

WATER RESOURCES AMENDMENT BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The Water Resources Amendment Bill 1998 amends the *Water Resources Act 1989* (“the Act”).

The main objectives of the Bill are to-

- provide that the licensing (Part 4) and special works (Part 7) provisions in the Act are sufficient to authorise large projects such as mining operations, and to authorise terms in issued licences which may otherwise be invalid were it not for these amendments;
- provide for minor amendments to the imposition of sugar mill levies by Water Boards.

Reasons for the Bill

The Act may not provide sufficient power to adequately authorise large scale works such as mining operations. Accordingly, the Bill proposes the amendment of the licensing (Part 4) and special works (Part 7) provisions to ensure that adequate, reasonable terms can be imposed in relation to large scale works when such works are to be authorised under the Act (either by a Part 4 licence or under a Part 7 special works agreement).

Sugar Mill assessments are currently used in a number of State-owned irrigation schemes in Queensland, as well as by some Water Boards, to generate revenue under the Act. Section 175, relating to the assessment of levies on sugar mills by Water Boards, refers to peak as a basis for assessment. However, the concept of “peak” will cease to exist from 1

June 1999, following the outcomes of the 1996 Sugar Industry Review. Section 175 is being amended to reflect the future non-availability of peak as a basis for assessing sugar mill levies.

Alternatives to the Bill

The amendments are essential to ensure that:

- large scale works such as mining operations can be properly authorised under either a licence issued under Part 4 or an agreement entered into under Part 7 (particularly to ensure that the rights and interests of neighbouring landholders can be protected); and
- sugar mill levy assessments are not levied on the basis of “peak”, which will cease to exist from 1 June 1999.

Estimated Cost for Government Implementation

There will be no additional cost to the State arising from the proposed amendments.

Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles, except in relation to the amendments validating the terms of issued licences which would otherwise be invalid were it not for the amendments proposed to Part 4 of the Act. That is, assuming that some of terms of the licences issued under Part 4 for large scale works are invalid, then the amendments validating those terms could be seen as imposing obligations retrospectively (section 4(3)(g) of the *Legislative Standards Act 1994*). However:

- with one exception, most licensees of large scale works (ie, mine operators) have not expressed any dissatisfaction with the terms attached to their licences issued under Part 4 and continue to comply with them;
- the proposed amendments do no more than ensure that the Act can accommodate large projects such as mining operations; and
- if the licence terms are found to be invalid, the water supplies of neighbouring landholders will not be adequately protected from

the adverse impacts of the licensed project.

Consultation

Varying degrees of consultation have occurred with interested parties (outlined below) during the preparation of the Bill.

(a) Interdepartmental

Amendments to the licensing (Part 4) and special works provisions (Part 7)

- Crown Law
- Department of Premier and Cabinet
- Department of Economic Development and Trade

Sugar Mill Levies Amendment

- Department of Primary Industries
- Department of Justice
- Office of Rural Communities (Department of Local Government and Planning)

(b) Industry/Community Consultation

Water Boards which currently make use of sugar mill levies—i.e. North Burdekin Water Board, South Burdekin Water Board and Pioneer Valley Water Board have been advised of the proposed amendments.

NOTES ON PROVISIONS

Clause 1 states that the short title is to be the *Water Resources Amendment Act 1998*.

- Clause 2* provides that section 9 of the amendment Act commences by way of proclamation.
- Clause 3* provides that this amendment Act amends the *Water Resources Act 1989*.
- Clause 4* inserts new paragraph (ba) into section 44(1).

Subparagraph (i) provides that a licence issued under Part 4 may include terms which aim to protect third parties. This provision will ensure that a licence can be issued for a project which takes account of the effect of the project on other water users in the area. For example, a term could be attached to a licence which requires the licensee to take account of the impact of the licensee's project on the water supplies of neighbouring third parties; and, if the project adversely affects the third parties' water supplies, the licensee can be required to undertake measures to restore the third parties' water supplies. To remove any doubt, the subparagraph provides that the combined effect of the licence and other licences held by the same licensee may be taken into account when assessing the impact of a project on the rights of third parties to water.

Subparagraph (ii) provides that a licence issued under Part 4 may relate to other licences held by the same licensee. For example, a large project may require a number of licences under the Act (eg, a mine may have a number of bores each of which will be separately licensed). In this example it may be necessary (eg, when assessing the total impact of the project on the water supplies of neighbouring landholders) to take account of the total effect of all the licences issued for the project. This provision will ensure that this can be done by way of a term imposed on a licence issued under Part 4. Moreover, the provision will ensure that licences may refer to other licences held by the same licensee. Thus, for example, a licence can be issued which includes a term authorising works (eg, a pump) but which explicitly provides no additional allocation of water above that already provided under the licensee's other licences.

Clause 5 ensures that Part 7 has sufficient scope to accommodate works associated with a mining operation. (Part 7 provides that certain works, “special works”, may be authorised by way of an agreement.)

Clauses 6-8 make minor amendments to sections 97, 98 and 99 which ensure that a Part 7 agreement can be entered into for works which have already been constructed (as opposed to those which are merely proposed to be constructed). These amendments in no way authorise such constructed works prior to their being authorised according to the procedure set out in Part 7, but they do recognise the fact that sometimes works are constructed prior to their being authorised under the Act. There basically are two types of situations that may require that existing works be brought under the special works (Part 7) provisions:

- Firstly, the works may be first authorised by licence (under Part 4) and then as a result of change in circumstance it may become appropriate for the existing works to be dealt with under the special works provisions. For example, projects such as mines usually commence with low level feasibility studies that include the construction of some works. A bore might be established to test the availability of supply. It is likely to be more appropriate to authorise those works by licence in the first instance. If the project proceeds then there will be a need for more extensive works and it is likely that it will be more appropriate to deal with the totality of works by way of the special works provisions.
- Secondly, it is possible that works could be constructed in the feasibility or development stage of a project, that do not require a licence at all. Then subsequently, as a result of the assessed impact of the full project proposal, a need for authorisation may emerge. For example the construction of an embankment that does not affect the flow of water in a watercourse would not require a licence. However in the context of a proposal

for the fully designed project it may be clear that in conjunction with other works the embankment will impact on stream flow and should be subject to authorisation. It would be appropriate then to authorise the existing embankment along with other works under the special works provisions.

Clause 9 amends section 175 of the Act to remove references to peak and makes related changes. The effect of the amendments will be that:

- the general head of power for water boards to levy sugar mills will be retained under section 175; and
- assessments are to be made in the way specified by Regulation (including specifying the basis for assessments, which was previously contained in section 175(3) of the Act).

Clause 10 amends the title to Part 12 in recognition of the fact that Part 12 will no longer deal exclusively with transitional provisions (because of the insertion of new section 256).

Clause 11 inserts new section 256 which validates the terms of licences issued under Part 4 in cases where those terms would have been invalid were it not for the amendments proposed in clause 4 of the Bill.

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