

The New Regime for Water Management in Tasmania

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Put simply, we would not be here without water...

We need it for drinking, for our recreational activities like fishing and swimming, to provide the food we eat, to generate electricity, and to support mining and other industries. We also expect our rivers and lakes to look good and provide homes for a wide range of aquatic plants and animals.¹

Water is one of our most precious natural resources. The rivers and streams through which it flows have a fundamental role in the maintenance of the stability and integrity of catchments, and also have the power to enrich us spiritually. Yet, sadly, water is a much abused resource.²

In Tasmania, the system of water management has undergone a dramatic change with the introduction of the *Water Management Act 1999*. The transformation that this State has seen is not unique. As with Tasmania, other Australian States and Territories have seen the management of water resources go through a scale of development not seen since the late 19th century.³ The impetus for these changes has emanated from the Commonwealth Government and a series of meetings held with the State Governments in the early 1990s,⁴ and the recognition that water is a scarce commodity.⁵

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¹ Tasmania Department of Primary Industries, Water and Environment, *Water into Tasmania's Future* (2nd ed, 1999) 2.

² S Anderson, 'Enforcement of Sustainable Irrigation Practices Through Current Tasmanian Law and Policy' (1997) 16 *University of Tasmania Law Review* 42.

³ As noted by P Tan, 'Water Licences and Property Rights: The Legal Principles for Compensation in Queensland' (1999) 16 *Environmental and Planning Law Journal* 284, 284.

⁴ For the result of these meetings see COAG, *National Strategy for Ecologically Sustainable Development* (1992); COAG, Communique from the meeting of 25 February 1994, Canberra (1994); COAG, Communique from the meeting of 11 April 1995, Canberra (1995).

⁵ As a continent, Australia has the lowest percentage of rainfall as run-off, the least amount of water in rivers and the smallest area of permanent wetlands. Commonwealth, *Australia: State of the Environment 1996* (1996) 7-4.

This article critically examines three aspects of the new legislation and conducts a comparison with the previous regime. The aspects considered are:

- The objectives of the legislation;
- The introduction of tradeable water rights; and
- The enforcement provisions.

These aspects demonstrate how the legislation today recognises the scarcity of water as a resource. The response to this recognition has been twofold. By utilising market forces, the available supplies of water are to be allocated to their highest value use. Similarly, by ensuring an integrated approach to water use, the environmental effects of rising water tables and increasing salinity,⁶ brought about by irrigation practices and human consumption,⁷ has seen the recognition that the 'balance between economic and environmental needs' must be rationalised.⁸ By a comparison of the objectives of the legislation, the change in societal attitude to the value and use of water can be demonstrated. Similarly, the introduction of tradeable water rights – a device previously unheard of – as well as the different methods of contemporary enforcement, will support the thesis that the attitude of the community towards water has altered from a belief that it is in abundant supply, to a recognition that it is a scarce commodity. This recognition of water as a scarce resource⁹ has led to the legislative solutions of market-based reform, allied to an integrated system of water management. Thus, by examining these aspects, it can be demonstrated how governments (and society, if we assume that governments largely reflect the will of society) have come to recognise the critical importance of water and the contemporary relevance of environmental considerations in its management and use. Further, we can see how economists have been able to capture the debate in relation to the management of natural resources, and that policy makers have been driven by economic rationales to allow market forces to provide the solution to the distribution and use of water. What is ultimately

⁶ Ibid 7-15.

⁷ Ibid 7-8/7-15.

⁸ Ibid 7-15.

⁹ For a discussion of the Earth Summit meeting in Rio de Janeiro in 1992 where the importance of water was recognised, see S P Johnson, *The Earth Summit: The United Nations Conference on Environment and Development* (1993).

being promoted is the modern ideal of sustainable development;¹⁰ which is to be achieved by market-driven economic rationalism.¹¹

The Objectives of the *Water Act 1957* as compared with the *Water Management Act 1999*.

The long title to the *Water Act 1957* expressed its objectives in the following manner:

[To] provide for the best use of the natural waters of the State and to that end to establish an authority to initiate and control the use of those waters, to codify the statute law affecting their use, to provide for the establishment of local river and water supply authorities.

Further, s 16 of this legislation (described as being in ‘very anthropocentric terms’)¹² outlines the role of the Rivers and Water Supply Commission as establishing waterworks for domestic, industrial and agricultural purposes, carrying out the functions of a water trust, preventing the taking of water for unlawful purposes and maintaining the natural drainage systems of the State. These provisions were not written with any environmental concerns in mind and reflected an attitude of promoting agricultural and industrial development without any significant consideration of the environmental, spiritual, and aesthetic qualities of water – and its role in the maintenance of ecosystems. In essence, they reflected a society where the predominant

¹⁰ The definition of sustainable development included in Schedule 1 of the *Water Management Act 1999*:

[S]ustainable development means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –
sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
avoiding, remedying or mitigating any adverse effects of activities on the environment.

¹¹ The modern strategic framework for the water industry established by the Council of Australian Governments encompasses the following aspects (see the comments by A Gardner, ‘Water Resources Law Reform’ (1998) 15 *Environmental and Planning Law Journal* 377, 377):

Water pricing policies which are transparent and enable full-cost recovery;
The creation of water rights separate from property titles;
The tradeability of water rights;
The development of integrated catchment plans; and
Greater public education and consultation.

¹² Anderson, above n 2, 44.

concern was economic expansion and the promotion of employment opportunities. The balance that is so integral to the political landscape of today; that of economic growth tied integrally to sustainable development and the present and future management of ecosystems, was not present in the legislation of yesteryear.

These objectives of the *Water Act 1957* can be contrasted with those contained in the *Water Management Act 1999*:¹³

- Promote sustainable use and facilitate economic development of water resources;
- Recognise and foster the significant social and economic benefits resulting from the sustainable use and development of water resources;
- Maintain ecological processes and genetic diversity for aquatic ecosystems;
- Provide for the fair, orderly and efficient allocation of water resources to meet the community's needs;
- Increase the community's understanding of aquatic ecosystems and the need to use and manage water in a sustainable and cost-efficient manner; and
- Encourage community involvement in water resource management.

The driving forces of this legislation were sustainable development, recognition of the public nature of the commodity, and the need to protect it for future generations. Thus, we see the twin goals of sustainable development and environmental management – two goals that may be difficult to implement. Indeed these twin pillars of economic efficiency and environmental management, as applied to the management of natural resources, may be diametrically opposed given that, for economic efficiency, regulation and intervention must be at an absolute minimum, yet for environmental protection, the opportunity for mature reflection and government control must be present.¹⁴ In terms of objectives, it is this balance of market efficiency

¹³ *Water Management Act 1999* (Tas) s 6.

¹⁴ See the comments by S Gunter, 'Review of Allocation and Management of Tasmania's Freshwater Resources, Submission by Environmental Defenders' Officer, 20 February 1998 into the review of the *Water Management Legislation*' (1998) 3:

The notion of efficiency seems diametrically opposed to achieving an effective and holistic catchment management approach to natural resources management which arrests degradation (we presume of soil, air, water and ecosystem resources).

and environmental protection (both of which derive from the recognition of water as a scarce commodity) that will be most difficult to meet. To this end, we need to heed the warning provided in a communique signed by 1600 scientists from 71 countries, including over half the Nobel Prize winners:

Human beings and the natural world are on a collision course. Human activities inflict harsh and often irreversible damage on the environment and on critical resources. If not checked, many of our current practices put at serious risk the future that we wish for human society in the plant and animal kingdoms, and may so alter the living world that it will be unable to sustain life in the manner that we know. Fundamental changes are urgent if we are to avoid the collision our present course will bring about ...¹⁵

Given this, it is obviously critical that the modern objectives of economic rationalism and market-driven allocation do not become the dominant rationale for the current legislation.

The objectives of the legislation as stated are drawn together conjunctively. Furthermore, s 6(2) of the *Water Management Act 1999* states:

It is the obligation of the Minister, the Secretary, a water entity and any other person on whom a function is imposed or a power is conferred under this Act to perform the function or exercise the power in such a manner as to further the objectives specified in subsection (1) and in Schedule 1.

This subsection, combined with the objectives as stated, would seem to indicate that sustainable development and ecosystem protection are to be accorded equal weight in the decision-making process. If the decision is not consistent with the objects of the Act, it will be invalid. However, Fisher¹⁶ (in the context of the South Australian legislation, but equally applicable to Tasmania) has commented that 'it is unlikely, given the current state of jurisprudence, that a court would order a decision maker, in a positive sense, to make a decision that furthers the object of the Act'.

The preceding discussion of the objectives of the two principal pieces of legislation that have governed water law in Tasmania over the past 50 years has highlighted that the aims of society, as reflected by the passage of the *Water Act 1957* and, more recently, the *Water Management Act 1999*, have changed dramatically in that period. Post Sec-

¹⁵ D Suzuki, *The Sacred Balance: Rediscovering our Place in Nature* (1997) 4-5.

¹⁶ DE Fisher, *Water Law* (2000) 192.

ond World War, the aims were of industrial development and economic expansion through employment and urbanisation. Today, concerns about the environment are ever present and the objective is not one of expansion, but of sustainable growth with a focus on the maintenance of the existing ecosystems and encouragement of biodiversity. This latter objective begs the question: can we achieve the laudable aims of the present legislation? To attain this, the focus must be on changing the public perception of water, to appreciate its value within the urban areas of Australia, to encourage the more efficient use of water within primary industry and to build the infrastructure to allow the recycling of waste water – costly enterprises today, but with the potential to return a dividend for many decades, and indeed centuries. The objectives and aims may have changed from the passage of the *Water Act 1957* to the introduction of the *Water Management Act 1999*, but standing alone, neither can be criticised. What each does is reflect the needs and aspirations of the society at the time at which it was enacted. To achieve the goals of the present legislation, each of us will need to appreciate the role that he/she or it can play in marrying the idea of biological diversity with sustainable development. To assist in formulating this role, the legislation also introduces trading in water rights. The idea is that market-based forces¹⁷ will see that the usage of water is allocated to its highest value economic use and therefore this scarce resource will adopt its most productive role in society. Thus, the recognition of the scarcity sees society seeking to balance the economic needs for human use and consumption against environmental protection. In other words, the scarcity of the commodity has seen society seek different ways to ensure that there will be a continued supply for human consumption, but that the ecological functions of water are considered at the same time.

It is the demand by humans for water resources ... that has dominated the development of the legal system. While this remains true even today, the ecological functions of water and water flows are beginning to be recognised by those responsible for water resource management and also to some extent by the legal system.¹⁸

¹⁷ For a discussion of the role of competition in the market place as the best way of ensuring that resources are allocated to their most efficient use, see Economic Planning Advisory Council, *Promoting Competition in Australia* (1989); Report by the Independent Committee of Inquiry, *National Competition Policy* (1993) ('Hilmer Report').

¹⁸ Fisher, above n 16, 1-2.

Access to Water and Trading in Water Rights

Part 5 of the *Water Management Act 1999* sets the foundation for the tradeability of water rights. This is a critical change in policy and direction that results from the separation of title to water from the land that adjoins it. The tradeability of water is also an indication of the capture of the debate surrounding the use of scarce resources by economists (ie, the use of market forces to ensure that resources are allocated to their highest value use). By ensuring that water is put to its highest value use – the available supplies will be allocated in the most economically efficient manner in society. This aspect, tied with environmental protection, sees the government seeking to balance the economic efficiency arguments with sustainable development.

Under the new legislation, certain categories of people are entitled to take water without a licence, though it should be noted that many of these provisions replicate the previous legislation and the common law position. People within these categories may take water for a casual use (defined as lawful use by persons or stock not normally resident on land which adjoins a watercourse or lake from which water is taken and includes camping, recreational use and use by travelling livestock).¹⁹ Similarly, riparian owners may take water for a specified purpose, including: domestic watering, the irrigation of a household garden, stock watering, firefighting or drilling under the *Mineral Resources Development Act 1995*.²⁰ Importantly, the Parliament has seen fit not to relinquish total control – the use of water for hydro-electricity generation can override the unlicensed user;²¹ the taking of water must not cause environmental harm;²² and, should it be deemed necessary, a licence can be required.²³

As noted, these provisions are not significantly different from those under the *Water Act 1957* where s 88 confirmed existing riparian rights, with s 100J declaring ordinary riparian rights to be the right to take water for purposes such as cooking, washing and stock and domestic watering. The amount of water that could be taken was defined in the *Water Regulations 1965*²⁴ and was 'relatively insubstantial'.²⁵ The primary basis on which water could be taken un-

¹⁹ See *Water Management Act 1999* (Tas) s 48(1).

²⁰ *Water Management Act 1999* (Tas) ss 48-9.

²¹ *Water Management Act 1999* (Tas) s 49.

²² *Water Management Act 1999* (Tas) s 51.

²³ *Water Management Act 1999* (Tas) s 50.

²⁴ SR 78/1965.

²⁵ See the comments by Anderson, above n 2, 50.

der this legislation was pursuant to s 94(1). This permitted the Rivers and Water Supply Commission to grant the right to take a significant quantity of water (known as a commissional water right). These would be granted for a renewable period of five years and would be annexed to the land.²⁶

In this context the *Water Act 1957* is, in one respect, significantly different from the *Water Management Act 1999*. Within the earlier legislation, there was no direct reference to environmental factors. By contrast, the recent legislation has, as noted, environmental issues as one of its primary objectives. Section 51 of the *Water Management Act 1999* is quite blunt: 'Nothing in this Part entitles a person to take water from a watercourse, lake or well if the taking would cause, either directly or indirectly, material environmental harm or serious environmental harm'. Again, what we see is the balance being sought between market efficiency and environmental protection. Trading in water is largely to be unregulated, yet, there is the overriding criterion that water cannot be taken if this would result in an adverse environmental impact. The scarcity of the resource necessitates both these responses. Competition and the market are seen as the best solution to allocate scarce resources.²⁷ Environmental protection is required to maintain biodiversity and sustainable development.²⁸

Outside the limited circumstances detailed in ss 48-53 of the *Water Management Act 1999*, a person is required to have a licence to take water from a watercourse, lake or well, or surface water.²⁹ This licence is to specify the water resource,³⁰ to be endorsed with the water allocation,³¹ and remains in force for such period as the Minister determines.³²

Importantly, and critically, when one considers that commissional water rights under the *Water Act 1957* were annexed to the land,³³ the water licence under the new legislation is the personal property of the licensee and can be alienated.³⁴

²⁶ *Water Act 1957* (Tas) s 94.

²⁷ See generally: Hilmer Report, above n 17.

²⁸ See generally: *Agenda 21* (Proceedings of the Earth Summit, 1992), ch 18.

²⁹ Note *Water Management Act 1999* (Tas) s 54.

³⁰ *Water Management Act 1999* (Tas) s 56.

³¹ *Water Management Act 1999* (Tas) s 56.

³² *Water Management Act 1999* (Tas) s 57.

³³ *Water Act 1957* (Tas) s 94.

³⁴ *Water Management Act 1999* (Tas) s 60.

For the farming community in Tasmania, this was a significant alteration – water rights were no longer to be annexed to land, they were separated from any interest, freehold or leasehold, in land. This posed a threat on two levels. First, the capital value of land was inextricably linked, in many respects, to the water rights attached to that land, and secondly, the ongoing farming activities were obviously linked to the water available. Having said this however, the limitations of the system dictated by the *Water Act 1957* were many, and were listed by the Department of Primary Industry and Fisheries as follows:

Water rights cannot be easily moved around between users to ensure that the best use is made of the scarce resource;

water right holders cannot readily increase that right without buying more property;

owners of property with a water right cannot realise the capital value of that right without selling the property;

irrigators cannot easily change their water right to meet changing cropping opportunities;

‘new’ irrigators cannot get into the industry without having to buy a property which already has a water right;

all users on a watercourse directly taking water for irrigation generally have the same allocation regardless of property size and how efficiently they make use of that water;

an irrigator needing higher than normal reliability for a water right to protect an investment in high value industries such as dairying or horticulture cannot obtain it;

there is no easy way for allowing a water right to move away from land which may become unirrigable (for example, through soil salinity) to land where the water could be used more efficiently;

there is no way to ensure that the State’s best agricultural and industrial land can be provided with an appropriate entitlement to water to facilitate optimal development and productivity.³⁵

What we see in the *Water Management Act 1999* is a policy driven by economic rationalism that the ‘free’ market will best determine the price of water and the greatest value use to which it can be put. The link between this market-based theory and the objectives of economic efficiency attached with environmental safeguards was commented on by Bond and Farrier:

³⁵ See Department of Primary Industries and Fisheries, *Trading in Property Rights* (1998) 2

We have heard a great deal in recent years, particularly in the context of pollution control, about how much more efficient fiscal instruments are in achieving environmental policy objectives, in comparison with traditional legal regulation. What economists have only just begun to acknowledge is that their fiscal alternatives to command and control regulation are not alternatives at all, but add-ons ... Transferable permits are dependent on the legal system not only to police boundaries but also to facilitate the process of transfer. If the legal system places obstacles in the way of transfer or slows the process down, and as a result imposes excessive transaction costs, then the market will not operate efficiently.³⁶

Thus, for this new system of tradeable permits to operate effectively, the legal system must have a role in policing the economic imperatives, and ensure that rights and obligations of the people within that system are policed appropriately. However, to ensure proper functioning of the economic model, the intervention by the State must be at a minimum; yet to achieve environmental safeguards, the opportunity for the State to intervene must also exist.³⁷ The *Water Management Act 1999* seeks to achieve this balance by providing that the relevant government Minister must approve the transfer where certain conditions are met; including that the transfer is consistent with any relevant water management plan; that the transfer could not be expected to lead to material or serious environmental harm; and that it will not have a significant impact on others taking water from that particular resource.³⁸ The purpose is laudable. Nevertheless, the potential for these conditions to interfere with the free market transferability of the resource is significant.³⁹ To this end, one significant criticism of the legislation is that there are no specific measures in place to prevent speculation in water and that if environmental con-

³⁶ M Bond and D Farrier, 'Transferable Water Allocations – Property Right or Shimmering Image?' (1996) 13 *Environmental and Planning Law Journal* 213, 215-6.

³⁷ As commented by Bond and Farrier, *ibid* 216:

[T]he transfer provisions in the *Water Act (NSW)* recognise the need to supplement market-place negotiations by providing for a system of administrative regulation of transfer, with extensive opportunities for community input. The problem is that this substantially slows down the process of transfer and increases transaction costs, resulting in conflicts with the demands of a narrowly defined economic efficiency.

³⁸ See *Water Management Act 1999* (Tas) s 97(2).

³⁹ The Department itself recognised this dilemma – 'constraints to trading should be as few as possible, predominantly associated with ecological sustainability and preservation of the property rights of others'. Department of Primary Industries, *National Principles for Water Allocation and Entitlements: A National Framework for the Implementation of Property Rights in Water* (1998) 3.

siderations are to be given appropriate importance, trading only on a long-term basis should be permitted.⁴⁰

The *Water Act 1957* had nothing comparative to this system of tradeability of water rights. A fundamental difference has been incorporated by the new legislation. Driven by environmental concerns (rather than industrial development) and a consideration that these concerns can best be met by market forces, the new legislation attaches the 'persona of propertisation' to a resource that is critical to the very foundation of life. The legislation is

not simply dealing with the transfer of a manufactured commodity between willing parties, where its only concern beyond facilitating the transaction is to offer some degree of protection to buyers against unscrupulous sellers. It is dealing with a vital community resource with values which go far beyond those allotted by players in the market economy.⁴¹

It is difficult, at face value, to see how the market can freely regulate such a fundamental aspect of everyday life – yet still allow the government intervention necessary to achieve the environmental safeguards. As indicated, the critical aspect to be resolved is the balance between market efficiency and environmental protection. Whilst there is no doubt a tension between these goals, the contemporary and comprehensive management system introduced by the *Water Management Act 1999* may yet provide a solution to what seems an intractable problem. Allied to the provision for the tradeability of water rights, is the recognition that whilst government regulation must be kept to a minimum to ensure the effective operation of the market and that enforcement of the legislative scheme must be in line with contemporary means, reliance solely on the state is no longer appropriate. Accordingly, the legislation provides for a flexible system of private and government supervision.

The Enforcement Provisions of the Legislation

In the current legislation, the system of enforcement is to be found in Part 13. For those in breach of the Act, Water Infringement Notices can be issued⁴² by an authorised officer⁴³ and demerit points can be

⁴⁰ See the comments by Gunter, above n 14, 1-2.

⁴¹ Bond and Farrier, above n 36, 216.

⁴² *Water Management Act 1999* (Tas) s 252.

⁴³ See Part 12 of the legislation for their appointment and powers.

imposed.⁴⁴ By contrast, the tripartite mechanism under the *Water Act 1957* was as follows:

- Offence provisions were to be used against irrigators who acted outside their right;⁴⁵
- The Rivers and Water Supply Commission could restrict existing rights or refuse to renew them; and
- The Rivers and Water Supply Commission could sue in equity.⁴⁶

Importantly, and critically for the modern system of water management, the new legislation has not relied solely upon the bureaucracy to enforce the rights, obligations and duties that exist.⁴⁷ It is now recognised that the State no longer has the resources, in terms of either time or money, to supervise every river, stream and lake in society. Given this, it is imperative that the private individual be given the opportunity to take an active role. Accordingly, the *Water Management Act 1999* provides for civil enforcement proceedings – by the Secretary of the Department, a Water Entity⁴⁸ or any other person with the leave of the Resource Management and Planning Appeal Tribunal. The grounds for granting leave to a member of the public are that it would not be an abuse of process to bring the application; it is likely that a determination in favour of the applicant will be given and that it is in the public interest that proceedings be brought.⁴⁹

By contrast, under the *Water Act 1957*, standing for interested parties, such as coast care groups, individuals, landcare entities and environmental watchdogs, was dependent upon common law principles. This would require that a private right has been, or would be, interfered with or special damage peculiar to that person had, or would have, occurred.⁵⁰

The contemporary management system for water enforcement sees a framework of combined State and individual enforcement – recognition that a system solely reliant on one or the other would be inadequate.

⁴⁴ *Water Management Act 1999* (Tas) ss 257-263.

⁴⁵ *Water Act 1957* (Tas) ss 100EA and 100G.

⁴⁶ *Water Act 1957* (Tas) s 84.

⁴⁷ As commented by Gardner, above n 11, 396:

The private rights and duties that are to be the foundation of water resource use should be made enforceable by private rights of action, especially through civil proceedings. Water right holders should not have to depend on bureaucratic action to enforce the basic rights and duties of water users.

⁴⁸ As defined in s 3 of the *Water Management Act 1999* (Tas).

⁴⁹ *Water Management Act 1999* (Tas) s 264(2).

⁵⁰ See the comments by Anderson, above n 2, 52.

quate for modern society. The individual, as well as the State, must undertake a positive role in the community in ensuring that water is treated consistently with the dictates of the legislation. The individual cannot simply rely on the State to undertake this role – it is imperative that each person recognises that they have a role, as does the State in ensuring compliance with the rules governing water management. It is of course the subsequent generations that will benefit from the enforcement role undertaken today.

Conclusion

The change in Tasmania from a system based on statute, but dependent in many cases upon the exercise of a common law right and the utilisation of the powers of bureaucratic enforcement, to one where the legislature dictates that all rights existing at common law for the taking of naturally occurring water are abolished,⁵¹ and replaced by a system of administrative disposition, has, at one level, been dramatic: but perhaps it can be regarded more as a natural progression in the development of the law and a recognition of not only the importance, but also the scarcity, of water as a resource.

The objectives of the legislation have moved from seeing water as an unlimited resource to be utilised in the promotion of industry, to recognition of the damage caused by human activity (or inactivity) and an appreciation that we, as society, are part of a larger eco-system – where the relationship between the entities within it is largely symbiotic. The aims of the current legislation are stated – the issue is whether the practice will match the rhetoric.

Trading in water rights has been introduced to permit the economic value of water to be fully utilised – the transference of water rights from unused or low-value uses such as broad-acre crops and pastures, to higher value uses, such as horticulture and dairying.⁵² The market is seen as the way in which this scarce natural resource will be utilised in the manner required in contemporary society.

Finally, the enforcement provisions with standing provided to private individuals and a system of demerit points allows the legislation to be used more proactively in ensuring its objectives are carried out. This should see a community with the opportunity of having a continuing role in the sustainable use of water.

⁵¹ *Water Management Act 1999* (Tas) s 7(1).

⁵² See the comments by the Department of Primary Industries and Fisheries, above n 35, 3.

Water management has undergone a dramatic change. This change was brought about by the recognition that unless steps were taken, neither could the supply of water be guaranteed for future generations nor would the present aquatic biodiversity be maintained. To meet this understanding, two pillars of water management have been incorporated into the legislative framework. One, that the market will best determine the use to which water is put, and two, that the taking of water must not cause environmental harm. In essence, what we now see is the twin pillars of responsible natural resource management deriving from the one cause. The system of water management has changed; the goal of the present legislation is ecologically sustainable use of water resources. The success of this will ultimately be judged against the improvement (or otherwise) in the environmental quality of our waterways and the availability of water for subsequent generations.