**WATER RESOURCES ACT AMENDMENT BILL 1979**

**Legislative Council 27 February 1979, pages 2981-2**

Second reading

 Received from the House of Assembly and read a first time. \

**The Hon. T. M. CASEY (Minister of Lands**): I move: That this Bill be now read a second time. It proposes several amendments to the principal Act, the Water Resources Act, 1976, that are of a disparate nature. The amendments have been proposed following a review of the operation of the Act since 1 July 1976, taking account of administrative experience and the views expressed by the Chairman of the Water Resources Appeal Tribunal.

The Bill proposes amendments to definitions of terms used in the principal Act designed to remove certain ambiguities and extend the application of the Act to publicly owned artificial water channels. Accordingly, new definitions of “watercourse” and “waters” are provided that more clearly define the ambit of the Act and provide for the extension to the waters in publicly owned artificial channels of the licensing controls on the taking or diversion of water under Part III and the water quality controls under Part V of the principal Act. This inclusion within the definition of “watercourse” of artificial channels vested in public authorities has been prompted by the decision that the most appropriate method of managing the utilisation of reclaimed water, such as that produced at the Bolivar sewage treatment works, would be by licensing in the same manner as applies to proclaimed watercourses under Part III of the principal Act.

 The Bill proposes amendments to sections 29 and 43 of the principal Act that are designed to make it clear that the Minister may issue licences to take water from proclaimed watercourses or underground waters in a proclaimed region immediately upon the watercourse or region being proclaimed without receiving applications. This amendment would ensure that the present administrative practice would have a clear legislative basis.

The repealed Control of Waters and Underground Waters Preservation Acts enabled the Minister to modify an authorised water allotment, by reducing it, if the water allotment for the preceding year had been exceeded. This principle was retained in the current legislation by virtue of regulations 18.3 and 31.1. The appeal tribunal has formed the opinion, with which the Law Department has concurred, that those regulations were ultra vires by virtue of sections 29 and 43 of the Act. Subsection (2a) of each of those sections enables the modification of the terms and conditions of a licence only with the consent of the holder of the licence. Sections 32 and 45 of the Act however, provide for the modification of the terms and conditions of a licence, but only in the event of a breach of the terms and conditions of that licence. Thus the use of water in excess of water allotment in breach of the terms and conditions of a licence, discovered after the issue of a licence for the succeeding year, cannot be penalised otherwise than by prosecution. This is often too severe a sanction for breaches of this nature. Accordingly, the Bill proposes amendments to sections 32 and 45 of the principal Act designed to enable the terms and conditions of a licence to be varied without the consent of the licence holder if the licence holder breached a term or condition of any corresponding licence held by him during the preceding year.

The system for the levying of charges for the use of water in excess of a water allotment applying to a River Murray licensee, and, as approved, to apply to a Northern Adelaide Plains underground water licensee, provides the means whereby excess water use is self-regulated. This has been found to be the most satisfactory way of administering this aspect of water use as it eliminates, except in cases of flagrant breaches, the necessity to initiate prosecutions. There is, however, no specific authorisation for the levying of such charges in the principal Act and accordingly the Bill proposes an amendment authorising the imposition of such charges by regulation. I seek leave to have the explanation of the clauses inserted in Hansard without my reading it. Leave granted.

Explanation of Clauses

Finally, the Bill proposes an amendment designed to make it clear that the appeal tribunal may adopt technical and scientific evidence heard in an appeal relating to a particular proclaimed watercourse or proclaimed region in any subsequent appeal relating to the same watercourse or region.

Clause 1 is formal. Clause 2 provides that the measure shall come into operation on a day to be fixed by proclamation. Clause 3 amends the definition section of the principal Act, section 5. The clause deletes the definition of “surface waters” and incorporates the matters comprehended by that term in a new definition of “waters”. This amendment is designed to remove ambiguities only. The clause recasts the definition of “watercourse” and includes within the meaning of that term any artificial channel that is vested in or under the control of a public authority. Apart from this addition, the new definition of “watercourse” is designed only to remove ambiguities in the existing definition. “Public authority” is also, by this clause, defined to include the Crown, councils and any prescribed statutory corporation.

Clause 4 amends section 29 of the principal Act by providing that the Minister may grant a licence to take water from a proclaimed watercourse without having to receive an application for the licence. Clause 5 amends section 32 of the principal Act by providing that the Minister may revoke, or suspend, or vary the conditions of, a licence to take water from a proclaimed watercourse if the licence holder has breached a condition of that licence or any licence under section 29 previously held by him during the preceding 12 months. Clause 6 amends section 43 of the principal Act by empowering the Minister, of his own motion, to grant a licence to take water from a well in a proclaimed region.

Clause 7 amends section 45 of the principal Act by providing that the Minister may revoke or suspend, or vary the conditions of, a licence to take water from a well in a proclaimed region if the licence holder has breached a condition of that licence or any licence under section 43 previously held by him during the preceding 12 months. Clause 8 amends section 65 of the principal Act by providing that the tribunal may receive in evidence any transcript of evidence in other proceedings before the tribunal and draw any conclusions of fact therefrom that it considers proper. Clause 9 amends section 79 of the principal Act, the regulation-making section, by empowering the making of regulations providing for charges for taking water in excess of the quantity fixed in a condition of a licence.

The Hon. R. C. DeGARIS secured the adjournment of the debate.