ENVIRONMENT PROTECTION BILL 1993

House of Assembly, 4 August 1993, Page 37

Second Reading

The Hon. M.K. MAYES (Minister of Environment and Land Management) obtained leave and introduced a Bill for an Act to provide for the protection of the environment, to establish the Environment Protection Authority and define its functions and powers, to repeal the Beverage Container Act 1985, the Clean Air Act 1984, the Environmental Protection Council Act 1972, the Marine Environment Protection Act 1990, the Noise Control Act 1977 and the Waste Manage­ment Act 1987, to amend the Water Resources Act 1990 and the Environment, Resources and Development Court Act 1993 and for other purposes. Read a first time.

The Hon. M.K. MAYES: 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 Environment Protection Bill is landmark legislation. It provides a framework amongst the most advanced in Australia to safeguard the essential life-supporting qualities of the South Australian environment.

The Bill sets out to promote and stimulate sustainable development and environmentally sound practices on the part of the vital wealth-generating sectors of the State, public authorities and the community as a whole. The Bill will foster a partnership between government and all sectors of the community necessary to achieve effective environmental protection and improvement. At the same time, it sets out the essential backdrop of rules, policies and remedies to apply when environmental performance does not match agreed community expectations.

Environmental rules, offences, penalties and remedies are necessary but not in themselves effective in achieving the environ­mental goals sought. Collaborative planning and action to meet the challenges and address the shortcomings will be essential elements in reaching those goals.

The focus of the new South Australian Environment Protection Authority (EPA), established by the Bill, will be to work positively and constructively with industry and the community to achieve cost- effective pollution prevention, waste reduction and management.

In South Australia, just as nationally and globally, we recognise the importance of economic development and employment proceeding hand-in-hand with measures to protect the quality of life of the community and future generations. That quality of life is dependent on effective measures to:

* protect air quality from motor vehicle, factory and other emissions;
* protect water quality from discharges affecting rivers, catchments, marine and groundwaters;
* guard against land contamination from landfills, industrial and other activities;
* protect the community from excessive noise; and
* to conserve natural resources by minimising industrial and domestic waste and encouraging recycling and the wise use of resources.

For the first time the Environment Protection Bill brings together these essential goals within a strategic framework provided by the principles of ecologically sustainable development (ESD). Those principles, incorporated into the objects of the Bill, mean that economic and environmental considerations will be integrated in addressing these so-called 'brown' environmental issues of pollution, waste, contamination and environmental harm generally. With a community now united in wanting to see economic and environmental progress, we can, by cost-effective environmental protection, promote economically and ecologically sustainable development. This ensures that the environment protection system also supports the South Australian economic development strategy.

To borrow a description coined by the former head of the Department, Dr Ian McPhail, this means 'wealth creation and environmental protection will be in line, not head-to-head'.

The Environment Protection Bill is not an extra layer of environmental law superimposed on existing legislation. The Bill replaces more than six existing Acts and licensing and approval systems. It provides instead a single, integrated and streamlined system of environmental protection. The Bill covers, in a holistic way, previously separate controls relating to clean air and ozone protection, the marine environment, inland and underground water resource protection, noise control, solid, liquid and hazardous waste manage­ment and beverage container recycling.

This integrated legislative approach to environmental protection, taking into account affects on land, air and water simultaneously, is the best path to effective environmental outcomes. But this fresh approach also means we can simplify the law, reduce the preoccupation with permit chasing by business, and abolish a series of separate statutory authorities numbering six in all.

Those benefits are consistent with the Government's agenda of public sector reform and will assist rather than impede the business sector. The Government Adviser on Deregulation concluded in his review of small business licensing that this Bill's streamlining of the current multiple licensing requirements will be beneficial to South Australian business.

The process culminating in this Bill has involved extensive consultation with environment, industry and community organisations beginning with a Green Paper published in 1991. This was followed by a White Paper and draft Bill released in August last year, along with the package of measures to finance the programs of the EPA. The draft Bill attracted eighty-four submissions which demonstrated broad support for the EPA and the proposed legislation, with some reservations from sectors of industry.

Since that time, a wide round of consultation with companies, industry sectors and industry associations has ensured that previous reservations about the Bill, and the mode of operation to be adopted by the EPA, have been clarified and addressed. That dialogue and partnership, which will be a feature of the new arrangements, has been recognised, for example, by the General Manager of the SA Chamber of Commerce and Industry, Mr Lindsay Thompson, who has praised the consultative process undertaken and the commitment of staff of the Office of the EPA in addressing legitimate views and positive suggestions advanced by the business sector.

The result of those consultations is an Environment Protection Bill which is directed at effective environmental solutions and goals, and yet provides to industry the requisite degree of certainty and time to adjust current practices, plant and technologies to meet desired environmental outcomes.

As a result of this landmark initiative, we can look forward to progressively achieving the environmental improvements sought by government, environment groups and the wider community.

The Environment Protection Bill has been developed as part of a legislative reform package with the recently enacted Development Act 1993, and the Environment, Resources and Development (ERD) Court Act 1993. The respective systems of initial development authorisation and ongoing environmental oversight are linked, resulting in streamlining of approval and licensing requirements and greater certainty for environmentally sound developments. The Environment Protection Bill, together with the Development and ERD Court Acts, completes a major Government initiative in legislative reform consolidating fourteen Acts of Parliament into these three principal Acts and two associated Acts dealing with coastal and heritage matters.

Development proposals with the potential to pollute the environment or generate significant waste will be referred to the EPA by the relevant development approval body under the Development Act. The EPA will have an input into that initial development authorisation and may impose conditions or, in certain instances, veto proposals. This means that the EPA can take a vital preventative approach to pollution and waste at the stage when development proposals are being planned, designed and assessed for approval.

Where the EPA has agreed to a development authorisation, the applicant will be assured of receiving an environmental authorisation under the Environment Protection Bill. An environmental authorisation, such as a licence, provides for ongoing environmental oversight of activities into the future. Conditions governing activities of environmental significance are adjusted periodically as scientific knowledge, environmental standards and expectations and technological advances to protect the environment change. The EPA will have an important role in seeing that environmental improvement is progressively achieved.

The Government's initiative in developing the EPA proposals has, in itself, had the welcome effect of stimulating industry and various public authorities to examine and improve their environmental performance. A range of companies and government agencies are undertaking environmental audits and waste minimisation audits, assessing their compliance with legal requirements, introducing best practice environmental management, negotiating environment improvement programs, and factoring in to their future investment and plant upgrading plans changes needed to meet environmental goals.

For its part, the Government's Cleaner Industries Demonstration Scheme is a tangible expression of commitment, through the Office of the EPA, to assist industry to make environmental progress. The Office, the Economic Development Authority and the Commonwealth Environment Protection Agency are each contributing $200 000 to the Scheme.

Positive environmental steps on the part of industry and public authorities will be recognised, encouraged and rewarded under the new legislation.

A range of measures in the Bill recognise and reward environmental planning initiatives and good practice by industry, and provide a greater degree of certainty for environmentally sound activities. These include:

* the entitlement for a business to propose its own environment improvement program together with a matching term for which its environmental authorisation should apply;
* encouragement for businesses to undertake voluntary environmental audits which would then be afforded legal protection;
* certainty that an environmental authorisation will be granted for activities approved under the Development Act, where the EPA has had an input and supported that approval;
* third party appeals being dealt with at the stage when development authorisation is granted, avoiding a second round of such appeals;
* the option for business to seek a single environmental authorisation covering their activities at various locations;
* greater certainty that the EPA will not 'shift the goalposts' set for industry by changing conditions under which they operate unless there is specific and substantial reason to do so;
* scope for industry to adjust and make environmental improvements over practicable timeframes in line with investment in new processes, equipment and technologies; and
* capacity for the EPA to set differential fees reflecting the polluter pays principle, and to include an incentive compo­nent to reward environmental improvement.

Together, these measures mean an Environment Protection Bill at the forefront of environmental regulation in Australia, providing, in a range of ways, a comparative advantage for environmentally responsible businesses in South Australia. The Bill measures up well when assessed against the recent report of the Australian Manufac­turing Council, The Environmental Challenge: Best Practice Environmental Regulation (June 1993), which emphasises the need to produce 'outcomes consistent with enhanced environmental performance and improved competitiveness'.

The Bill establishes the South Australian Environment Protection Authority as a statutory authority of six members.

The EPA's charter is to oversee the protection, restoration and enhancement of the quality of the environment having regard to the principles of ecologically sustainable development and the specific objects set out in the Bill.

The EPA has responsibilities independent of the Minister in relation to its reports and recommendations, its decision-making functions on environmental authorisations, such as licences and exemptions, and its enforcement responsibilities under the Bill.

The EPA will be supported in its work by the Office of the EPA, a group within the Department of Environment and Land Management formed by an amalgamation of departmental staff and former employees of the Waste Management Commission.

The specific functions of the EPA set out in the Bill include—

* preparing draft environment protection policies;
* contributing to the development and implementation of national environment protection measures;
* instituting or supervising environmental monitoring and evaluation programs;
* promoting the development of the environment management industry of the State; and
* encouraging and assisting in implementation of best practice environmental management, emergency planning, environ­ment improvement programs and similar programs.

For the first time, this legislation requires that a South Australian State of the Environment report be prepared and published at least every five years. The EPA will be responsible for co-ordinating contributions and information from public authorities and for assessing and reporting to the Minister, the Parliament and the people of South Australia on the state of the environment. The range of matters to be reported on is specified in the Bill. The report will provide an assessment of progress towards environmental goals and significant issues and priorities that need to be addressed.

The membership of the EPA has been designed so that it has the requisite expertise, standing and credibility for such important responsibilities. It is not to be composed of members representing sectional interests or particular organisations.

A broadly-based, representative body called the Environment Protection Advisory Forum is also established to advise the EPA and the Minister on issues, proposals and policies under the Bill and to ensure that the views of a wide range of interested organisations are taken into account.

The membership of the Advisory Forum has been structured so that it includes representatives of the various sectors of industry affected by, or interested in, the measures and policies to be developed under the legislation. Its membership also includes representatives of environment and conservation organisations (including local community environment interests), the Local Government Association and the United Trades and Labour Council. State Government agencies with significant responsibilities in environmental protection, natural resources, economic development, public and environmental health and disaster prevention and planning are also represented.

Nominations for membership of the Forum must be sought from relevant organisations. As well as the Advisory Forum, there is provision for the EPA to establish specialist committees.

The framework of the Bill is provided by a series of objects which delineate the scope and purpose of the Bill. Reinforcing these objects, the Bill creates, for the first time, a general statutory environmental duty which requires us all to take reasonable and practicable measures to prevent or minimise harm to the environment from activity that pollutes the environment or produces wastes.

The Bill sets out the process for establishing environment protection policies which will include the specific requirements, standards, criteria and guidelines for activities with the potential to cause environmental harm from pollution or waste.

Initially, the State's environment protection policies will consist of the current requirements, standards and guidelines contained in various provisions of the Acts and regulations being replaced by this Bill. This will include those covering air and water quality, noise and waste management. The translation of those current requirements into environment protection policies is provided for by the transitional provisions in Schedule 2 of the Bill. Existing environmental standards are to be maintained in the initial set of environment protection policies.

Subsequent environment protection policies will be developed according to the consultative processes specified in the Bill. The policies will be considered by the Forum, the Minister and Cabinet and the Environment, Resources and Development Committee of Parliament. Once declared by the Governor, environment protection policies become disallowable statutory instruments under the Act.

The Bill also provides for policies to come into effect on an interim basis, prior to the consultative processes being undertaken, where there are good grounds for the policy to operate immediately. The processes of consultation and consideration of submissions would then follow. The process for establishing environment protection policies and interim policies is analogous to that used in the Development Act 1993 for development plans.

Special provision is made in the Bill for national environment protection measures to become South Australian environment protection policies. The Bill thereby provides the means by which South Australia will meet its obligations under Schedule 4 of the Inter-Governmental Agreement on the Environment entered into on 1 May 1992 by the Commonwealth, all State and Territory governments and the Australian Local Government Association. This Agreement provides for national environment protection measures directed at achieving greater consistency in environmental standards across Australia and effective environmental protection with allowance for more stringent State policies where appropriate.

Under the Agreement, national measures for the protection of the environment may cover—

* ambient air quality;
* ambient marine, estuarine and freshwater quality;
* noise related to protecting amenity where variations in measures would have an adverse effect on national markets for goods and services;
* general guidelines for the assessment of site contamination;
* the environmental impacts associated with hazardous wastes;
* motor vehicle emissions; and
* the re-use and recycling of used materials.

An extensive prior consultative process, which parallels that required in this Bill, is required for development of all national environment protection measures, including consideration of regional environmental differences and the impact of measures.

Under the Agreement, national measures will be decided upon by a two-thirds vote of the national ministerial body and will be disallowable by the Commonwealth Parliament.

Schedule 4 of the Agreement is to be given effect by complementary legislation in each jurisdiction and it is envisaged that the South Australian complementary legislation will be prescribed as the relevant national scheme laws for the purposes of this Bill.

Once this prescription is made, a national environment protection measure that comes into operation under such prescribed laws will automatically come into operation as an environment protection policy under the South Australian Environment Protection Act.

Until the Parliament of South Australia enacts the complementary legislation being developed to give effect to Schedule 4 of the Inter-Governmental Agreement on the Environment, the provisions of this Bill dealing with the application of national measures as State environment protection policy will have no effective operation. The complementary Commonwealth and State Bills to give effect to the Agreement are expected to be available for consideration late this year.

The Environment Protection Bill will also facilitate future collaboration and cooperation in various environmental endeavours on the part of local government authorities in matters such as recycling of waste and improved stormwater management.

The obligations of the South Australian Environment Protection Bill apply equally to public authorities and the private sector and the Crown is bound by its provisions. This includes the requirements—

* to comply with mandatory provisions of environment protection policies; and
* to obtain and conform with the conditions of an environment­al authorisation (works approval, licence or exemption), if undertaking a prescribed activity of environmental significance listed in Schedule 1 of the Bill.

There are other significant features of the Bill to which I draw the attention of the House. The Bill—

* establishes a single, integrated system of environmental authorisations for specified activities of environmental significance listed in Schedule 1 of the Act in place of the six licensing systems that currently apply (Clauses 36-57);
* invites industry to initiate their own environment improvement programs and undertake voluntary environmental audits (which would have legal protection) while enabling the EPA to require an audit in certain circumstances (Clauses 45,59 and 43);
* provides that an environmental authorisation must be granted for development approved under the Development Act 1993 where the EPA has been consulted and has concurred with that approval (Clause 48);
* transfers regulatory responsibility for pollution of water to the EPA (Schedule 2, Clause 2); and provides for referral of applications within water protection areas to the Minister of Water Resources (Clauses 62-65);
* re-enacts SA's beverage container deposit and ozone protection Systems (Clauses 66-79);
* provides for a general environmental duty (Clause 25) and general offences of causing environmental nuisance (Clause 83), material environmental harm (Clause 81) and serious environmental harm (Clause 80) and appropriate defences to a charge of a contravention (Clauses 85 and 125);
* provides for environmental protection orders (Clauses 94-96), clean-up orders to deal with environmental harm (Clauses 100-104), emergency powers and dispensations (Clause 106);
* provides applicants with a right of appeal against certain EPA decisions to the Environment, Resources and Development Court (Clause 107-109);
* provides for the EPA and any person who would have standing at common law to seek injunctions and other civil remedies through the ERD Court (Clause 105);
* allows the ERD Court to use mediation and conciliation mechanisms for the resolution of disputes and to make restraining orders (in the same way as the District Court) to prevent disposal of property that may be required to satisfy a judgement of the Court (amendment of ERD Court Act in Schedule 2, Clause 3 of the Bill);
* provides criminal penalties ranging from on-the-spot fines to a maximum $lm for the most serious environmental harm in line with the maximum penalties set in the Acts being replaced (Clauses 80-85,35);
* provides for corporate and related company liability, and, in common with numerous other SA Acts of a similar kind and comparable interstate laws, for directors to be liable in certain circumstances (Clauses 128-130, 125, 138) along with appropriate defences such as having complied with licence conditions or mandatory policies (Clause 85) or not having been negligent (Clause 125).

The Bill before the House does not deal with the matter of contaminated sites caused by previous polluting activity, or with related questions of financial liability for contaminated site remediation. These matters are currently the subject of a national discussion paper released under the auspices of the Australian and New Zealand Environment and Conservation Council. The Government will be developing policies and proposals for contaminated site matters over the next eighteen months, after which the necessary new provisions to be incorporated into the Environment Protection Act will be presented to Parliament.

As I said at the outset, this Environment Protection Bill is landmark legislation. It is forward-looking; it accommodates the anticipated development of greater consistency in environmental protection under national environment protection measures to the benefit of industry and the environment; it also takes a forward- looking approach to progressive achievement of environmental goals.

The Bill provides an effective, advanced and streamlined framework for environmental protection (in South Australia, together with an approach which will encourage a positive, constructive and collaborative partnership between government, industry and the wider community in the move towards economically and ecologically sustainable development. I commend the Bill to the House.