

Draft Water Management Bill 1998

Environmental Defenders Office (TAS) Submission

22 July 1998

Objectives of the Act

As the Act is part of the Resource Management and Planning System its objectives should be set out similarly to those in the other legislation (eg, *Land Use Planning and Approvals Act 1993*) and we propose the following:

The objectives of the Act are to further the Objectives in Part 1 of the Schedule - to:

- (a) promote the sustainable use and development of Tasmania's limited water resources;
- (b) maintain ecological processes and genetic diversity;
- (c) provide for the fair, orderly and sustainable allocation of water resources to meet the needs of the community and the natural environment that sustains it
- (d) increase the community's understanding of the aquatic ecosystem and the need to use and manage water in a sustainable, effective and cost efficient manner
- (e) encourage public involvement in water resource management and planning
- (f) protect and enhance the quality of Tasmania's aquatic resources
- (g) prevent degradation of Tasmania's water resources by promoting efficient and effective use, conservation and re-use of water
- (h) require persons engaged in water use activities to make progressive improvements in water use including water conservation techniques
- (i) provide for the monitoring and reporting of water quality throughout the state on a regular basis
- (j) control the catchment, storage, collection and distribution and use of water with a view to reducing, minimising and where practicable eliminating harm to the aquatic environment
- (k) adopt a precautionary approach when assessing environmental risk to ensure that all aspects of environmental quality, including aquatic ecosystem sustainability and integration and beneficial uses of the aquatic environment are considered when assessing and making decisions in relation to Tasmania's aquatic water resources
- (l) easily integrate water management and use with environmental, social and economic, conservation and resource management policies at State and local levels

- (m) ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made concerning the use and development of water resources
- (n) to ensure that water management plans fully consider the capability of Tasmania's aquatic resources
- (o) protect public infrastructure and other assets to enable the orderly provision and coordination of public water utilities and other facilities for the benefit of the community
- (p) provide for the equitable sharing of water resources
- (q) recognise the importance of water to the environment generally
- (r) preserve as far as possible, wetlands and other ecosystems and scenic beauty
- (s) minimise interference with scientific, historical, cultural and archaeological sites

Water Plans

State Water Plans

It should be mandatory that the State Water Plan provides for the assessment of the quality, quantity and condition of water resources etc. The first State Water Plan should be prepared as soon as practicable and at least within twelve months after the commencement of the act.

Water Management Plans

These should be Catchment Management Plans, or at least Water Management Plans must be devised around water catchments, to make them consistent with the State Catchment Management Policy. Water Management Plans should therefore be prepared for catchments or integrated parts of catchments.

The Water Management Plan must include an assessment of the needs of ecosystems in the catchment, and serve to protect the water resource by prohibiting or regulating land use or land management practices; require specified action to be taken to improve land management practices, prevent or minimise land degradation or rehabilitate degraded land that is resulting in diminishing water quality and/or quantity.

Sustainable water allocation must include environmental factors such as land care, water quality, salinity and pollution. Water allocation must also consider the nature of land being irrigated or the nature of the operation to which water is being supplied. For example if quantities of water carrying salt or other pollutants drains from the land into other land or water courses; or if water supplies decrease and there is insufficient water to meet the demand, or if unable to dispose of waste irrigation water due to its degraded quality.

Clause 4.11 - The proposal statement must be publicly advertised.

Clause 4.13 - Other members may be appointed to the Committee who represent other parts of the catchment or adjoining catchments.

Water Management Plans should be reviewed regularly and amended by a process of public consultation; amendments to plans may be initiated by members of the public.

Rights in Respect of Water

Clause 5.2 - Entitlements to take water are also subject to the taking of water not leading to an environmental nuisance.

Water regulations should continue to specify the maximum quantities of water which may be taken.

Clause 5.3 - How are prescribed water resources to be defined? They should include considerations of the needs for the catchment including the downstream perspective, the health of the aquatic life, the conservation and maintenance of water quality and quantity.

Licensing

Water Licenses

Water licenses should also vary if the disposal of irrigation water is of degraded quality. A licence should be required if there is drilling in relation to mining.

Allocation of Water

Clause 6.11 - The Minister must reduce water allocations to prevent a reduction in water quality etc.

Transfer of Licenses and Water Allocations

Any transfer must be in accord with the relevant Water Management Plan and the Act.

Clause 6.16 - The quantity of water that could be sustainably used needs to spell out how it is assessed, in relation to the water management plan for the particular catchment and the environmental, economic and social issues relevant to the catchment and downstream catchments.

Clause 6.18 - Public consultation on a proposed transfer must be required by all water management plans and the types of situations be clearly stated as to where public consultation is necessary, eg. large environmental impact, availability of water to other adjoining or downstream water users, effects on the catchment etc.

Breach of License

There must be mandatory provisions for licence breaches, and the Act should provide that the authority must act in relation to a proven breach. Investigations and prosecutions for breaches of license and other breaches of the Act should preferably be enforced by Departmental Officers. Authorised Officers employed by the Water Management Committees may find themselves compromised in ways similar to Council employees who should be, eg issuing an Environment Protection Notice against a polluter in clear cases where an environmental nuisance is being caused and fail to act. It is our experience that, for example, under the Land Use Planning and Approvals Act or the Environmental Management and Pollution Control Act, Councils or even the Environment Department are reluctant or tardy to act to correct something quickly. The result is further environmental damage, an erosion in public confidence in the authority.

See Civil Remedies section below. Law enforcement must extend to breaches of license conditions as well.

Control of Activities Affecting Water

Control of Activities

The Act should specify that the Rivers and Water Supply Commission is responsible for monitoring the condition of all freshwater resources and assessing changes in their condition. It should spell out the criteria for prescribed bores and prescribed groundwater areas.

Clause 7.3 - Licenses and Permits for Farm Dams should be directed at first instance to the Council which should refer them to the Farm Dam Working Group (which should be statutorily recognised) and, if appropriate to the Board of Environmental Management and Pollution Control, similar to the provisions in sections 24, 27 of the Environmental Management & Pollution Control Act 1994. The environmental effects of in-stream farm dams may, in some catchments, be very different from the environmental affects of other farm dams.

Clause 7.7 - The Minister must restrict taking of water where there is inadequate supply or overuse of water in a catchment.

Clause 7.8 - The person taking the water, as well as the owner or occupier of the land must also have the responsibility to prevent/rectify any damage.

Permits

Clause 7.12 - Water Management Plans and Council Planning Schemes should be integrated to provide a straightforward public consultation and an appeals process to the Resource Management and Planning Appeals Tribunal.

Water Districts and Schemes

Creation of Districts and Schemes

Creation of water districts and schemes must be part of water catchments for entire water catchments and easily integrated with them and with the Catchment Management Policy.

Clause 8.5 - Controlling bodies for river improvement or drainage schemes must obtain a permit to undertake activities affecting water courses etc.

Water Management Districts

Water Management Districts must cover a water catchment or part of a water catchments.

Clause 8.12 - What other types of water districts or schemes are envisaged?

Clause 8.17 - We are concerned that authorised Officers nominated by the controlling body may not be the best fitted to undertake water management activities in the district if they are not able to be adequately impartial, eg. for environmental monitoring, or bailiff. This is the advantage of the current position of the Rivers and Water Supply Commission, being a government body.

River Improvement Schemes

Controls affecting river flow must be sensitive to the minimum flow needs of river ecology. River improvement schemes must recognise activities which are likely to induce or exacerbate flooding issues, eg. upstream deforestation or land clearance which will significantly increase water run off and flooding in heavy rain. Stream modification or inadequate dam construction may have major impacts on downstream catchment users. River improvement schemes must be consistent with the objectives of this Act and with Water Management Plans and State Policies.

Drainage Schemes

Drainage Schemes must take into account the quality of water flowing from the land and levels of pollution therein. Drainage Schemes must also consider the Objectives of the Act and the provisions of the Water Management and State Policies.

Enforcement

As discussed earlier, the Act should be impartially enforced preferably by employees of an independent body such as the Rivers & Water Supply Commission. There should also be a provision that provable breaches of the Act must be enforced.

Civil Remedies

The Minister, a Municipal Council or any persons with a proper interest in the subject matter may apply to the Resource Management and Planning Appeal Tribunal for an Order with similar provisions to s.48 (5) (enclosed) of the Environmental Management and Pollution Control Act 1994. Civil enforcement proceedings should be able to be taken where

- (a) a person has engaged, is engaging or is proposing to engage in conduct in contravention of this Act or any plans under this Act; or
- (b) a person has refused or failed, is refusing or failing or is proposing to refuse or fail to take any action required by this Act or to abide by this Act.

Miscellaneous

Where the exercise of rights under a water license or permit may result in a detrimental affect on another person, that other person is able to appeal to the Resource Management and Planning Appeal Tribunal.

This Act binds the Crown in the Right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

There should be no exemptions to persons or resources from the operation of this Act and the Government must be bound by the Water Management Plans.

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