

RECENT DEVELOPMENTS

Tasmania

Water Management Bill 1999

Introduction

The draft *Water Management Bill* was released for public consultation in February 1999, together with an explanatory booklet and a Regulatory Impact Statement. The proposal complements the *State Policy on Water Quality Management 1997*, which set out water quality objectives and actions to achieve them. It was the third major public consultation on water management, and altogether 139 submissions were received. The Bill was also discussed extensively by Department of Primary Industries, Water and Environment (DPIWE) staff and other stakeholders, at 145 meetings over an extended period. The revised *Water Management Bill 1999* was tabled in the House of Assembly on 17th June 1999 and passed on 24th June. The Bill was then tabled in the Legislative Council, ready for debate when the Council reconvened in late September. It was passed by the Council on 23rd September 1999 with some amendments to protect existing users, and is expected to be in force at the end of 1999.

The Bill establishes a new system for the sustainable allocation and management of Tasmania's freshwater resources. It will require all commercial users to have a similar type of water licence to ensure consistency and equity. Licence fees will be set by Regulations to be passed once the Bill takes effect. In July 1999 a discussion paper was released on the proposed content of these entitled 'Water Management Bill 1999: Proposed Water Licence Fees'. The intention is to obtain feedback on draft principles before the rates are set. The paper proposes that water licence fees should be set to cover the actual costs of providing the water management services that are required to protect the rights of licensees and the aquatic environment. Pricing principles are included to determine how the costs will be allocated between different licensees.

The *Water Management Bill 1999* contains 16 parts. Part 2 sets out objectives, and Part 3 administrative provisions. Part 4 contains requirements for water management plans, and Part 5 outlines rights in respect of water. Part 6 contains requirements for licences, the allocation of water, restrictions in the case of inadequate water, transfer of licences and water allocations, provisions concerning breaches of licences, and special licences. Parts 7 and 8 deal with wells and dams and the construction of dams, including requirements for a new Assessment Committee for Dam Construction, and permitting provisions. Part 9 deals with the creation and administration of water districts, and Part 10 the establishment, powers and duties of trusts. Part 11 regulates metering of water. Part 12 contains provisions for the appointment and powers of authorised officers, and Part 13 criminal and civil enforcement requirements. Part 14 contains sections for the review of decisions and appeals, and Part 15 brings together miscellaneous provisions including offences, fees and charges.

Objectives and Planning

The objectives of the Act are to further the objectives of the resource management and planning system of Tasmania, which are set out in Schedule 1, and in particular to provide for the use and management of the freshwater resources of Tasmania - s 6(1). A number of matters must be had regard to. These include the promotion of the sustainable use and facilitation of the economic development of water resources, the maintenance of ecological processes and biological diversity, and the allocation of water in a way that meets the community's needs - s 6(1)(a)-(f). The Act binds the Crown - s 4.

Water management plans may be prepared for a watercourse or courses, a lake, a groundwater area or any combination thereof - s 14(1). Plans must include an assessment of the quantity of water needed by ecosystems that depend on the resource, and an assessment of the likely detrimental effects arising from the taking or use of water - s 14(2). Plans may include a number of other matters, such as provision for the allocation and use of water, licensing and administration - s 14(3). In preparing plans, the Secretary of DPIWE must consult with the Director of Environmental Management, relevant water entities and other persons - s 19. Plans must be consistent with a number of statutory requirements including relevant State policies, environmental agreements and improvement programmes, planning schemes, and the objectives of the Act - s 20. Consultation and exhibition requirements for the draft plan are clearly set out - ss 23-24, and representations must be taken into consideration before a recommendation is made to the Minister - s 25. Plans must be reviewed at least once every five years - s 33.

Water Rights, Licensing and Allocation

Owners, occupiers, casual users and those with lawful access to land may have certain rights in respect of water - ss 47-48. All common law rights to the flow of and for the taking of water are abolished - s 53.

A licence may be required to take water by any person if a water management plan so provides - ss 49, and 54. Special licences may be required by high capacity water users - ss 106-120. Any taking must not cause environmental harm - s 50. A licence authorises the holder to take water subject to any water management plan and condition in the licence - s 55. Certain details must be provided in the licence including specifying the water to be taken - s 56. The minister will determine the duration of the licence and water allocation - ss 57-58. Applications are to be made in the approved form and accompanied by the prescribed fee - s 62. In determining applications, the Minister must be satisfied that they are consistent with the objectives of the Act and any water management plan, are unlikely to lead to environmental harm, and will not have significant adverse effects of other users of the resource - s 63. Where there is no plan in force, the Minister must advertise notice of the application and invite written representations - s 65(2).

Water allocations are fixed by specifying the volume of water that may be taken and used, or by reference to the purpose for which it is to be taken and used; it may also be specified as being the water allocation of another licence - s 83. Allocations may be granted by the Minister, and must conform to any plan - s 84(1) and (2). Fees may be charged for allocations - s 85(1); allocations may also be sold to licensees - s 85(2). An assessment must be carried out of the effect of

allocation before any decisions are made - s 86. Allocations may be reduced where necessary to give effect to any plan - s 88(1). Where water supplies are limited and any taking is having a detrimental environmental effect, water restrictions may be imposed - ss 90-91.

Licences and allocations may be transferred to another person with the approval of the Minister - ss 94, and 119. An application must be made for approval of the transfer, which must be in the approved form and accompanied by the prescribed fee - s 95(1). Applications must be approved if they are consistent with the objectives of the Act, any relevant plan, are not expected to lead to environmental harm, and will not have a significant adverse impact on other users - s 95(2).

Assessment and Permitting of Wells and Dams

Works relating to wells and dams must conform to codes of practice set out in management plans or be assessed and permitted by the Assessment Committee for Dam Construction - ss 122, 140 and 143. Owners and occupiers must take action where the Minister is satisfied a well may result in environmental harm, a dam is dangerous, or where any offence has been committed - ss 123, 132, and 144(1).

Administration, Water Districts and Trusts

The Minister is responsible for the management of Tasmania's water resources, by developing policies, allocating water, providing information and involving the public - s 8(1). Exemptions may be granted to any person where appropriate - s 11. A register must be kept of all licences and permits granted or transferred - ss 12(1) and (2).

Water districts may be created by application of any water entity to the Minister; they give the water entity control of and responsibility for the water district - s 164. Water supply, irrigation, riverworks, drainage and hydro-electric districts may also be created for similar purposes - ss 165-167. Application must be in the approved form and state various details - s 168. If approved, the water entity may exercise a number of powers, including the acquisition of land - s 180, and the ability to enter land to undertake works - s 193. The water entity must also exercise certain responsibilities, including reporting periodically to the Minister - s 179.

A water entity may set itself up as a trust if it will assist in achieving the objectives of the Act and giving effect to any relevant water management plan - s 203. Establishment as such will enable the exercise of various powers, such as the power to borrow - s 209.

Enforcement, Review and Appeals

Authorised officers have a number of powers to enforce provisions of the Act, including measurement, taking samples, inspection and surveying, carrying out operations, and preventing the unlawful taking of water - ss 237, and 243. Authorised officers have the power to enter premises, watercourses and lakes if necessary to the execution of their powers - ss 238-242. Water infringement notices may be served where an officer is satisfied an offence has been committed - s 249(1); notices must specify offences and penalties - s 249(2). Civil enforcement proceedings may also be taken to prevent or require certain action - s 261.

Decisions may be reviewed and appealed in various cases - ss 267-268, and 271-272. Applications for review are made in writing to the Minister - s 269(1); applications for appeals are made to the Resource Management and Planning Appeal Tribunal - s 273(1). Both the Minister and Appeal Tribunal have various powers in connection with reviews and appeals - ss 270(1), and 276(1).

Simon Marsden