

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

*Committee*

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

Progress was reported after clause 50, as amended, had been agreed to.

**Clause 51: Schedule 1 added -**

Hon M.J. CRIDDLE: I move -

Page 65, after line 9 - To insert the following new definition -

**“public interest”** means public interest having regard to any economic, social or recreational benefits to the public, or to a section of the public.

The Standing Committee on Legislation recommended in recommendation No 3 that the term "public interest" be defined as including but not limited to social planning and recreational purposes. The definition is significant because it is a trigger for the compensation for changes to licences made in the public interest under the proposed sections 24 and 25 of schedule 1. Water users are to be compensated if changes are made solely for the benefit of the public. It is inappropriate for the Water and Rivers Commission to compensate people who are adversely affected by land planning decisions, such as reservations for parks and water catchments. These decisions are made under various planning Acts that have their own compensation provisions. If land along a stream is acquired by the Government so that the landowner loses his riparian right or a licence to use the water, the value of that right and the licence would be included in the price paid for the land.

Hon KEN TRAVERS: The Labor Party is pleased to see that the Government has picked up the recommendation. It has been pursuing the Government to do so. Although planning is not included in the definition as per the recommendation, we accept the Government's assurance that if anyone loses a water licence or access to water, the planning legislation contains sufficient provisions to ensure that person is compensated. Therefore, we support the amendment and welcome its being included.

Hon NORM KELLY: At the end of the definition a reference is made to a section of the public. The Australian Democrats support the amendment because of the public interest test, but my concern is that the reference to a section of the public may be narrowing the definition to a small group. What is the clause referring to when it refers to a section of the public?

Hon M.J. CRIDDLE: If the Government took the right or licence back to benefit the water supply or industry, that mechanism would be in place.

**Amendment put and passed.**

Hon GIZ WATSON: I move -

Page 69, after line 25 - To insert the following new subclause -

- (2) The Commission must refuse to grant a licence if it considers that the granting of such licence would lead to action contrary to the principles of ecologically sustainable development.

The purpose of the new subclause is to require the commission to refuse to grant a licence if it considers that the granting of such a licence would lead to action contrary to the principles of ecologically sustainable development. We believe it is important that the requirements to adhere to ecologically sustainable development are binding on the commission, and if it is considered that granting such a licence would lead to environmental damage contrary to the principles of ecologically sustainable development, the commission must act to refuse that licence. The intent of the subclause is slightly damaged by the fact that the amendment to include ecologically sustainable principles in the object of the Act was not accepted by the Chamber. However, I still argue that this is an important amendment to ensure that those principles must be carried out by the commission.

Hon M.J. CRIDDLE: The Government is opposed to the amendment. Environmental protection is included in the objects, and we have had the debate about the inclusion of the principles of ecologically sustainable development in the objects.

Hon NORM KELLY: The Australian Democrats will support this amendment. As I mentioned yesterday when I was moving an amendment to clause 7, the Democrats believe the generally accepted definition of the principles of ecologically sustainable development, even though they will not be appearing in this legislation, are contained in the Conservation and Land Management Act. As the definition is generally accepted, the

commission should have no problem in complying with the requirement of the principles of ecologically sustainable development to allow sufficient scope for the proper use of water in this State.

Hon KEN TRAVERS: In principle my position on this amendment remains the same as it was when we were dealing with amendments to clause 7. Amendment 14/7 was ruled out yesterday. Will the impact of this amendment allow us to reconsider that clause? If so, I am not sure on what basis clause 7 was ruled out and how everything interacts. The Labor Party has no opposition to the general principles contained in the amendment, which, as I said yesterday, are inherently ingrained throughout the Bill.

Hon M.J. CRIDDLE: We voted against a similar proposal earlier. The Act requires us to act according to the principles of the Environmental Protection Act. Licences will be refused if the commission considers a licence is contrary to its overall objectives.

Hon Kim Chance said this was superfluous when we debated it previously. I do not see the necessity for this, so the Government opposes the amendment.

Hon NORM KELLY: In response to Hon Ken Travers, my understanding of the Bill is that the definition ruled as unnecessary on Tuesday applied to part III of the Act, and this deals with the schedule. That is why we are able to continue with this amendment. That previous definition of "ESD", which was not moved, does not affect this. My amendment to clause 7 stands alone irrespective of whether a definition is included in the legislation.

The CHAIRMAN: If I had considered this proposed amendment out of order, I would have ruled it out of order. I do not consider it out of order.

Hon M.J. CRIDDLE: This is in the schedule and it does relate to part III. It is similar to what we had before, so it does relate to part III of the Act.

A amendment put and a division taken with the following result -

Ayes (12)

Hon Kim Chance	Hon Tom Helm	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson
Hon G.T. Giffard	Hon Norm Kelly	Hon Tom Stephens	Hon E.R.J. Dermer ( <i>Teller</i> )

Noes (12)

Hon M.J. Criddle	Hon Ray Halligan	Hon N.F. Moore	Hon Greg Smith
Hon Max Evans	Hon Barry House	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon Peter Foss ( <i>Teller</i> )	Hon Murray Montgomery	Hon Simon O'Brien	Hon Muriel Patterson

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Pairs

Hon J.A. Scott	Hon W.N. Stretch
Hon N.D. Griffiths	Hon Dexter Davies
Hon Cheryl Davenport	Hon B.K. Donaldson
Hon Bob Thomas	Hon B.M. Scott

**Amendment thus negatived.**

Hon M.J. CRIDDLE: I move -

Page 71, line 3 - To insert before "A" the word "If".

Page 71, line 3 - To insert before "granted" the word "is".

Page 71, lines 3 to 5 - To delete the words after "granted" to "subclause (1)," and insert instead -

to an owner or occupier of land -

(a) authorizing the continued taking of water -

(i) from a water resource which is below the land, or runs through, is contiguous to or partly situated within the land; and

- (ii) which, before, and at the time of, the application of section 5C to that water resource, was taken periodically or continually from the water resource;

and

- (b) the application for the licence is made within 12 months after the day on which section 5C became applicable to the water resource,

the licence is

Page 71, line 5 - To delete “the” and insert instead “a”.

Page 71, line 6 - To delete “referred to in that” and insert instead “from the day on which”.

Page 71, line 6 - To delete “; and” and insert instead “5C”.

Page 71, lines 7 and 8 - To delete the lines and insert instead -

became applicable to the water resource.

- (4) In subclause (3) -

**“water resource”** means a watercourse, wetland or underground water source to which section 5C applies.

These amendments implement recommendation No 1 in the Legislation Committee’s report by requiring that the first licence issued to an existing water user be for 10 years.

**Amendments put and passed.**

Hon KEN TRAVERS: I move -

Page 71, after line 8 - To insert the following new subclause -

- (4) Sufficient details to identify a licence granted for a period exceeding -
  - (a) a period specified in a relevant plan approved under Part III Division 3D Subdivision 2; in respect of that type of licence; or
  - (b) if a period is not specified in such a plan in respect of that type of licence, 10 years or such period as is prescribed in respect of that type of licence,

are to be included in the annual report submitted by the accountable authority of the Commission under section 66 of the *Financial Administration and Audit Act 1985*

Hon Giz Watson had an amendment mentioning 21 years. This amendment is an attempt to provide a compromise solution. Clearly, on occasion licences should be implemented for extended periods, but that should occur only once everything has settled down and we are able to assess the situation. Hon Giz Watson’s amendment would have meant that the extension to a maximum of 21 years would have been the norm. This amendment seeks to provide protection and clarity. It will provide for 10-year licences in the first instance, and if over time a sustainable yield is established, extension may be possible.

This amendment will ensure that if the Water and Rivers Commission wishes to provide a licence for longer than the period approved under the relevant plans or in absence of any specification in the relevant plans, 10 years should be included in the annual report. That will allow the Parliament and the public the opportunity to challenge the decision made by the commission and, ultimately, by the Government of the day. It is a good accountability mechanism and provides flexibility in the duration of licences. I intend to question the minister about this, because it is important that we make the situation very clear to water users.

One of the benefits of this Bill, certainly for water users, is that people will have an implied right to renew a licence so long as they are conforming with the conditions of the licence, complying with the law, and the like. I will raise that matter when we get to that clause in the Bill, because as we go through this Bill we need to ensure that we are very clear about that matter and that it is drawn out as part of the debate.

While I understand the intent of Hon Giz Watson’s original amendment providing for 21-year licences, this amendment will achieve what she had hoped to achieve, but in a better way, and still provide the necessary flexibility in both the short and long term as this new regime develops and progresses. There may be times when it will be necessary to issue licences for longer than 21 years, such as for the bankability of major projects - under this amendment that will obviously need to be reported - but by the same token in the foreseeable future it

will be necessary to keep the licence period reasonably shorter than 21 years. I believe the proposed amendment providing for 21-year licences would extend the period and it would become the norm as well as the maximum. This amendment is a good compromise and should accommodate all of the necessary interests with regard to the length of time for which licences are issued.

Hon M.J. CRIDDLE: The Government supports the amendment.

**Amendment put and passed.**

Hon M.J. CRIDDLE: I move -

Page 71, line 23 - To insert before "the land" the words "all of".

Page 71, line 26 - To delete "the" appearing first and substitute "that".

The Bill provides for a smooth transfer of a licence to the new owner when the licence is sold with the land. These amendments will restrict that provision to situations in which the property is sold as a whole. Where the property is subdivided before it is sold, the licence holder must specify how he wishes to transfer the licence. This may include transferring the whole licence with a part of the property, transferring the licence in part with the separate parts of the property, or transferring the licence to another land holder.

**Amendments put and passed.**

Hon M.J. CRIDDLE: I move -

Page 74, after line 25 - To insert the following new subclauses -

(4) In this clause —

“**licensee**” in relation to a licence, includes a person whose name is endorsed on the licence as a person with whom the holder of the licence has an agreement referred to in clause 30 relating to the taking of water under the licence by that person.

(5) The Commission may give a direction to a person included as a licensee due to subclause (4) only if the Commission —

(a) is of the opinion that it is the responsibility, and within the power, of that person to comply with the term, condition or restriction included in the licence; and

(b) gave that person sufficient written notice of that term, condition or restriction for the person to comply with it.

Page 75, line 2 - To insert after "licence" -

“ or in relation to the taking of water under the licence by that person .

Page 78, lines 4 and 5 - To delete "licensee has consistently not taken the".

Page 78, lines 5 and 6 - To delete "the licensee is entitled to take" and insert instead -

“ may be taken ”.

Page 78, line 6 - To insert after "licence" -

“ has consistently not been taken ”.

These amendments are part of a series of amendments to remove capital gains tax on the temporary transfer of licences by replacing them with agreements to lease the licence. They will allow the commission to direct the person operating under the licence as well as the licence holder. The amendments will also allow the commission to protect the interests of people with an agreement to take the water under the licence when the licence holder wishes to transfer the licence to another person or to amend the licence.

Hon KEN TRAVERS: I believe amendment No 57/51 is about protecting lessees rather than about capital gains tax.

Hon M.J. CRIDDLE: The amendment is necessary to protect people and is a consequence of the capital gains tax amendments.

**Amendments put and passed.**

**Progress reported and leave granted to sit again.**