

RIGHTS IN WATER AND IRRIGATION AMENDMENT BILL 1999

Committee

Resumed from 10 October. 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 new clause 25 had been dealt with.

Clauses 26 and 27 put and passed.

Clause 28: Section 20 amended -

Hon M.J. CRIDDLE: I move -

Page 22, after line 14 - To insert the following new subclause -

- (4) The operation of this section does not prevent the owner or occupier of land from making any dam or tank on the land as long as the owner or occupier is taking water in accordance with this section.

At present a landowner does not require approval to build a dam for any purpose on his land in an area that is not subject to surface water licensing. This amendment will make it clear that the riparian owner can build a dam on a watercourse on his land to store water which is reasonably required to satisfy his riparian use. This amendment was proposed in response to recommendation No 2 of the Legislation Committee.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 29 and 30 put and passed.

Clause 31: Section 22 amended -

Hon NORM KELLY: I move -

Page 24, after line 14 - To insert the following new subclause -

- (1) Section 22(1)(a)(i) is amended by inserting after “Division” the following —
“ or is not taking all reasonable steps to minimise the degradation of the watercourse or wetland ”;

This amendment follows on from my comments earlier about the use of measures when actions are taken which would degrade watercourses or wetlands. Section 22 of the Act gives the commission the ability to make directions on the manner of water taking and so forth.

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

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 32 to 38 put and passed.

Clause 39: Section 26G amended -

Hon NORM KELLY: I move -

Page 30, line 2 - To insert after “amended” -

—

(a)

Page 30, after line 4 - To insert the following new paragraphs -

- (b) by inserting after paragraph (b) the following paragraph —

“

- (ba) is being taken or used without all reasonable steps being taken to minimise the degradation of the water resource; and

- (c) by inserting after “(b),” the following —

“ (ba), ”.

”

Section 26G of the Act provides powers for the commission in cases of the improper use of water and gives the commission the ability to direct that wells be closed down. It also gives the commission some control over the taking of quantities of water. This amendment is in line with previous amendments that I have moved.

Hon M.J. CRIDDLE: The Government accepts these amendments. They are similar to those on ground water.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 40 to 43 put and passed.

Clause 44: Divisions 3C and 3D inserted in Part III -

Hon M.J. CRIDDLE: I move -

Page 37, after line 13 - To insert the following new subclauses -

- (2) Subject to an order made under subsection (4), a committee may from time to time appoint, discharge or alter, subcommittees of members of the committee, or members and other persons, as it thinks fit to advise it on any matter within the functions of the committee, particularly a matter of localized interest.

- (3) A subcommittee is to be presided over by a member of the committee and sections 26GL(3), 26GN, 26GO, 26GR and 26GS apply in respect of a subcommittee as if a reference in those sections to "committee" were a reference to "subcommittee".

Page 37, line 21 - To insert before "other" -

" any ".

Page 37, line 21 - To insert after "provisions" -

" the Minister thinks fit ".

Page 37, line 21 - To delete "its" and insert instead -

" subcommittees or the committee's ".

Page 37, line 24 - To delete "be varied," and insert instead -

" vary ".

Page 37, line 25 - To delete "at the same time" and insert instead -

" simultaneously ".

These amendments all relate to water resource management. The water resource management committees will have a broad range of interest, from catchment-wide and regional issues to sharing water along tributaries of streams. These amendments give the committees the ability to establish advisory groups made up of people the committees select to investigate and recommend policies related to local problems. This will allow a local committee to focus on regional policy without neglecting the detailed study required to deal with local problems.

Amendments put and passed.

Hon M.J. CRIDDLE: I move -

Page 38, line 27 - To insert after "practicable" -

and, with respect to the functions of the committee, relevant

Amendment put and passed.

Hon GIZ WATSON: I move -

Page 38, line 28 - To delete "all or any of".

The purpose of the amendment is to ensure that the committee comprises people of experience in the area listed in proposed section 26GL(2) to avoid a situation where a committee may comprise a membership with expertise in only one of those listed areas. The amendment is an attempt to ensure that the committee has a broad level of experience rather than one which, for example, might have knowledge and experience of only the use of water resources.

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

Amendment put and passed.

Hon NORM KELLY: The next amendment standing in my name is an attempt to prevent ongoing conflicts of interest in committee work, although I am not saying that the amendment is an ideal way of resolving conflicts of interest. The commission's officers and I have worked hard to find the best practicable way of avoiding ongoing conflicts of interest, bearing in mind that we are talking about regional down to local management committees. The minister's second reading speech makes reference to the Government's belief that existing mechanisms are sufficient to deal with conflicts of interest in these management committees. I would like to hear whether the Minister for Water Resources has any intention to implement regulations to further address these specific conflicts of interest. One of the things the Democrats were concerned about was that the usual course would probably be to include a Water and Rivers Commission representative on the committees. If I were to move this amendment, and if it were to be passed, it could place that commission member of the committee in an untenable situation, being the link between the commission and the committees.

Hon M.J. CRIDDLE: Provisions in the Bill will ensure that vested interests do not interfere with the proper functioning of the committees. Vested interests must be recorded in the minutes and committee members with such vested interests may be excluded from the proceedings. In addition, an overriding provision for dealing with vested interests can be included in the ministerial order establishing the committee. Terms of delegations of power from the Water and Rivers Commission to the committee and the commission's control and direction of the committee will also include provisions for dealing with vested interests. These will ensure that vested interests are brought to the commission's notice before action is taken to implement the committee's decision.

Hon KEN TRAVERS: I appreciate the comments by the minister about orders establishing the committees. As I understand it, it is intended that there would be policies within the Water and Rivers Commission, which I assume would be represented by the orders, to deal with the issue of vested interests. The proposal outlined by Hon Norm Kelly would provide for a bureaucracy that would make it difficult to deal with. Could the minister provide a brief outline of the circumstances, with respect to vested interests, and how that would be dealt with by way of the orders?

Hon M.J. CRIDDLE: Obviously the users will have an interest in that, if they are going to get a licence, it would be in their interest to be excluded from the deliberations.

Hon NORM KELLY: One scenario is where a majority of committee members have a joint vested interest in the decisions they may be able to make. The fact that those members vote on whether they remain in the decision-making process can be abused. I am not completely satisfied that the assurance given by the minister will sufficiently restrict conflicts of interests. My amendment on the Supplementary Notice Paper, however, would probably create more problems than it would address, and therefore I will not move it.

Hon M.J. CRIDDLE: The committee is advisory to the commission, so if the commission had a concern, it could always send it back to the advisory committee for further consideration.

Hon KEN TRAVERS: I am glad to see that the amendment will not be moved, because the minister has pointed to one of the key decisions. The committee is not a final decision-making body, but I would not want this to be in any way taken as the Australian Labor Party's position. We believe that vested interests are very important with respect to this legislation, and we look forward to that day that the Cabinet also includes them.

Hon NORM KELLY: I move -

Page 43, after line 10 - To insert the following new subclause -

- (3) Despite subsection (1), neither the Commission nor the State is relieved of any liability that it might have for a member of a committee having done anything as described in that subsection.

This amendment refers to the proposed section 26GS, "Protection from Liability". It is to ensure that neither the commission nor the State is relieved from any liability that it may have as a result of a member of a committee having done anything described in that subsection. I commend the amendment to members.

Hon M.J. CRIDDLE: The Government supports the amendment, which will ensure that a person can take legal action against the Water and Rivers Commission for torts committed by committee members. This is in spite of the committee member not being personally liable.

Amendment put and passed.

Hon GIZ WATSON: I move -

Page 45, after line 14 - To insert the following new subclause -

- (3) A regional management plan is to specify the monitoring and reporting (which is to occur at least once in every 7 years) to be carried out by the Commission to ensure, as far as is practicable, that the objects of this Part are achieved in the implementation of the plan.

The intention of this amendment is to ensure that monitoring and reporting is carried out under the various management plans. One of the aspects I picked up in examining the Bill was that the requirement for monitoring was not firm enough. This amendment is an attempt to ensure that feedback happens when an assessment is made of the impact of taking water, and to acknowledge that the frequency and detail of monitoring has to be measured against the costs and practicalities of that program. I move this amendment in the belief that it will give effective feedback for assessing whether the taking of the water resource is sustainable.

Hon M.J. CRIDDLE: The Government supports this amendment. Monitoring is an important element of sound water resource planning and management. The amendment requires that the report on the implementation of the plan be produced every seven years. This time frame is consistent with the proposed requirement to review the need to amend the plan every seven years.

Hon NORM KELLY: The Australian Democrats support the amendment. Not only does it stipulate the reporting period at the outset, but it also requires details of how the monitoring in preparation for the eventual reporting will be undertaken.

Hon KEN TRAVERS: Just to make it unanimous, the Labor Party also supports the amendment.

Amendment put and passed.

Hon M.J. CRIDDLE: I move -

Page 46, line 11 - To insert after "entitlements" the words " , and of agreements,".

This is one of a series of amendments I will move to remove capital gains tax on temporary transfer of licences by replacing transfers with agreements to lease the licences. Advice from the Australian Taxation Office has indicated that temporary transfers of licences are subject to capital gains assessment. Amendments to the Bill are required to replace temporary transfer arrangements with agreements to lease the licence. This and related amendments will enable a licence holder to enter into an agreement to allow another person to operate for a specific period under the licence. This will have the same practical effect as a temporary transfer, but without the capital gains tax implications. The agreement will act as a lease and the lease payments can be treated as income. The lessee will be able to use the licence on his or her own property or on a property of the licence holder if the land is also leased.

Hon KEN TRAVERS: The Labor Party welcomes these amendments and the fact that the Government has attempted within the constraints of this legislation to minimise the capital gains tax implications. Other potential capital gains tax issues cannot be dealt with in this legislation - they are the province of the Federal Government. The Labor Party looks forward to the State Government's continuing to pressure the Federal Government to come up with a more equitable arrangement, recognising that the Federal Government has always had a strong opposition to this tax but has left it in its legislative framework. The Australian Labor Party supports the capital gains tax amendments. These licences should be treated in the same way as any other asset; that is, if it were loaned out on a temporary basis, one would not normally expect to pay capital gains tax. These are good amendments and will go a long way in gaining the necessary community support for this legislation to operate effectively.

Amendment put and passed.

Hon GIZ WATSON: I move -

Page 46, after line 20 - To insert the following new subclause -

- (3) A sub-regional management plan is to specify the monitoring and reporting (which is to occur at least once in every 7 years) to be carried out by the Commission to ensure, as far as is practicable, that the objects of this Part are achieved in the implementation of the plan.

This amendment is the same as my previous amendment. The only difference is that this brings monitoring and reporting requirements into the subregional management plan. For all intents and purposes, it is the same as the previous amendment.

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

Amendment put and passed.

Hon M.J. CRIDDLE: I move -

Page 47, line 15 - To insert after "entitlements" the words ", and of agreements,".

This is another capital gains tax-related amendment.

Amendment put and passed.

Hon GIZ WATSON: I move -

Page 47, after line 23 - To insert the following new subclause -

- (3) A local area management plan is to specify the monitoring and reporting (which is to occur at least once in every 7 years) to be carried out by the Commission to ensure, as far as is practicable, that the objects of this Part are achieved in the implementation of the plan.

This is the third amendment relating to monitoring and reporting.

Amendment put and passed.

Hon M.J. CRIDDLE: I move -

Page 51, after line 16 - To insert the following new subclauses -

- (2) Without limiting when action may be taken under subsection (1), the Commission, within 7 years from the day -
- (a) on which a plan had effect; or
- (b) the Commission last considered whether action under subsection (1) needed to be carried out in respect of a plan,
- is to consider whether action needs to be taken in respect of the plan under subsection (1) after taking into account any relevant report or information under section 26GW, 26GX or 26GY regarding the extent to which the objects of this Part have been adhered to in the implementation of the plan.
- (3) Notice that the Commission is to consider whether action needs to be taken in respect of a regional management plan under subsection (1) must be published in a newspaper circulating throughout the State, and is to specify -
- (a) The places at which -
- (i) a copy of the plan may be inspected; and
- (ii) copies of the plan may be obtained;
- and
- (b) the effect of subsection (4) and the period and the address or addresses referred to in that subsection.
- (4) Written submissions on the need for action to be taken under subsection (1) may be made by any body or person -
- (a) within the period determined by the Commission, which must be not less than 2 months after the day on which the notice under subsection (3) is published in the newspaper; and
- (b) by delivering or posting them, so that they are received within that period at an address designated by the Commission.

In line with recommendation No 9 of the Delegated Legislation Committee's report, this amendment will require the commission to review every seven years whether a regional management plan should be updated. All reviews of management plans must be advertised so that the public may comment on the need to review the plan. Other reviews will be advertised if it is warranted. In addition, all updating of the plans must be done in consultation with the public. Whether the numerous lower level plans need to be amended will be determined by the commission in consultation with the water resource management committees and the commission's statewide water resource allocation committee.

Hon KIM CHANCE: The Australian Labor Party supports this amendment. I rose on this occasion because this is the last of the amendments dealing with clause 44. I want to reassure Hon Norm Kelly and others who are concerned about the expanded power of these committees and their importance within the operation of the Act. I do not know whether Hon Norm Kelly is aware of committees that have a similar function. Although this

legislation substantially broadens the power of those local committees and makes them more integral to the implementation of the legislation, we now have local water advisory committees, particularly in ground water areas. I was a member of the Water Authority board, which relied heavily on advisory committees, and particularly the Wanneroo ground water advisory committee, which performed work the board could not have done. I recognise that the potential for a conflict of interest always exists. However, history has shown that that conflict has always been manageable. While we should not be anything less than watchful on a matter as important as this, we can start that watching process with some confidence.

Hon NORM KELLY: I acknowledge and thank Hon Kim Chance for those comments. Given that this is such a broad revamp of the existing legislation, we will need to watch many aspects of its operation over the next few years. I note that it will include a review provision. In the absence of any direct concerns, it is appropriate that we have that watching brief on the committees. The committees will probably take a while to establish themselves and innocent mistakes could be made along the way. Given the long gestation period of this legislation, we can expect a few teething problems in its implementation.

We have had extensive discussions with commission officers about these amendments. I understand that when the regional management plans are reviewed, they will incorporate subregional and local management plans. That minimum period of two months will provide ample scope for people who want to make submissions to address any concerns they have.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 45: Sections 26L, 26M and 26N inserted -

Hon M.J. CRIDDLE: I move -

Page 52, line 28 - To insert after "licensees" -

, persons whose names are endorsed on a licence as being a person with whom the holder of a licence has an agreement referred to in clause 30 of Schedule 1

This is part of a series of amendments with regard to capital gains tax.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 46 and 47 put and passed.

Clause 48: Division 3E inserted in Part III -

Hon M.J. CRIDDLE: I move -

Page 59, line 28 - To insert after "licence" -

or a water entitlement under the licence

This amendment is necessary to correct an omission in the initial draft. The change will ensure that security interests for licences, such as mortgages, are protected if the licence holder wishes to transfer the water entitlement of a licence rather than the licence itself.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 49 put and passed.

Clause 50: Sections 27A and 27B inserted -

Hon M.J. CRIDDLE: I move -

Page 64, after line 31 - To insert after proposed section 27B the following new section -

27C. Minister to review and report on this Part

- (1) The Minister is to carry out a review of the operation and effectiveness of this Part as soon as is practicable after the expiry of 5 years from the commencement of the *Rights in Water and Irrigation Amendment Act 2000*.

- (2) In the course of that review the Minister is to consider and have regard to -
 - (a) the effectiveness of the operations of the Commission under this Part;
 - (b) the attainment of the objects of this Part and the need for the continuation of this Part; and
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Part.
- (3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause the report to be laid before each House of Parliament.

This new section will require the legislation to be reviewed after five years. This is a common section in legislation to ensure that the legislation is effective and efficient. As the amendments to the Bill relate solely to part 3, the review has been restricted to that part.

Hon KEN TRAVERS: The Labor Party wholeheartedly supports this amendment. We raised this matter as part of the ongoing discussions, and the Government indicated that it was always its intention to include this new section. However, it appears to have been missed out, and we are pleased it will now be included. This is old legislation, with a range of significant amendments made to it, and it is appropriate that due to the complexity of this legislation, we set a time for its review. I expect that both sides of this Chamber will have an ongoing review of this legislation as it is bedded down, and that if any problems are identified, they will bring them back before the expiry of that five-year period. It is appropriate that at some time in the future, these amendments are reviewed to ensure they achieve the intent that we are seeking to achieve.

Hon NORM KELLY: The Australian Democrats also support this amendment. I am sure all sides of this Chamber will review the implementation of this legislation. New subsection (3) states that the report is to be laid before each House of Parliament. We would have liked the Government to move that the review also be tabled, so that we can see not only what some may say is the minister's sanitised report but also the initial review, so that that review is not withheld from public scrutiny. This is a bit of an issue for the Australian Democrats, and I am sure also for others in the Chamber.

Amendment put and passed.

Clause, as amended, put and passed.

[Continued on page 2001.]

Sitting suspended from 3.45 to 4.00 pm