

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY
2007**

Water Resources Bill 2007

SUPPLEMENTARY EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Environment, Water and Climate Change
Mr Jon Stanhope MLA

This Supplementary Explanatory Statement relates to the *Water Resources Bill 2007* (the Bill) as introduced into the Legislative Assembly.

Overview of Government Amendments to the Bill

There have been three Government Amendments made to the Bill. In addition to these three amendments, there is additional information provided in relation to the use of strict liability and in relation to privilege against self incrimination.

Use of Strict Liability

The Bill includes a number of offences where strict liability applies to a specific element of the offence or to the offence. Strict liability offences are primarily aimed at conduct on the less serious side of the criminal spectrum. Strict liability offences have two essential features. The first is that there is no requirement to prove a fault element, such as intention or recklessness. However, the prosecution is still required to prove the physical elements of the strict liability offence beyond a reasonable doubt and disprove beyond a reasonable doubt any defences that the defendant has put in issue.

Strict liability can be applied to the whole of an offence or to just a particular element of the offence. If strict liability only applies to a particular element of the offence, it means that there is no fault element for that physical element, but there will be a fault element for each other physical element of the offence. In effect, the offence remains a fault element offence, though in relation to one of the physical elements, fault does not have to be proven.

The offences listed in clauses 57, 58 and 59 have had strict liability applied. The offences are ‘regulatory’ in nature, and in no case does the penalty exceed 50 penalty points hence there is no punishment that is disproportionate in nature to the offences listed. In addition, liability in relation to contravention of these conditions, such as the installation of a meter on a water pump, could not be avoided through explanations relating to misunderstanding.

The public benefit that underlies the imposition of such conditions relates to efficient and sustainable management of the Territory water resources, a matter which has never been in need of more critical focus than now. In effect this demonstrates that the imposition of such conditions is a rational and reasonable regulatory application, hence the application of strict liability to the offences is satisfactory.

Privilege against self incrimination

Clause 105 provides that this section applies if a person is required to give information or produce a document under this Act. Whilst it may be seen to abrogate the privilege, it is for specific circumstances, however there is provision that the evidence is inadmissible in any criminal proceeding.

Summary on Clauses subject to Government Amendment

Part 6 – Disciplinary Action

Clause 60 — Grounds for disciplinary action – outlines what constitutes a ‘ground’ for disciplinary action.

Clause 60(d) provides that contravention by a person of a Territory law or a law of another jurisdiction may be used as reasonable grounds by the Authority in considering the person’s suitability to hold a water access entitlement, a surviving water allocation or a licence. When considering suitability under this law, a person’s previous environmental compliance is a reasonable consideration to take into account.

Part 9 – Protection of water resources

Clause 77 – Action by authority if notice or direction contravened – provides that this section applies if the authority has reasonable grounds for believing that a person has engaged in conduct that contravened a prohibition or restriction under a notice given to the person under section 71, or a direction given to the person under this part.

An authorised officer or someone else authorised by the authority for this section such as an environment protection officer with delegated powers, may enter the land and take any action stated in the notice or direction and do anything else necessary to give effect to the notice or direction. This entry power is only applicable if the person was told, in the original notice or direction, that contravention of the notice or direction may result in entry by an authorised officer to undertake appropriate actions.

Further, this entry power is limited to exclude entry into parts of the premise that are being used for residential purposes. Therefore entry into gardens and outside grounds where water infrastructure is most commonly placed is authorised but entry into areas of the actual residence are not.

Under subsection (3) a person who enters land under this section is not authorised to remain on the land if on request by the occupier of the land the person does not produce for an authorised officer his or her identity cards and in any other case a certificate signed by the authority for this section that the person is authorised to carry out an activity mentioned in the certificate.