CARBON RIGHTS BILL 2002

Introduction and First Reading

Bill introduced, on motion by Mr Logan (Parliamentary Secretary), and read a first time.

Second Reading

MR LOGAN (Cockburn - Parliamentary Secretary) [12.20 pm]: I move -

That the Bill be now read a second time.

There are significant economic and environmental benefits for the State in facilitating the establishment of tree plantations and other environmental plantings. The benefits relate to the potential for trading in carbon rights, the production derived from the plantings, and the environmental improvements they provide. One way of encouraging these plantings is to reduce some of the commercial and legal risks. The Government has developed a package of three Bills which will achieve this. The first of these is the Carbon Rights Bill 2002.

The essence of the Carbon Rights Bill is its provision for the registration on the title to land of a “carbon right” and accompanying “carbon covenant”. It is supported by the Tree Plantation Agreements Bill 2002, which provides for the registration on the title to land of a plantation interest. To facilitate the registration of, and due effect being given to, these new interests in land a number of amendments are to be made to the Transfer of Land Act 1893. These amendments - as well as a few amendments to other Acts - are contained in the third Bill, the Acts Amendment (Carbon Rights and Tree Plantation Agreements) Bill 2002.

Members will be well aware of concerns in the international community over the greenhouse effect leading to global warming and climate change. As members may recall, the earth’s atmosphere provides a natural greenhouse effect under which some of the radiation from the sun is reflected back from the gases in the atmosphere - a blanket that makes this earth habitable. However, over recent centuries, industrial and agricultural development and the use of fossil fuels have greatly increased emissions of carbon dioxide and other gases into the atmosphere. The concentrations of carbon dioxide, methane and other so-called greenhouse gases have increased significantly over the past 200 years. In a simple sense, this means that the blanket that in the past has made the earth habitable has become thicker. There is now broad scientific agreement that this has already resulted in more of the sun’s radiation being trapped, which is already making the earth generally warmer, and that this is already starting to lead to significant changes in weather patterns. The dramatic changes in rainfall experienced over the past 25 years in the south west of the State may well be one early sign of global climate change or the greenhouse effect. Reversing this situation of higher atmospheric concentrations of greenhouse gases will take a long time. It is estimated that at least half of all carbon dioxide emissions remain in the atmosphere for about 100 years. Industrial activity, transport and urban growth and activities cannot simply be turned off.

The Gallop Labor Government is developing an integrated greenhouse strategy that will provide a strategic framework for a responsible response by Western Australia to this global problem. The strategy will address a whole range of complex issues using principles based around carbon sequestration, emission reductions, new technologies and adaption strategies. This package of legislation delivers one key part of a greenhouse strategy. It delivers a legislative framework for recognising property rights in tree plantations and carbon sequestration, and links those rights to the land on which the plantations have been established and the carbon has been sequestered.

Carbon sequestration means removing carbon dioxide from the atmosphere and storing it in organic forms in plants and soils. This is recognised in the Kyoto Protocol as a legitimate means of reducing a nation’s net greenhouse gas emissions. The rights arising from the storage of carbon in this manner - carbon rights - may be traded internationally under certain conditions. The financial return from carbon rights is also expected to promote revegetation, especially in agricultural areas, and thereby sustainable land management options, such as biodiversity plantings, fauna corridors and the revegetation of saline land. These land management practices will lead to greater protection of Western Australia’s great biodiversity values and a reduction of the problem of salinisation of our lands and waters.

The Carbon Rights Bill will provide security for the owner of the carbon right in land by enabling a carbon right to be registered on the land title under the Transfer of Lands Act as a separate interest in that land. There is presently uncertainty about whether the Kyoto Protocol will come into effect and whether Australia will ratify it. Despite this uncertainty, much has been achieved at the international level in clarifying the rules that would apply to carbon trading internationally and how carbon sequestration plantings would be counted. However, some of the rules are still to be agreed, so some uncertainty remains. The Government’s aim of reducing
uncertainty has been moderated by a concern to not expose the State to liability. As a result, the approach in the Bill is simple focusing on the creation and ownership of carbon rights. Issues such as measuring the carbon that has been sequestered, managing the land so carbon is sequestered and stays there, provisions for disease and fire protection and whether a particular type of sequestered carbon can be traded and so on are left to the market to determine. These details should be addressed in the carbon covenant, the agreement between the landowner, the owner of the carbon right and anyone else whose cooperation was required to give effect to the agreement.

Under the Bill the landowner, or someone else with the landowner’s agreement, can register a carbon right in respect of land. Registration will clarify the ownership of the right to the benefits from carbon sequestration on the land, but it gives no guarantee as to how much carbon is there, whether it will remain there or what value it may have. The carbon right relates solely to proprietorship of the benefits of sequestration. It makes it clear who owns those benefits and, if the owner is someone other than the owner of the land, it makes the position secure. The registered carbon covenant spells out the details of how much carbon is to be sequestered, over what time frame, in what form, how it is to be measured and so on. However, the Bill does not bind the Government to force the parties to deliver on their undertakings in the covenant. Legislation for the covenant is again about proprietorship of the land, the carbon and the benefits from sequestration. It is up to the signatories to use civil remedies to ensure delivery of the covenant undertakings, just as in any other agreement.

How does the Bill reduce the risks associated with carbon rights? Registration of a carbon right and carbon covenant by a party who is not the landowner will remove the risk that a court might find, in the event of a dispute between the parties, that despite that person’s investment in the right or covenant the right to the carbon sequestration benefits belonged to the land-holder. Without the Bill, such a finding could be possible as a result of the old common law rule that trees growing on land, and the carbon contained in the trees, are part of that land, and therefore belong to the owner of the land. It should be noted however that a carbon right could not be registered over a person’s land without the agreement of the person who owned the land. In essence then, the Bill provides that where a landowner grants the rights to carbon sequestration to another party the purchaser can register his rights on the title to the land and have confidence in what this act will provide.

The Bill therefore gives certainty to those wishing to trade in carbon rights and gain the credits or emission offsets which arise from sequestration. To illustrate the significance of this change, I am advised that a recently concluded agreement for the sale of rights to carbon sequestration in Western Australia required paperwork some two-thirds of a metre high! With this Bill, I understand that only about one-tenth of that paperwork would be required. This Bill will therefore dramatically reduce the costs of trading in carbon sequestration rights, further increasing the likelihood that greater revegetation will occur in Western Australia.

In summary, part 1 of the Bill contains preliminary provisions including the important definition of carbon sequestration and some other terms. Part 2, together with new provisions to be inserted into the Transfer of Lands Act by the Acts Amendment Bill, provides for the registration of a carbon right form. Once the form is registered the carbon right is created and the registered proprietor is given statutory recognition. A carbon right is a separate interest in land that can be transferred, devised, extended, surrendered or mortgaged like any other interest in land. A person other than the owner of the land can register as the owner of the carbon right only with the written agreement of the landowner. This is done by registering a carbon covenant.

Part 3 provides for the registration of carbon covenants. A carbon covenant is an agreement between the landowner, the proprietor of the carbon right and anyone else whose cooperation is required to ensure the carbon is sequestered in accordance with the agreement. Third parties could potentially include a lessee, sharefarmer or owner of neighbouring land. Like a carbon right, a carbon covenant is an interest in land. By its nature, it is a benefit to the owner of the carbon right, because it provides the terms under which the carbon will be sequestered, which determine the market value of the carbon right. This benefit runs with the carbon right and can be inherited. For the other parties to the agreement, the covenant places restrictions on the way in which land will be managed, so it is a burden on their land, and this runs with the burdened land as an encumbrance. This means that the obligations and restrictions that bind an owner or lessee of land under a registered covenant also bind that person’s successors in title, heirs, executors and administrators.

Part 4 makes provision for the Governor to make regulations generally, and specifically provides for regulations to require the proprietor of a carbon right to report in respect of that carbon right on the area of the affected land and the quantity of carbon sequestered. It is anticipated that reporting of carbon sequestered by the State for national and international reporting purposes will be based on satellite imagery. To ensure the accuracy of this approach, it is necessary to ground truth the imagery by checking how much carbon is actually present in the ground in a small sample of sites. In due course, regulations can be made under the Bill’s provisions to ensure that this information is provided when required.
The Bill has built on approaches elsewhere and made significant improvements. The approach in New South Wales is limited to crown land, and in Victoria the legislation applies only to tree plantations. The Bill enables rights to be registered for all forms of carbon sequestration in vegetation. It does not cover the registration of carbon sequestered by injection into geological formations or by chemical industrial processes. It is restricted to sequestration as a result of changed land use practices, consistent with the Kyoto Protocol. The Bill applies to all land, freehold as well as crown, and to carbon sequestration in all forms from trees to shrubs, pasture, rangeland and even carbon in the soil.

There are major environmental benefits for Western Australia in promoting changes to more sustainable land management practices in the agricultural and pastoral areas including reclaiming saline farming land and degraded rangeland. Recognising the carbon rights associated with reforestation, revegetation and certain other land management activities will help to pay for those changes and benefit the State as a whole, particularly should international carbon trading agreements be in place.

As I have mentioned, this Bill has been kept simple, and focuses on the registration of rights and covenants. It does not distinguish between land use practices that might lead to sequestration. It does not favour those that have other environmental benefits. All are treated alike.

Some people have expressed a fear that promoting plantations too heavily may lead to plantations dominating the landscape and changing the social fabric. This is a real concern, which may need to be addressed through land use planning at the local and regional level. The Bill is concerned only about registration and leaves it to other statutory processes to determine which forms of land use may or may not be appropriate in an area. Similarly, it must be recognised that carbon sequestration is just one of several initiatives which must be taken by Western Australia to adopt and implement a responsible approach to the global issue of climate change. The greenhouse strategy, which, as I previously stated, is currently being prepared, will provide a broad framework for an integrated response to climate change by Western Australia at this time.

The Carbon Rights Bill has been developed, in the face of uncertainty, to reduce commercial risk and promote environmental and economic benefits as part of an overall greenhouse strategy for the State of Western Australia. It has built on and improved upon approaches adopted elsewhere and, for the present, represents national best practice in a rapidly changing area.

Finally, I acknowledge the valued contribution of a number of people in the development of this legislation, especially the members of the carbon rights task force: Dr Peter Newman, Mr Simon Dawkins, Mr Richard McKellar and Mr Jim Malcolm, and also Dr Bryan Jenkins, who was actively involved in the formative stages. The task force was ably assisted with legal advice from Ms Sandra Eckert and Ms Allison Clarke, as well as Ms Alison O’Dwyer, the drafting officer in the Parliamentary Counsel’s office. The task force prepared a discussion paper addressing the issues and outlining the proposed approach. Some 1 500 copies of the discussion paper were distributed and more than 70 written submissions were received. The task force also organised two public forums; one on sequestration and one on security of investment. There was a series of rural consultations, and briefings were given to industry, agriculture and environmental groups. The Bill has significantly benefited from the active participation of these stakeholders and to them I offer my thanks.

I commend the Bill to the House.

Debate adjourned, on motion by Mr Bradshaw.