

## **Explanatory Notes for the *Water Resources Management (Administration) Bill 2003***

### **GENERAL BACKGROUND TO THE BILL**

This Bill relates to the administration of Acts that deal with water resources management in Western Australia. It is the first of two Bills that will implement the Machinery of Government Task Force's recommendation to amalgamate environmental protection and water resources management administration.

This requires the *Water and Rivers Commission Act 1995* to be repealed, and the Water and Rivers Commission's ("the Commission") powers and functions to be transferred to the **Minister**, or the **CEO** of the Department of Environment (the Department). The Department will also administer the *Environmental Protection Act 1986*.

The Minister will have overall responsibility for determining policy, by-laws and strategy, approving plans and directing the CEO on priority matters. The CEO will be responsible for operational matters such as licensing, monitoring and enforcement.

This Bill will create no new regulatory powers, and does not substantially alter the way Government will carry out its water resources management functions with the demise of the Commission. A **Water Resources Council ("the Council") is to be established**. The Council will advise the Minister and CEO on matters of policy, planning, allocation of resources, water allocation charges and related matters.

The Council will consist of ministerially appointed members with expertise in water resources management, nature conservation, economic development, community development and natural resources law. Regional involvement in water resources management and decision making will be maintained through advisory and local Water Resources Management Committees.

The Bill also establishes a **Water Resources Ministerial Body** for dealing in land and other substantial assets. This model of an incorporated Ministerial Body has been recently adopted by the Machinery of Government changes to the *Transport Co-ordination Act 1966*. The Ministerial Body, established as a body corporate, simplifies administration by providing a repository for land and other assets that may be transferred or acquired. The Ministerial Body is explained in more detail in the clause notes (Part 2 c.5).

## Part 1 – Preliminary

**c.1 Short title**  
Short Title of this Act

**c.2 Commencement**  
Simply states the commencement of this Act will be on the day it receives Royal Assent.

**c.3 Terms used in this Act**  
Defines and explains terms used in Act.

It is proposed that the CEO will be the **Director General** of the Department of Environment.

**c.4 Water resources Acts**  
This clause simply lists the Acts that the Minister may designate as a water resources Act, the provisions of this Act will then apply with respect to the administration of those Acts, avoiding the need to replicate the provisions in each Act.

## Part 2 – The Minister and the Water Resources Ministerial Body

**c.5 The Water Resources Ministerial Body**  
This clause creates the Water Resources Ministerial Body as the *alter ego* of the Minister. The Ministerial Body is based on the model inserted in the *Transport Coordination Act 1966* by the *Machinery of Government (Planning and Infrastructure) Amendments Act 2002*. The Ministerial Body is an agent of the State and will have the status, immunities and privileges of the State.

The Ministerial Body will not employ any staff and is not an organisation. However, the Minister may delegate administrative and procedural matters to the CEO or other officers as specified.

The Ministerial Body a body corporate, through which the Minister can perform any of the Minister's functions that are conveniently dealt with by a body corporate, such as dealings in land, property and other assets.

**The concept of a Ministerial Body** is a clearer way of providing the same facility that the more traditional incorporated Minister was intended to provide. The continuity of the Ministerial Body provides administrative advantages. For example, despite Ministerial or portfolio changes, land held by the Ministerial Body can continue to be held by that body.

The Ministerial Body has the following advantages and features;

- The Body will have perpetual succession. The control of land and vesting orders by the new Minister will be automatic when the portfolio is restructured.
- Confusion as to which Minister holds the title or vesting of the land will be eliminated. Under traditional arrangements, land has been held in the name of the Minister. This requires records of portfolio changes to be kept so that the responsible Minister can be identified. Unfortunately, this does not resolve the control of the land as portfolios may be divided and it is not usual, at such times, to specifically allocate land among the new portfolios. For example, the land currently under the control of the Commission has been held, over the past twenty years, in the names of the Ministers for Works, Water Supplies, Environment and Water Resources.
- Administration of the Ministerial Body may be delegated, allowing the CEO or other agents of the Minister to undertake the day-to-day operation of the management and transfer of the land while retaining Ministerial direction.

**c.6****Purpose and nature of the Ministerial Body**

A clause that describes the purpose and nature of the Ministerial Body. It is important to recognise that the Ministerial Body is not specifically given functions. It is to provide the Minister with a tool to carry out necessary dealings in land, property or assets. The purpose is to provide an improved means for the Minister to enable such tasks to be performed by a corporate body rather than an individual.

**c.7****Execution of documents by the Ministerial Body**

This clause sets out the administrative procedures relating to the execution of documents by the Ministerial Body. The Ministerial Body will have a common seal, which will be affixed to relevant documents in the presence of the Minister who will sign these documents. The CEO or an officer of the Department may be authorised by the Ministerial Body to sign documents on behalf of the Ministerial Body, either generally or subject to conditions.

**c.8****Delegation by the Minister**

This clause outlines the delegations that the Minister may make under this or any other water resources Acts. The Minister has the power to delegate to the CEO, an officer of the Department or any other person having functions under this Act or a water resources Act, any power or duty he or she has under this or related (water resources) Acts.

Delegations made by the Minister under this section cannot be further delegated by that person.

**Part 3 - The Water Resources Council****c.9 Water Resources Council established**

This clause simply establishes the Water Resources Council, consisting of Ministerially appointed members.

**c.10 Membership of the Council**

The members and chairman of the Council are to be selected based on the criteria outlined. The listed areas of expertise will ensure that members selected have expertise and experience in water resources management, and sustainability aspects including community and economic development. This is an important aspect, and will support and promote Government's broader objectives of sustainability in water resource management.

**c.11 Functions of the Council**

This clause clearly outlines the functions of the Council. It is important to recognise that the Council is intended to advise on policy and planning and other high level strategic issues of water resources management, and will not serve as an administrative or approval type body. Another important function of the Council will be to advise the Minister on whether objectives of water resources Acts are being met.

**c.12 Term of office**

This clause sets out the terms of office for Council members. A feature of this is that members may be re-appointed consecutively after serving a term on the Council.

**c.13 Casual vacancy**

Vacancy of Council positions are dealt with under this clause. This also gives the power to the Minister to remove persons for the reasons listed.

**c.14 Remuneration and allowances**

Remuneration for Council members is at the discretion of the Minister, within the criteria determined by the Minister for Public Sector Management.

**c.15 Quorum**

This clause states the requirements for a meeting quorum.

**c.16 Presiding at meetings**

This clause simply outlines the provision for a chairman or other member to preside at meetings.

- c.17            Disclosure of Interest by Council Members**  
This clause establishes the requirements for Council members regarding disclosure of pecuniary interests in matters before Council, and the requirements for members to not take part in any decision on the matter which they declare such an interest. This clause has been inserted to protect the integrity of decisions that may be before the Council, for which members may have a vested, commercial or any other interest in the matter. While that member may participate in discussion on the matter, he may not take part in any decision making process.
- Sub-clause (5) excludes common interest from having to be declared, for example a member holding a water licence would not be excluded from decisions relating to water allocation policy advice
- c.18            Procedure at meetings**  
Meeting procedures will be determined by the Council.
- c.19            Minutes**  
Accurate minutes of Council meetings must be kept.
- c.20            Staff and other resources of the Council**  
This clause states that an executive officer is to be provided to the Council, and states that the CEO is to provide all necessary facilities and services, as agreed with the chairman.
- c.21            Application of the *Financial Administration and Audit Act 1985***  
This clause simply states that all things done by or for the Council will be in accordance with the *Financial Administration and Audit Act 1985*, (“FAAA 1985”), and regarded as services or operations of the Department. This means that the reporting and accountability rules of the FAAA 1985 will apply with respect to the Council, and its activity will be included in the Department’s annual report.

#### **Part 4 – General Administrative Provisions**

- c.22            Minister may give directions to the CEO**  
This clause establishes the ability for the Minister to direct the CEO to ensure the CEO in performing his or her statutory functions is subject to the control of the Minister. It also states the requirements for annual reporting and disclosure of information relating to certain directions of the Minister.
- c.23            Delegation by the CEO**  
The CEO has the power to delegate the CEO’s powers and duties under this and other water resources Acts. These delegations cannot be further delegated by officers, to ensure the CEO has the control of all delegations.

Delegations by the CEO can be made to an officer of the Department or another person having functions under this or another water resources Act.

**c.24      Provision of staff, services and facilities**

This clause allows the CEO to provide staff, services and facilities, for ‘related entities’ which includes advisory committees, and other bodies and people, established or carrying out functions under this Act or a water resources Act.

The Swan River Trust Act includes its own provisions to allow the CEO to provide support.

**c.25      Advisory committees**

The Minister may establish committees for the purpose of advising the Minister or CEO on any aspect of the administration of a water resources Act. Members of committees may be remunerated on the recommendations of the Minister for Public Sector Management. Advisory Committees can be established in relation to any function of a water resources Act. This general function is in addition to the power to establish local Water Resources Management Committees under the *Rights in Water and Irrigation Act 1914*.

Under the transitional provisions of the *Machinery of Government (Water Resources) Bill 2003*, all existing committees established by the Water and Rivers Commission Board will become ‘Advisory Committees’ established under this section of the Act. These will include the Cockburn Sound Management Council, the Geographe Bay Management Council, regional water allocation advisory committees etc.

**c.26      Non-public sector staff**

This clause enables the CEO to engage wages staff other than under the *Public Sector Management Act 1994*. This is necessary to enable existing wages staff employed by the Commission to be employed in the future. These staff do not fall under the definition of ‘public sector staff’.

**c.27      Protection from liability from wrongdoing**

A standard clause to protect any person who acts ‘in good faith’ to administer any function under this or a water resources Act. This includes protection for members of committees formed by the Minister under this Act when performing their functions as committee members.

The liability for these Acts falls to the State.

**c.28      Confidentiality**

This confidentiality clause protects all information given in confidence, which may only be used or released in accordance with sub-clause (2). Penalties for misuse of confidential information is set at \$50,000 which is in line with similar provisions in the *Environmental Protection Act 1986*.

**c.29**

**Regulations**

This clause simply allows for the Governor to make any regulations to give effect to this Act and, as referred to in s.27(2)(f), for release of information.