

WATER — VARIABLE TAKE LICENCES

Grievance

MREDMAN (Warren–Blackwood) [9.15 am]: My grievance is to the Minister for Water and it is in regard to a number of tensions on the issues of spring rights in the Warren–Donnelly irrigation district. A report on property rights by the upper house Standing Committee on Public Administration allocates a section to water. It puts in sharp focus many of the issues I have raised with the minister over the past couple of years. The first point I make is that most of the systems in the district are now fully allocated. Page 104 of the report, “Private Property Rights: The Need for Disclosure and Fair Compensation”, includes a quote from a Department of Water and Environmental Regulation senior adviser as follows —

Rapid uptake of licensed water entitlements in the Warren Donnelly since 2016 has resulted in most water resources becoming fully allocated. Therefore, landholders have sought to find alternative sources of water, which has included exploring water drawn from springs exempt from regulation.

That highlights the point that although the issue is not a new one, it has come into sharp focus since 2016. We know that many of the drivers, including the price of avocados and the importance of the avocado industry in the Manjimup–Pemberton region, have driven an interest in water and ensured interest in investment in that industry and in truffles, strawberries, citrus and a range of other investments. I have highlighted this concerning issue to the minister before; nevertheless, this report puts it into sharp focus. Another section on page 104 of the report states —

Further, it is concerning that it was not until subareas in the Warren–Donnelly catchment became fully allocated that DWER sought to ensure a consistent interpretation and the RIWI Act, and to correct previous incorrect advice provided by DWER to some landowners advising that they had a spring exemption when they did not.

I highlight that there is an acknowledgment that, from a regulatory point of view, the issue of the over-allocation of water has sharpened to ensure that we get those issues right, while a longer-standing issue has come into sharp focus during this minister’s tenure. I want to make the point that there has been a drive to look for water. One of the options is to look for spring rights, because if one cannot get an A-class licence, or a variable take licence, the only other way to get water is with a section 5 exemption, which in the district is loosely called spring rights. I quote from page 102 of the report —

Where a section 5 exemption applies, —

That is the spring rights —

there is no limit to the quantity of water that a land owner/occupier can take, even within an over-allocated area. The landowner may also build a dam to hold the spring water without requiring a licence or bed and banks permit.

The point is made that spring rights is in sharp focus in response to the investment interest and, of course, the need to have water in order to achieve that. I am sure that the minister, through his advisers, is aware that there is a lot of anxiety about this. As that interest grows in investment and in water—water that they cannot get—so, too, are they looking forward to a consistent, strategic approach from government to manage that issue. Page 121 of the upper house report states —

DWERs actions have caused landowners, particularly those in fully allocated subareas in the Warren–Donnelly catchment, dependent on their spring rights for supply of water, significant anxiety and frustration.

The committee that produced this report was chaired by Hon Adele Farina. I make the point that the upper house report identified and put into sharp focus many of the issues that I have directly raised with the minister in letters covering a range of matters as they apply to water in those particular districts. In a letter dated 25 March 2019, I wrote about the importance of the Department of Water and Environmental Regulation undertaking community engagement. There is a variable level of understanding of water management processes within the community, particularly of late, given the investment interest. The importance of that engagement is critical for consistency in responses and also to understand the issues that water users are facing. I also wrote a letter on 18 September 2019 in which I very directly raised the issue of inconsistencies in the department’s approach to spring rights and I put the issue firmly on the minister’s plate. I said that it is an emerging issue. I did not make these matters heard in a publicly significant way but I raised them directly with the minister’s office and now the committee report has brought the issue into sharp focus.

I highlight that the level of anxiety among people in that area is leading to discussions about the potential for legal action against the government. The report highlighted that there is an inconsistent approach. I know that the report is on the minister’s table and is awaiting a response. I asked a question earlier this week about whether the minister intended to respond to the upper house report in the allocated time, which is before the finish of this calendar year. I understand that, nevertheless, there is the potential that legal action will be taken against the department. I know that the Western Australian Water Users Coalition is considering that option. It is not an option that anyone wants to

pursue, but certainly they want a signal from the minister that these serious issues will be taken up by the government and that the government will undertake a high level of engagement with the community to get an outcome. Recommendation 28 of the Standing Committee on Public Administration report recommends that the Minister for Water commission an independent inquiry into the Department of Water and Environmental Regulation's new administrative processes as they apply to issues such as spring rights.

In summary, before my time runs out, it is clear that this report reinforces what has been on the table for a long time. I have directly raised these issues with the minister. I recognise that they are longer term issues but they have come under sharp focus in the minister's term of government. The community down there is looking for a response; it is looking for a government response to the committee's report in a timely way but, more importantly, it wants a stronger level of engagement from the department.

MR D.J. KELLY (Bassendean — Minister for Water) [9.22 am]: I thank the member for Warren–Blackwood for raising this grievance this morning. It is correct that in June 2019, the Standing Committee on Public Administration commenced an inquiry into private property rights and considered a number of concepts within the water portfolio, including issues related to section 5C licences to take water under the Rights in Water and Irrigation Act 1914. The department cooperated with that inquiry. It gave evidence on 17 February, 20 May and 19 August this year and provided multiple submissions. The issues that the committee looked at were largely around water management issues in the Warren–Donnelly area, specifically exemptions from licensing for the taking of water from springs. The committee has handed down its report. It made 10 findings and 11 recommendations relating to the Rights in Water and Irrigation Act. In accordance with our obligations under standing order 119(1), the government will provide a response in due course.

Although “spring rights exemption” is a commonly used term, the act does not specifically refer to spring rights and the department does not grant spring rights exemptions. Rather, the act defines a “spring” for the purpose of the act and the circumstances in which water can be taken from a spring without a licence. Section 5 of the act states that regulations do not apply to certain water flowing from a spring unless the spring is prescribed by local by-laws as a spring to which part III applies. Therefore, the springs that meet the requirements provided under section 5 are exempt from licensing and permitting requirements. An exemption from the regulations means that a landholder may construct and use water arising from a spring as they see fit. This exemption has existed since the introduction of the act, so it is not a new issue. Importantly, the act does not specify a formal assessment process for the determination of whether an exemption exists; therefore, the department has spent considerable resources to clarify the interpretation of the legislation to provide greater surety when making a determination. Because no process is set out in the act, the department tried to clarify this issue by putting in place an administrative process that dates back to 2016. When the Leader of the Nationals WA was the Minister for Water, this was a live issue. The member's grievance this morning indicated that this has been an issue only during my term as minister. That is not correct because the department and the former Minister for Water, the Leader of the Nationals WA, put a procedure in place in 2016 to encourage people who thought they had a spring the right to engage with the department so that they could get a determination rather than going ahead and taking water with the potential of being found in breach of the legislation because they did not have a licence. The process that was considered by the upper house committee has in fact been in place since 2016 and it was put in place by the previous Minister for Water, who is the current Leader of the Nationals WA.

I am aware that there is still concern about how that process is working. I have received correspondence from a number of interested parties in the Warren–Donnelly area complaining that the system is not clear or about the outcome. The member for Warren–Blackwood has to remember that although some people want spring rights on their properties, some neighbouring properties do not want them to be given a spring rights exemption because they think that that will take water from them. Whenever there is a spring rights determination, the people who get it are happy, the people who do not get it are not happy and those who own neighbouring properties can also be unhappy. It is not just a case of granting an exemption to everybody who wants an exemption because everyone will be happy, because that is not always the case, especially in a catchment such as Warren–Donnelly where water is fully allocated. Members on this side of the house understand that water in that area is precious and therefore we understand that anxiety is felt both by the people who want a spring rights exemption and those who do not want their neighbours to get it. I challenge the tenor of the member's grievance this morning that this issue has come into focus only during this term. It has been a longstanding issue.

Mr D.T. Redman: It has certainly sharpened.

Mr D.J. KELLY: As water in Western Australia becomes scarcer because of climate change, these issues will become more acute. It would be helpful if the National Party recognised the impact of climate change on —

Mr D.T. Redman: We do.

Mr D.J. KELLY: But it does nothing about it.

Mr D.T. Redman interjected.

Mr D.J. KELLY: If the member for Warren–Blackwood wants me to respond to his grievance, he should not interject. It would be great if the National Party at the national level acknowledged the impact of climate change and took some action. It has not done that. The National Party is full of climate change deniers. We have acknowledged the issues raised by people in the Warren–Donnelly area. We are aware of the issues raised by the standing committee. We take these issues seriously. The department is working on what else can be done to further clarify the situation and is particularly looking at whether new legislation on this issue is required.