WATER RESOURCES ACT AMENDMENT BILL 1976

Legislative Council, 28 July 1976, page 240

Second reading

**The Hon. J. C. BURDETT: I move:**

*That this Bill be now read a second time.*

It is designed to give some real power to the Water Resources Appeal Tribunal set up by division III of Part II of the principal Act in dealing with appeals under section 64 of the Act. Under the principal Act a licence is granted or refused by the Minister on the advice of the appropriate advisory committee. A right of appeal to the tribunal against the refusal to grant a licence, inter alia, is given by section 64. The power of the tribunal in the principal Act is to uphold or quash the decision appealed against. There is not the power, given to most appellate bodies, to substitute its own decision for that appealed against. This means that even after a successful appeal the Minister could maintain his refusal or at any rate could certainly first grant the licence and then revoke it.

Thus there can arise the ridiculous situation that an applicant can go to the trouble and expense of an appeal, win the appeal and then lose because the Minister can again refuse or at any rate can certainly grant the licence and immediately revoke it.

This, in practice, makes the tribunal almost useless. If an appellate tribunal is set up, it should not be mere window-dressing but should have some power. One would have thought that the administration would in fact act on the decision of an appeals tribunal, but the case of *G. H. Michell & Sons (Australia) Proprietary Limited v Minister of Works* (judgment of the Full Court on an interlocutory application given on March 28, 1974) is an example of a case where the applicant successfully appealed to the tribunal and still had his application not granted. He won but he still lost.

That case was brought under the now repealed Underground Waters Preservation Act, 1969-1975, but the appeal provisions are similar. It should be noted that the old Underground Waters Preservation Act, 1959-1966, did give the appeals tribunal the power to substitute its directions for the decision appealed against. I am conscious of the need to prevent an appeals tribunal from becoming in effect the policy-making body. Therefore, the method I propose in this Bill is to empower the tribunal to quash the decision appealed against with such directions as to the tribunal seem necessary or desirable, and to provide that the Minister shall comply with any such directions.

While I think it is generally undesirable to allow an appeal from merely administrative decisions of a Minister, the principal Act gives the Minister some discretions which go beyond mere administration and which are properly the subject of appeal. In any event, it has long been accepted in legislation on this subject that there should be an appeals tribunal. In such a case, the decision of the tribunal should have some real effect.

I mention that the governing council of South Australian Fruitgrowers and Market Gardeners Incorporated, which is very interested in water resources, has stated by letter that it approves of the principle of this Bill and considers that the Minister should comply with any direction given by the tribunal.

Clause 1 is formal. Clause 2 is the operative clause. It repeals section 64 of the principal Act and substitutes a section 64 which enables the appeals tribunal to give directions upon quashing a decision and directs the Minister to give effect to such directions.

The Hon. C. W. CREEDON secured the adjournment of the debate.