**IRRIGATION BILL 1994**

**LEGISLATIVE COUNCIL, 4 MAY 1994, PAGE 741**

**Second reading**

Received from the House of Assembly and read a first time.

**The Hon. R.I. LUCAS (Minister for Education and Children's Services)**: I move:

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it.

Leave granted.

This Bill is the result of the on-going review of water-related legislation. It concerns the distribution of water for irrigation, and the drainage of irrigation water and has been prepared after extensive public consultation, particularly with the Riverland irrigation community.

Statutory powers for irrigation may be found in eight separate Acts of Parliament. There is no good reason for several Acts to address the same issue. Considering the similarity of purpose of the various irrigation Acts, it is logical and practical to have standard provisions which would enable all areas to be managed in similar ways. This encompasses both Government and private irrigation bodies.

The responses to the "Green Paper" on the proposals for legislation were generally supportive of consolidated and updated legislation.

The Renmark Irrigation Trust will continue to operate under its existing statute, the Renmark Irrigation Trust Act 1936. It can however, elect at any time to have its Act repealed and operate under this legislation.

The need for land tenure and irrigation management to be dealt with in the Irrigation Act 1930 no longer exists. In fact, this was recognised in 1978 when the administration of irrigation activities in government irrigation areas was delegated by the Minister of Lands to the then Minister of Works. This Bill enshrines that arrangement.

The pertinent aspects of the Bill are:

* the establishment and management of Government and private 'Irrigation Districts';
* the separation of the land tenure provisions from water management;
* the land tenure concept of 'Irrigation Areas' is not relevant to water management. The water management function will now revolve around 'Irrigation Districts' which are simply those properties to which the irrigation and drainage facilities are available;
* it considerably simplifies the conversion from Government irrigation district to a private irrigation district, at the same time protecting the rights of individuals and taking into consideration Government's obligations;
* in addition to the normal regulation-making powers, there is also provision for private trusts to make their own regulations to cover local requirements, subject to Ministerial approval there is a right of appeal to the Environment, Resources and Development Court;
* there is a power to grant financial assistance under certain conditions to an owner or occupier in a Government irrigation district or a private irrigation Trust;
* there is a power for a Trust to borrow money from any institution it deems appropriate;
* the legislation provides for a simple but effective means of setting and recovering charges, but more importantly provides the flexibility to suit the needs of individual districts.

To this extent, this Bill is similar to the Bill that was introduced in this place in 1993.

Since the drafting of that Bill, the major restructuring issues surrounding the rehabilitation of the irrigation systems have become clear. The blueprint for the restructuring of the irrigation industry that must accompany this major undertaking has been developed in conjunction with the irrigators. This Bill reflects those requirements by providing the means by which the industry can ensure greater efficiency in the use of water.

The new Bill sets out the parameters for restructuring by—

* providing the power to exclude land from a district where—
* the land is not used to carry on the business of primary production;
* the land is not suitable for carrying on the business of primary production efficiently; or
* it is not economically viable to extend the rehabilitated system to that land;
* providing for compensation, and the principles for such compensation, where land is to be excluded;
* providing a right of appeal to the Environment, Resources and Development Court—against the decision to exclude land and the level of compensation.

It is a necessary consequence of these parameters that only those properties that are used to carry on the business of primary production will comprise an irrigation district. A property that is not used for that purpose when the Bill comes into operation will continue to be supplied with water as though it were included in the district.

This arrangement will last until 5 years after the authority for the district serves notice on the owner of the land ending it. The owner may end it earlier if he or she wishes to do so. An authority's purpose in ending such an arrangement would normally be to provide water to the land on a different basis. Clause 5 of the second schedule of the Bill sets out these transitional arrangements.

Another consequence is that there must be power to abolish a private irrigation district and dissolve its trust if the trust is not carrying out its functions properly because its members cannot co-operate, or it cannot pay its debts or it is in breach of the Act or conditions imposed under the Act. Clause 14 gives the Minister power to abolish a district in these circumstances after serving notice of his or her intention to do so. The trust has three months to rectify the problem which will extend to six months if it appeals to the Environment, Resources and Development Court.

This Bill also includes additional provisions enabling two or more private irrigation districts, or parts of districts, to merge and form a new district. The procedures for merger are set out in Part 3, Division 2 of the Bill.

The Bill changes the emphasis from the mere provision of water for irrigation to the provision of water for the business of primary production. Whilst the Bill specifically addresses irrigated horticulture, the Minister or a trust may supply water for other forms of primary production—such as aquaculture—which may benefit the economy of the State.

I am confident that this legislation will go a long way in improving the way Irrigation Districts are managed in the future. It will enable the important primary industries which rely on irrigation waters to manage their affairs in a business-like manner, be they Government or private.

I commend this Bill to theHouse.

Explanation of Clauses

 Clause 1: Short title

 Clause 2: Commencement

These clauses are formal.

Clause 3: Repeal

This clause repeals the Acts listed in schedule 1. The Bill supersedes these Acts.

Clause 4: Interpretation

This clause defines terms used in the Bill.

Clause 5: Existing government irrigation districts

This clause provides for the continuation of irrigation areas established under the Irrigation Act 1930. They are called government irrigation districts under the Bill and will be made up of land used to carry on the business of primary production connected to the irrigation systems in operation under the Act of 1930. See clause 4(2) for the concept of connection of land to an irrigation or drainagesystem.

Clause 6: Establishment or extension of irrigation districts

This clause provides for the establishment of new government irrigation districts and the extension of existing districts by establishing or extending irrigation systems and connecting land to the new or extended systems.

Clause 7: Inclusion in or exclusion from a district

This clause provides for individual properties to be included in or excluded from an irrigation district. The application must be made by the owner and any long-term occupier of the property. A long-term occupier is a registered lessee with at least five years of the term of the lease left to run. See the definition in clause 4(1).

Clause 8: Change of name and abolition of district

This clause enables the Minister to change the name or abolish a government irrigation district by notice in the Gazette.

Clause 9: Existing private irrigation areas

This clause provides for the continuation of existing private irrigation areas as private irrigation districts under the Bill.

Clause 10: Establishment of private irrigation district

This clause provides for the establishment of private irrigation districts. All land owners must apply and long-term occupiers are given an opportunity to object. If a long-term occupier does object the property that he or she occupies must be excluded from the district.

Clause 11: Conversion from government to private irrigation district

This clause refers to conversion from a government irrigation district to a private irrigation district pursuant to Part 4.

Clause 12: Inclusion in or exclusion from a district

This clause provides for inclusion of a property in or exclusion of a property from a private irrigation district.

Clause 13: Abolition of private irrigation district on landowner's application

This provision enables the owners of land in a private irrigation district to apply to the Minister for abolition of the district. All owners must apply and any long-term occupier may veto the proposal. Abolition under this provision could be used to convert a private irrigation district to a government irrigation district with the agreement of the Minister.

Clause 14: Abolition of private irrigation district without landowner's application

This clause enables the Minister to abolish a private irrigation district and dissolve the trust if the trust is not performing its functions properly, cannot pay its debts or has failed to comply with the Act or a term or condition on which an application for merger or conversion from a government irrigation district was granted. The Minister must give the trust 3 months’ notice in which it can remedy the problem and the trust or a member of the trust may appeal to the Environment, Resources and Development Court.

Clause 15: Interpretation

This clause is an interpretative provision.

Clause 16: Application for merger

This clause enables owners of properties in two or more private irrigation districts to apply for merger of the districts or parts of the districts.

Clause 17: Grant of application

This clause enables the Minister to merge the two districts by publishing a notice granting the application in a local newspaper. The terms of the notice must have been agreed to by two thirds or more of the irrigated properties in the districts concerned.

Clause 18: Constitution of trust

This clause provides that the owners of land constituting a private irrigation district are the members of a trust which is a body corporate.

Clause 19: Presiding officers of trust

This clause makes provision for the presiding officer and deputy presiding officer of a trust.

Clause 20: Calling of meeting

This clause provides for the calling of meetings of a trust.

Clause 21: Procedure at meetings of trust

This clause provides for procedures at meetings.

Clause 22: Voting

This clause provides for voting at meetings. One vote may be cast in respect of each property comprising the district. The values of the votes are determined in accordance with subclauses (6), (7), (8) and (9).

Clause 23: Accounting records to be kept

Clause 24: Preparation of financial statements

Clause 25: Accounts, etc., to be laid before annual general meeting

These clauses provide for accounts, financial statements and reports.

Clause 26: Interpretation

This clause is an interpretative provision.

Clause 27: Application for conversion

This clause enables landowners in a government irrigationdistrictto apply for conversion of the district to a private district.

Clause 28: Proposal for conversion by the Minister

This clause enables the Minister to initiate procedures for the conversion of a government irrigation district toa privateirrigationdistrict. The consent of a majority of the landowners is required for the Minister's proposal to succeed.

Clause 29: Conversion to private irrigation district

This clause provides for the notice granting an application under clause 27.

Clause 30: Functions

This clause sets out the functions of irrigation authorities.

Clause 31: Powers

This clause sets out the powers of irrigation authorities.

Clause 32: Further powers of authorities

This clause enables an irrigation authority to do "contract work" for property owners and enables a trust to buy in bulk on behalf of its members.

Clause 33: Water allocation

This clause provides for the fixing of water allocations on a fair and equitable basis.

Clause 34: Transfer of water allocation

This clause provides for the transfer of water allocation. They can be transferred between properties with the consent of the authority or may be transferred to the authority itself. The authority may resell the allocation to another landowner.

Clause 35: Supply of water for other purposes

This clause enables an irrigation authority to supply water for other purposes.

Clause 36: Power to restrict supply or reduce water allocation

This clause enables an irrigation authority to restrict or stop the supply of irrigation water for the reasons set out in the clause. Action under this clause (except under subclause(1)(d))must be on a fair and equitable basis.

Clause 37: Supply of water and drainage outside district

This clause provides for irrigation and drainage outside a district under agreement with the owner or occupier of land.

Clause 38: Drainage of other water

This clause provides for the drainage of water other than irrigation water.

Clause 39: Establishment of boards

This clause enables the Minister to establish advisory boards which may also exercise powers delegated by the Minister.

Clause 40: Delegation

This clause is the Minister's power of delegation.

Clause 41: Direction of trust by Minister

This clause enables the Minister to take action against a trust to prevent irrigation water draining onto or into land outside the trust's district.

Clause 42: Boards of management and committees

This clause enables a trust to establish a board ofmanagement to carry out its day-to-day operation. A trust can alsoestablish committees for specific purposes.

Clause 43: Delegation

This clause enables a trust to delegate its functions and powers.

Clause 44: Change of name of district

This clause enables a trust to change the name of its district.

Clause 45: Regulations by a trust

This clause provides for the making of regulations by a trust. The regulations can only be made with the approval of the Minister.

Clause 46: Notice of resolution

This clause provides that the establishment of a board ofmanagement or the delegation of functions or powers mustbe byresolutionof which 21 days’ notice has been given.

Clause 47: Exclusion of land from an irrigation district

This clause allows an authority to exclude land from its district for the reasons set out in subclause (1). The authority must give the owner and the long-term occupier of the land at least three months (but not more than 12 months) notice. The owner or long-term occupier may appeal against the authority's decision (seeclause 65(1)(b)).

*Clause 48: Exclusion of land on basis of cost*

This provision enables an authority to exclude land that is too expensive to connect to a new system being installed by the authority. The reason for installing a new system must be to improve the efficiency with which water is supplied or drained. The landowner is entitled to pay the cost himself or herself (subclause (4)).

Clause 49: Compensation

This clause provides compensation for a landowner and long-termoccupierwhose land is excluded from a district under clause 47.

Clause 50: Appointment of authorised officers

Clause 51: Powers of authorised officers

These clauses provide for the appointment and powers of authorised officers.

Clause 52: Hindering, etc., persons engaged in the administration of this Act

This clause makes it an offence to hinder or obstruct a person referred to in subclause (2) in the administration of the Act.

Clause 53: Right to water

This clause provides for a landowner's right to water.

Clause 54: Restrictions on and obligations of landowners

This clause sets out the obligations of landowners under the Bill.

Clause 55: Charges

This clause gives irrigation authorities the right to impose water supply and drainage charges.

Clause 56: Declaration of water supply charges

This clause sets out the factors on which a water supply charge may be based.

Clause 57: Minimum amount

This clause provides for the payment of a minimum amount in respect of a water supply charge.

Clause 58: Drainage charge

This clause provides for declaration of a drainage charge and the basis of such a charge. A landowner may be exempted if water does not drain from his or her land into the authority's drainage system.

Clause 59: Determination of area for charging purposes

This clause provides the degree of accuracy required when determining the area of land for charging purposes.

Clause 60: Notice of resolution for charges

This clause requires 21 days’ notice of the resolution fixing the basis for water supply and drainage charges by a trust.

Clause 61: Minister's approval required

This clause requires a trust that is indebted to the Crown to obtain the Minister's approval for the declaration of charges and the fixing of interest.

Clause 62: Liability for charges and interest on charges

This clause sets out the basis for liability for charges and interest on charges.

Clause 63: Sale of land for non-payment of charges

This clause provides for the sale of land to recover unpaid charges or interest on charges. The wording of this provision follows the wording of the corresponding provision in the Local Government Act 1934.

Clause 64: Authority may remit interest and discount charges

This clause enables an authority to remit interest in case of hardship and discount charges to encourage early payment.

Clause 65: Appeals

This clause provides for appeals to the Environment, Resources and Development Court.

Clause 66: Decision may be suspended pending appeal

This clause enables a decision, appealed against to be suspended pending the determination of the appeal.

Clause 67: Appeal against proposal to abolish district

This clause enables a trust or a member of a trust to appeal against a proposal by the Minister to abolish a private irrigation district.

Clause 68: Constitution of Environment, Resources and Development Court

This clause provides for the constitution of the Court when exercising the jurisdiction bestowed on it by the Bill.

Clause 69: Financial assistance to land owners in government irrigation districts

This clause enables the Minister to give financial assistance to an owner or occupier of land in a government irrigation area.

Clause 70: Trust's power to borrow, etc.

This clause sets out detailed borrowing powers of trusts.

Clause 71: Financial assistance to trust

This clause enables the Minister to grant financial assistance to a trust.

Clause 72: Unauthorised use of water

This clause makes the unauthorised taking of water from an irrigation or drainage system an offence.

Clause 73: Division of land

This clause sets out provisions relating to the division of an irrigated property. This provision does not prohibit the division of a property but provides for certain consequences if a property is divided without the authority's consent. A person dividing a property would have to comply with any relevant planning legislation.

Clause 74: False or misleading information

This clause makes it an offence to provide any false or misleading information to an irrigation authority.

Clause 75: Protection of irrigation system, etc.

This clause makes it an offence to interfere with an irrigation or drainage system without lawful authority.

Clause 76: Protection from liability

This clause provides for immunity from liability in certain circumstances.

Clause 77: Offences by bodies corporate

This clause is a standard provision making the persons who run a company or other body corporate guilty of an offence if the body corporate commits an offence.

Clause 78: General defence

This clause is the standard defence provision.

Clause 79: Proceedings for offences

This clause provides for proceedings for offences against the Act.

Clause 80: Evidentiary provisions

This clause provides for evidentiary matters.

Clause 81: Service, etc., of notices

This clause provides for service of notices.

Clause 82: Regulations by the Governor

This clause provides for the making of regulations.

Schedule 1: Repeal of Acts

This schedule repeals the Act listed in the schedule.

Schedule 2: Transitional Provisions

This schedule sets out transitional provisions. Clause 1 provides for the transfer of property, rights and liabilities from the boards and other authorities managing irrigation areas and districts under the repealed legislation to the trusts established under the Bill. Clause 2 allows an authority to fix a water allocation in relation to land where that land did not have an allocation under repealed legislation. Clause 3 provides transitional arrangements for the payment of rates under the repealed legislation and the payment of charges under the new Act on its commencement. Clause 4 ensures that a person who was entitled to vote at meetings of a board of management before this Act comes into force will be able to vote at a meeting of the corresponding trust. Clause 5 is required because land comprising a district under the new Act will (with some exceptions) be land used to carry on the business of primary production (an irrigated property). Clause 5 provides that land not falling within this category when the Act comes into force will continue to be provided with water for at least 5 years as though the land were an irrigated property. An agreement will be taken to subsist under section 37 and can be terminated by the owner at any time and by the authority after 5 years notice or in circumstances referred to in section 47(1)*(c),* (d) or (e). Clause 6 is a special provision relating to the exclusion of land from the Cobdogla irrigation district which is a variation of clause 48 of the Bill.

Schedule 3: Consequential Amendment of Other Acts

This schedule amends certain Acts. The title of the Irrigation Act 1930 is changed to the Irrigation (Land Tenure) Act 1930. The parts of the Act dealing with irrigation are struck out leaving the land tenure provisions as the principal provisions of the Act.

The Hon. CAROLYN PICKLES secured the adjournment of the debate.