

**WATER RESOURCES LEGISLATION AMENDMENT BILL 2006**

*Committee*

Resumed from 25 September. The Chairman of Committees (Hon George Cash) in the chair; Hon Kim Chance (Leader of the House) in charge of the bill.

**Clause 112: Section 3 amended -**

Progress was reported after the clause had been partly considered.

**Hon MURRAY CRIDDLE:** I want to ask a question about the definition of “wetland”. The definition in the Rights in Water and Irrigation Act 1914 reads -

**“wetland”** means a natural collection of water, whether permanent or temporary, on the surface of any land and includes -

- (a) any lake, lagoon, swamp or marsh; and
  - (b) a natural collection of water that has been artificially altered,
- but does not include a watercourse.

This is one of the issues that has caused so much consternation in regional Western Australia. Has the government given any consideration to changing that definition because of the angst it has caused in those areas?

**Hon KIM CHANCE:** A definition of “water resources” is inserted because this term was included in the Water and Rivers Commission Act 1955. The previous definition of “watercourse” -

**The CHAIRMAN:** Minister, I think we are dealing with the word “wetland”.

**Hon KIM CHANCE:** I was moving towards that, yes. The previous definition of “watercourse” is deleted and replaced with the more modern definition that is used in the Rights in Water and Irrigation Act 1914. The definition is intended to be consistent with that act. I am not sure that I can help the honourable member if he is asking me what I think defines a “wetland”. We had this debate a few years ago when the Environmental Protection Amendment Bill was passed. A better definition of “wetland” is needed somewhere because even a puddle can be defined as a wetland if someone wants to define it that way. However, that is not what government agencies have dealt with; they have dealt with wetlands that are either permanently or semi-permanently inundated areas. It is generally taken to mean that they are areas that contain biota that are unique to wetlands. However, no legal definition defines it in that way. I do not know whether I can help the member any more than that.

**Hon MURRAY CRIDDLE:** The reason I raise the issue is because in places such as Gingin, for instance, a whole area was considered to be a wetland. The follow-on from that, from an environmental point of view, was that no-one could use the land in the long term.

**Hon Kim Chance:** Some of which looked like hills to me.

**Hon MURRAY CRIDDLE:** Absolutely. We are putting that type of arrangement in this legislation, and the impact of that over time might cause difficulty for agricultural purposes.

**Hon Kim Chance:** If the definition is incorrect, I agree.

**Hon NORMAN MOORE:** The minister has said on two occasions now that the definition of “water resources” in the bill is the same as that in the Rights in Water and Irrigation Act, but it is not. There is a significant difference between the two definitions. Interestingly, the definition of “wetland” is a straight take from the Rights in Water and Irrigation Act, whereas the definition of “water resources” is not; it is different. If the minister looks at the two definitions, he will see that there are significant differences between them. I say that for the minister’s information.

**Hon Kim Chance:** I did not say that the definitions were the same. In respect of the Water and Rivers Commission Act, I said that the term was the same, but not the definition.

**Hon NORMAN MOORE:** My understanding of what the minister said the other night and today is that the definition of “water resources” that is contained in the new legislation reflects the definition of “water resources” in the Rights in Water and Irrigation Act, which the minister said is a more modern definition.

**Hon Kim Chance:** I did say that, but I was referring to the definition of “water resources” in the Water and Rivers Commission Act 1995.

**Hon NORMAN MOORE:** Okay. We debated the definition of “wetland” during the passage of the Environmental Protection Amendment Bill. The definition of “wetland” means a natural collection of water, whether permanent or temporary. I am not going to debate it now, but someone must consider whether

“temporary” is the right word. The minister was correct to say that a puddle that might last for 20 seconds or 20 minutes is considered a wetland under that definition. Clearly that is nonsense.

**Hon MURRAY CRIDDLE:** I believe that a “wetland” is a permanent body. We are now getting to the stage at which a wetland is a temporary body. When there is a heavy shower where I live, the water body that is created will be temporary, I can tell members. The definition of “wetland” should refer to a permanent wetland rather than a temporary body.

**Hon PAUL LLEWELLYN:** I want to clarify how we would define “wetland” more clearly. It is not only about water, but also the suite of water dependent species that rely on an area. It is an ecosystem as opposed to a physical body of water.

**Hon Kim Chance:** Absolutely.

**Hon PAUL LLEWELLYN:** If we are to be clear about defining “water resources” and the ecological services of wetlands, we must define them in relation to the ecosystem and the water dependent ecosystems.

**Hon MURRAY CRIDDLE:** I must say that that backs up everything I just said.

**Hon Kim Chance:** We are in ferocious agreement.

**Hon MURRAY CRIDDLE:** That clarifies the issues. We are talking about a permanent area, which is the ecology over the longer term. That is the reason I have raised this matter because that is what caused the problem in the areas I have already mentioned, such as Gingin and the coastal plain in the south.

**Clause put and passed.**

**Clause 113 put and passed.**

**Clause 114: Parts II, IIA and heading to Part IIB inserted -**

**Hon NORMAN MOORE:** Before we get to Hon Paul Llewellyn’s amendment, I want to come back to the fundamental principle of the water resources ministerial body. We have already discussed this in clause 1, so I will not spend a lot of time on it. I have a question relating to the Water Supply, Sewerage, and Drainage Act 1912, which will be repealed by this legislation and which provides for the minister to be a body corporate. The explanation for the repeal of the Water Supply, Sewerage, and Drainage Act is that it is being replaced by clause 114 of the Water Resources Legislation Amendment Bill. My question is simple. What is the difference between the provisions of the Water Supply, Sewerage, and Drainage Act and the new bill in the context of the minister’s role in all this? The minister is a body corporate under section 2 of the Water Supply, Sewerage, and Drainage Act, but will be replaced as a water resources ministerial body under the new bill. What is the difference? If there is no difference, why are we repealing the Water Supply, Sewerage, and Drainage Act?

**Hon KIM CHANCE:** To the extent that we have understood the question, I can try to answer it now. I want to make the point that the repeal of the Water Supply, Sewerage, and Drainage Act is not effected by this clause; in fact, clause 197 of the bill effects the repeal. However, that was not the Leader of the Opposition’s question. As I understand the question, I will try to redefine it.

**Hon Norman Moore:** Would you like me to repeat it?

**Hon KIM CHANCE:** If I try to redefine it, the Leader of the Opposition can tell me whether I have understood his question. I understood the Leader of the Opposition to be saying that this act has the effect of repealing the Water Supply, Sewerage, and Drainage Act 1912. Now that we are dealing with clause 114, which refers to the minister’s corporate body, to what extent does the corporate body replace the functions of the Water Supply, Sewerage, and Drainage Act 1912?

**Hon Norman Moore:** The minister’s functions under that act.

**Hon KIM CHANCE:** Yes. Did I understand the question?

**Hon Norman Moore:** What is the difference? If you just give me half a second.

**Hon KIM CHANCE:** Okay.

**Hon NORMAN MOORE:** Section 2 of the Water Supply, Sewerage, and Drainage Act 1912 states that the minister is to be a body corporate. Part of that section allows the minister to acquire, hold and dispose of real and personal property and to be a body corporate. That legislation is already in place. This bill will repeal that legislation and will transfer this body corporate function and the ability to hold and deal in land to the Water Resources Ministerial Body, which is a new body being created by the bill. I am simply asking: what is the difference between the minister’s functions under the Water Supply, Sewerage, and Drainage Act and the minister’s functions under this bill? I asked the rhetorical question: if there is no difference, why are we doing it?

**Hon KIM CHANCE:** I think I can handle that. It is basically a matter of redundancy, but I will get to that. The Water Supply, Sewerage, and Drainage Act established the minister responsible for the administration of

certain water acts as a body corporate, as the Leader of the Opposition has said, and it vested certain works and lands in that body corporate. That body corporate has existed since assent to the act in 1912. It fundamentally has two functions. First, it is the default body that holds the land and assets of various water-related boards and carries out their functions prior to such a board being established and after the boards cease to exist. It has a default function. That applies to boards established under the Rights in Water and Irrigation Act 1914, the Land Drainage Act 1925, the Water Boards Act 1904, the Country Areas Water Supply Act 1947 and the Country Towns Sewerage Act 1948. The second function is that it holds land and works acquired or constructed by government under water resources legislation that is not otherwise vested in the commission or the Water Corporation. Currently, the only relevant boards that remain that are covered by that description are the Busselton Water Board and the Aqwest-Bunbury Water Board. Section 5 of the Water Boards Act provides that in the event of the dissolution of a water board, the land, assets and functions are to transfer to the commission; therefore, there is no need for the body corporate to exist for dealing with the boards. Further, the body corporate is no longer active and it holds no freehold land. Any works or assets it holds are likely to be those that are not actively managed or not on the government's assets register. It is possible that it may hold some reserve land, but that is unlikely. However, that possibility arises because of the difficulty in easily tracing vesting orders for some of the reserve land. The bill proposes to repeal the act as its provisions are largely redundant. The Minister for Water Resources is to be the successor to the body corporate, and all assets, if any were to exist - as I have just said, there probably are none - will transfer to the minister and may be dealt with by the ministerial body established under clause 216(2). Separate provision is made in clause 216(3) for the transfer of care, control and management of reserves, if any exist, to the Minister for Water Resources because reserves do not transfer to successors in the same way as actual and personal property.

**Hon NORMAN MOORE:** I appreciate the Leader of the House's response. It seems to me that fundamentally the Water Supply, Sewerage, and Drainage Act has a provision that the minister holds the land until such time as it goes somewhere else, or after somebody has got rid of it and it comes back to him in a holding pattern. The Leader of the House described it as a default clause.

**Hon Kim Chance:** A default position, yes.

**Hon NORMAN MOORE:** That does not apply, obviously, under the new bill because the government is in fact ensuring that the ministerial body holds the land. I have some serious reservations about that. The Leader of the House needs to convince me, if he can, that the ministerial body should be the body corporate that holds the land and other assets that we have been discussing. The explanatory memorandum refers only to land in the reasons that this is happening and says that the minister has to have it. A simple amendment to the Water Supply, Sewerage, and Drainage Act could provide that the default clause relate not to boards, but, indeed, to the new department; in other words, the assets - namely, the land - could be held by the minister until such time as they transfer to the department or, if the department were to disappear, they could come back to the minister as a body corporate until such time as they can go somewhere else. However, the fundamental principle that the government has adopted is that the minister will in fact be in control of the land. I have not been convinced that that is a good thing. I do not know whether the Leader of the House wants to try to have another go at convincing me, but that is a very important matter and one that this chamber should take a serious interest in.

**Hon KIM CHANCE:** I rise only briefly because I do not have much more to add to what I said last night on the same question. The question that arises is whether the assets - the things of value, whether they be land assets or assets such as in rights to timber - should be held by the minister's body corporate or by the department, which would, in effect, give the chief executive officer of the department the right to trade in land. There are a number of agencies that we would not normally expect would have the right to trade in land. We then got ourselves a bit tied up with the issue of some of the older and bigger departments such as education. In point of fact, agencies whose key function is the management of a resource generally do not have an expectation that they will trade in land. With other agencies that trade in land as a matter of course in their business - for example, the Department of Housing and Works - we would normally expect that the CEO of the department would have the capacity to deal in land. Therefore, it is a matter of choice: is it the minister's corporate body or is it the CEO of the department? That is basically what it comes down to.

**Hon NORMAN MOORE:** There will be a couple of amendments to this clause down the track, but shall we go through it in the order in which we want to ask the questions? I have a question that relates to proposed section 9(1)(b), before we deal with proposed new subsection (4), which is Hon Paul Llewellyn's amendment. Proposed section 9 is headed "General functions and powers of the Minister", and states -

- (1) The Minister has the general functions of -  
...
- (b) assessing water resources;

The Leader of the House may be aware that in a previous debate about water in Western Australia I raised the fact that the assessment of water resources in this state was done in 2001, I think. I think the state's water plan in fact still uses 2001 figures. The Leader of the House might recall that I raised in the chamber that the state's water resources are significantly greater than the water we are currently using, and that is on the basis of sustainable yield. I do not have those figures with me at the moment, but I just ask the question: when is the government going to assess the state's water resources, and when is it going to update the 2001 figures? That is absolutely crucial to understanding whether the state has a water crisis or not. If the 2001 figures are accurate, we do not have a crisis. If they are inaccurate, we need to know. Therefore, I would like to know when the government is going to do something about assessing the water resources that the minister now wants as one of his powers or functions. Secondly, how does the government intend to go about doing it? Is any thought being given to using the Geological Survey of Western Australia again, which used to be involved in assessing the state's water resources? Unfortunately, our government changed that, which I think, in retrospect, was a mistake. Can the Leader of the House answer those questions for me about that matter?

**Hon KIM CHANCE:** I thank the Leader of the Opposition for raising those questions about the timing and the methodology of the way in which the Minister for Water Resources will carry out the functions of proposed section 9(1)(b) under part II; that is, the general function of assessing water resources. It is a reasonable question to put to the Minister for Water Resources. I could not possibly stand in his place and explain how he is going to do that. The important thing is, in dealing with this legislation, that the legislation provides that as a stated function for the Minister for Water Resources. How he does that will be a matter for his accountability to Parliament on those issues. However, I note, from my observations, that the Minister for Water Resources and his predecessors in that role have taken very seriously the issue of assessing water resources. Yes, it is 2001 since we had a major statewide expression of that assessment, but there has been intensive assessment of different parts of the state's water resources, and Yarragadee is a clear example of one of those. The state has spent many tens of millions of dollars in assessing Yarragadee.

**Hon Norman Moore:** Do you actually know how much is there?

**Hon KIM CHANCE:** I think we know more now than we did when we started, but if that question is taken to be "Do we know enough?" I think undoubtedly we do not know enough. I would also like to know more about a number of other water resources. Hon Ken Baston is out of the chamber on urgent duties, but he and I share a wish that we could know a lot more about the Carnarvon artesian basin, and I would like to know a lot more about the La Grange aquifer in the northern Pilbara and southern Kimberley. One day we will. The important thing, though, is that this legislation provides for the assessment of water resources as a key function.

**Hon PAUL LLEWELLYN:** I move -

Page 41, after line 14 - To insert -

- (4) In performing the Minister's functions under this section -
  - (a) the Minister is to have regard to water recycling and efficient water use measures when planning the development of new water resources; and
  - (b) the Minister is to promote decision making processes that involve public consultation.

In the context of the minister and the Water Resources Ministerial Body, the general functions and powers of the minister are laid out in proposed section 9. I noticed when we were defining water resources previously that we seemed to lack a modern interpretation of and a modern scope for water resources. We had a long discussion in which we said that we should regard waste water, recycled water and perhaps even stormwater as part of that definition. Similarly, in the definition of the functions and powers of the minister, something was specifically absent from those functions and powers, and that was a provision with similar wording to my amendment; that is, on page 41, at line 14, after proposed subsection (3), a new subsection (4) as follows -

In performing the Minister's functions under this section -

- (a) the Minister is to have regard to water recycling and efficient water use measures when planning the development of new water resources;

When the Yarragadee debate was happening in the past year or two, it was very clear that the real decision that was being made about Yarragadee was how we would make up the shortfall in supply of water, given the growth in population and an insistence on the part of the Water Corporation that delivering 155 kilolitres a person would create a shortfall in the order of 45 gegalitres up to 2012. It did not appear to enter into the minds of our policymakers that we had a major under-utilised water resource in the amount of water that was going to waste water, and we had a major under-utilised water resource that was water that we could have saved. No serious regard was given to looking for an alternative source of water other than developing a new natural source - in other words, the Yarragadee - when we had a major resource flowing out of the drains and out of the waste water

treatment facilities in Perth. The water that comes from waste water treatment plants is in the order of 108 gigalitres; the water that comes from storm water is more than 120 gigalitres. Many gigalitres of water could be saved through efficient use.

I bring members' attention to the need for modern thinking about resource planning and management. That applies to any resource, particularly those measured in megalitres and megawatts. Water saved is, in effect, water gained. When we use efficient technologies or water conservation strategies, we are not generating megalitres; we are creating negalitres. Negalitres of water is water that we do not need to develop. The notion of negalitres was absent from the Yarragadee debate. I acknowledge, Hon Norman Moore, that we have a lot of water. We have had a conversation about it not always being in the right place. However, there are sound economic arguments for water recycling and water efficiency. That being the case, it ought to be fully spelt out in this legislation that the Minister for Water Resources, in performing the functions under this clause, should have regard for water recycling and efficient water-use measures when planning the development of new water sources. That is what was absent in the Yarragadee debate. In the end, we decided it was either the Yarragadee or a desalination plant. We asked ourselves the wrong questions. Had we gone out to tender for 45 gigalitres of water, I am certain that somebody would have submitted a tender for less than we were intending to spend on the Yarragadee and certainly less than we are spending on desalination plants.

**Hon Kim Chance:** Paul, we will support this amendment.

**Hon PAUL LLEWELLYN:** I am so glad that the government will support this amendment.

**The CHAIRMAN:** Hon Paul Llewellyn, the Leader of the House is indicating that in this game you can talk yourself out of an amendment. I will be leaving the chair at 9.55 pm.

**Hon PAUL LLEWELLYN:** I am under significant pressure. I note the time. The amendment states that the minister should promote decision-making processes that involve public consultation. Although the Water Corporation and the Department of Water have done a commendable amount of public engagement and consultation, it should be explicit in the legislation that the minister should promote decision-making processes that actively involve the community. In that way, we will engage the community in programs to achieve water efficiency and savings and we may be able to persuade the community that using recycled water in our homes and in our industries is an acceptable arrangement.

Progress reported and leave granted to sit again, pursuant to standing orders.

*House adjourned at 9.56 pm*

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