

WATER RESOURCES AMENDMENT BILL 1995

EXPLANATORY NOTE

GENERAL OUTLINE

Objectives of the Legislation

The Water Resources Amendment Bill 1995 amends the *Water Resources Act 1989*.

Amendments to Part 9 of the Act will provide more flexibility in establishing and amalgamating water areas and boards and improve the administration process of those boards.

The insertion of the new Part 4A is to establish the process by which the Government may release water allocations for sale by auction, tender or ballot after taking due consideration of impacts on other entitlements.

The amendments to Part 7 will increase the flexibility of the licensing process in designated floodplain areas with a view to removing uncertainty surrounding existing and certain proposed works, in a manner acceptable to the community.

Provision is being made to enable charges to offset the cost of Government in ensuring that referable dams are built and operated in a safe manner to protect the community.

A range of provisions in the Act are to be amended for administrative efficiencies and to clarify accountabilities.

Reasons for the Bill

The implementation of the Sugar Industry Infrastructure Package (joint Commonwealth-State initiative) requires more flexible arrangements in Part 9 to enable the establishment of new boards or the amalgamation of existing boards.

For some time the Government has released water allocations and required a contribution from water users towards the cost of new water resources infrastructure. The new Part 4A will clarify the processes that can be used to obtain these contributions.

It has been found necessary to amend Part 7 of the Act in relation to designated floodplain areas to improve the procedural arrangements in establishing such areas.

Considerable costs are associated with the assessment of applications for licensing of large dams and subsequent monitoring to ensure their continuing safety. Amendments will enable a significant part of these costs to be contributed by the applicants or dam owners.

Administration of the Act over recent years has indicated a need to improve a range of provisions for increased efficiencies.

Estimated Cost for Government Implementation

There will be no additional costs to Government from the implementation of the legislation.

Consultation**(a) Interdepartmental**

1. The Treasury Department (GOE Unit) has been consulted and supports the move to clarify the market-based approach to selling new and increased water allocations.
2. The Department of Minerals and Energy endorses the proposals for implementing fees and charges for referable dam safety administration on mine sites.
3. The Office of Rural Communities accepts that the changes proposed to the Act will have no negative impacts on communities.

(b) Industry/Community Consultation

1. The Queensland Irrigators' Council accepts that these changes are necessary but particularly seeks the extension of permanent transferability of allocations. Irrigators have supported water auctions as an alternative and appropriate allocative mechanism.
2. Drainage and water boards in the Ingham area have requested the proposed amendments to allow amalgamation of four existing drainage areas to proceed as part of the Sugar Industry Infrastructure Package.
3. The Lower Balonne Advisory Committee has recommended the adoption of the changes proposed in relation to designated floodplain areas.
4. The Queensland Mining Council's representative agreed in principle to the introduction of new fees for referable dams subject to the introduction of guidelines and more timely processing of applications.

NOTES ON PROVISIONS

Clause 1 provides that the short title is to be the *Water Resources Amendment Act 1995*.

Clause 2 provides for the commencement of sections in the Schedule which contain references to the *Land Act 1994*.

Clause 3 states that the Act amends the *Water Resources Act 1989*.

Clause 4(a) omits the definition of "catchment area" in section 1.4(1) of the Act and states that a "catchment area" is an area as declared under section 4.2; and

(b) omits the definition of "designated area" and refers to section 7.2.

(c) amends the definition "controlled works" to ensure that structures which should not be considered to be controlled works, are not controlled works and consequently will not be required to be licensed when an area is designated.

Clause 5 amends section 3.20 of the Act by providing for the Corporation to enter into “secondary supply agreements”.

A “secondary supply agreement” will enable the supply of water by the Corporation to a consumer through works owned by the Corporation or someone else, other than the consumer.

All agreements other than “secondary supply agreements” are to be approved by regulation.

Matters that previously were required to be included in an agreement under this section will now be discretionary.

Clause 6 amends section 3.28 and replaces the mandatory requirement for an order in council establishing an advisory committee or an advisory council with an obligation on the Minister, if establishing such a council or committee, to decide in writing the specific matters set out in section 3.28(1).

Clause 7 replaces section 4.2 and provides for a catchment area to be declared by regulation and authorises the chief executive to control specified use of land in the catchment area.

The regulation may prescribe how the chief executive is to exercise the chief executive’s control under this section and may provide for the delegation of the chief executive’s powers to a local government in a catchment area.

Clause 8 inserts “or” at the end of each paragraph in section 4.13(1)(a) to (i) and clarifies that the matters set out in sub-paragraphs (a) to (j) are disjunctive.

Section 4.13(1)(j) and (3) is amended by omitting references to section 7.5 of the Act which was omitted in 1993.

A further sub section (3A) is inserted after section 4.13(3) to clarify the status of controlled works in a designated area between the time the area is designated and a decision is made on an application and any subsequent appeal from that decision.

The insertion of subsection 3B makes it clear that subsection 3A offers no protection if the person does not apply for a licence.

Clause 9(a) makes provision for the payment of a prescribed fee for the assessment of an application for a referable dam.

(b) inserts section 4.17(1AA) and enables the chief executive to require further plans among other things, in relation to an application for a referable dam and other applications.

Section 4.17(2) is amended by inserting a provision where the chief executive will not be required to notify of an application for a licence for “acceptable existing works” declared under section 7.2.

The chief executive will not be required to notify about a licence application for an artesian bore or a sub-artesian bore where the chief executive receives a signed statement from all persons entitled to object under sub-section 3 to such an application.

(c) amends section 4.17(3A)(a) and (b) of the Act to enable non-riparian licensees within the distances specified to object to an application for works constructed or to be constructed in or on a watercourse, spring or lake.

Clause 10 amends section 4.19(1)(a) and removes redundant words.

Redundant words are removed from section 4.19(1)(b)(vi) as those words are already included in the definition of “referable dam”.

Clause 11 replaces the existing section 4.22 to take into account the change in ownership of land to which the licence relates.

Clause 12 amends section 4.24 by inserting the words “authorising water to be taken” and clarifies the nature of the licence to which the section applies.

Clause 13 inserts a provision in section 4.25(1)(c) requiring a licensee to show cause where a licensee fails to comply with a requirement made by the chief executive under the Act.

Clause 14 (a) amends section 4.26 and provides an appeal process for a person aggrieved by a sale proposal under the new section 4A.10;

(b) as a consequence of amendments to Part 7 of the Act, a new paragraph is inserted in section 4.26(2) which does not allow an appeal to the Land Court for an application for a licence for “acceptable proposed works” as these works will have been assessed and identified in a proposal advertised under section 7.3 and open to objection for a period of 60 days and subsequently approved under a regulation made under section 7.2 as acceptable proposed works. The regulation may only be made if the chief executive has made a recommendation about the proposal under section 7.3.

Clause 15 amends section 4.34 of the Act to reflect the present administrative arrangements in the Department of Transport.

Clause 16 amends section 4.52 and states how an appeal is commenced and provides for filing a notice of appeal within 30 days of being notified of the chief executive's decision.

Clause 17 inserts a new Part 4A in the Act with new sections as follows:—

- (a) Section 4A.1 will state the purpose of this Part to allow the recovery of costs incurred by the State in providing works.
- (b) Section 4A.2 will provide the meaning of terms used in Part 4A.

“Entitlement information” means, among other things, information specifying the way entitlements will be sold. Entitlements may be sold by auction, tender, ballot or at a fixed price;

- (c) Section 4A.3 will provide that the chief executive may publish a notice of intention to sell but only with the approval of the Governor in Council.

The notice must contain specific matters including an invitation to lodge objections within 60 days after publication;

- (d) Section 4A.4 will state where a notice of intention to sell must be published;
- (e) Section 4A.5 will place an obligation on the chief executive to cause an inquiry to be made before publication of the notice to sell.

In an irrigation area the chief executive is to take into account water to be supplied to section 8.13 licensees;

- (f) Section 4A.6 will state which persons are eligible to lodge objections against a notice of intention to sell.
- (g) Section 4A.7 will place an obligation on the chief executive to inquire into objections received under section 4A.6(a) or (b).

Provision will be made requiring the extension of an inquiry under section 4A.5 in the circumstances prescribed;

- (h) Section 4A.8 will enable the chief executive to amend a notice of intention to sell but only with the approval of the Governor in Council. The notice, among other things, must invite objections to the amendment which are to be lodged within 60 days after publication.

The chief executive may amend a notice of intention to sell without publishing in prescribed circumstances;

- (i) Section 4A.9(1) will state who may object to the amendment of a notice of intention to sell.

The chief executive is obliged to inquire into objections received and section 4A.7 applies with all necessary modifications;

- (j) Section 4A.10 will outline the procedure to be followed after an inquiry and will allow the publication of a sale proposal advertising the proposed sale entitlements with the approval of the Governor in Council.

A person aggrieved by a sale proposal will have rights to appeal to the Land Court under the new section 4.26(1A);

- (k) Section 4A.11 will provide that the chief executive may only sell entitlements 30 days after the sale proposal was published and only as prescribed by regulation;
- (l) Section 4A.12 will provide for the issue of a licence on the sale of an entitlement as required under the terms of the sale and will provide that sections 4.17, 4.18 and 4.26 do not apply to such a licence issued. The terms that may be included in a licence issued are included in the entitlement information which must be included in the sale proposal notified.

Clause 18 inserts a new section 5.3(2) and (3) which enables the chief executive to require further information from the owner of a referable dam and provides for the payment of fees for periodical inspections of a referable dam and the assessment of documents about the dam.

Non-compliance of a requirement under this section without a reasonable excuse is an offence for which a maximum penalty of 200 penalty units may be imposed.

Clause 19(a) amends section 7.2 and replaces “order in council” with “regulation”.

(b) provides for the making of a regulation only if the chief executive has made a recommendation about the proposal under section 7.3, the details of which must be specified in the regulation.

Clause 20 replaces section 7.3 (Procedure prior to the constitution of a designated area) and specifies the mandatory detail to be provided in the notice to be published under section 7.3(3) which may specify acceptable existing and acceptable proposed works which have been assessed as not having an unacceptable hydraulic impact during a flood.

Provision is also made for a modified proposal to be published specifying the differences between the original proposal and the modified proposal and providing for the lodging of objections within 14 days of publication in relation to the matters that are different.

Definitions of— acceptable existing works;
acceptable proposed works;
proposed worksite; and
unacceptable hydraulic impact,

are provided.

Clause 21 replaces section 8.3 and removes redundant words. The functions of the Governor in Council are moved to section 8.4.

Clause 22 replaces section 8.4 and places an obligation on the Governor in Council to consider the report and recommendations submitted and make or decline to make a regulation establishing the irrigation undertaking.

Clause 23 omits section 8.11 and the requirement to determine certain land a holding.

Clause 24 replaces section 8.12 and grants the chief executive discretionary power to grant a nominal allocation for specified land in an irrigation area.

Clause 25 amends section 8.13 by deleting the references to “holding”.

The amendment to subsection (3)(a) by including a reference to section 4.19(1)(a) picks up the matters omitted in section 8.13(2) and corrects the existing reference to subsection (2)(a) which is now subsection (2).

Clause 26 replaces section 8.15 and is consequential upon the omission of “holding” from the Act.

Clause 27(a) replaces “order in council” with “regulation” in section 9.1(1);

(b) will provide for the status of a body corporate;

(c) will require judicial notice to be taken of an imprint of a board’s common seal;

(d) will provide for a single area to be constituted of 2 or more non-contiguous parcels of land; and

(e) will provide for a regulation to be made giving effect to a proposal the details of which must be specified in the regulation.

The regulation may only be made if the chief executive has made a recommendation about the proposal under section 9.3.

Clause 28 amends section 9.3 and

(a) replaces the heading in section 9.3 with “Procedure before making regulation”;

(b) requires the chief executive to publish a notice about the proposal;

(c) enables the chief executive—

(i) to carry out any investigation considered necessary into an objection lodged; and

(ii) make a written recommendation to the Minister as to the regulation to be made under section 9.1;

(d) provides for the recommendation to contain a modified proposal. However, before making such a recommendation the chief executive must publish another notification specifying the differences in the original and modified proposal and provide for a further objection period of 14 days in relation to the matters that are different; and

(e) provides for the chief executive to carry out any investigation considered necessary into an objection to the modified proposal.

Clause 29 replaces section 9.4 and provides for the membership of boards.

Section 9.4A provides for the term of office of members of a board.

Section 9.4B provides for the appointment of members of a board by the Governor in Council.

Section 9.4C provides for the election of members of a board under a regulation.

Section 9.4D provides for persons qualified to be elected to a board.

Section 9.4E provides for the amalgamation of existing boards if the Governor in Council amalgamates 2 or more areas into 1 area.

The dissolution of the old board, the transfer of assets and the substitution of the new board for the old board in contracts and proceedings is provided for.

Clause 30 amends section 9.12 and extends the power of a board and authorises a board to enter, in certain circumstances, land or a road outside its area on which the board is authorised to construct works.

Clause 31 amends section 9.19 and permits the Minister to approve the supply of water by the board to a local government, among others, in prescribed circumstances.

Clause 32 amends section 9.22(3A) and places the responsibility of appointing an arbitrator with the Minister.

Clause 33 amends section 9.61 and places the responsibility with the Minister in prescribed circumstances, of exempting a board member from the prohibition against voting.

Clause 34 amends section 10.13(2)(a) and 3(b)(iii)(C) and enables the chief executive to determine the period specified.

The amendment of section 10.13(2)(b) is consequential upon the omission of section 8.11.

The requirement of an order in council in section 10.13(2)(e) is replaced by a regulation. Redundant words are also omitted.

Clause 35 inserts a new section 10.17A entitling an eligible person to sell a nominal allocation in the circumstances prescribed.

The sale is subject to the issue or amendment of a licence that may be subject to conditions imposed by the chief executive.

Clause 36 provides for consequential amendments to section 10.22.

Clause 37 makes minor amendments to the *Land Act 1994*.

SCHEDULE contains minor and consequential amendments.