

WATER RESOURCES AMENDMENT BILL 1999

EXPLANATORY NOTES

1. GENERAL OUTLINE

1.1 REASONS FOR THE BILL

Section 129 of the *Water Resources Act 1989* (the “WR Act”) provides for the constitution, by regulation, of a part of Queensland as a water supply or drainage area in respect of the construction, acquisition, maintenance, administration, extension or modification of works for water conservation, water supply, irrigation, drainage, flood prevention, flood control or the replenishment or improvement of underground water supplies. Section 129 also provides for the constitution, by regulation, of a board for an area.

Section 131 specifies the procedures to be followed before a regulation may be made pursuant to s.129, including publication of a notice containing particulars of the proposed scheme relating to the area to be constituted, the works to be undertaken and the method of financing the cost.

The scheme in Part 10 of the WR Act focuses on the establishment of areas and boards and does not contemplate the necessity to remake subordinate legislation by reason of expiry pursuant to the *Statutory Instruments Act 1992* or the consolidation of subordinate legislation into a more manageable form. In particular, s.131 provides that a regulation under s.129 may only be made in accordance with the procedures mentioned above. Consequently, even if a regulation is made simply for the purpose of continuing an instrument due to expire or to consolidate existing instruments, the procedures prescribed by s.131 must be repeated.

The amendments proposed will enable the remaking, by one regulation, of more than 100 instruments under s.129 which are due to expire on 1 July 1999 (by operation of the *Statutory Instruments Act 1992*) and the consolidation of all existing instruments under s.129 without the necessity to repeat the advertising and objection processes undertaken when each instrument was made.

A minor amendment will also clarify the transitional provisions of the WR Act. Section 1.3(g) of the WR Act (as passed) provided that irrigation, drainage or other areas constituted under repealed legislation are to be treated as areas under the WR Act.

Provision was made in the WR Act for the constitution of various types of “areas” for various purposes. While it is clear from the transitional provisions that irrigation areas and drainage areas are to be treated as irrigation and drainage areas under the WR Act, it is not clear how other areas are to be treated.

The amendments will clarify that areas other than irrigation or drainage areas created under a repealed Act are to be treated as water supply areas under the WR Act.

Section 232(2) of the WR Act provides that a person may sell the person’s rights to a part 5 nominal allocation. A regulation may be made under s.232(3) to provide for the sale by a person of rights to a part 4 or 9 nominal allocation. For part 5 rights, the authority to sell is contained in s.232(2) and the only regulation making power is that contained in s.232(4), which also applies to part 4 or 9 rights. Section 232(4) is restricted to provisions about conditions that apply to the sale and charges. Because of these specific provisions, it could be argued that the general regulation making power in s.250A does not apply in relation to part 5 rights and would not authorise the making of a regulation about the exercise by the purchaser of rights to a nominal allocation under part 5. A minor amendment will clarify the regulation making power in relation to the sale of entitlements under s.232.

1.2 OBJECTIVES OF THE BILL

The objectives of the Bill are to:

- (a) provide a mechanism for the remaking of instruments due to expire and the consolidation of all existing instruments made pursuant to s.129 in a single regulation;
- (b) clarify the transitional arrangements for areas other than irrigation or drainage areas created under Acts repealed by the WR Act;
- (c) put beyond doubt that a regulation made under s.232 may provide for the exercise by the purchaser of rights to a nominal allocation.

Way in which objectives are to be achieved:

The Bill amends Part 10 to:

- (a) authorise the remaking and consolidation of instruments made under s.129 about areas and boards without the necessity to repeat the lengthy advertising and objection process undertaken when each of the instruments was made;
- (b) provide that areas other than irrigation or drainage areas created under a repealed Act are to be treated as water supply areas under the WR Act.

The Bill amends s.232(4) by inserting a new paragraph (aa) to clarify the regulation making power.

Alternative way of achieving objectives:

As an alternative to the Bill, in excess of 100 instruments could be remade in accordance with the same lengthy advertising and objection process which has already been complied with when each instrument was made. While this is appropriate where an area or board is first being constituted, it should not be necessary where a regulation is being made which simply provides for the continuation of areas and boards that have already been constituted.

If the amendment concerning the transitional arrangements for areas created under repealed legislation is not made, it will remain unclear how those areas are intended to be dealt with under the WR Act.

If the amendment to s.232(4) is not made, the scope of the regulation making power will remain unclear.

1.3 COST FOR GOVERNMENT IMPLEMENTATION

The Bill will reduce administrative costs as it will remove an unnecessary requirement to repeat lengthy advertising and objection processes in relation to areas and boards simply because an instrument is being remade for the purpose of consolidating it with other instruments or to continue its provisions.

The technical amendment to s.232 will have no impact on administrative costs.

1.4 CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The Bill is consistent with fundamental legislative principles.

1.5 CONSULTATION

The Department of Premier and Cabinet has been consulted in relation to the Bill and supports the amendments. The Business Regulation Reform Unit was consulted in relation to the provisions of the Bill concerning areas and boards and supports the amendments.

2. ANALYSIS OF THE BILL

Short title

Clause 1 provides that the short title for the Act is the *Water Resources Amendment Act 1999*.

Act amended

Clause 2 provides that the Act amends the *Water Resources Act 1989*.

Amendment of s.129 (Constitution of area and board)

Clause 3 changes references in s.129 to the constitution of a board to the establishment of a board. This amendment will facilitate the making of a regulation which provides for the continued operation of a board constituted under an instrument due to expire without having to constitute the board again. (Section 36 of the *Acts Interpretation Act 1954* provides that in an Act “establish” includes constitute and continue in existence.)

Amendment of s.131 (Procedure before making regulation)

Clause 4 changes a reference in s.131 to the constitution of a board to the establishment of a board to accord with the amendments made to s.129.

Replacement of pt 10, div 2 heading

Clause 5 changes the heading of Division 2 from “Constitution of board” to “Membership of boards” to accord with current drafting style and to reflect the amendments made to s.129 to omit reference to constitution of a board.

Amendment of s.132 (Membership of boards)

Clause 6 changes the heading to s.132 to accord with current drafting style and the change to the heading of Division 2.

Amendment of s.209 (Appointment of chief executive to administer area)

Clause 7 replaces references in s.209 to the constitution of a board to establishment of a board to accord with the amendments to s.129.

Insertion of new s.232(4)(aa)

Clause 8 inserts a new paragraph that puts beyond doubt the power to impose, by regulation, requirements on a purchaser of rights to a nominal allocation.

Insertion of new ss257 and 258

Clause 9 inserts a new s.257 to clarify that an area, other than an irrigation or drainage area, constituted under a repealed Act is constituted as a water supply area under the WR Act.

Clause 9 also inserts a new s.258 which exempts the remaking of existing subordinate legislation made under s.129 from the procedures specified in s.131. Because s.258 will only be required to enable a regulation consolidating and remaking existing instruments under s.129 to be made immediately after the amendments have been effected, provision is made in subsection (3) for s.258 to expire on 31 December 1999.