

Draft Water Management Bill 1999

Environmental Defenders Office (TAS) Submission

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s.3(1): Definitions

It would be helpful to members of the public if the definitions of "environmental agreement, environmental harm, environmental improvement program, environmental nuisance, serious environmental harm" as in the *Environmental Management and Pollution Control Act 1994* (EMPCA), could be spelled out in the *Water Management Act* because not everyone has access to all the legislation.

A definition of "Person" should be included, as per the *Land Use Planning & Approvals Act 1993* (LUPAA), "includes a department or other agency of government of the State or the Commonwealth and an authority of the State or the Commonwealth"

s. 6(1): Objectives of the Act

The following should also be listed:

- protect and enhance the quality of Tasmania's aquatic resources
- prevent degradation of Tasmania's water resources by promoting efficient and effective use, conservation and re-use of water
- require persons engaged in water use activities to make progressive improvements in water use including water conservation techniques
- provide for the monitoring and reporting of water quality throughout the state on a regular basis
- 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
- adopt the precautionary principle 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
- integrate water management and use with environmental, social and economic, conservation and resource management policies at State and local levels 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
- minimise interference with scientific, historical, cultural and archaeological sites

ss. 7-12: Administration

s 11 The Minister must not exempt a person from any requirement not to cause material environmental harm etc. As a basic principle there should be no exemptions to persons or resources from the operation of this Act and the provisions of Water Management Plans.

State Water Plans

s.13 (2) The provisions of this subsection should be mandatory.

The first State Water Plan should be prepared as soon as practicable and at least within twelve months after the commencement of the act.

ss19-33: Water Management Plans (WMP)

To be consistent with LUPAA, the Act should specify time limits for adoption and final decision and production of WMP's. (see eg. s. 29 of LUPAA)

s 20 The scope of a WMP should include land management practices which may impact on water resources of a catchment such as land clearing, land degradation and pollution. The quality and quantity of water available in a water resource are of equal importance.

s 24 There should be provision for the community to approach the Minister to trigger the creation of a WMP. Due to the key place that these plans hold in this management system, it is desirable for the creation of the plans to be instigated from other areas such as water entities, proposed water entities, and the community.

s 32 The draft WMP must be consistent with the objectives of the Act, State Policies and Planning Schemes.

s 26 When preparing the draft plan the Secretary must have regard to its consistency with the State WMP

s 42 It may be desirable for water entities and members of the public to be able to initiate a review and amendment of a WMP, especially as the administration of the plan may actually be the responsibility of a local water entity.

There should be provision for appeal against the provisions of a WMP.

Implementation of WMP's

s 44 The local community as well as local landowners and users should have responsibility for the administration of WMP's, to address the problem of fairly balancing competing interests.

s 46 This section allows for the possibility of a water entity (which could well be a small group of landowners) to bypass the notice requirements and become responsible for the administration of a WMP without other interested parties having an opportunity to have direct say on this matter. This is of concern because the water entity then has the power to impose rates on all licence holders in under that plan .

s 51 Where these conditions are met it should be mandatory for the Minister to revoke the approval for the water entity to administer the plan.

Rights in Respect of Water

s 53 The causation of significant detrimental effects to other users or the aquatic environment is an appropriate test to be applied to using water to generate electricity and we commend the inclusion of this section.

Licensing and Allocation of Water

s 61 There is no requirement that the use to which the water is to be put be listed on the licence. This use may have an impact on the relevant catchment in terms of the volume and quality of runoff etc. The use to which the water will be put as well as details about the land in which it will be used should be included in the details of the licence.

s 66 Change in wording to " The Minister MUST refuse to grant a licence if -" The additional reason in s 74 (b) could be added in here as well.

s 80 The s 55 provision against causing material or serious environmental harm could be included in the breach of licence section also.

Restriction in case of Inadequate Water

s 89 A similar review and implementation of water restrictions should be able to be triggered by local users. Change in wording to "...the Minister MUST, by notice..."

s 91 If a shortage occurs, it may indicate a problem with the management plan itself and it may be necessary that the WMP be amended to reflect a more appropriate amount of water that may be taken in accord with that plan.

s 91(2) The ecosystem needs should take priority.

Transfer licences and water allocations

We are concerned about the possibility that under these provisions, large entities may acquire a large slice of the water allocations and licences which would adversely effect what can be done on the land by future owners who may be small farmers.

s 94 Change of wording to " The Minister MUST refuse....."

In some circumstances, public consultation on licence transfers may be appropriate.

Special Licences

s 105(f)(ii) The qualifier " essential" is unnecessary when referring to the needs of the ecosystem and probably has no place if the precautionary principle is applied as all that may be essential is not known.

s 106 Special licences should not be exempt from the provisions of the State Water Plan or WMP's.

s 109 There should be provision for public consultation on the granting of special licences.

s 112 No licensee, especially the large electricity generating entities, should be exempt from the provisions of the Act. Licenses should not exceed a term of 20 years before being reviewed especially given the potential for significant adverse effects of the water use on ecosystems dependant on this water.

ss 112 and 159(3) Similarly, no compensation should be payable to such entities in the case of a reduction of water allocation. This compensation is unjust with respect to other water uses.

The mandatory phrasing used in this Division regarding the granting and renewal of special licences and the payment of compensation contrasts with the discretionary phrasing used almost everywhere else. This is of

concern when combined with an apparent lack of public consultation in this Division.

Control of Activities Affecting Water

ss 125(1); 127; 133(1); 134(1) Change discretionary provisions with mandatory ones ie " Minister may" to " Minister must"

Activities not requiring a permit

ss 132 and 136 These provisions may be in conflict with the requirements of a Council Planning Scheme which may require a permit for such works. Under LUPAA " work" includes " any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees or the removal of vegetation or topsoil...s.3(1). In our view, these activities should be subject to a council permit.

Riverworks and drainage districts

ss 150, 175, 177 Similarly, works done under these sections may be in conflict with the provisions of the LUPAA where Council Planning Schemes require permits for works.

ss 150 to 157 Written representations should be considered from those in the local community generally, in accord with the provisions of the Resource Management and Planning System, and should also include considerations of the provisions of the local planning scheme, the protection of wetlands, protection of threatened species. There should also be consultation with the local council and the Director of Parks and Wildlife Service. An appeal from a decision appointing a river works or drainage district should lie to the Resource Management and Planning Appeal Tribunal (consistent with LUPAA).

Water Districts

s 156 An assessment of a proposed appointment of a water district should always be undertaken. s 160 An electricity entity should not be exempt from the State water plan or a WMP.

s 167 The Minister MUST revoke approval on the listed grounds.

s 168 The grounds on which an electricity entity's approval can be revoked are much narrower than for other administering bodies, and it would seem more equitable that they are the same as for these other bodies.

Enforcement

s 234 The service of infringement notices must be mandatory, ie provable breaches of the Act must be enforced.

Offences

s 253(2) Damage to a watercourse could also be through pollution, degradation etc.

s 253 (3) Mandatory enforcement provisions should be included or proven breaches of the Act. ie " The Minister MUST serve notice..."

s 246: Civil Enforcement Proceedings

We commend the inclusion of this section. It would be made even more effective by the addition of the following in s.246(5)(e): " require the respondent to undertake the action required by the Act" .

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

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