

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

*Second Reading*

Resumed from 21 September.

**HON MURRAY MONTGOMERY** (South West) [8.13 pm]: The issues I raise on this Bill have been around in some form or another for a long time. For decades people have wanted to change the Rights in Water and Irrigation Act 1914. A few people who have worked fairly hard in the community over the past few years to try to change the Act have already been mentioned, and obviously a few others have also put in a fair bit of work. One of those is Chris Scott, a chap from Nannup. Chris has been representing the fruit growers on the Western Australian Water Users Coalition. A great deal of comment has been made to me about the fair degree of input from Steve Dilley of Donnybrook, the president of the WA Fruit Growers Association. My interest in this Bill and the preceding drafts probably goes back to 1997. At that time I convinced my National Party colleagues in both this House and other place to come on a tour through the south west to see at first hand some of the issues that were confronting us. Water use was one of the issues that was raised during those three or four days touring through the south west. It created such a degree of interest that I convinced my colleague Hon Dexter Davies to assist me to organise some forums - which we were able to do with the help of the Water and Rivers Commission - to explain what was occurring with water and water management.

It appears that one's point of view depends on the use one has for water. Water usage varies from the community's need for drinking water, to household water use, recreational use, the environment, the needs of industry and another issue in which my constituents have a great deal of interest and on which they are reliant - the water used in food production. The south west is known for its horticulture and viticulture. In 1997 I was in the eastern States to look at some other interests that I have. I took the opportunity while I was in New South Wales and Victoria to tour the Murray River irrigation area. I talked to people along the Murray River, probably from the Hume Dam to Deniliquin, and asked them their views of water management. When one talks to dairy farmers, citrus growers and rice farmers one gets a diversity of views on how best to use the irrigation area. They all agree that water is a precious commodity, but they all want to be able to use it to their own advantage and not necessarily to that of their neighbour's. After that tour, the following year, as someone has previously mentioned in this House, the Minister for Water Resources suggested the possibility of a few of us from this House and the other place visiting the eastern States provided we saw fit to get ourselves there. We were offered some assistance with organising tours to visit not only the Murray River but also the Darling River system and associated rivers running into both rivers to see how farmers made use of the water. On examination of the area we were alerted to the problems associated with the water regimes in those areas.

Fortunately, allocations of water such as those made in the eastern States are not made in this State. After visiting the area west of Tamworth to Gunnedah and surrounding areas that are allocated more than 600 per cent of the total capacity of the water draw downs, we were able to appreciate why some of the problems exist in that area. After speaking to cotton growers throughout the area, I acquired an understanding of their needs, but that is not to say that the problems they are creating with their use of water escaped us.

In a broad, philosophical sense we must appreciate water as a precious resource and not totally discount the fact that wars could be fought over it. Although the likelihood of that occurring in Australia seems remote, if we are not correctly using a strongly sought after resource, someone else may try to take it. Countries have argued over food supplies and mineral resources. It could be argued that water is the most important resource we have, as someone said earlier, particularly as Australia is one of the driest continents in the world. It is fortunate that Western Australia's water resource management is based on sound principles.

Although some concerns have been expressed about this Bill, it will build on the principles of the Act that has served this State for long time. The Bill will fulfil those management objectives. The farming community and water users will see the need for management of our water resources, the protection of the environmental values of the landscape and the efficient and sustainable use of that water and that local communities should be effectively engaged to ensure everyone can benefit from our water resource.

I acknowledge the people's concerns that have been highlighted before; nonetheless, I will refer to some of them now. I hope the minister will indicate whether the Australian Taxation Office has provided some answers to capital gains implications. Another issue is native title. Both those are federal issues; nonetheless, they deserve to be commented on.

With reference to compensation, our society works on the principle that if a resource is taken by the State for the use of the community, compensation should be paid. Other issues are the ability to appeal should conflict arise over allocations, etc; the trading of water between various landowners; and the cost, renewal and allocation of licences. I understand from some of the material I have read that licences will be renewed every 10 years

providing certain criteria are met. That in itself would be an acceptable method for renewing licences. However, at the same time we must ensure licences are not taken from landowners for the community's needs without compensation being paid. Possible contravention by the landowner of other Acts must be taken into account when his licence is due for renewal.

I understand from the old Act that provision has always existed for licence fees. However, under this Bill no additional provisions will be included to impose licence fees. Another issue not covered in the Bill, but which should be considered, is provision for an independent audit to be undertaken of the entire State's water resource. An assessment should be carried out regularly, other than by the Water and Rivers Commission, as part of a management process. The information should be made publicly available to ensure the process is transparent and to enable the community to appreciate the needs of both the environment and the community, particularly the needs of food producers. Fruit growers, viticulturists and those involved in aquaculture need to make sure that their investments are safe. Water is a resource shared between the community and the environment. If the quantity of water falls by 10 per cent, nature insists everyone must take a cut, including the environment. The environment has suffered in the past when nature has not provided the necessary rainfall.

As a user of water in food production, over a considerable time, I believe the legislation goes a long way towards assisting this State to manage a resource and ensure its renewal for future generations. I urge that the minister consider an independent and regular audit of our water resources to enable their most efficient management. I support the Bill.

**HON GIZ WATSON** (North Metropolitan) [8.32 pm]: I offer the support of the Greens (WA) for this Bill. On the first reading of this Bill the Greens were about 80 per cent happy that it dealt with issues of concern to us. The current Act was written in 1914, and all contributors to this debate have acknowledged a need to amend and modernise that legislation. Our understanding of the need to incorporate provisions for environmental management into legislation such as this has advanced considerably since 1914. The Greens have been very happy with the level of cooperation and consultation that has occurred with this Bill. The cooperation of the representative of the Water and Rivers Commission in assisting in the understanding of the existing legislation, and working on proposed amendments, has been appreciated.

The significant aspects of this Bill are that it provides objectives for the management of water resources, and restates the basic rights of the Crown and individuals in relation to surface and ground water resources. It will establish local water resource committees; require the development and implementation of management plans; and provide for the grant, registration and trading of water entitlements. The Standing Committee on Legislation examined the Bill and, as a member of that committee, I can say that it was a very useful process and many witnesses presented their concerns and opinions. The committee produced a very useful report, which has led to a number of amendments being taken on board by the Government. In that committee report I dissented on one matter and produced a minority report, which I will discuss later. When I undertook to examine this Bill on behalf of the Greens, I was looking for certain objectives, in the context of the Greens' expectation of best practice in natural resource management. This is the first major piece of legislation I have had the opportunity to deal with that is actually about the balance between private rights and laws designed to protect the natural environment.

We wanted to ensure that the legislation recognised the importance of water for not only the consumption of humans, but also the health of ecosystems, particularly in Western Australia which, as has been noted by other members, is a dry part of the continent. Hon Murray Montgomery referred to wars being fought over water, and we are well aware that this is already happening in other countries. Less than 3 per cent of the world's water is actually potable, and it must be managed in a way that maintains not only its quantity, but also its quality. Human modification of streams and underground water sources, to extract water for commercial, agricultural or industrial uses, has consequences. There is no such thing as a free lunch in the environment. Even if it might appear at first that the extraction of water has no environmental consequences, that is simply not the case in the long term.

I have some concerns about the increased use of ground water in this State, because it amounts to mining a resource, rather than using it in a sustainable way. Proposals to extract deeper ground water sources could result in mining an asset that has taken decades, if not centuries, to accumulate. Information on recharge rates and the consequences of extracting water from the environment is still insufficient. We anticipate that this Bill will be able to manage and control the extraction of water from the environment.

I examined this Bill in another context, that Western Australians are very heavy users of water. Despite the fact that Australia is the driest inhabited continent, it ranks second in the world for water usage per capita with one million litres of fresh water used per person, of which 70 per cent is agriculture, forestry and fishing usage and about 8 per cent household usage. We are not the most cautious of water users. We could vastly improve our

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use of water for irrigation; I refer particularly to the Ord River scheme. If more understanding of and caution in flood irrigation in those areas had been used from the outset, the problems of rising salinity and waterlogging would not have arisen. I hope that as a community and as water users, we can learn to be much more scientific and judicious in the use of our fresh water assets.

Another context in which legislation could be put to manage water in this State is that of the implications for predicted climate change. I note that the Commonwealth Scientific and Industrial Research Organisation gave very salutary warnings about the reduced rainfall and therefore the reduced availability of water that we can expect, particularly in the south west of this State. In its report released last year it predicted a general drying of southern Western Australia with a rainfall decrease of about 10 per cent to 30 per cent in winter and spring. Winter is the current crucial rain season for WA; therefore, any reduction in this season will be strongly felt. The legislation we contemplate must take into consideration at least the potential, if not the likelihood, of increased scarcity of potable water in this State. Certainly, the Greens (WA) advocate that we must do a lot more to live within those realistic predictions of reduced stream flow and reduced rainfall. We know of the substantial reduction in stream flows in the south west of the State in the past 30 years. When one adds to that fact that about 75 per cent of the river systems in the south west are saline beyond being available even for stock grazing purposes, I am afraid to say that we have not done the best to date to conserve the river systems in this State. We must take a more precautionary approach.

That is not to take away from the fact that I believe this Bill is about trying to establish controls in a way that we have not had before. The current conditions do not present an enviable record of our treatment of our rivers, our estuaries and many of our wetlands. I remember being shocked when I read a report published in 1998 by the Water and Rivers Commission about the state of the northern rivers. It was the first attempt to give an overview of the state of the catchments in the northern part of the State. Again, we must take into consideration that the level of degradation of a lot of the country due to overgrazing, feral animals and inappropriate agriculture has resulted in an enormous number of river systems in the Kimberley and the Pilbara-Gascoyne being severely degraded. It is important to realise, when debating legislation on water, that we are dealing with a resource that is already severely depleted.

Probably one of the major concerns of the Greens, as raised by other conservationists and interested parties and perhaps one of the major reservations raised with me by various advocates, is the larger question of creating tradeable water rights. We do not accept that the creation of tradeable water rights will necessarily provide the best mechanism for the long-term sustainability of the resource. For example, a comparable situation is the tradeable rights that have been established with fishers' licences. It has often been said that the trading of these licences will lead to the best management of the resource. There is little evidence to support that assertion. Sometimes the trading of licences leads to the best management of the resource but sometimes it does not. I do not believe that trading and best management are related. There are examples of fisheries resources being overexploited despite the fact that they are a tradeable commodity. Indeed, arguments have been made to the contrary that trading licences tends to lead to monopolies or a larger portion of the resource being owned by fewer people, which does not necessarily mean the resource will be managed in a sustainable way. Again, to use the fishery analogy, some of these so-called lifestyle fishers who have a smaller interest and smaller numbers of licences are often more likely to manage resources for the long-term local benefit and environmental sustainability than some of the large companies who can simply move on when they have exploited a certain area.

I have some concerns about the notion of higher orders of use when determining the priorities of water allocation. There will be some very healthy debates about that issue because it appears to me that in the discussions we have had in committee and debates on this Bill, a higher order is defined by economics and actually means the greatest economic return. We appreciate the fact that the setting of the environmental flow criteria is very much an essential part of this legislation to ensure sufficient water is allocated for environmental purposes ahead of any other allocation. Again, although only draft criteria are available now for members to assess whether those environmental flows will be set at the right level and meet environmental criteria, we would be keen to see the final shape of that aspect of water management.

The Greens accept that the Council of Australian Governments set the requirement for tradeable water rights and that it has driven the changes in the State. Given those reservations, we accept that it is part of this Bill. However, I have heard warning bells ringing about further privatisation of water resources in this State and I am sure moves will be made to broaden the privatisation of water resources in this State. The results of such steps in countries like England have been disastrous. I place on notice that the Greens (WA) will oppose any such moves in Western Australia; they would be totally unacceptable.

The Greens promote a model for water management of integrated catchment management with local committees reflecting catchment boundaries. Provisions in the Bill allow for local committees to be involved in decision

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making. The committees must fairly represent a broad range of interests including community and environmental expertise, and not only water users' interests. The Greens welcome this approach. It is essential that the environmental component be set at a level to preserve biodiversity in river systems, and to discourage water waste and excessive consumption.

The Greens have sought to include in the Bill adherence to ecologically sustainable development principles. The Greens will move an amendment to include ESD principles in the Bill. Also, we seek to ensure that the Bill includes a duty of care to take all reasonable measures to ensure that users do not diminish or degrade the water resource. Those are two key objectives. I am pleased that Hon Norm Kelly and I have worked cooperatively to develop a range of amendments to be discussed in detail during committee.

Also, the Bill attempts to meet the challenge of natural resource management in juxtaposition with and balancing private property rights. Historically, and to a large extent contemporaneously, laws are about protecting property rights rather than enshrining the intrinsic rights of the environment. It is a reasonably novel area in which to attempt to create a balance in maintaining a common resource with either real or assumed private interests.

The Greens (WA) amendments, as I have mentioned already, will strengthen the objectives of the Bill by including ESD principles, and this includes the principle of intergenerational equity and the precautionary principle. I am pleased that those amendments are on the Supplementary Notice Paper, and I understand that they will be accepted by the Government.

Another issue raised with me that causes me concern, and which has not been adequately addressed in the Bill, is that of monitoring all bores over a certain capacity. I seek some clarification. As it is a complicated Bill, I am not sure where we reached on this issue. The major concern relates to owners of water bores. If water is taken for commercial use above a certain capacity, people should be required to report to the commission on the volume extracted. I seek some clarification on that requirement. I apologise for doing so, but I am not sure of the current status of that aspect as it has been a lengthy process.

I am well aware of the growing impact of the extraction of water from bores. I was in the Wanneroo area a couple of weekends ago on a property belonging to a friend. We spoke to a number of residents about the impact of draw down on trees and cave lake systems and streams in the Wanneroo area. I am well aware of the situation at Yanchep, where the streams within the cave system have completely dried up, and trees and plants in the park are showing signs of drought stress.

Hon M.J. Criddle: So is my crop this year!

Hon GIZ WATSON: There is a lag effect with ground water. There is a delay between the water being extracted and the results of that action showing up further downstream. Although it is disappointing that the minister's crop has not received rain, he knows what is happening. We do not know what measures will be necessary to bring the water back into the ground water system. A major problem is the draw down from the Gngangara pines. Comments have been made by residents in the area that overdrawing of water from bores on market gardens is significantly affecting cave lakes and vegetation in the Wanneroo and Gingin areas. We must address the monitoring of bores more strongly.

The Greens (WA) also seek a requirement for third party standing. We seek a civil remedy so that any person who is concerned about the protection of the environment will have recourse to a judicial review. The legislation will allow an affected party to take legal action; however, if third party standing is granted, any person concerned about the environment being degraded by the extraction of water could bring a case seeking remedy. This is important. A major impediment to successful prosecution or redressing environmental degradation is that one must have standing in the court before bringing a case. The fact that this Bill does not allow third party standing in such cases should be addressed.

I have mentioned that the provision for local committees to deal with decisions about water allocation is welcome, as long as it involves adequate community representation and people with no vested interest in the use of that water. They must also have a suitable level of environmental skill. As much as I acknowledge that the Water and Rivers Commission will provide a substantial part of the expertise, it is also useful to have community representatives who have an understanding of aquatic systems and water management. The requirements for monitoring and reporting need to be strengthened. I shall be moving amendments to that effect when we are in committee. The requirement to produce management plans and review them is welcome, but I shall move amendments to strengthen those management plans by requiring that monitoring be carried out regularly and reported on, so that we shall be able to assess whether the management plans achieve what they aim to.

I draw attention to my minority report on the Bill. My minority report was on the issue of compensation, which was a hotly debated topic, needless to say, because water users made many submissions about their concerns on

how compensation would be allocated and whether they would be adequately compensated for perceived loss of water resources. My reason for producing a dissenting report was that recommendation 4 of the committee states -

The majority of the Committee recommends that the payment of compensation be mandatory wherever a legitimate existing use, whether licensed or unlicensed, is reduced or removed, the scope of exemptions from such compensation to be decided by Parliament.

The concern I raised in my minority report was that the recommendation, if enacted, will broaden the scope of mandatory compensation, thereby providing a disincentive to the equitable and sustainable use of water resources. Further, it will recognise an assumed right to take water that does not exist under current law. I therefore support the existing provisions in the Bill.

Hon Kim Chance: Even though the recommendation said "legitimate existing use"?

Hon GIZ WATSON: Yes, despite the fact that "legitimate" is obviously a qualifying adjective to "use", I was not comfortable that "legitimate" adequately covered my concerns. The reasoning behind my concern is that the recommendation, if enacted, will recognise an assumed right to take water that does not exist under current law. I referred to a paper by Alex Gardner entitled "Note on Water Rights, Sustainability & Compensation" which was published on 28 October 1999. My report quotes that paper -

Statutory rights relating to the use of natural resources may be regarded as mere personal privileges if they simply grant to the rights holder a licence to do something that is otherwise illegal; for example, the right to take some natural resource from Crown land. There is no legal restraint on Parliament's powers to legislate to cancel or reduce the rights held under these statutory privileges.

Hon Kim Chance: Rather like fishing licences.

Hon GIZ WATSON: Absolutely. I made the comparison with fishing licences earlier. I dissented from that recommendation of the committee, and that was the only point of dissent.

I acknowledge and thank a few people who have assisted me in assessing this legislation, particularly Jane Burkin, who produced an internal report on the Bill for me in June last year, which was very useful because, as all members who have delved into this subject will know, this is a very complicated and comprehensive piece of legislation. I also acknowledge the hard work and assistance provided by members of the Conservation Council, who are James Doogie, Joan Payne, and Rachel Siewert who provided their views on the Bill. The Conservation Council does an enormous amount of work with virtually no resources, and provides some very comprehensive and well-considered comments on matters such as these. The Greens will support the Bill and will also move amendments at the committee stage.

**HON M.J. CRIDDLE** (Agricultural - Minister for Transport) [9.05 pm]: As my colleagues have mentioned, the need for reform in our approach to water resource management in Australia is well recognised. Anybody who watched the television news program tonight will certainly confirm that. It is vital for our quality of life and for ensuring that water is used sustainably and efficiently. The way in which water is stored, extracted, delivered, used and disposed of can have profound environmental and economic effects. The need to secure water use for commerce and agriculture cannot be overstated. Irrigation alone is estimated to have added more than \$7b in 1996-97 to Australia's agricultural production.

Western Australia is fortunate that its water resources have been well managed. However, times have changed and the resource is becoming scarcer and more highly valued. There is now a keen appreciation of the need to provide water for the environment. It is a fundamental principle of the Council of Australian Governments' water reform framework agreement that the environment is recognised as a legitimate user of water.

Hon Ken Travers has spoken in some detail about the legislation and the Legislation Committee's report and recommendations. I congratulate the committee on its work. I am pleased to advise the House that the Government intends to adopt all the recommendations. The recommendations deal with the concerns of stakeholder groups such, as the Water Users Coalition. I believe the proposed amendments will satisfy their needs.

The ability to trade water entitlements under the new legislation will help to move towards more efficient and higher value uses. Not only will water users, both the buyer and seller, benefit from the trade but also the environment will benefit. The Government anticipates that water will move from degraded and unsuitable lands to more productive sites which are able to grow higher value crops, using modern irrigation techniques. I have been amazed at some of the techniques I have seen in the north which disperse water underground. That obviously has enormous benefits.

Hon Kim Chance: Did you go to Shamrock Station?

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Hon M.J. CRIDDLE: I did. I shall move a series of amendments in committee which will deal with capital gains tax on the temporary transfer of licences. The amendments will replace the temporary transfer agreements to lease licences. This means the lease payments can then be treated as income rather than be subject to capital gains tax. The Australian Taxation Office has provided advice to the State that a water licence acquired after 19 September 1985 is an asset for capital gains tax purposes. The Australian Taxation Office has also advised that the date of acquisition of land does not affect the capital gains tax implications in respect of the water licence. Like Hon Ken Travers, the Government believes it is anomalous that unlicensed water users who were using water prior to 1985 should be subject to capital gains tax. The Minister for Water Resources has taken up this matter with the federal Treasurer.

Hon Bob Thomas raised the issue of water users' rights. I point out that the reason people pay more for land with water is that the Water and Rivers Commission is able to use the statutes to define and protect those rights. Without that protection, the rights would often be worth nothing. One need only look at Wanneroo, Carnarvon and Manjimup to see the prosperity that good water resource management can bring to local landowners and the community in general.

Far from taking away water rights, the legislation clarifies and secures many rights. The Bill already includes a provision for the renewal of licences, and I will move amendments to extend the users' rights to build dams. I reassure the House that there is no intention by the Government to tax rain. This was one of the myths promoted in the early stages of consultation. There has been extensive consultation. I know that this Bill has been discussed by people across the length and breadth of Western Australia. The extensive consultation appears to have now dispelled such myths. The legislation does not increase or introduce any charges for the use of water. Unlike other States, the vast majority of water users in Western Australia do not pay a licence fee.

Hon Bob Thomas was not right when he said that common law gives landowners exclusive rights to water from watercourses. Common law gives landowners very limited rights to water and requires them to leave the bulk of the flow substantially unchanged. The Act gives landowners rights to capture and use the water in a way that protects the rights of other water users.

Hon Bob Thomas: You misquoted me. I talked about watercourses which are wholly contained within a person's property.

Hon M.J. CRIDDLE: Perhaps that needs clarification.

Hon Bob Thomas: That is what I said. Obviously, you read what I said in *Hansard* and worked from that, so I do not know how you got it wrong.

Hon M.J. CRIDDLE: We endeavour to get things right. We will look at that again.

The reforms will have the opposite effect to that feared by Hon Bob Thomas, if that is his case, and by Mr Graeme Waugh of Albany. Other States have found that similar reforms have increased wealth, productivity and employment in the local area.

Members of the Opposition have raised the issue of compensation on several occasions during the debate, and Hon Giz Watson raised it again just now. The Government will introduce compensation for people who are treated unfairly, but there is no intention to guarantee the water supply. Water users must share responsibility for future sustainable water supplies. The Government will support and protect water users while they act responsibly, but it will not pay compensation to those who use water illegally or recklessly.

Hon Kim Chance: Nor should it.

Hon M.J. CRIDDLE: Exactly. The legislation will provide for indefinite licences, but until the water use is proved to be sustainable, the commission will continue to issue fixed-term renewable licences.

The question of water resource management committees - their composition, the number of committees and the area they will cover - was raised by Hon Ken Travers. I assure the House that the Water and Rivers Commission will consult with the community during the establishment of the committees, including consultation on the skills members will need and how committees will work. Hon Ken Travers recognised this issue when he said that whoever is in government will need to arrive at a balance between a committee which is a workable size but which has the necessary expertise and representation of interest groups to come up with good solutions. There must be a limit to the number of committees so as to provide them with the support, services and financial resources they will need. This is one reason that I will move an amendment during the committee stage to allow a water resource management committee to establish subcommittees. This means that if a committee is set up in the west Kimberley, for example, a subcommittee could be established to look at particular problems in a smaller sub-area such as the Canning basin.

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Hon Norm Kelly expressed his concerns about the possible conflict of interest of members that could arise within the management committees. I advise Hon Norm Kelly and members of the House that this is a situation that faces every board or committee, be it public or private. That is a well-known point. The provisions of the Bill require all conflicts to be declared and recorded in the minutes. The role of these committees will be to consider matters of interest to all members. Provisions are included in the Bill to allow the committees to decide whether a member with a particular interest should be excluded from the discussions and/or voting. As the recommendations of the committee are implemented by the commission, a check will be undertaken to ensure that the system is working.

The board of the Water and Rivers Commission has adopted a code of conduct for its committees in accordance with guidelines prepared by the Office of the Public Sector Standards Commissioner. The code also requires members to openly declare private interest matters, such as investments, relationships, voluntary work and membership of other groups that may conflict, or be perceived to conflict, with a member's public duty. I hope that this satisfies Hon Norm Kelly's concerns. However, if further assurance is required, the Office of the Auditor General has produced a brochure called "Roles and Responsibilities of Members of Governing Bodies of State Government Agencies". This brochure covers members appointed to a board or committee and sets out their fiduciary duty, including consciously avoiding any conflict of interest, disclosing any material or personal interest in an agency matter, and subsequently abstaining from any discussion or vote on the issue.

I move on to another issue that has been of concern. Hon Ken Travers stated that the Standing Committee on Legislation recommended that consideration be given to an independent appeals mechanism. The Government has adopted this recommendation, and the necessary amendments have been drafted. However, under the Constitution, there is a restriction on matters that can be dealt with by the Legislative Council. The change from an appeals system to a tribunal will involve additional expenditure - we have been through that before in other cases - and I have been advised that the Legislative Council cannot deal with the proposed amendments. Arrangements are being made to include those in the Bill. The Minister for Water Resources intends to move those amendments in the Legislative Assembly. Once established, the tribunal will also deal with disputes over compensation amounts. The Government has been working with other parties and the community to reach a balanced outcome, and I believe that the amendments proposed by the Government reflect that approach.

In response to his comments by Hon Murray Montgomery on auditing water use, I indicate that an audit of water use in Western Australia has recently been completed. I understand that when the audit is finalised and the data is worked into a form suitable for public dissemination, the results will be made available to the public. Hon Murray Montgomery also spoke about the capital gains tax issue, which I covered earlier.

Hon Giz Watson mentioned matters dealing with climate change. The Bill includes provision for plans that will be reviewed from time to time. If the flow of streams and groundwater reduces, the plans will outline the strategies to respond, including how use will be reduced. These strategies will be developed in consultation with the users. Hon Giz Watson also had concerns about sustainability. This is considered by the Water and Rivers Commission to be a very important part of water resource management. It is the norm in Western Australia that aquifers are managed on the basis of sustainable yield.

Hon Giz Watson also questioned confirming water use. The Water and Rivers Commission uses a variety of means to audit and confirm water use, including, in some cases, crop area or metering of the volume pumped. The Bill provides the commission with the opportunity to require the reporting of water use. Application of this power will be determined on a case-by-case or needs basis.

Hon Giz Watson also mentioned the issue of sustainable development. The Government has carefully considered the position including the sustainable development principles proposed by Hon Giz Watson. It considers the Bill includes adequate provisions to ensure that proper regard is given to protecting the environment. It does not see a need to extend these provisions as this would upset the balance between conservation and development that is expressed in the objects clause of the Bill. A request was also made to include third-party appeals. The Government will oppose the amendments that the member is seeking to include.

I am pleased that there has been an all-inclusive approach to the development of the Bill and its passage through the Parliament. I am pleased that the non-government parties have publicly acknowledged the hard work that has been put into developing this Bill by the Minister for Water Resources and the Water and Rivers Commission. I emphasise that the passage of the Bill during this session of Parliament will bring significant financial rewards to the State under the Council of Australian Governments agreement on the national competition policy and will provide significant new opportunities in irrigated agriculture and industry in Western Australia. It is my hope that the support for the Bill continues and it is passed.

Question put and passed.

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Bill read a second time.

*Committee*

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

**Clause 1: Short title -**

Hon KEN TRAVERS: The minister's response did not cover a number of issues raised by the Opposition in the second reading debate. These include benefits that may accrue to the Minister for Local Government, the member for Warren-Blackwood, from amendments to the Act resulting from that minister's involvement in cabinet deliberations, and the licence that was granted to Koorian Olives that, according to its prospectus, guarantees a water supply for 25 years. The Minister for Transport did not answer questions on those matters. It is important that the Government comes clean and provides answers before this Bill is considered further and passed by this Parliament. A number of clauses we will consider tonight will provide a potential benefit to the Minister for Local Government. This relates to a licence that was granted at the time these amendments were being considered by the Government, of which that minister is a member of Cabinet. The Minister for Local Government acknowledged that he actively participated in those cabinet decisions. The minister's comments outside this place in defence of his involvement are not accurate. When Cabinet debated the legislation, the minister was chairman of one of the companies involved, and he was a director of the company that made the original application for the licence. Prior to the licence being issued the application was changed to a company with which he was not associated. However, the minister was clearly involved in the initial processes. It is important that before we debate the amendments to this Bill the Minister for Transport answer the questions that were raised during the second reading debate. We need to know about the role and involvement of the Minister for Local Government in the drafting of these amendments, whether the amendments will provide a benefit to this minister of the Crown by improving the security of that licence and whether they have enabled Koorian Olives to issue a prospectus that indicates it has access to the water for 25 years. I hope the minister will give the people of Western Australia answers to those very important questions before this legislation is debated any further.

Hon M.J. CRIDDLE: It is pretty harsh to ask a minister who does not have carriage of this legislation whether another minister has had a role.

Hon Ken Travers: You had the opportunity to consult with him because I raised these issues earlier in the debate.

Hon M.J. CRIDDLE: There are no special benefits in this Bill for any particular person. We are not doing this for a particular reason.

Hon Ken Travers: Will a company of the Minister for Local Government get a benefit from this legislation?

Hon M.J. CRIDDLE: This Bill will benefit the general community. To be honest with Hon Ken Travers, I would not have a clue whether the Minister for Local Government will benefit. I am here to carry the legislation on behalf of all Western Australians. If we want to get down to the particular points of view of every farmer around the State it will be a difficult debate.

Hon Ken Travers: That is different from a licence application going through at the same time as a cabinet discussion.

**Clause put and passed.**

**Clauses 2 to 4 put and passed.**

**Clause 5: Section 2 amended -**

Hon NORM KELLY: I move -

Page 3, after line 20 - To insert the following new paragraph -

(c) after the definition of "Crown land", by inserting the following definition —

“

“**degradation**”, in respect of water, includes the sensible diminishing of the quality or quantity of that water;

”;

This will expand the clause to include a definition of degradation and is a precursor to further amendments to clause 18 to make sure that water resources will not be degraded. This amendment specifies that degradation can



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include reference to the quality or the quantity of water. This may be not only a diminution of water used; an increase in the quantity of water could also be a degradation of that water resource. That is why the definition includes “the sensible diminishing” of the quantity or quality of water.

Hon GIZ WATSON: The Greens (WA) support this amendment.

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

**Amendment put and passed**

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

Clause 6: Section 3 inserted -

Hon GIZ WATSON: I move -

Page 6, after line 7 - To insert the following section -

**3A. Native title rights not affected**

- (1) To avoid doubt, nothing in this Act affects the operation of section 211 of the *Native Title Act 1993* (Cth) in relation to a provision of this Act.
- (2) This Act does not affect the operation of the *Native Title Act 1993* (Cth).

The purpose of the amendment is straight forward; that is, to put beyond doubt that nothing in the Bill will affect the Native Title Act. Although there has been debate both within the Committee and when we examined this aspect, the Greens seek to ensure it is explicit within the Bill.

Hon M.J. CRIDDLE: The amendments included in this Bill are not intended to change native title. The commonwealth legislation, including the Native Title Act, overrides state legislation, and any impact of this Bill on native title will be determined by the courts. The Government, therefore, opposes the amendment.

Hon NORM KELLY: The Australian Democrats support this amendment. It is taken directly from the commonwealth Environment Protection and Biodiversity Conservation Act passed through the Federal Parliament last year. It is worthy of being included in this legislation.

Hon KEN TRAVERS: The Labor Party's position on native title is well known. I accept the minister's comments. It is my view that even if this amendment were defeated it would not significantly affect the Bill one way or the other. I understand that this Bill will not override the Native Title Act.

**Amendment put and negated.**

**Clause put and passed.**

**Clause 7: Division 1 inserted in Part III -**

Hon NORM KELLY: I move -

Page 7, lines 8 to 11 - To delete the subclause and insert the following new subclause -

- (3) Any person who performs a function under this Part is to do so in accordance with the objects of this Part and in accordance with the principles of ecologically sustainable development.

This amendment is complementary to Hon Giz Watson's amendment. It also stands alone from her amendment. It will bring this legislation into line with other legislation, such as the Conservation and Land Management Amendment Bill passed by this Parliament earlier this year. It will also bring it into line with what is occurring in other Legislatures throughout Australia; that is, it will provide that the principles of ecologically sustainable development should be incorporated into this type of legislation.

The definition proposed by Hon Giz Watson of the principles of ESD allows a degree of flexibility. Each of the five principles in Hon Giz Watson's amendment refer to the word “should”. It is an expression of intention of how the legislation should work. In that way the clause is not 100 per cent binding. It is nonetheless a strong direction to any governmental officers to operate under the legislation in accordance with the principles of ESD.

Hon M.J. CRIDDLE: The Government believes the objects of the Bill are adequately covered in this legislation. This amendment is therefore unnecessary.

Hon KEN TRAVERS: I agree with the comments made by Hon Norm Kelly that this amendment can stand alone from the actual principles of ESD under Hon Giz Watson's amendment on the Supplementary Notice Paper. I also acknowledge the minister's comments that effectively the principles of this legislation are largely

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designed to move towards ecological sustainability in the use of our water resources. The Opposition has given this issue and these amendments significant thought in deciding whether they are necessary to enhance the legislation. It is fair to say that at the end of the day we think they are all underpinned by the general amendments being voted on today. It is also fair to say that a number of other pieces of legislation in the environmental protection area will effectively pick up many of these issues. Nonetheless, the Australian Labor Party has supported including the principles of ecologically sustainable development in legislation. It therefore supports the amendments. However, the Labor Party feels the amendments are unlikely to significantly alter the legislation one way or the other. Many people in this Chamber share the view that the decision to support or oppose these amendments is a very fine call. The Bill fundamentally picks up the intent of these amendments. However, to be seen to be clearly consistent on these matters, the Labor Party will support them.

Hon KIM CHANCE: It is important that I comment on this amendment and Hon Giz Watson's proposed amendment, as the Australian Labor Party's spokesperson on primary industry. The point made by Hon Norm Kelly is correct. Although it appears to be a complementary amendment to Hon Giz Watson's, it stands on its own. It imposes a requirement for persons performing a function under the Rights in Water and Irrigation Act to do so in accordance with the principles of ecologically sustainable development, with or without the definition of those principles. The definition in Hon Giz Watson's proposed amendment is irrelevant. Like Hon Ken Travers, I believe that it does no harm to include in the Act an apparently obvious statement that it is a requirement to carry out functions bearing in mind those principles, although it is apparently superfluous to make that statement. I have no reservation in supporting Hon Norm Kelly's amendment. Whether or not Hon Giz Watson's proposed amendment supplements it, it is an important statement that must be made; although I agree with Hon Ken Travers that the Bill makes the point anyway. I do not believe the future operation of the legislation hinges upon the amendment; notwithstanding that, it is an important amendment.

I wanted to put on the record my point of view because the Australian Labor Party, as recently as today, has been urged by some people, including the Western Australian Farmers Federation, to oppose this amendment. We have considered the points made by the Farmers Federation, and it is important from the farmers' viewpoint, as well as ours as legislators, to bear in mind the need for ecologically sustainable development, particularly in an industry of this nature in which we are so comprehensively interfering with the natural flow of resources for agricultural purposes. We must be extremely careful about that, and from that point of view it is important for farmers, when they go out into international markets stating that their operations are clean and green, to be able to demonstrate to their clients elements of legislation of this nature to support that claim.

Hon MARK NEVILL: I thought I should contribute to this debate but other members have handled it very well. Predictably, I will oppose the amendment proposed by Hon Giz Watson. This Act is already subject to the Environmental Protection Act and the amendment is unnecessary. That Act should look after those particular matters, and if we are to include these principles they should be stated in that Act as it overrides a great deal of other legislation. Attempts have been made to insert a provision of this nature in previous Bills dealt with in this House. I will oppose the amendment.

Hon NORM KELLY: I will make an additional quick point in response to Hon Kim Chance's comments, particularly in regard to the Farmers Federation's concerns about the amendment. I refer to Hon Giz Watson's proposed amendment that lists one of the principles in paragraph (c) as follows -

the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

I believe all Western Australians support that principle.

Amendment put and a division taken with the following result -

**Extract from Hansard**  
[COUNCIL - Tuesday, 10 October 2000]  
p1728b-1739a

Hon Murray Montgomery; Hon Giz Watson; Hon Murray Criddle; Hon Ken Travers; Hon Norm Kelly; Hon Kim Chance; Hon Mark Nevill; Chairman

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Ayes (14)

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

Noes (15)

Hon M.J. Criddle	Hon Ray Halligan	Hon M.D. Nixon	Hon W.N. Stretch
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Max Evans	Hon N.F. Moore	Hon B.M. Scott	Hon Muriel Patterson ( <i>Teller</i> )
Hon Peter Foss	Hon Mark Nevill	Hon Greg Smith	

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Pairs

Hon Tom Helm	Hon Barry House
Hon Bob Thomas	Hon Dexter Davies

**Amendment thus negated.**

The CHAIRMAN: The proposed amendment by Hon Giz Watson is ruled out of order.

**Clause put and passed.**

**Clauses 8 to 13 put and passed.**

**Clause 14: References to "wetland" inserted instead of certain words in various sections -**

Hon M.J. CRIDDLE: I move -

Page 10, after line 11 - To delete "section 12(2)(a)" in the Table.

Page 10, after line 21 - To delete "section 12(1)(a) and (b)" in the Table.

These amendments are proposed as a result of recommendations of the Standing Committee on Legislation.

**Amendments put and passed.**

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

**Clause 15: References to "water-course" changed to "watercourse" in various sections -**

Hon M.J. CRIDDLE: I move -

Page 11, after line 17 - To delete "section 12(1)(a) and (b) and (2)(a)" in the Table.

This amendment is moved for the reasons outlined on the previous amendment.

**Amendment put and passed.**

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

**Clauses 16 and 17 put and passed.**

**Clause 18: Division 1A inserted in Part III -**

Hon NORM KELLY: I move -

Page 16, line 1 - To delete "(b)".

Page 16, line 5 - To insert after "5C" -

; or

- (b) a person taking or using water from a water resource does not take all reasonable steps to minimise the degradation of the water resource.

Page 16, line 7 - To insert after "of" -

- (a) in respect of subsection (1)(a),

Page 16, line 8 - To insert after "subsection" -

(1)(a)(i) or (ii); or

(b) in respect of subsection

Page 16, line 8 - To insert after “(1)(b)” -

, a person directly affected by the degradation of the water resource referred to in that subsection.

Proposed section 5A of the Bill provides that civil remedies be available for any unlawful taking of water relating to rights. These amendments in my name will extend that civil remedy. When water is taken or used, and all reasonable steps are not taken to minimise the degradation of that water resource, civil remedy will be available. However, the remedy will be available only to persons directly affected by the degradation of that water. It is a limitation. It is not a right for third parties to take action. It will apply to a person directly affected by the degradation of the water resource. I commend the amendments to the Chamber.

Hon M.J. CRIDDLE: The Government supports these amendments that fall into line with the previous amendments moved.

Hon KEN TRAVERS: I was remiss in not commenting on earlier debate on clause 5. As the minister mentioned, these amendments follow from clause 5. The Labor Party takes comfort from the Government's support and also agrees to the amendments.

**Amendments put and passed.**

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

**Clauses 19 to 24 put and passed.**

**Clause 25: Section 12 amended -**

Hon M.J. CRIDDLE: I propose that existing clause 25 be defeated. Substitute clause 25 is proposed as a result of the recommendations of the Standing Committee on Legislation concerning special licences, which are different from ordinary licences in that they are issued for 10 years. Pursuant to recommendation 1, which establishes special licences, the provision for 10-year licences is to be made in clause 12 of schedule 1. Clause 51 also refers to special licences.

Hon KIM CHANCE: The Opposition supports this amendment moved by the Minister for Transport. As the minister said, it will put into effect recommendation 1 of the fifty-first report of the Legislation Committee. It has particular application when landholders have access to a spring or a wetland within their property and are eligible to apply for a special licence if the spring is brought within the control of the Rights in Water and Irrigation Act. It is an important component of the legislation, and one widely misunderstood when the first draft of this legislation appeared. The Labor Party is keen to support this amendment.

**Clause put and negatived.**

**New clause -**

Hon M.J. CRIDDLE: I move -

Page 20, lines 1 to 20 - To delete the clause and insert instead -

**25. Section 12 repealed**

Section 12 is repealed.

**New clause put and passed.**

**Progress reported, pursuant to standing orders.**