

**RIGHTS IN WATER AND IRRIGATION AMENDMENT BILL 1999**

*Committee*

Resumed from 12 October. The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon M.J. Criddle (Minister for Transport) in charge of the Bill.

**Clause 51: Schedule 1 added -**

Progress was reported after the clause had been amended.

Hon M.J. CRIDDLE: I move -

Page 78, lines 15 to 22 - To delete the lines and insert instead -

- (f) in the opinion of the Commission, the exercise of the power is necessary to prevent a serious inconsistency arising as a result of —
  - (i) the approval of a plan, or the alteration, revocation or substitution of a plan, under Part III Division 3D Subdivision 2; or
  - (ii) the making, amendment or repeal of relevant local by-laws;

The original drafting of this proposed section was too narrow. It provided for licences to be amended only when the plans and by-laws were changed. The changes to licence conditions may be necessary when plans or by-laws are first made or if the by-laws or plans are revoked. The compensation provisions relating to licence holders when treated unfairly will apply to licences under this section.

**Amendment put and passed.**

Hon M.J. CRIDDLE: I move -

Page 78, line 23 - To insert after “licensee” -

, or a person whose name is endorsed on the licence as a person with whom the licensee has an agreement referred to in clause 30,

Page 78, line 31 - To insert after “licence” -

or of an agreement referred to in clause 30

Page 78, line 33 - To insert after “transfer” -

or agreement

Hon KIM CHANCE: As with other amendments that have the effect of altering the outcome of this legislation with respect to capital gains tax, the Opposition will support these changes. It needs to be noted at this stage that, while this may not apply to this amendment, a large number of the amendments appearing in the name of the Minister for Transport are the result of positive negotiations between the Opposition and the Government, and that is where we are making such spectacular progress with the committee stage of the Bill.

Hon M.J. CRIDDLE: The Government understands the point made by Hon Kim Chance.

**Amendments put and passed.**

Hon M.J. CRIDDLE: I move -

Page 79, lines 22 to 28 - To delete the lines and insert instead -

- (b) in the opinion of the Commission, the exercise of the power is necessary due to a serious inconsistency, which cannot be resolved by an amendment under clause 24, arising as a result of —
  - (i) the approval of a plan, or the alteration, revocation or substitution of a plan, under Part III Division 3D Subdivision 2; or
  - (ii) the making, amendment or repeal of relevant local by-laws;

This amendment is also necessary because the original drafting was too narrow. Cancellation of licences may be necessary when plans or by-laws are first made, and if the by-laws or plans are revoked the proposed amendments will provide for compensation if licences are cancelled in an unfair or unreasonable way.

**Amendment put and passed.**

Hon M.J. CRIDDLE: I move -

Page 79, line 29 - To insert after "licensee" -

or a person whose name is endorsed on the licence as a person with whom the licensee has an agreement referred to in clause 30,

Page 81, line 20 - To insert after "entitlements" -

**and agreements with licensees to take water**

Page 81, line 28 - To insert after "may" -

transfer

Page 81, line 29 - To delete "transfer".

Page 81, line 29 - To delete "to another person".

Page 81, line 30 - To delete "transfer".

These amendments correct a minor drafting error and ensure that the licence can be transferred only to people who can hold a licence.

Hon KIM CHANCE: The Opposition is happy to deal with this block of amendments. In effect, they relate to property rights in an entitlement, and agreement with licensees to take water. This raises the matter of ownership of water rights and the timing of that ownership. This goes back to those matters that the Opposition raised in the second reading speech about decisions which have been made, effectively, on the eve of this legislation becoming law which seem to favour the former Minister for Water Resources, Mr Paul Omodei. We raised these matters in the context of Moltoni Holdings and its ownership of water under an agreement that had been made on the Yarragadee aquifer. We sought an answer from the Government in the second reading stage. However, I do not believe this Chamber has ever been given an adequate explanation of those matters. On the eve of this legislation becoming law, which will create a capital value in respect of a water licence, 100 per cent of the sustainable yield of that aquifer has been given to a single applicant who has a connection with government. We were told when the question was raised that Hon Paul Omodei was not connected with the company which holds these water rights, yet we have since found that Hon Paul Omodei was a director of Moltoni Agricultural Pty Ltd, the company which was seeking the water rights at the time in question. That is quite contrary to what the Parliament had been told.

Hon KEN TRAVERS: These amendments to clause 51 will allow the transfer of a water licence to a person who does not own the land but can demonstrate that he has access to the land. Will this Bill significantly amend the Act by making it a lot easier for a person who has access to the land to hold a licence, rather than the current situation where the person must be the owner of the land?

Hon M.J. CRIDDLE: The information I am given is that a person need only be an occupier of the land in order to hold a licence.

Hon Ken Travers: Will these amendments make it easier for a person who is not the owner or occupier of the land to hold a licence?

Hon M.J. CRIDDLE: The information I am given is that these amendments do not do that; the Bill does that.

Hon Ken Travers: Which clauses of the Bill do that?

Hon M.J. CRIDDLE: Clause 3 of proposed schedule 1 of the Bill does that. With regard to the remarks made by Hon Kim Chance, the Bill was not prepared for the benefit of any individual, whether that be a member of Parliament or a member of the general community. Hon Ken Travers raised this matter earlier in the committee debate, and I said likewise at the time. I am not the minister who prepared the Bill, so I do not know the detail of the developments.

Hon KIM CHANCE: Clause 51, which deals with transfers of licences and water entitlements, raises an issue of more global proportions. When we talk about entitlements to transfer, we are dealing with property rights, because what makes a licence - that is, a right to use - a matter of property is its element of transferability. Once a licence is transferable, it becomes, whether in law or not, as a matter of commercial reality, property. We cannot get much more central to the question of property than that. The concern that we have raised, and which has perhaps been highlighted only because a member of the Government is involved in this case, is almost irrelevant to the broader question, which is whether this legislation and the concept of transferable water entitlements opens up the question of real-estating, which is a question with which we are well familiar in the Mining Act. If it does, this legislation is not as good as it could be, because there should be some means of preventing people from profiting from the right to use, and the transferable right to use, a public resource. That is a deficiency in the Bill, although not such a deficiency as will cause the Opposition to withdraw its support of

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the legislation. Nonetheless, we need a response, if not now - and I acknowledge what the Minister for Transport has said - then at least at a stage when the minister in another place has the opportunity to address this Chamber in the manner that is available to him. It is a serious concern that should be addressed.

Hon KEN TRAVERS: I take the minister's point that, in the past, a person needed to be an owner or occupier of the land, but under clause 3 of proposed schedule 1, all he need do now is demonstrate that he has access to the land. Many of these amendments moved by the Minister for Transport, which, as Hon Kim Chance has mentioned, we support, pick up some of the issues with regard to capital gains tax. This is one of the key elements of this legislation and it relates to transferable water entitlements. A person can hold the licence because he has been able to demonstrate under section 3 that he has access to the land, and an amendment provides for an implied right of renewal. If someone is not the owner or occupier of the land but holds the licence by having demonstrated that he has access to the land, will that person be able to trade that licence to another party within the subaquifer area?

Hon M.J. CRIDDLE: Licences can be held by a landholder, an occupier or a person granted access by a landholder or a public utility. Therefore, the same group must be able to receive the transfer. The licence holder must have a genuine use for the water.

Hon KIM CHANCE: My question relates to the ongoing right to hold that licence being tied to the licensee's ability to demonstrate that he has a need and an ability to use that water. This goes to the question of "real estating" that I referred to earlier. If an applicant is awarded a right to use an entire aquifer and some years later fails to demonstrate that he is using that resource in the way indicated in the licence application or is clearly not able to use that water as a result of, for example, bankruptcy or an inability to trade, what happens to the licence right, particularly if it has been awarded over 21 years? If a person applies for the water and gets the licence, which means other people cannot access the water, how long must they wait before they can access it? How long will it be before the original licence is cancelled? I am concerned that a person will get control of an aquifer and sit on it because he knows that anyone who wants access will have to come to him. Of course, he can then set his price. That is how the "real estating" issue begins to have effect. If there is a need to demonstrate an ability to use the water, at what point do we say that the application has proved to be nonsense because five years later not a drop has been used?

Hon M.J. CRIDDLE: If a licence were granted over an entire aquifer, conditions would apply. Those conditions may vary because there would be different situations and resolutions of the licence in the long term. The position would be reconsidered if the licensee had not used it. The commission would have to make a decision because there would be a variation in the situation. Recent variations have occurred after two years.

Hon KEN TRAVERS: If the person loses access to the land on which the licence was issued, does that person have the right to on sell it? If he cannot, does it revert to the original landholder?

Hon M.J. CRIDDLE: In that case the licence would be terminated and it would be reallocated by the commission.

**Amendments put and passed.**

Hon M.J. CRIDDLE: I move -

Page 82, lines 8 to 16 - To delete the clause and insert instead -

**30. Agreements with licensees to take water**

- (1) Subject to this Division, the holder of a licence may enter into an agreement with another person ("the third party") relating to the taking of water under the licence by the third party for a limited period of time.
- (2) An agreement referred to in subclause (1) is of no effect to the extent that a relevant local by-law prohibits such agreements in relation to licences, licences of a particular kind or in particular circumstances.
- (3) An agreement referred to in subclause (1) is of no effect unless -
  - (a) it is entered into with a person who holds, or is eligible in terms of clause 3 to hold, a licence of the same kind;
  - (b) it has been approved by the Commission; and
  - (c) the licence is endorsed in accordance with clause 36(d).

- (4) Subject to clauses (2) and (3)(a), the grant or undertaking to grant approval under clause (3)(b) is at the discretion of the Commission.
- (5) In exercising that discretion the Commission is to have regard to all matters that it considers relevant, including those set out in clause (7)(2).
- (6) If the Commission would approve an agreement referred to in subclause (1) but for the fact that the third party is not a person who is eligible in terms of clause 3 to hold such a licence, the Commission may undertake to approve the agreement if the third party becomes a person who is eligible to hold the licence within the period of time specified in the undertaking.
- (7) Without limiting subclause (4), the Commission may refuse to approve an agreement, or to undertake to approve an agreement, if the third party is a person who has committed an offence against this Act.

Page 83, line 10 - To insert after "entitlement" -

or of an agreement referred to in clause 30

Page 83, line 29 - To insert after "licence" -

, or of an agreement referred to in clause 30,

Page 85, lines 1 to 9 - To delete the clause and insert instead -

**36. Endorsement and record of dealings**

The Commission must -

- (a) in the case of the transfer of a licence, endorse on the licence as licensee the name of the person to whom the licence has been transferred;
- (b) in the case of the transfer of a water entitlement under a licence to a person who does not hold a licence of the same kind, issue a licence to the person to whom a water entitlement has been transferred endorsed with such particulars as the Commission thinks fit relating to the transfer;
- (c) in the case of the transfer of a water entitlement under a licence to a person who holds a licence of the same kind, endorse on the licences affected such particulars as it thinks fit relating to the transfer; and
- (d) in the case of an agreement referred to in clause 30 between the holder of a licence and a third party relating to the taking of water under the licence by the third party, endorse on the licence the name of the third party, the period of the agreement and any other particulars it thinks fit relating to the agreement.

Page 86, lines 13 to 20 - To delete the lines.

These amendments are part of a series of amendments to remove capital gains tax on a temporary transfer of licence. Reference to "temporary transfers" is deleted and a new clause inserted. That new clause allows a licence holder to enter into an agreement with a third party to use the licence.

**Amendments put and passed.**

*Sitting suspended from 6.00 to 7.30 pm*

Hon M.J. CRIDDLE: I move -

Page 86, line 26 to page 87, line 28 - To delete the lines.

I previously referred to the limits on the Legislative Council's powers that prevent the Council making amendments to introduce a tribunal appeals system. This limitation is imposed by section 46 of the Constitution Acts Amendment Act 1899. The limitation may also prevent the Council from introducing amendments to expand the compensation provisions. The expansion is proposed in the Standing Committee on Legislation's recommendations 4, 5 and 6. Accordingly, this amendment will delete from the Bill the compensation provisions in proposed section 39(1) of division 9. The deletion will allow the Minister for Water Resources to introduce the required amendments in the Legislative Assembly. These amendments will reinstate compensation for changes made in the public interest and implement the Legislation Committee's recommendations.

Hon KIM CHANCE: As the minister has explained, the proposition before the Committee will have the effect of removing from the Bill, for the purposes of our committee stage debate, those matters relating to

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compensation. Members understand that the minister will soon move also in a similar manner to remove from the Bill those issues concerning the objections tribunal, for the reasons he has explained.

The Australian Labor Party will cooperate with the Government for the reasons it has given. This is an appropriate means of managing the business. We are, of course, a little cautious in the way we have accepted this, because those two provisions relating to compensation and the objections tribunal form the main plank of the Australian Labor Party's negotiations with the Government on this Bill. We understand why this approach needs to be taken, and we support it. Although the minister has explained the constitutional reasons, members deserve some explanation of why it needs to be done this way.

The Australian Labor Party accepts the undertaking given by the Minister for Transport and the Minister for Water Resources that when the message relating to this Bill reaches the Legislative Assembly, these two elements will be incorporated in the legislation. We are happy to cooperate on that basis, since we cannot make the change in this place. However, we seek an assurance from the minister that this legislation will not be proclaimed without the inclusion of those two elements in the agreed form. We can talk only about the compensation provisions at present, but obviously the assurance we seek concerns the compensation provisions and the objections tribunal provisions. I have asked for that assurance in those terms because there is always the possibility of a procedural difficulty in the Assembly, which we cannot anticipate. However, one should be aware that things like that could occur.

Should the compensation and objections tribunal provisions of the legislation, for example, require the introduction of a separate Bill, an assurance in the terms I have just requested would become absolutely critical, because if that were to occur, the legislation, as amended, would come back to this place without containing either compensation or objections tribunal elements. We would then have to wait for new legislation to be introduced in the other place, and that would be a dangerous position to be in, particularly as we are getting close to the end of a parliamentary session. I imagine the water users would be extremely concerned about that possibility, because the legislation would achieve all the things that had been set out, other than contain the safeguards for water users. I understand an assurance from the minister at the committee stage has no significance whatever in the policy of the Bill, and that the assurances we are seeking should properly be included by a recommittal of the Bill and restarting the second reading stage.

Hon M.J. Criddle: I think in my second reading summation I said the Government would implement the recommendations of the Standing Committee on Legislation. That goes a long way towards -

Hon KIM CHANCE: Yes, I understand that. Indeed, I have no doubt whatever of the Minister for Transport's intention in this matter; nor do I have any doubt whatever about the integrity of the undertakings given by the Government generally and by the Minister for Water Resources in particular. I simply want to make it clear to people who read the debate on this stage of the Bill that the Opposition believes there is no need for them to be concerned. However, we have sought the assurances that the industry has every right to seek.

Hon M.J. CRIDDLE: It is clearly the intention of the minister in the other place to carry out the assurances I gave on compensation and the appeals tribunal. I think the member called the tribunal by another name.

Hon Kim Chance: I called it the objections tribunal, which relates to my fishery background.

Hon M.J. CRIDDLE: It is known as the appeals tribunal. The assurances I have given will be carried out.

Hon KEN TRAVERS: Based on the assurance of the minister, we must not pass this point without acknowledging that there has been a great deal of cooperation between the Government and members on this side of the Chamber on the issue of compensation. The Labor Party is very pleased that the Government has agreed to the only mechanism that can be used to reach agreement between the Opposition and the Government for enhancing the compensation provisions in accordance with the recommendations of the Legislation Committee. The Labor Party always wanted to achieve a better outcome for compensation and independent appeals than was in the original legislation. Therefore, we will support the minister's amendment.

Hon NORM KELLY: The Australian Democrats support what the Government and the Labor Opposition are seeking to achieve by the amendment. We look forward to further debate when this matter returns to this Chamber. We will be making any concerns known to the minister and appropriate officials in the meantime to avoid unnecessary delays in the passage of the Bill.

Hon GIZ WATSON: This is the opportunity for the Greens (WA) to put a few matters on the record because obviously the Greens will not have the opportunity to comment during the debate in the other place. Compensation was the subject of my dissent from recommendation 4 of the committee, which was to recommend that the payment of compensation be mandatory whenever legitimate existing use for the licence is reduced or removed and that the scope of exemptions from such compensation should be decided by Parliament.

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Hon KEN TRAVERS: Before we finish with this clause, we must make it very clear what it does. This clause will cause significant changes to occur because it deals with the issues of tradeable water entitlements. I want to raise some key elements. One proposed section will allow someone who is not the owner or occupier of the land

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to hold a water licence and section 22 as amended will provide for the renewal of a licence being an implied renewal as long as the person is complying with the Act or a relevant local by-law, whereas currently there is no expectation of the renewal of a water licence at the end of a licence period. Although the practice of the Water and Rivers Commission in the past might have been to renew licences, there was no guarantee of that in the legislation. This amendment will clearly give a person who is responsibly and lawfully using the licence in accordance with the conditions an expectation and a right to have the licence renewed. Those two proposed sections will provide a significant benefit to any water licence holder. The proposed section will allow licence holders to have an expectation to hold them in perpetuity as long as they comply with all the other conditions provided for in the Act, and will be able to trade that water licence off to somebody else. As members have said at every stage of this Bill, over time that will be of significant public benefit. Companies are already indicating that they are moving in that direction. As Hon Kim Chance mentioned, some have issued prospectuses. One can only assume that that is in anticipation of this legislation being passed. The prospectuses claim that they have access to water for the next 25 years when in fact they only hold a three-year licence.

This clause goes very much to the enhancement of anyone who was granted a water licence while the matter was being considered in Cabinet. I must say that, as we prepare to pass this clause, it is a shame that the Government still has not explained to the people of Western Australia why a member of Cabinet participated in cabinet debates on this legislation, which will provide a clear benefit to that Cabinet member and companies associated with him. I understand the minister cannot provide an explanation; however, the issue was raised with the Premier and the minister in the other place and neither took that opportunity to provide an explanation. It is a great shame that those explanations have not been given as it tarnishes this legislation.

**Clause, as amended, put and passed.**

**Clauses 52 to 63 put and passed.**

**Clause 64: Division 3B inserted in Part III -**

Hon GIZ WATSON: I move -

Page 99, line 17 - To delete "A" and substitute "Any".

The intention of this amendment, as part of a series of amendments, is to provide standing to a third party in appeal decisions by the commission. The amendment seeks to alter the reference to "a person" to "any person". The reason for the amendment is that often in issues concerning environmental management, third parties are concerned about whether legislation is being carried out to the full extent of providing environmental protection. One of the major impediments to legal action in such cases is that people do not have standing before the commission. The intention of this series of amendments is to enable a third party to bring an appeal before the commission.

Hon M.J. CRIDDLE: I understand amendments numbered 23 to 27 on the Supplementary Notice Paper are related and the Government will oppose them. They would allow any member of the public to appeal against licences issued to other parties and would impose an unfair burden on a licence holder. They would create uncertainty for water users and unacceptable delays in undertaking developments. The Bill provides for community input into policy making and licensing decisions, and thus renders these amendments unnecessary.

Hon KEN TRAVERS: The collection of amendments to be moved by Hon Giz Watson would, as the minister and Hon Giz Watson said, provide for third parties to appeal against the issue of a licence. The Australian Labor Party has given this matter a great deal of consideration. Members should note that later in the debate Hon Giz Watson will move an amendment to allow people to have standing to bring proceedings for a breach of the Rights in Water and Irrigation Act. The Labor Party will not support an amendment that provides a third party with the right to appeal the issue of a licence. It is unnecessary for people to have appeal rights against the issue of licences because it will encourage vexatious claims. However, the Labor Party will support an amendment to provide for standing in the case of any breach of the Act. It is important that I make that distinction because members need to understand that an administrative decision made by the Water and Rivers Commission outside policy will be a breach of the Act. A breach of the Act will occur if a decision is not made under other provisions of this legislation to ensure that the environment is protected. It is the Labor Party's view that instances in which people wish to appeal against the issue of a licence following a breach of the Act will be provided for by Hon Giz Watson's later amendment for standing in the case of breaches of the Act. It is not necessary to put a separate provision in the legislation to allow people to appeal against what in the main will be, if not a breach of the Act, a simple dislike of the policy decisions of the Water and Rivers Commission. Those issues must go to a political debate.

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As I said, if the environment is in any way damaged as a result of the issue of a licence, that would be a clear breach of the Act and therefore the proposed standing provision clause would provide the necessary comfort to those people in our community who want to appeal against the issue of that licence. There is therefore no need for a right of appeal against licences without justification. We support the ability of people to have standing under the Act to appeal against breaches when the Act has not been applied correctly. That is the Labor Party's position and we therefore oppose these amendments.

Hon GIZ WATSON: The point made by Hon Ken Travers in relation to potential vexatious actions is often raised as an objection to granting third party standing, and there are two responses to it: First, undertaking a legal action is expensive and, second, most individuals and community groups would seriously consider such a matter.

Hon Ken Travers: I suspect these vexatious claims may come from other licence users or potential licence users. The member should not think I was attacking environmental groups or anyone of the like. I suspect vexatious claims would come from commercial competitors.

Hon GIZ WATSON: Yes. However, it is my understanding that a case that is clearly vexatious can be thrown out of court without being heard. The legal system therefore has the means to assess a case up front, and if a case is vexatious and has no basis it will not be heard.

Hon Ken Travers: That is an appropriate argument on the standing. The problem with this amendment relates to the background of an appeal to the court on the granting of a licence.

Hon GIZ WATSON: Those are the reasons that I suggest the likelihood of a vexatious claim being successful is virtually negligible. The Greens (WA) continue to seek the amendment to the Bill.

Hon KEN TRAVERS: When we reach the issue on standing, the Labor Party will not support the view that vexatious claims would be made for the reasons outlined by Hon Giz Watson. However, I believe part of the problem with her amendments is an insufficient explanation of the grounds on which people can appeal against the issue of a licence which would encourage vexatious claims. I suspect such claims would come from commercial competitors, not from someone with a legitimate environmental reason for appealing. That is the reason that the Labor Party will not support the amendment; however, we believe in the right of third parties to have standing.

Hon NORM KELLY: My understanding too is that if appeals were made by other licence users or interested commercial entities, avenues would exist to take legal action against those people if the purpose of their appeal to the minister were based purely on an intent to gain a commercial advantage by delaying or denying the grant of a licence to an applicant. When we compare this amendment with the issue of legal standing for third parties for breaches of the Act, we can see it is a pre-emptive measure so that action can be taken prior to the granting of a licence that may have an environmentally unsound basis.

Hon Ken Travers: This amendment is a lot broader than that.

Hon NORM KELLY: I realise that, and there may be a way to tighten it up further. At the moment the Bill provides that appeals are limited to the applicant. Proposed new section 26GG(2) states an appeal is limited to the applicant for the licence, the licensee or, if the appeal is made under section 26GG(1)(f), a person to whom the licence or water entitlement would be transferred. It is very much a simple appeal mechanism to provide a degree of recourse for the applicant. I accept that this amendment will take it a lot further. However, the Australian Democrats will support the amendment because it provides scope to extend the appeal right to other parties. We can then look at tidying up any of the concerns that have been expressed by Hon Ken Travers.

**Amendment put and negatived.**

Hon GIZ WATSON: I will not move the remaining amendments in my name on Amendments and Schedules No 7-3 as they relate to the same change. As the previous amendment was lost I assume they will all be lost.

Hon M.J. CRIDDLE: I do not wish to move amendment 88/64 standing in my name. I move -

Page 100, line 2 - To insert after "licence" -

, or an agreement referred to in clause 30 of Schedule 1

This is a further capital gains amendment. It ensures that appeals can be made against the commission if it refuses to approve an agreement for another person to operate under the licence.

**Amendment put and passed.**

Hon M.J. CRIDDLE: I move -



Page 100, line 7 - To insert after “transferred” -

or a person who is a party to the agreement

Once again this is a capital gains tax amendment.

**Amendment put and passed.**

Hon M.J. CRIDDLE: I do not wish to move amendments 91/64 to 93/64. I move -

Page 100, lines 23 to 26 - To delete proposed section 26GJ.

Proposed new section 26GJ required appeals to be conducted in accordance with schedule 2. As schedule 2 is to be deleted section 26GJ should be removed.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 65 to 68 put and passed.**

**Clause 69: Schedule 2 added -**

Hon M.J. CRIDDLE: I move -

Page 101, line 18 to page 105, line 17 - To delete the clause.

In response to recommendation 7 of the Legislation Committee the Government wishes to replace the ministerial appeals system with an independent tribunal.

**Amendment put and passed.**

Hon M.J. CRIDDLE: I do not wish to move amendment 101/69.

**Clause, as amended, put and passed.**

**Clauses 70 to 85 put and passed.**

**New clause 45 -**

Hon NORM KELLY: I move -

Page 51, after line 24 - To insert the following new clause -

**45. Section 26K amended**

Section 26K(3) is amended by inserting after “legislation” the following -

and section 42 of that Act applies to such an order as if the order were a regulation

This new clause will amend section 26K, which has strong powers. It provides the power to exempt the Crown from being bound and subsection (2) states that the Government may by order published in the *Gazette* provide for these exemptions for the Crown or a statutory undertaker from any provision of this part. Section 26K(3) refers to sections 43(4) and (7) to (9) of the Interpretation Act applying to an order under section 26K(2) as though the order were subsidiary legislation. My amendment would provide that section 42 of the Interpretation Act applies to such an order as if the order were a regulation. This will provide a safeguard so that any of these orders then become disallowable instruments in the Parliament so that either House of Parliament can disallow such an order. Given the strong power contained in section 26K I believe this is a responsible way to ensure that there is a level of scrutiny and accountability to such orders made by the Government.

Hon M.J. CRIDDLE: The Government will support this amendment to tighten exemptions for the Crown by requiring the exemption order be laid before the Parliament for a possible disallowance because it is consistent with modern legal trends for increased accountability of the Crown.

**New clause put and passed.**

**New clause 80 -**

Hon GIZ WATSON: I move -

Page 110, after line 18 - To insert the following new clause -

**80. Standing to bring proceedings in respect of breach of this Act**

- (1) Any person may bring proceedings in the Supreme Court for an order to remedy or restrain a breach or a threatened breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.
- (2) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

The intention of this new clause is to bring third party standing to any breach of this Bill. It will enable a person to bring proceedings in the Supreme Court in order to remedy or restrain a threatened breach of the Act whether or not any right of that person has been or may be infringed as a consequence of the breach. This is in line with the previous amendment that I sought to move. It is important, particularly in legislation that seeks to protect the environment, that third party standing be available, because that is often the first hurdle for individuals or groups who want to ensure that an Act is being implemented and is serving to protect the environment. This new clause is appropriate and is in line with the provision that allows for a third party to ensure that the Act is carried out; and, if it is not, for an order to be made to remedy or restrain a breach of the Act. We seek the support of the Chamber for this amendment.

Hon M.J. CRIDDLE: The Government's policy is that the courts are the proper jurisdiction to determine who should be allowed to bring legal action of this type. Therefore, the Government will oppose the amendment.

Hon KEN TRAVERS: The Labor Party will support this new clause. The Government's position of leaving it to the courts is a complete cop-out, considering that in so many other pieces of legislation it seeks to take powers away from the courts. I am not a Queen's Counsel, so I stand to be corrected at some future time, but it is certainly the Labor Party's view that the current direction of the courts in Western Australia is in many cases to grant third party rights of appeal.

Hon Derrick Tomlinson: Not appeal. This is dealing with a prosecution.

Hon KEN TRAVERS: I stand corrected. Other States of Australia give people third party standing to bring action for breaches or threatened breaches of their water legislation. In my view, even if this new clause is not successful, in due course third parties will be given standing with regard to this legislation. I say that for a number of reasons: First, that is the current direction of the courts. Secondly, the basis of these amendments is to give the environment pre-eminence with regard to the allocation of water. In my view, therefore, anyone who sought standing before the courts, particularly with regard to breaches of this legislation with regard to the environment, would eventually be granted standing by the courts. I am interested to know whether the Government has any views to disprove that proposition. I am not a Queen's Counsel, but I believe that because of the importance that this legislation places on the environment, and because of the recognition by the courts that everyone has an interest with regard to environmental matters, in the long run people will be granted by the courts the standing that this clause seeks to grant.

We want to include this clause now to save time and money for the people of Western Australia who may have an action taken against them. We want those people to be able to get on with the substantive issue of arguing about whether there has been a breach of the Act, rather than have to spend time and money on arguing about whether they have standing. The Government's position of not supporting this amendment is short-sighted. The first people who have an action taken against them, particularly on environmental grounds, that will affect their licence will need to spend a lot of money to determine whether they have standing. It is the Labor Party's view that they will be given standing; and I look forward to the Government's putting any views to the contrary.

The Government has not raised the issue of vexatious claims, but I realise that some government members have concerns about that matter. It is the Labor Party's view that the mechanisms within the Supreme Court to require people to make commitments with regard to costs and the like if the claim does not have substantial merit will ensure that vexatious claims are not made under this clause.

Hon Derrick Tomlinson: What absolute nonsense!

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Hon KEN TRAVERS: The necessary remedies would be available to the courts should a person seek to use this clause; and if a person did want to be vexatious, he would just take the action and seek the standing anyway.

Hon Derrick Tomlinson: Courts have ways of dealing with vexatious matters. To follow the line of vexatious litigation here is quite erroneous. I will speak later.

Hon KEN TRAVERS: I cannot wait to hear Hon Derrick Tomlinson's analysis, so I will now sit down to give him the opportunity of enlightening the Chamber with his intellectual muscle.

Hon DERRICK TOMLINSON: I cannot resist the temptation of responding to that very flattering invitation from a stupid man.

Hon Ken Travers: I feel honoured! I am now up there with Hon Ljiljanna Ravlich.

Hon DERRICK TOMLINSON: No. Hon Ljiljanna Ravlich is drop-dead beautiful. Hon Ken Travers is not drop-dead beautiful. I interjected at the point at which the member was raising an argument about vexatious litigation. The interjection I was trying to make is that courts have procedures for dealing with vexatious litigants; and if there were vexatious litigants, the court would deal with them accordingly. However, this amendment is not about vexatious litigants. It is giving any person the right or standing to bring proceedings in the Supreme Court against a breach of the Act. If it were a criminal prosecution, it would be necessary to establish that there was a person or object against whom there has been a breach of the law. A state authority - the police, or the Director of Public Prosecutions - would pursue that prosecution against a breach of the law. Alternatively, it might be civil litigation, in which case a person in contention with another person could argue in the court that he had in some way been offended by the actions of that other person. Therefore, in either case, whether it be a civil proceeding or a criminal proceeding, there would be those two parties.

The Bill now brings into the proceedings of the Supreme Court any person: Any person may take proceedings in the Supreme Court for an order to remedy or restrain a breach or threatened breach of action - not a person against whom there has been an offence in the case of civil litigation, not a person against whom there has been an offence in the case of a criminal prosecution, but any person. One could say that any person might be offended by an action against a matter that affects the so-called "environment". This will allow the opportunity, not for the vexatious litigant, but for some single-minded party or organisation - whether it be the Greens (WA), the Australian Greens, the "Rainbow Warriors" or the "Rainbow Connection" - to take a case to the Supreme Court. Procedures exist for civil litigation and for criminal prosecution. This would open a Pandora's box of litigation that I do not believe this Parliament should be entertaining. If members want to pursue the defence of particular values, there are ways to do that other than to give access to the Supreme Court. We would be making a grave mistake if we were to include this opportunity not for vexatious litigation but for mischievous litigation in this legislation.

Hon KIM CHANCE: I promise the Committee that I am not here to make self-fulfilling my prediction that this matter would take an hour after dinner to complete. However, I cannot let this slide by.

This clause deals with the capacity to bring a prerogative writ in the Supreme Court by any person notwithstanding the status or standing that he might be accorded by that court. It is as simple as that. The Government's argument that one would need to establish standing in the court itself is inferior to the argument that the Parliament should be able to predetermine who shall have standing. Why is it the exclusive prerogative of the Supreme Court of Western Australia to decide in a matter concerning the environment who shall have standing to bring a case before it? The Supreme Court is one of our democratic institutions, so is the Parliament. Who decides which has the greater standing in the matter of determining who shall have standing in the Supreme Court? It is a nonsense argument and one that I fear we will lose when this matter is debated in another place.

I urge members to consider the core issue. They should not be too concerned about what might flow from it, which is what Hon Derrick Tomlinson has asked us to consider. It is not the exclusive prerogative of the Supreme Court to make that decision. Parliament has at least as much stake in this matter as the Supreme Court to determine who should be able to bring a case of this nature. Members should think about the nature of the issue - it is fundamental to the environmental considerations of our State. Why should a person who has the means and the commitment to bring a prerogative writ - I am sure that Hon Derrick Tomlinson understands what kind of means and commitment are required to do that -

Hon Derrick Tomlinson: You have now reached the nub of my concern.

Hon KIM CHANCE: One cannot begin without a substantial sum of money even to get a hearing in the Supreme Court. Why should we try to impose a bar to justice over and above that? That is effectively what the member's argument has been.

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I understand that ultimately we may not be successful; although it is a matter on which we will - uncommonly in this debate - come to a point of division. However, ultimately we will lose it, but I urge -

Hon Ken Travers: The irony is that the effect will be the same in the court, but people will have spent a lot more money.

Hon KIM CHANCE: They will, but they may have heard from lawyers rather than a former bus driver, a former school teacher and a poor old broken down truckie. When coalition members in another place deal with this matter, I hope they take into account the broader considerations. I regret that in the end, even though this amendment may be successful in this place, it may never become law. That is unfortunate. Members opposite should consider the ultimate outcome of this; that is, who should decide who can use the democratic institutions of this State.

Hon DERRICK TOMLINSON: I am sorry that the member wants to confuse this State's democratic institutions with its judicial institutions.

Hon Kim Chance: They are all part of democracy.

Hon DERRICK TOMLINSON: I am sorry, they are not. They might be an integral part of the system, but they have distinct jurisdictions. Members of the judiciary have an important role as gatekeepers in determining who shall access the courts. That is part of what I am arguing: It is not up to this Parliament to say that anyone may access the courts and, in doing that, override what the member has described as the authority of the courts. The authority of the courts should rest there.

I ask Hon Kim Chance to think seriously about his own words. In effect, they were: Think about the consequences of the Act that we might be pursuing. Hon Kim Chance asks us to consider the consequences if the amendment carried in this place is rejected in the other place. I ask members to consider the consequences if this were to become law. Any person will have standing to bring action in the Supreme Court. Any person, by a decision of this Parliament, will have the power to override the gatekeeper function of a Supreme Court judge. That function is an important aspect of avoiding the things Hon Kim Chance was referring to when he talked about vexatious litigants.

Hon Kim Chance: It is a separate matter.

Hon DERRICK TOMLINSON: It is, but the Supreme Court's gatekeeper function should be respected. It is not appropriate that this Parliament, with its democratic power and authority, override or be cavalier in its attitude to the Supreme Court's gatekeeper function.

Hon B.K. DONALDSON: I cannot believe what is being proposed. I will provide a relevant example. A person recently slashed about three or four acres of light regrowth. An environmental storm-trooper, or one of the storm-trooper group, was driving along that road and reported this to the Environmental Protection Authority and the Department of Environmental Protection. A swarm of people then descended upon this man because of the very nasty things he had done to this land. One would think that he had almost destroyed the complete environment of Western Australia. He only wanted to put in a few more grapevines!

Hon Ken Travers: Had he breached an Act of Parliament?

Hon B.K. DONALDSON: No. Just hear me out. This man took the opportunity to be a bit mischievous. He parked a D9, which was quite visible from the road, in the corner of this little bit of clearing. World War III broke out. More people visited this poor guy to explain to him that what he was doing was ravaging this State. It got even worse than that.

The Commonwealth's law overrides all state laws. This is another erosion of States' rights. That is what happens when we talk about federation. I have a copy of the letter that was sent. These three acres of light scrub that were slashed created one of the greatest tragedies in Australia's history. This piece of land was of significant environmental importance to Australia's conservation areas. I could not believe it. That is how stupid some people can be. One should read carefully new clause 80(2), which says -

Proceedings under this section may be brought by a person on his or her own behalf . . . and on behalf of other persons (with their consent) . . .

However, under new clause 80(1), whether or not consent is obtained, a person can still bring those proceedings. Frankly, this is another attempt by the Greens - they do it regularly - by stealth -

Hon Norm Kelly: This is pretty stealthy!

Hon B.K. DONALDSON: No. Read between the lines. Have a good look. Are members opposite too dumb to read between the lines? Hon Giz Watson sat on a committee which dealt with this, and it is funny that there was

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not one whisper, not one murmur from her. However, when she gets back to her own little group of people, what happens? They tell her that she must introduce this new clause to tighten up the legislation. Therefore, as people drive along the road and see someone pumping water on a horticultural lot, they say, "That is a threatened breach of the Act. It will destroy the environment. We must go straight to the Supreme Court." There are enough checks and balances in this legislation to cover all that.

Let us turn to a site on which union people are working. I would be delighted if this legislation incorporated some of the powers in the industrial relations legislation. I would love this legislation to have that, because I would be able to drive around more work sites. As a matter of fact, I took that opportunity at the Whitford City Shopping Centre a few years ago.

The CHAIRMAN: Order! I trust that Hon Bruce Donaldson and the interjectors will give consideration to the clause and the Bill we are considering while the member is driving by the work sites.

Hon B.K. DONALDSON: Mr Chairman, I take your point. I am trying to draw an analogy. As I was driving past, I saw a sign on the gate that read "No ticket, no start". I rushed to the minister - I did not have to go to the Supreme Court because the Act provides that a penalty would apply if that sign was not removed. Surprise, surprise, by the time an inspector got there, within about an hour, someone had been tipped off and that sign was removed. I am pleased to say that that sign never went back on that Whitford City Shopping Centre work site after that.

Hon Ken Travers: So it was a third party appeal.

Hon B.K. DONALDSON: However, I did not have to go to the Supreme Court because the Act already provided for that. The Bill clearly provides that the Water and Rivers Commission can reduce or take away some of the water allocations when the environment is threatened. That is stated clearly in the Bill. Obviously, members opposite have been discussing this Bill in this Chamber for so long that they have forgotten what they have already passed. They should look at the Bill as it exists now. This is an outrageous attempt by the Greens to convince the Labor Party of the spurious argument they are trying to put forward in this place to destroy the piece of legislation on which a committee worked damned hard to come up with a solution and a compromise with all the stakeholders. At the eleventh hour, we have this stupid amendment by the Greens.

I am trying to keep to the subject matter, Mr Chairman. However, there would not be a water licence issued in Western Australia if the Greens had their way. Let us be honest about that. They do not want one bore in Western Australia licensed.

Hon Ken Travers: And there would not be a tree left standing if you had your way.

Hon B.K. DONALDSON: I developed a property in Koorda, which was a model of how to develop a property, with its vegetation and timber and the way it was carved out.

I violently oppose what the Greens are trying to impose upon us. I have a fair idea what will happen in the other place. I hope that when this legislation comes back and is about to be ditched, Hon Kim Chance will rethink his position, because what Hon Derrick Tomlinson said is correct. I think even Hon Kim Chance now doubts that he will support this.

Hon Kim Chance: No.

Hon B.K. DONALDSON: I can see it in his eyes.

Hon Kim Chance: You have dispelled all doubt.

Hon B.K. DONALDSON: We country people get those vibes and feelings, and we do not live very far away from one another.

Hon Norm Kelly: He was wavering until you spoke.

Hon Bob Thomas: Are you going to do the election advertisements for Richard?

Hon B.K. DONALDSON: No. By stealth, the Greens are trying to impose their will upon us. I cannot understand the Labor Party or even Hon Ken Travers going along with this rubbish.

Hon NORM KELLY: Now that I have an opportunity to respond to the broader issues of the separation of powers, the State's land-clearing policies and the like, I firstly point out to Hon Bruce Donaldson, who is the Chairman of the Standing Committee on Legislation, that during the committee's inquiry into this Bill - I was a member of the committee which conducted that inquiry - the issue of third party appeal rights was raised, although it was not inquired into deeply. However, on page 64 of the committee's report, at point 12.3, the committee highlighted the fact that broader concerns which were raised included ecologically sustainable

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development framework, duty of care, third party civil proceedings, regulations, etc. As I said, even though it was not raised in depth, it was raised during the committee's inquiry.

On the issue of the separation of powers, Hon Derrick Tomlinson pointed out that he believed it should be up to the courts, rather than the Parliament which was elected by the people and which gives the judges in those courts the powers they have, to decide who should have standing before those courts. I disagree with Hon Derrick Tomlinson. The Parliament should determine for the people who should have standing before the courts.

Hon Bruce Donaldson pointed out problems with land clearing. I understand that there is a problem with the amount of land clearing in this State. However, these concerns can be raised and acted upon through the Department of Environmental Protection and the Environmental Protection Authority. Hon Giz Watson's amendment is basically a template of what is already in place in other States, particularly in the New South Wales Environmental Protection Act which has had this provision for about 20 years. It has not brought about a flood of actions in the New South Wales Supreme Court. It has been used sparingly and, I suggest, quite wisely. Those who choose to bring such actions in the Supreme Court will not waste well-earned money. As Hon Ken Travers has said, if this provision is included the first hurdle of having to prove standing before the court will be bypassed. Hon Ken Travers also pointed out the savings to be made by removing the first hurdle. It will also avoid delays in bringing proceedings before the court. The amendment refers to threatened breaches of the Act, often where time is of the essence, so that the court can act. The Australian Democrats will support the amendment.

Hon M.J. CRIDDLE: This issue is about the separation of powers. The court is the correct place to decide who can bring actions. The court will listen to the relevant facts and will set precedents. I am well and truly keen to see this question go to a vote.

Hon KEN TRAVERS: I raised the matter of vexatious claims because Hon Derrick Tomlinson -

Hon Derrick Tomlinson: Give me an excuse to respond. Go for it!

Hon KEN TRAVERS: I raised it because it was raised as an argument against the amendment. I agree with Hon Derrick Tomlinson that the courts will have the ability to deal with vexatious claims with or without this amendment. The Government did not indicate whether in its view, as a result of changes to this legislation which give the environment pre-eminence in decisions, the courts will give people who seek standing on the basis that they have an interest in the environment, the prerogative of taking action on a breach or threatened breach of the Act. I made it very clear earlier that the Labor Party does not have a Queen's Counsel's opinion on this, but it is of the view that the courts will take that action. As the Government opposes this amendment, it must have decided whether on current case law a court will rule that third party standing -

Hon Derrick Tomlinson: You are overriding case law by bringing this in as legislation. You are saying that the decision of the democratic Parliament will override all that.

Hon KEN TRAVERS: I am not sure if -

The CHAIRMAN: Order! Hon Ken Travers will address the Chair and not others who may attract his attention.

Hon KEN TRAVERS: Hon Derrick Tomlinson's comment is amazing. A significant amount of legislation that passes through Parliament either alters existing legislation or overrides case law, common law and the decisions of the courts. If the Government has not considered this issue prior to deciding on this amendment, it has been negligent. If it has considered case history, and it shares our view that the courts most likely will give people standing because of the importance of the environment to many people in the community, I cannot see why the Government opposes this clause. It would save a lot of money and time in our courts, which are already overworked and have a massive backlog.

I say to Hon Bruce Donaldson, through you, Mr Chairman, that I welcome the day when there will be third party appeals under the Workplace Agreements Act, and I look forward to his introducing a private member's Bill to achieve that. I will be the first to support third parties, such as unions, being allowed to look at how people are being ripped off under the Workplace Agreements Act. The member should introduce workplace agreements legislation if he wants to talk about industrial relations and draw analogies with this Bill. People will be able to bring a third party action only if there is a breach or a threatened breach of the Act. I hope it will never be necessary to use the provision. Under the current staff and board of the Water and Rivers Commission, and the current Minister for Water Resources, I am sure the Water and Rivers Commission would take the necessary action if there were a breach or a threatened breach of the Act. That will not always be the case, because another member will become the minister at some time.

Hon Kim Chance: It may be someone who has a vested interest.

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Hon KEN TRAVERS: Exactly. We have seen that before. We should not allow the courts sort it out. That is a complete abrogation of our responsibility. I come back to the key issue, which I would love the Government to respond to: Who does it expect to have standing in respect of breaches or threatened breaches? If the Government has not sought that sort of advice when determining its position on this amendment, I would like to know why.

Hon GIZ WATSON: It seems extraordinary to use the argument that we are somehow directing the courts and that is not appropriate in this context, and yet in debate on other legislation the opposite argument is used. For example, with workers compensation the courts are very much being told -

Hon Kim Chance: Mandatory sentencing!

Hon GIZ WATSON: That was my next example. A Bill, which we will no doubt deal with very soon, proposes to direct what the courts do.

Hon Derrick Tomlinson: Don't confuse sentencing with standing. Goodness gracious, you can do better than that.

Hon GIZ WATSON: They are both about directing the courts what to do and not do. The opposition to third party standing is already happening.

Hon Derrick Tomlinson: How do you define "third party"?

Hon GIZ WATSON: I was involved in a case in which the Environmental Protection Authority was taken to court for failing to protect the environment of Cockburn Sound. Those of us bringing the case were concerned that we would have to fight very hard for standing, but it was not an issue at all. Hon Kim Chance put the argument for putting aside the question of standing very well, because there is still the substantive issue of whatever case might be brought.

Hon Ken Travers: People must prove a breach or a threatened breach.

Hon GIZ WATSON: Absolutely. Government members may bury their heads in the sand, but the reality is that third party standing is being recognised more and more in such cases. The amendment seeks to have that matter put aside before the substantive case is heard.

Hon B.K. DONALDSON: New clause 80(1) refers to "a threatened breach of this Act". A "threatened breach" would be an interesting question in a court of law. It is something that has not happened but is a threat to breach an Act. The clause reads in part -

... whether or not any right of that person has been or may be infringed by or as a consequence of that breach.

That is an interesting situation. All these people with dreadlocks will come out of the forest, travel on the highway to Perth and see all the horticultural produce on the different properties. They will say, "Goodness gracious, there is too much water being used. We will have to plant more trees. We will stop this mob from taking any water out." There will be 400 members of the Rebels motorbike gang coming through the Dunsborough horticultural area on their way back to Perth. The members of this Chamber will see 50 bikes parked outside the Supreme Court if they let this rubbish go through. One of the Rebels motorbike gang will walk into the court and say to the Chief Justice, "I want you to stop this terrible drawing of water in Western Australia." The Rebels bikie group will reckon this is the best thing since sliced bread. For argument's sake, if we extrapolate this proposed subclause into other Acts, they will be lining up at the Supreme Court to take action against the police for threatened harassment.

Several members interjected.

The CHAIRMAN: Order! Members should not be incited.

Hon B.K. DONALDSON: I do not think members opposite understand the points of law, nor do they realise what they are doing in this House tonight. What has been happening is outrageous.

Hon Ken Travers: It sounds like a minister of the Crown getting a licence and selling it off bit by bit.

Hon B.K. DONALDSON: The member should go outside the House, say that and prove it. He should get his facts straight first. He should not start using this Chamber as a castle.

Hon Ken Travers: Listen to you abusing it!

Hon B.K. DONALDSON: I have not been abusing anybody.

Several members interjected.

**Extract from *Hansard***  
[COUNCIL - Tuesday, 17 October 2000]  
p2102a-2116a

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Hon Ken Travers: You talked about people with dreadlocks.

The CHAIRMAN: Order!

Hon B.K. DONALDSON: That is just a phrase I use occasionally. I will sit down. However, I want to make it clear to this Chamber that I will vote against this amendment tonight. I am sure it will be treated in the other place with the contempt it deserves. When it comes back to this Chamber, I hope a little commonsense will prevail and members opposite will think seriously about it, engage a good Queen's Counsel and get him to tell them what this amendment really means.

New clause put and a division taken with the following result -

Ayes (12)

Hon Kim Chance	Hon E.R.J. Dermer	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon Helen Hodgson	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Norm Kelly	Hon Tom Stephens	Hon Bob Thomas ( <i>Teller</i> )

Noes (11)

Hon M.J. Criddle	Hon Peter Foss	Hon Murray Montgomery	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Ray Halligan	Hon M.D. Nixon	Hon Muriel Patterson
( <i>Teller</i> )			
Hon B.K. Donaldson	Hon Barry House	Hon W.N. Stretch	

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Pairs

Hon N.D. Griffiths	Hon B.M. Scott
Hon G.T. Giffard	Hon Greg Smith
Hon Christine Sharp	Hon Max Evans
Hon Tom Helm	Hon Simon O'Brien
Hon Mark Nevill	Hon N.F. Moore

**New clause thus passed.**

**Title put and passed.**

**Bill reported, with amendments.**