38 makes it an offence to contravene or fail to comply with a condition of a licence and empowers the Minister to vary, suspend or cancel the licence.

Clause 39 enables the Minister to authorise the taking of water for particular purposes specified by the Minister.

Clause 40 enables the Minister to act if water is being used at an unsustainable rate (40 (1)) or if one person is taking more than his or her fair share (40 (4)).

Clause 41 is an interpretive provision.

Clause 42 deals with the concept of degradation of water. Subclauses (1) and (2) set out different meanings, subclause (1) applying throughout the State and subclause (2) only applying in more sensitive areas proclaimed as water protection areas. To prove degradation of water outside these restricted areas the prosecution must prove that use or enjoyment of the water has been detrimentally affected or an animal, plant or organism is likely to be detrimentally affected. In the more sensitive areas it is only necessary to prove that the quality of the water was detrimentally affected during its dispersion. This will usually occur in the initial stages of dispersion and may only last for a few seconds. It Is not necessary to prove that any person was prevented from using the water during this initial stage or that any person or animal, plant or organism has suffered. This provision will catch people who release small quantities of polluting material which taken in isolation would not be a problem but may well be a problem if released by more than one or two individuals.

Clauses 43 and 44 create offences of polluting water directly (43) or by releasing material onto or from land and polluting water indirectly (44). Subclause (2) of both clauses creates liability for landowners but a landowner who can prove that there was nothing that he or she could reasonably have been expected to have done to prevent the offence has a defence under clause 48 (2).

Clause 45 provides an offence in relation to the storage or disposal of material underground.

Clause 46 provides for regulations prohibiting certain acts or activities that have a pollution potential.

Clause 47 is an evidentiary provision.

Clause 48 sets out certain defences.

Clause 49 provides for the granting of licences.

Clause 50 provides for the renewal of licences.

Clause 51 makes it an offence to contravene a licence.

Clause 52 provides for the variation of licences.

Clause 53 provides for the disposal, escape or storage of material pursuant to regulations.

Clause 54 enables the Minister to take action in the case of unauthorised release of material. The Minister may by notice require prevention of further release and may require clean up of the material already released.

Clause 55 enables the Minister to act if in his or her opinion there is a risk that material will escape into water.

Clause 56 is an interpretive provision.

Clause 57 limits the application of Part VI.

Clause 58 regulates certain activities in relation to watercourses or lakes to which Part VI applies.

Clause 59 provides for the issue of permits.

Clause 60 makes it an offence to contravene a permit.

Clause 61 enables the relevant authority to order a landowner or other person to take remedial action in relation to unauthorised obstructions, maintenance of a watercourse or lake in good condition or in relation to a contravention of clause 58.

Clause 62 is an interpretive provision.

Clause 63 requires that well drilling and associated work must be carried out by or under the supervision of a well driller licensed under Part VII. Subclause (4) provides a defence in the case of an emergency.

Clause 64 provides for the granting of well driller’s licences.

Clause 65 provides for renewal of licences.

Clause 66 provides for the issue of a permit to drill a well or carry out other associated work.

Clause 67 provides for contravention of a licence or permit.

Clause 68 enables the Minister to require remedial work to be done if there is a defect in a well or a well is in need of repair or maintenance.

Clause 69 provides for a right of appeal to the tribunal.

Clause 70 allows for a decision that is the subject of an appeal to be suspended pending the appeal.

Clause 71 makes it an offence to provide false or m isleading information.

Clause 72 makes it an offence to interfere with property of the Crown.

Clause 73 provides for vicarious liability of employers or principals for offences committed by their employees or agents.

Clause 74 provides that members of the governing body of a body corporate that commits an offence are also guilty of an offence and liable to an equivalent penalty.

Clause 75 is an evidentiary provision.

Clause 76 provides a general defence.

Clause 77 makes the more serious offences under the Bill minor indictable offences and provides that proceedings may be taken within five years after the commission of an offence.

Clause 78 provides that where money is due under the Act to the Minister or a public authority the money is a first charge on the land in relation to which the money is due.

Clause 79 provides for immunity from liability.

Clause 80 provides for exemption from the Act by regulation.

Clause 81 provides for the service of notices.

Clause 82 provides for the making of regulations.

Schedule 1 enumerates the Acts and agreements to which this Act will be subject (see clause 6).

Schedule 2 sets out transitional provisions.

The Hon. D.C. WOTTON secured the adjournment of the debate.