

# NATURAL RESOURCES LEGISLATION AMENDMENT BILL 1996

## EXPLANATORY NOTES\*

### GENERAL OUTLINE

#### Objectives of the legislation

The Natural Resources Legislation Amendment Bill 1996 amends the *Water Resources Act 1989* and the *River Improvement Trust Act 1940*.

The main objectives of the Bill are to—

- provide for the improved management of natural resources;
- clarify the original intent of section 51 of the *Water Resources Act 1989* in relation to appeals; and
- provide for more efficient administration of the legislation through minor amendments to the *Water Resources Act 1989* and the *River Improvement Trust Act 1989*.

#### Reasons for the Bill

The current provisions of the *Water Resources Act 1989* require the chief executive to consider any licence application received. The chief executive's decision on a licence application, as prescribed, is subject to appeal to the Land Court. The Act is amended to overcome the current incremental approach to allocation of the resource, and provide for the development and implementation of clear policy decisions in the management of the water

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\* These Explanatory Notes relate to the Bill as introduced into the Legislative Assembly. This Bill was amended in Committee—see Endnotes.

resource to be effected through an approved water management plan.

The insertion of the new part 3A of the *Water Resources Act 1989* will enable the Government to give clear direction in an approved water management plan for a nominated area on the policy and principles under which the water rights vested in the Crown in the nominated area are to be exercised. Where an approved plan exists, a decision, agreement or other action authorising the taking of water or the construction of works for the taking of or concerning water must not be inconsistent with the plan.

Provision is also made in the Bill which puts beyond doubt whether a regulatory impact statement is required under the *Statutory Instruments Act 1992*. It is considered that division 2 of part 5 of the *Statutory Instruments Act 1992* does not apply to a water management plan which when approved is subordinate legislation as the requirements to give notice and publication and receive submissions under the proposed part 3A are of a comparable level to the publication and consultation required under division 2 above.

The *Water Act 1926* which was repealed by the *Water Resources Act 1989* specified that only applicants and those with a statutory right to object were eligible to appeal a decision to issue a licence. While the provisions concerning appeals were rewritten from the *Water Act 1926*, it was not intended to provide appeal rights to persons other than applicants and persons entitled to object under the Act.

Section 51 is amended to accord with that intent and will allow a person directly affected by a decision to appeal against a decision as prescribed.

The amendments also include specific power for the chief executive to appoint persons as authorised officers to exercise the powers granted under section 7.

A number of river improvement trusts have sought to amalgamate trusts and the trust areas in response to local government boundary changes. Voluntary amalgamation is being considered by some trusts where more efficient operations and coordination may result.

The Bill also contains some minor amendments which will clarify existing provisions of the *Water Resources Act 1989*.

## **Estimated Cost for Government Implementation**

There will be no major financial implications resulting from the Bill. Adjustments in service delivery are anticipated particularly while priorities and resources are directed to preparing a water management plan for a particular area or locality.

### **Fundamental Legislative Principles**

The new section 25N in part 3A of the Bill will have retrospective operation in that it prevents the processing of certain licence applications received prior to the day of publication of a notice under section 25D. The notice will also impact upon negotiation, agreement and other actions as prescribed under the Act in relation to water allocation.

It is essential that there be a cutoff date for dealing with applications and other matters to enable all relevant considerations and planning to be undertaken in the water management planning process prior to making decisions which could have significant impact on the resource. However, it may be that a particular licence application or water supply proposal is the “trigger” for the planning process and the need for a water management plan may not have arisen but for the scope or perceived impact of the proposal or application received.

The amendment of section 51 of the *Water Resources Act 1989* will provide a right of appeal for a person directly affected, “a dissatisfied person”, by a decision as prescribed. However, the amendment may limit potential for some third party appeals in respect of those decisions which are appealable.

The term “dissatisfied person” replaces the term “person aggrieved” which was considered by the Court of Appeal in *Stevenson v. Wenck and Others* (Appeal No. 224 of 1994) and the Court was of the view that the term should be given its natural meaning. The natural meaning went beyond what was intended.

### **Consultation**

#### **(a) Interdepartmental**

No further consultation has been undertaken in relation to the Bill, as concerns raised by some Departments when seeking approval to prepare the draft Bill were addressed at that time.

**(b) Industry/Community Consultation**

Representatives of the Queensland Farmers Federation, the Queensland Irrigators Council, the Queensland Conservation Council, and the Local Government Association have been consulted on the draft Bill.

All representatives have indicated support for the proposed Bill, except the Queensland Conservation Council which does not support the proposal regarding appeal of waterworks licence decisions. The Queensland Conservation Council is of the view that the wider right of appeal as interpreted by the Court should be retained.

## NOTES ON PROVISIONS

*Clause 1* states that the short title is to be the *Natural Resources Legislation Amendment Bill 1996*.

*Clause 2* refers to part 2 which amends the *River Improvement Trust Act 1940*.

*Clause 3* inserts a new section 4A which provides for the amalgamation of river improvement areas and trusts by regulation and includes provision for the adjustment of rights and responsibilities, and any other matter necessary to give effect to an amalgamation or abolition of the previous areas and their trusts.

Provision is also made for the members of the trusts for previous areas to go out of office on the day a new area and trust are constituted.

*Clause 4* refers to part 3 which amends the *Water Resources Act 1989*.

*Clause 5* amends the long title of the Act and provides for the management of water.

*Clause 6* inserts and defines the term “water management plan” for section 2 (Interpretation).

*Clause 7* inserts new sections 6A - 6D into the Act as follows—

(a) section 6A will provide for the appointment by the chief executive of

persons as authorised officers in the circumstances prescribed;

(b) section 6B prescribes the methods by which an authorised officer's powers may be limited;

(c) section 6C requires the chief executive to give each authorised officer an identity card the latter which must meet certain specified criteria.

It further provides for the return of the authorised officer's card as soon as practicable after cessation of appointment. Failure to comply with the requirement attracts a maximum penalty of 10 penalty units.

Provision is also made for the issue of a single identity card as prescribed.

(d) Section 6D states that an authorised officer may only exercise a power under this Act if the authorised officer first produces the officer's identity card or has it displayed clearly visible to the person.

Provision is made enabling an authorised officer to produce the identity card for the person's inspection at the first reasonable opportunity if it is impracticable in the above circumstances to do so.

*Clause 8* inserts a new part 3A after section 25 with new sections as follows—

(a) section 25A provides definitions for the purpose of part 3A.

(b) section 25B provides for the Minister to prepare water management plans for parts of Queensland. A water management plan is stated to be subordinate legislation.

(c) Section 25C provides for the mandatory inclusion of material in a water management plan and further provides for matter which may be included.

Provision is also made enabling a water management plan to make provision about anything about which a regulation may be made under the Act.

(d) Section 25D places an obligation on the Minister to give public notice when proposing to prepare a draft water management plan.

The notice must contain specific information including an invitation to make a submission within 30 days from date of publication.

A further obligation is placed on the Minister to send a copy of the notice to each local government whose area or part of an area is included in the

proposed plan area. Provision is also made enabling the Minister to send a copy of the notice to any person or group considered appropriate.

(e) Section 25E identifies matters to which the Minister must have regard in preparing the principles and policies to be included in a plan for the plan area.

(f) Section 25F places an obligation on the Minister to give public notice when a draft water management plan has been prepared and further provides for specific information to be included in the notice including information about where a copy of the draft plan may be inspected and purchased and an invitation to make written or oral submissions.

Provision is also made requiring the Minister to send a copy of the notice and the draft plan to each local government in the area to which the plan applies which local government is required to make the copy of the draft plan available for public inspection.

The Minister may send a copy of the notice about the draft plan to any person or group the Minister considers appropriate.

(g) Section 25G places an obligation on the Minister to consider all submissions made, about the draft plan, by the date specified in the notice published under section 25F(2)(d).

(h) Section 25H prohibits the Minister from approving a draft plan if the draft water management plan has been altered since the public notice of the draft plan was published under section 25F.

It also states that the public notice requirement under section 25F applies again if a draft plan is amended before it is made as a water management plan.

(i) Section 25I states that a water management plan does not have effect until approved by Governor in Council.

(j) Section 25J provides that if the Minister decides to discontinue the preparation of a water management plan or a draft water management plan has been prepared and it is intended not to proceed toward making a water management plan the Minister is obliged to give public notice of the decision.

Further provision is also made concerning the notice requirements and copies of the notice.

The Minister is also obliged to send a copy of the notice to each local

government, person or group to whom a notice was sent in the circumstances prescribed.

(k) Section 25K provides for the amendment of a plan by a later plan only if the procedures for the preparation and approval of a plan under this part are followed.

Subsection (2) identifies some matters which may be effected by amending a plan.

Subsection (3) provides for correcting minor amendments or making a change that is not a change of substance to a plan by regulation. Provision is also made for amendments of a type stated in the plan or if provided by regulation.

(l) Section 25L places an obligation on the chief executive to keep each water management plan or draft water management plan available for inspection at the offices identified during office hours.

Further provision is made to enabling plans to be made available for inspection at other places the chief executive considers appropriate.

Copies are available on payment of a fee which must not be more than the reasonable cost of publishing the copy.

(m) Section 25M puts beyond doubt whether a regulatory impact statement is required under the *Statutory Instruments Act 1992*

(n) Section 25N states that if the Minister publishes notice of a proposal to prepare a draft water management plan under section 25D, certain actions, as specified in paragraphs (a) to (f), must not occur as from the date of publication of the notice until the water management plan is notified under the *Statutory Instruments Act 1992* or the Minister publishes a notice of intention not to proceed further toward making a water management plan.

Subsection (3) puts beyond doubt that this applies even if the application was made before the notice is published and to negotiations about an agreement started before the day of publication.

(o) Section 25O provides for exceptions as prescribed to the application of section 25N and allows decisions to be made in respect of those matters.

Further, words used in subsection (1) and their meanings are included to assist in the interpretation of the section.

(p) Section 25P states that if a water management plan is in force for an area an action taken or decision made under the act in relation to the plan

area must not be inconsistent with the plan.

Subsection (2) describes the nature of the action or the decision for subsection (1).

*Clause 9* amends section 43(1) of the Act by deleting the words “and an objection thereto” clarifying that the chief executive must cause inquiry to be made for all applications made under section 42.

*Clause 10* inserts a new section 43A which requires certain decisions to be published, which decisions may be appealed against under section 51(1). This provision is the means by which a “dissatisfied person” is informed about a decision against which the dissatisfied person may appeal.

*Clause 11* replaces “a person aggrieved” in section 51(1) and inserts the term “dissatisfied persons”.

In subsection 51(2) the term “person aggrieved” is omitted and the subsection now states that persons who are entitled to object and did object to (a) a notice of intention to sell, or (b) an amended notice of intention to sell may appeal to the Land Court against a sale proposal under section 88.

Further, the new subsection (13) in section 51 provides the meaning of “dissatisfied person” for the purposes of subsection (1).

*Clause 12* omits section 129 (11) and removes the requirement for the entire proposal (published under section 131) to be included in the regulation made under section 129.



**Amendments agreed to in Committee****1. Clause 3—**

At page 4, line 10 to page 5 line 6—

*omit, insert—*

**‘Amendment of s 3 (Constitution of the Burdekin River Improvement Area)**

**3.(1)** Section 3(3) and (3A)—

*omit, insert—*

**‘(3)** A regulation may add to the Burdekin River Improvement Area (the **“principal area”**) or to another river improvement area (also the **“principal area”**)—

- (a) all or part of the area of 1 or more local governments (the **“added area”**); or
- (b) all or part of 1 or more other river improvement areas (also the **“added area”**).

**‘(3A)** In a regulation under subsection (3)—

- (a) the whole of the Burdekin River Improvement Area may be the principal area but not the added area; and
- (b) a part of the Burdekin River Improvement Area may be the added area; and
- (c) if the added area is the added area under subsection (3)(a)—a river improvement area (other than the Burdekin River Improvement Area) may only be the principal area if each local government whose area, or part of whose area, is the whole or a part of the added area makes a written request that the regulation be made.

**‘(3B)** A regulation made under subsection (3) may—

- (a) for a river improvement area other than the Burdekin River Improvement Area—change the name of the river improvement area (the **“expanded area”**) consisting of the principal area and the added area; and

- (b) if the added area is only a part of a river improvement area—apportion the assets and liabilities of the trust for the river improvement area; and
- (c) if the added area is the whole of a river improvement area—transfer the assets and liabilities of the trust for the river improvement area to the trust for the expanded area; and
- (d) provide for any other matter necessary or convenient to give effect to the addition of the added area to the principal area.

‘**(3C)** Subsection (3D) applies if—

- (a) an expanded area is established under subsection (3)(b); and
- (b) the added area did not consist of the whole of a river improvement area; and
- (c) a local government had representatives on the trust for the river improvement area (the “**original area**”) of which the added area was a part; and
- (d) the part of the original area that is not the added area no longer contains any part of the area of the local government.

‘**(3D)** When the expanded area is established, the representatives mentioned in subsection (3C)(c) go out of office as members of the trust.

‘**(3E)** Subsection (3F) applies if—

- (a) an expanded area is established under subsection (3)(b); and
- (b) the added area consisted of the whole of a river improvement area.

‘**(3F)** When the expanded area is established, the trust for the added area ceases to exist and all of the members of the trust go out of office as members of the trust.’.

**(2)** Section 3(5) and (6)—

*omit, insert—*

‘**(5)** A regulation may—

- (a) abolish a river improvement area other than the Burdekin River Improvement Area; and
- (b) abolish the trust for the area being abolished; and

- (c) provide for the vesting of the assets and liabilities of the trust being abolished; and
- (d) provide for any other matter necessary or convenient to give effect to the abolition of the area and its trust.

‘(6) When the trust is abolished, the members of the trust go out of office as members of the trust.’.

## **2. Clause 11—**

At page 18, lines 19 to 21—

*omit, insert—*

- ‘(a) for a decision about an application for a licence or for the renewal of a licence—the applicant; or
- (ab) for a decision about the amendment, variation, cancellation, revocation or suspension of a licence—the person who was the licensee when the decision was made; or
- (ac) for a decision about an application for the transfer of a licence—the transferor and the transferee; or’.