**STATUTES AMENDMENT (WATER RESOURCES) BILL 1997**

**Legislative Assembly, 28 May 1997, pages 1453-5**

Second reading

**The Hon. D.C. WOTTON (Minister for the Environment and Natural Resources)** obtained leave and introduced a Bill for an Act to amend the Environment Protection Act 1993 and other Acts as a consequence of the enactment of the Water Resources Act 1997; and for other purposes. Read a first time.

The Hon. D.C. WOTTON: 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. The Water Resources Act 1997, recently considered by Parliament requires a number of consequential amendments to be made to other relevant natural resources management legislation in order to be fully operational in the manner envisaged by the Government. In particular, consequential amendments will provide for better integration between the Water Resources Act and other associated legislation.

The need for better integration and co-ordination of efforts in natural resources management has been raised as a major issue for natural resource managers at all levels. The Water Resources Act is under pinned by the principles of ecologically sustainable development and integrated resource management, and is in itself an important step towards the resolution of the issue of integrated management. The amendments contained in the Bill now before the House will further facilitate effective integration by providing, wherever possible, a relatively seamless process for permit applications, which are designed to prevent duplication and conflict, and save time and resources, while ensuring that all relevant environmental issues are considered before issuing permits to undertake activities that may have an impact on a variety of natural resources.

Land use planning is one of the most significant determinants of water resources outcomes, and proposed amendments to the Development Act will facilitate the prevention of inconsistencies between development plans under the Development Act, and water plans under the Water Resources Act.

The Environment Protection Act will be amended to require the Environment Protection Authority to consult the relevant water resources manager before issuing an environmental authorisation, an environment protection order, or a clean up order, where that order or authorisation would allow an activity for which a permit under the Water Resources Act would otherwise be required. Certain applications (those relating to activities in water protection areas) will be referred to the Minister administering the Water Resources Act for formal consideration and advice on the grant or refusal, or grant with conditions, of the environmental authorisation. The Environment Protection Act will also be amended by incorporating in it various provisions that have remained in the Water Resources Act 1990 since enactment of the Environment Protection Act, but which will no longer have a place under the new Water Resources Act, as they deal solely with water quality (pollution) issues. The provisions in question provide for the proclamation of water protection areas (areas which are identified as requiring special protection against water pollution), and will allow the Minister to enforce the prevention of water pollution in water protection areas.

Amendments will also clarify that the statutory defence for polluting one’s own property does not apply to the pollution of water on or under property or a neighbouring property. (The amendment has been required only as clarification, as the law does not recognise ‘ownership’ of water by a land owner in any case, unless the water has been positively appropriated by the land owner). It would be clearly inappropriate for the statutory defence to apply to water, particularly groundwater, which moves long distances beneath the surface of the ground, potentially spreading a contamination far from its source.

The Local Government Act will be amended by removing the existing provisions relating to watercourse management. Councils’ powers to control activities relating to watercourses are now found within the Water Resources Act 1997.

The Pastoral Land Management and Conservation Act will be amended to require the Pastoral Board to consult the relevant water resources manager before approving a property plan, or issuing a notice to undertake certain remedial work on a property, where the plan or order would authorise or require an activity that is one of those normally controlled under the Water Resources Act. The Pastoral Land Management and Conservation Act will also be amended by providing that rights of persons passing through pastoral property, or holding mining tenements to pastoral land, are subject to the Water Resources Act.

The Soil Conservation and Land Care Act will be amended to provide that functions of Soil Conservation Boards will include any functions delegated under the Water Resources Act. The Soil Conservation and Land Care Act will also be amended to provide that district plans must be, as far as practicable, consistent with water plans that apply in the district. Where voluntary and compulsory property plans include activities that would otherwise be covered under the Water Resources Act, then the relevant authority under the Water Resources Act must be consulted prior to approval of the plan. Consultation is likewise necessary for certain activities that may be required to be undertaken by the terms of a soil conservation order.

The South Eastern Water Conservation and Drainage Act will be amended to provide that the management plan of the South Eastern Water Conservation and Drainage Board will need to be amended to ensure consistency with the plan of a catchment water management Board if at any time there is a Board in relation to any part of the South Eastern Drainage Board’s area. The Act will also be amended to require, in relation to the granting of a licence that would authorise an activity otherwise requiring a permit under the Water Resources Act, that the relevant water resources authority must be consulted before the licence is granted.

I commend this Bill to the House.

Explanation of Clauses

*Clause 1: Short title*

*Clause 2: Commencement*

*Clause 3: Interpretation*

These clauses are formal.

*Clause 4: Amendment of s. 29—Certain amendments may be made without formal procedures*

Clause 4 amends section 29 of the Development Act 1993. The amendment enables the Minister to amend a Development Plan "in accordance with" a plan, policy, standard, report (e.g. a report in a water plan under the Water Resources Act 1997) etc. instead of including the plan, policy, etc., in the Plan as section 29 presently provides. This will enable the Minister to tailor the amendment to the Plan. Clauses 5 to 20 amend the Environment Protection Act 1993:

*Clause 5: Amendment of s. 39—Notice and submissions in respect of applications for environmental authorisations*

Under the Water Resources Act 1997 a permit is not required for an activity that is the subject of an environmental authorisation. The purpose of the amendment to section 39 is to require the Authority under the Environment Protection Act 1993 to invite submissions from the authority under the Water Resources Act 1997 to whom an application for the permit would otherwise have had to be made before the Authority decides whether to grant or refuse the authorisation.

*Clause 6: Amendment of s. 46—Notice and submissions in respect of proposed variations of conditions*

Clause 6 makes a similar amendment in relation to the variation of conditions of an environmental authorisation.

*Clause 7: Amendment of s. 47—Criteria for grant and conditions of environmental authorisations*

Clause 7 makes a consequential amendment to section 47.

*Clause 8: Substitution of s. 61*

Clause 8 inserts definitions into section 61 in consequence of new sections 64A to 64D.

*Clause 9: Insertion of s. 61A*

Clause 9 provides for water protection areas following the repeal of the Water Resources Act 1990.

*Clause 10: Substitution of s. 62*

Clause 10 provides for the appointment of an authorised officer under the Water Resources Act 1996 as an authorised officer under the Environment Protection Act 1993.

*Clause 11: Amendment of s. 64—Certain matters to be referred to Water Resources Minister*

Clause 11 amends section 64 to limit its operation to applications of the kind set out in new subsection (1a).

 *Clause 12: Insertion of ss. 64A to 64D*

Clause 12 inserts new sections 64A to 64D. Sections 64A and 64B are sections 55 and 56 of the Water Resources Act 1990. Section 64C provides for delegation and section 64D provides that costs due to the Minister under section 64A or 64B are a charge on land.

*Clause 13: Amendment of s. 84—Defence where alleged contravention of Part*

Clause 13 amends section 84 so that it is not a defence where the property damaged is naturally occurring water.

*Clause 14: Amendment of s. 93—Environment protection orders*

*Clause 15: Amendment of s. 99—Clean-up orders*

These clauses require the Authority to invite submissions from the relevant authority under the Water Resources Act 1997 in relation to proposed environment protection orders and clean-up orders.

*Clause 16: Amendment of s. 118—Service*

 *Clause 17: Amendment of s. 135—Recovery of technical costs associated with prosecutions*

*Clause 18: Amendment of s. 138—Enforcement of charge on land*

*Clause 19: Amendment of s. 139—Evidentiary provisions*

These clauses make consequential amendments.

*Clause 20: Amendment of schedule 2*

Clause 20 inserts transitional provisions. New clause 6 of schedule 2 of the Environment Protection Act inserted by this clause will be used to transfer the substance of Part 4 Division 2 of the Water Resources Regulations 1990 under the Water Resources Act 1990 (dealing with control of waste on boats) to an environment protection policy under the principal Act. This clause is based on subclauses (6) and (7) of clause 5 of schedule 2 under which provisions under laws repealed by the Environment Protection Act 1993 were "fast tracked" into environmental protection policies.

*Clause 21: Repeal of Division 1 of Part 35*

Clause 21 repeals Part 35 Division 1 of the Local Government Act 1934. That Division sets out provisions relating to watercourses that have been superseded by the Water Resources Act 1997.

*Clause 22: Amendment of s. 41—Property plans*

*Clause 23: Amendment of s. 43—Notices to destock or take other action*

*Clause 24: Amendment of s. 59—Right to take water*

These clauses make consequential amendments to the Pastoral Land Management and Conservation Act 1989. Clauses 22 and 23 require consultation with the relevant authority under the Water Resources Act 1997. Clause 24 makes section 59 subject to the Water Resources Act 1997.

*Clause 25: Amendment of s. 29—Functions of boards*

*Clause 26: Amendment of s. 36—District plans*

*Clause 27: Amendment of s. 37—Voluntary property plans*

*Clause 28: Amendment of s. 38—Soil conservation orders*

*Clause 29: Amendment of s. 39—Provisions relating to compulsory property plans*

Clauses 25 to 29 amend the Soil Conservation and Land Care Act 1989. The amendment to section 29 makes it clear that a soil board has functions delegated to it under another Act. Clause 26 requires a district plan and three year program to be consistent with a relevant water plan under the Water Resources Act 1997. Clauses 27, 28 and 29 require a board to consult the relevant authority under the Water Resources Act 1997 in relation to voluntary and compulsory property plans and soil conservation orders.

*Clause 30: Amendment of s. 18—Management plan*

*Clause 31: Amendment of s. 43—Grant of licences*

Clauses 30 and 31 amend the South Eastern Water Conservation and Drainage Act 1992. Clause 30 requires the Board to amend its management plan if necessary so that it is not inconsistent with any relevant catchment water management plan under the Water Resources Act 1997. Clause 31 requires the relevant authority under the South Eastern Water Conservation and Drainage Act 1992 to consult the relevant authority under the Water Resources Act 1997 before granting or varying a licence.

*Clause 32: Amendment of s. 16A—Regulations to which this Act applies*

Clause 32 amends section 16A of the Subordinate Legislation Act 1978. Section 16A sets out the classes of regulations that are not subject to automatic expiry. The amendment includes in this category regulations under the Water Resources Act 1997 that declare a watercourse, lake or well to be a prescribed watercourse, lake or well or a part of the State to be a surface water prescribed area and regulations appointing a body to be a catchment water management board.

*Clause 33: Amendment of Water Resources Act 1997*

Clause 33 amends the transitional schedule of the Water Resources Act 1997. Paragraph (a) replaces subclause (1) of clause 2 of the schedule which provides for existing proclaimed watercourses, lakes and wells to be prescribed watercourses, lakes and wells under the new Act. The purpose of the amendment is to make it quite clear that proclaimed watercourses, lakes and wells under the Water Resources Act 1976 travel across to the new Act as well as those under the 1990 Act. Wells under the 1976 Act are a particular problem. Under section 41 of that Act an area of the State is declared to be a Proclaimed Region (wells as such are not declared to be proclaimed wells) and subsequent provisions regulate the taking of water from wells within the region. In other words proclamations under section 41 do not actually declare wells to be proclaimed wells.

In order to remove any suggestion that proclamations proclaiming watercourses, lakes or wells going back to 1976 under previous legislation may be regulations for the purposes of the Subordinate Legislation Act 1978, paragraph (a) of subclause (1) explicitly states that this is not so. The purpose of these amendments is to remove any argument in relation to the transition of the existing proclaimed water resources to the new Act.

Paragraph (b) replaces subclause (2) of clause 2 of the schedule. The new subclause (2) replaces paragraph (a) and makes a consequential change to paragraph (b) of the previous subclause. The reason for replacing paragraph (a) is to better express the intention which is to enable proclamations under the previous Acts to be varied or revoked.

Paragraph (c) extends the transitional operation of Part 6 of the Catchment Water Management Act 1995 for another year. Delays in passing and bringing the principal Act into operation mean that a levy imposed by councils under the principal Act for 1997-1998 would not be in time for inclusion in council rate notices. The additional administrative cost of sending out separate notices can be avoided if Part 6 of the Catchment Water Management Act continues to apply.

Paragraph (d) makes a consequential change.

Ms HURLEY secured the adjournment of the debate.