**WATER RESOURCES BILL 1976**

**Legislative Assembly, 3 February 1976, pages 2022-6**

Second reading

The Hon. J. D. CORCORAN (Minister of Works) obtained leave and introduced-a Bill for an Act to provide for the assessment, conservation, and development of the water resources of the State, the control and management, and utilisation and quality, and for other purposes. Read a first time.

The Hon. J. D. CORCORAN: I move:

That this Bill be now read a second time.

The development and management of South Australia's water resources, and hence its supplies, is one of the greatest social issues facing the State. The quantity and quality of our water resources is probably the most important and generally least appreciated asset we have. It hardly needs stating that South Australia is the driest State in the world’s most arid continent. Our State possesses less than 2 per cent of the total water resources of Australia, while accounting for 12 per cent of Australia’s land mass and more than 9 per cent of its total population. This gives some indication of the problems facing the Government in conserving, developing and managing our water resources.

Increasingly the pressures of exploitation are giving rise to instances where damage to the resource, or hardship to communities and individuals, will result if sound management and conservation policies are not properly carried out. At the same time, increasing industrial, agricultural and urban development are giving rise to problems of waste disposal, which, especially when accompanied by diminishing quantities of water in streams and underground, result in increasing dangers of deterioration in water quality. The existence of these pressures, felt in our State to a degree, not paralleled anywhere else in Australia, and the necessity of taking positive management initiatives to overcome them, underline the importance of this measure to the State.

The purpose of this Bill, therefore, is to enable the water resources of the State to be conserved, developed and managed in the manner that is most beneficial to the people of the State with provision for enlisting their involvement to the greatest degree in the planning and management process.

This measure is the legislative expression of the South Australian Government’s water resources management policy, which was announced just over two years ago. It will make possible the achievement of the fundamental principles of this policy by first, providing a framework for consolidating the responsibility and authority for the conservation and management of water resources under the Ministry and hence preventing the fragmentation that has proved disastrous elsewhere in Australia; secondly, promoting greater opportunity to incorporate water resources planning and management within the framework of comprehensive economic, environmental and social policy at the local, regional and State levels; thirdly, providing a basis for multi-objective planning and management, in which not only the objective of economic efficiency is taken into account but also the objectives of environmental quality, regional economic development, and social well-being; fourthly, providing a basis for multi-purpose planning and management of the State’s water resources. In the past the main thrust of Government policy and activity has been directed towards the provision of water for domestic and industrial use and irrigation purposes. It is now recognised that there are many other purposes of water use that interest and affect the community, the enjoyment of water in recreational pursuits, and the preservation of flora and fauna, to name but two.

Fifthly, recognising the interdependence of surface and underground water, and of quality and quantity, which entails the adoption of a consistent and unified approach to each of these aspects of water resources; and lastly, providing means whereby the planning and management efforts, already upgraded in tempo to meet the unique problems encountered in this State, can take the initiative. Only thereby can the water resources of the State be enhanced, especially in quality. In contrast, if this measure not enacted, water resources management would inevitably become a matter of attempting to remedy damage after it has been done, and of alleviating hardship after its. worst .effects have been suffered.

Many aspects of this policy were expressed in a statement of water resources policy that was adopted last year by all States and the Australian Government. The relevant objectives of this policy are as follows:

The provision of adequate water supplies of appropriate quality to meet urban and rural domestic needs, as well as those of viable primary and secondary industries.

The conservation, development and management of water resources so that other purposes such as flood control, recreation needs and wildlife conservation are also achieved.

The more intensive prevention of harmful pollution and the maintenance of high standards of- water quality.

The development of effective waste water treatment facilities in conjunction with water supply systems and the encouragement of recycling and re-use of water where appropriate.

The adoption of water pricing policies which enable water needs to be met at a fair and reasonable price, but which provide an incentive to all water users to avoid wasteful or environmentally harmful practices and which encourage the efficient allocation of resources.

The maintenance of adequate, undisturbed aquatic environments as reference areas and the preservation of appropriate wetlands for the benefit of native wildlife.

The implementation of a programme of public education aimed at ensuring the proper understanding of the factors affecting the development and use of water resources and a sense of responsibility in these matters.

The involvement of the public in the planning of water enterprises.

The principles on which this Bill have been based are therefore in accordance with the most modern developments in water resources management that have been evolving recently at the national level, and indeed internationally. Furthermore, in its treatment of all aspects of water resources as a unified whole, it is believed to be the most advanced legislation in this field in the world.

At the same time, it remains a purely South Australian Bill, designed to meet the unique and various needs of all regions of this State. Until now, legislation, related to water resources management has been provided by a number of separate acts in the fields of surface waters, underground waters and water quality. The present situation is fragmented and inadequate from the legislative viewpoint, and as a result, it is fraught with administrative difficulties. Completely new and consolidated legislation is required in these three fields, and in addition new ground must be covered.

In the surface waters area, management is currently exercised using the Control of Waters Act, 1919-1975. This Act is somewhat archaic in its wording and structure, and in practice has proved to be applicable only to the management of diversions from the Murray River, which indeed require management since the resources of the river have a definite limit. There is a need for completely new legislation in the surface waters field, a need which is fulfilled by this Bill. The management of underground waters is effected through the Underground Waters Preservation Act, 1969-1975. This Act provides for a rather wider range of controls than the surface waters legislation because by their nature underground water resources are much more liable to permanent damage or destruction by ignorant or self-interested mismanagement. Its very necessary powers are exercisable only in defined areas which at present are the Northern Adelaide Plains and parts of the South-East and Eyre Peninsula.

It is worth noting that, in the Northern Adelaide Plains, underground water is being extracted three times faster than it is being replenished. In this Bill opportunity is taken to upgrade technically the provisions for underground waters management, and to transform the management approach into one that is consistent with the approach used in respect of surface waters. Among other things, provision is made for the protection of aquifers throughout the State from faulty or inappropriate well construction. To date, only certain limited aspects of water quality have been provided for in existing legislation. Only the Health Act and the Waterworks Act contain effective provisions, and these are limited to water for human consumption and, in the latter case, are confined to strictly limited areas.

This Bill provides for the control of the discharge of wastes into waters throughout the whole State, and in respect of all beneficial uses of water. The method provided for exercising the necessary controls is relatively simple, and differs somewhat from the methods commonly used in other States and countries which in some respects have proved to be unsatisfactory. Some have adopted the method of classification of waters by type of use, and provide penalties for those who cause the quality of receiving waters to exceed the limits laid down. This approach is proving unenforceable. The approach in this Bill is first, to prohibit the discharge of wastes into waters where such action would result in the impairment of water quality, and, secondly, to provide for the Minister, by order, to authorise the discharge of wastes into waters only in strict accordance with the terms of the order, thus enabling a positive approach to water quality enhancement to be taken. The Bill also contains powers to take action to mitigate the resulting pollution caused by an emergency or accidental happening.

New ground is broken by the Bill in three further areas. First, the establishment of a South Australian Water Resources Council and Regional Advisory Committees. This provides a formal mechanism for public involvement in the management process. Secondly, the establishment of an appeal tribunal which will provide the individual with an additional opportunity to have his or her case examined by an independent body and, thirdly, the provision of powers to construct works necessary for the purposes of the Act, such as those required for water quality mitigation, and further provisions to facilitate efficiency in administration.

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

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 provides for the Act to come into operation on a day to be fixed by proclamation. Clause 3 deals with the arrangement of the Act. Clause 4 repeals the Act specified in the schedule. The definitions needed in. the Bill are covered in clause 5 and the attention of members is particularly drawn to the definition of “waste”. Clause 6 vests the control of and the right to the use of all waters in the State in the Crown, subject to the provisions of this Bill. Clause 7 provides that the Crown is to be bound by the Bill. Clause 8, most importantly, provides that the River Murray Waters Agreement is not to be affected by this measure.

Clause 9 establishes the South Australian Water Resources Council and provides for its constitution. It is intended that the members of the council will be drawn from a number of fields concerned with water in this State, and to this end it has been expressly provided that members shall be nominated by the Local Government Association, the Chamber of Commerce and Industry, United Farmers and Graziers and the conservation body prescribed by the Minister. Provision is also made for the appointment of a person experienced in irrigated horticulture and viticulture and six persons having professional qualifications in engineering, a geo-science, agriculture, environment or conservation, public health and Crown lands administration. The chairman of the council is to be appointed by the Minister.

Clause 10 covers the terms and conditions subject to which members of the council are appointed. The appointments are for a term not exceeding four years and are subject to the standard provisions as regards dismissal and vacancies in office. Clause 11 is a standard clause providing for procedure at meetings. Clause 12 allows for the appointment of a secretary to the council under the Public Service Act. Clause 13 provides for the payment of allowances and expenses to members of the council who are not public servants. Members of the council who are public servants are to be entitled to receive travelling allowances and out of pocket expenses. Clause 14 deals with the powers and functions of the council. Generally, the role of the council is to advise the Minister on any matters arising from the Bill or its administration and, in particular, on matters of policy. This clause also provides that the council is to have regard to factors such as the equitable distribution of water, the social well-being of people and the preservation of the amenities, nature, features and general character of a locality.

Clause 15 is a standard clause protecting members of the council from liability while acting as such and validating acts of the council carried out during some defect in its membership. Clause 16 provides for the establishment by the Minister of advisory committees. The powers and functions of such committees are to be as prescribed but will be flexible enough to ensure that there is appropriate high level of regional involvement. Clause 17 establishes the Water Resources Appeal Tribunal, to consist of the chairman, who will be a legal practitioner of seven years standing, two standing members, one of who will be qualified in engineering and one in science, and at least one other member drawn from a panel to be established by the Governor. No-one who is a member of Parliament, a member of the council, a member of an advisory committee, or a member of the Well Drillers’ Examination Committee is qualified to be on the tribunal. Clause 18 gives the Governor power to establish the panel required for the tribunal and provides for the representation on the panel of certain interests:—primary production well drilling, industry, and public health. Clause 19 is a standard clause prescribing the conditions of office of the chairman and members of the tribunal. In this case the term of office is three years, with the possibility of re-appointment. Clause 20 disqualifies a member of the tribunal from sitting at the hearing of an appeal if he has any proprietary, financial or personal interest in the result. Clause 21 provides that, a decision of the majority of members shall be a decision of the tribunal and in the event of an equal division, the decision in which the chairman concurs is to be the decision of the tribunal. This clause also provides that the chairman will decide any questions of evidence or law or procedure.

Clause 22 is a standard clause protecting members of the tribunal from liability while acting as such. Clause 23 entitles members of the tribunal to allowances and., expenses as determined by the Governor. Clause 24 provides for the appointment of a registrar of the tribunal. Clause 25 begins the third part of the Bill, relating to surface waters and gives the Governor power to declare any watercourse to be a proclaimed watercourse.

Clause 26 prohibits any person from diverting or taking any water from a proclaimed watercourse without authority. Penalties for this offence range from $100 to $3 000. Because of the difficulty of proof of such an offence, an evidentiary provision has been included in this clause so that proof of the existence on any land of a channel or means of taking water shall be prim a facie evidence that water was taken. Clause 27 clarifies the position with regard to the general law and declares that no right to take water from a proclaimed watercourse may be acquired otherwise than by virtue of this or any other Act.

Clause 28 grants to the owner of land through which a proclaimed watercourse passes the right to take water for domestic purposes and for providing drinking water for grazing stock on that land. Clause 29 provides for the grant of annual licences to use water, subject to such terms and conditions as are specified in the licence. Clause 30 is a transitional provision enabling licences granted under the Control of Waters Act to be continued in existence until they expire.

Clause 31 makes it an offence for a person to fail comply with a term or condition of his licence, with a penalty not exceeding $1 000. Clause 32 gives the Minister power in the case where he is satisfied that the holder of a licence has contravened or failed to comply with a condition of that licence, to serve on the licence holder an. order which revokes or suspends for the period stated to serve on the licence holder an order which revokes or suspends for the period stated in the order the licence, or which amends or varies the terms or conditions of the licence.

Clause 33. is a provision which operates when there is, is expected to be, a shortage in the availability of :water. It gives the Minister power to restrict by notice the supply of water to licence holders. It will be an offence to take water in contravention of such a notice, ,with a penalty of $5 000 and a daily default penalty of $1000. Clause 34 provides that a person who is convicted of an offence against clause 33 shall be deemed to have contravened a term of the licence and thus may be subject to the operation of clause 32 (that is, the revocation, suspension or variation of his licence).

Clause 35 is again for operation in times of actual or expected water shortage and gives the Governor powers to dispense with, suspend or vary any other Act, by-law, rule or regulation, for a maximum term of six months, to, ensure equitable distribution of the available water. Clause 36 prevents any person from obstructing or interfering with a proclaimed watercourse unless authorised. Penalties provided vary from $500 to $5 000.

Clause 37 is a provision enabling an authorised officer to require an owner of land to remove any obstructions or interference in relation to the bed or banks of a proclaimed watercourse, which flows through or which is contiguous to his land. There is a penalty of not more .than $100 a day for failing or refusing to comply with such a requirement. Clause 38 prohibits the carrying out of any works which would affect a proclaimed watercourse without authority and prescribes a penalty of $2 000.

Clause 39 provides for the grant of permits for works, and allows for the variation by the Minister of the terms and conditions of such permits.

Clause 40 makes it an offence, carrying a penalty of $1 000, to contravene or fail to comply with any term or condition of a permit. This clause also gives the Minister -power to revoke a Clause 41 begins the part of the Bill dealing with underground waters. This clause allows the Governor to declare any region of the State to be a proclaimed region. Clause 42 prohibits any unauthorised drawing of water from wells in a proclaimed region. Penalties are provided ranging from $100 to $3 000. An evidentiary provision provides that proof of the existence of a means of withdrawing water shall be prima facie evidence of withdrawal.

Clause 43 gives the Minister power to grant annual licences to withdraw water subject to such terms and conditions as are specified in the licence. Clause 44 states that it is an offence to contravene or fail to comply with a term or condition of a licence and provides a penalty of SI 000. Clause- 45 allows the Minister, in the case of a contravention of a term of a licence, to serve upon the licence-holder an order revoking or suspending that licence, or varying any terms or conditions of that licence.

Clause 46 allows the Governor to declare that specific provisions of this Bill shall not apply to wells in a particular class. Clause 47 gives the Minister power to require such information in relation to any wells in an area as he specifies a notice published in the Government Gazette, and provides a penalty, of $500 for failing to comply with a notice. Clause 48 prohibits the carrying out of any major work on a well without authorisation. This applies to drilling, constructing, deepening or plugging wells, to work on the casing or lining of wells, and to the deepening of or other work on wells which are either fully or partly exempt from the provisions of the Bill if that deepening or work would cause those provisions to apply to that well. For this offence,

penalties of $100 to $3 000 are provided. However, if the work carried out was urgently required to prevent pollution or deterioration of the waters of the well and it was not practicable to apply for a permit, provided that the work was carried out in accordance with any regulations relating to work carried out in such an instance and the Minister was informed immediately on the work being carried out, the person carrying out the work shall have a defence to a charge laid under this clause.

Clause 49 provides for the grant of well construction permits and for the variation of any of their terms and conditions. Clause 50 is a transitional provision allowing permits granted under the Underground Waters Preservation Act to continue in existence until their expiry. Clause 51 makes it an offence carrying a penalty of $1 000 to contravene or fail to comply with a condition of a permit. In this clause the Minister is given power to revoke the permit if the holder of that permit is convicted of an offence under this clause.

Clause 52 is similar to clause 48. This clause relates to the change of use of a well, and provides that it shall be an offence to allow a change in the use of a well without the consent of the Minister. It is also an offence to contravene or fail to comply with a condition of a consent. This clause carries penalties between $500 and $3 000. Clause 53 gives the Minister power, where he considers it necessary to prevent pollution, deterioration, wastage or inequitable distribution of water, to serve on the owner of land on which a well is situated an order requiring that person to take the action specified in the order.

Clause 54 makes it an offence to contravene or fail to comply with a provision of a well order. The offence carries a penalty of $2 000 with a default penalty of $200. Clause 55, importantly, allows the Minister, if an order has not been complied with within a period specified in the order or a reasonable period, to take the necessary action to ensure compliance with the order and to recover the cost of that action from the person on whom the order was served. Clause 56 makes it an offence for the owner of land on which a well is situated to allow the well to fall into disrepair. There is a penalty of $200 and a default penalty of $100. Clause 57 prevents any person from drilling or otherwise carrying out major work on a well unless he is the holder of an appropriate well driller’s licence or is working under the direct supervision, of the holder of such a licence. This clause is expressed to apply to officers of the Crown as well as private persons. The penalty provided is $1 000. Clause 58 provides for the granting of well drillers’ licences of prescribed types.

Clause 59 is a transitional provision allowing licences granted under the Underground Waters Preservation Act to continue in existence under this Bill. Clause 60 establishes the Well Drillers’ Examination Committee with such members, appointed by the Minister, and such powers and functions as shall be prescribed. Clause 61 is the first clause of the part of the Bill dealing with water quality. It states that no person shall, unless authorised by or under this or any other Act, cause, suffer or permit any wastes to come into contact, directly or indirectly, with waters, and prescribes a penalty of $10 000 with a default penalty of $1 000. This clause is not to come into operation until proclaimed in order to give those concerned with disposal of waste time for arrangements to be made.

Clause 62 deals with water quality orders. The Minister may, by order, authorise a person to dispose, disperse or discharge specified waste into waters, but only in strict accordance with the terms of the order. Such orders have a maximum life of five years. Clause 63 is applicable to situations which are considered by the Minister to warrant urgent action. The Minister may, by notice addressed to a person, require that person to discharge waste into any waters, or to place it on any land, or prohibit that person from discharging waste into any waters or from placing it on any land. A person acting in accordance with such a notice shall not be guilty of an offence- against this Bill, but a person who contravenes the notice is subject to a penalty not exceeding $10 000. If it is considered necessary, the Minister may take such action as is required to prevent or minimise water pollution, and may recover the costs of that action from the person responsible for the pollution.

Clause 64 deals with the situations in which an appeal to the tribunal will lie. An appeal lies against the refusal to grant any licence or permit against any order and against the imposition of any term or condition subject to which a licence or permit is granted or to which an order is made. Other than the specific instances listed, no appeal lies. Appeals must be instituted in the prescribed manner and form, and at the hearing of an appeal, the tribunal may uphold or quash the decision appealed against. it has no power to vary a decision. Clause 65 prescribes certain of the procedures for appeals to be heard before the tribunal. It is a standard clause covering such matters as notice to persons involved and who may appear before the tribunal. The tribunal, for flexibility, is not. to be bound by the rules of evidence and is to be concerned more with the substance of matters arising before it than with technicalities.

Clause 66 gives the tribunal power to require the attendance of any person, to require the production of any books or documents, to require a person to make oath or affirmation that he will answer questions, to require a person to answer any question and to enter upon any land or premises. Penalties are provided for failure to comply with a requirement of the tribunal and for misbehaviour before the tribunal. It is, however, also provided, that a person may refuse to answer a question if the answer would tend to incriminate him or to produce any books or documents if their contents would tend to incriminate him. Clause 67 provides that the institution of an appeal will not suspend or affect the operation of the decision or direction which is the subject of the appeal.

Clause 63 provides that the tribunal shall give reasons in writing for any decision. Clause 69 gives the Minister power to acquire land subject to the provisions of the Land Acquisition Act. Clause 70 gives the Minister power to construct works which are necessary for the purposes of this Act. Clause 71 is a power of delegation given to the Minister. A delegation under this clause may be revoked at will and does not prevent the exercise of any power by the Minister. Clause 72 gives the Minister power to appoint authorised officers for the purposes of this Bill.

Clause 73 deals with the powers of authorised officers under this Bill, and provides that it shall be an offence, with a penalty of $500 to obstruct an authorised officer, or a person assisting him, in the carrying out of his duties under this Act, or to refuse to answer any question put by an authorised officer. The fact that an answer may tend to incriminate a person is no excuse for refusing to answer a question, but that answer may not be used in evidence in any proceedings other than under this Bill. Clause 74 provides that no liability will attach to authorised officers in the carrying out of their duties as such. Clause 75 makes it an offence to make any false

or misleading statement in supplying any information u this Act, and provides a penalty of $500.

Clause 76 is an evidentiary clause applying to certain allegations in complaints for offences under this Bill. Clause 77 is a standard clause explaining what is mean by the term “default penalty” in this Bill. Clause 78 allow for proceedings for offences under the Act to be disposed of summarily, and provides that the Minister’s consent ‘ necessary for the commencement of proceedings. Clause 79 is the power to make regulations necessary for purposes of this Bill. The schedule repeals the Control of Waters Act and the Underground Waters Preservation Act.

Mr. ARNOLD secured the adjournment of the debate