**SOUTH-EASTERN DRAINAGE ACT AMENDMENT BILL 1985**

**Legislative Assembly, 14 March 1985, page3270**

Second reading

 **The Hon. J.W. SLATER (Minister of Water Resources**) obtained leave and introduced a Bill for an Act to amend the South-Eastern Drainage Act, 1931. Read a first time.

The Hon. J.W . SLATER: 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.

Explanation of Bill

The object of this Bill is to improve the remedies available to the authorities acting under the South-Eastern Drainage Act, 1931, against persons who leave rubbish in, or otherwise block, drains in the areas administered under the Act. The authorities are the South-Eastern Drainage Board, the Minister and the District Council of Millicent. The areas they administer are the South-East, the Eight Mile Creek area (both defined in the Act) and the area of the District Council of Millicent respectively.

In April 1984, Board employees discovered the carcasses of around 20 sheep which had been dumped in one of the major drains in the South-East, Drain M. The matter was reported to the police and local authorities and, after consulting with them on the adequacy of evidence collected, the remains were burned. The police subsequently identified the offender, who admitted the offence, and it was decided to prosecute. Section 76 of the South-Eastern Drainage Act, 1931, creates an offence of obstructing or damaging a drain or discharging dirty water or noxious liquids into a drain. However, 20 dead sheep in a drain with a bottom width of 40 metres can hardly be called an obstruction.

The police therefore chose to prosecute under the Police Offences Act, 1953. The case was subsequently heard by two justices of the peace in June 1984, and a small fine was levied. Board expenses for disposing of the dead carcasses were not recovered at this hearing but the Board was informed they could be, subject to a separate claim and hearing. Subsequently, the Board did not take any further action to recover costs.

This case drew attention to the limitations of section 76 of the South-Eastern Drainage Act, 1931. Dumping of dead stock, noxious weeds and other forms of rubbish is a fairly common practice by some irresponsible landholders. The recent occurrence was the first time that the offender was identified and prosecuted. The Board considers the dumping of a large number of dead sheep in a drain to be a serious offence and, further, considers that the small fine imposed for the offence manifestly inadequate. There is very little deterrent value in the small fine and the problems associated with the recovery of Board costs for the disposal of the carcasses has caused the Board concern.

 Another problem that section 76 does not address at the moment is the planting of vegetation in drains . Drains are periodically machine cleaned and during one such recent programme difficulties were experienced with one particular drain where an adjoining landholder had planted trees in the drain. It is imperative that unrestricted access be available to all drainage works.

Clause 1 is formal. Clause 2 replaces section 76 of the principal Act. Subsection (1) of the new provision extends the ambit of the offence to include the matters already mentioned. Subsection (2) provides a daily penalty where an offender fails to comply with a notice to remedy the contravention. Subsection (3) provides that the offender is liable for the authority’s costs in remedying the contravention and that these costs may be recovered as a debt or summarily. This means that the authority can sue in a court in the normal manner or alternatively can obtain an order for payment of the costs from the court of summary jurisdiction which convicts the offender. To allow flexibility subsection (4) provides a mechanism by which something, which would otherwise be unlawful under the section, may be done. For instance an authority may wish to encourage the revegetation of drainage reserves. Subsections (5) and (6) are self-explanatory.

The Hon. P.B. ARNOLD secured the adjournment of the debate.