

MACHINERY OF GOVERNMENT (WATER RESOURCES) AMENDMENT BILL 2003

Consideration in Detail

Clause 1: Short title -

Mr P.D. OMODEI: Clause 1 states -

This Act may be cited as the *Machinery of Government (Water Resources) Amendment Act 2003*.

I thank the minister for her response to the second reading debate. She obviously listened intently to the arguments put forward by members on this side of the House. The one thing the minister did not respond to concerned the mechanics of how the legislation would work and the points I raised concerning conflict of interest in relation to the gamekeeper-poacher - I think they were the words I used - and about how the Water and Rivers Commission would fit into the Department of Environmental Protection picture; in other words, the DEP is responsible for the environment. Obviously, approval for the construction of water dams or the sinking of bores would have an environmental impact and there may be a conflict between what was previously the DEP and the Water and Rivers Commission, which will now fall under one entity. If there were to be conflicts and environmental impacts, will the minister explain how they would be resolved when the same department also approves licence applications for either sinking a bore or constructing a dam?

Dr J.M. EDWARDS: There is no particular conflict of interest. At times there may be some tension, but we do not see any particular conflict of interest arising. Under the various Acts to do with water, the environment has to be considered. When a water allocation is being considered, the environmental water requirements are taken into consideration. The people in the Water and Rivers Commission already look at the impact that will have on the environment. When assessing the sinking of a big bore, we look at the potential impact on wetlands, rivers and other areas of the environment that could potentially be affected. A very big proposal would be referred to the Environmental Protection Authority. The EPA would decide whether or not to assess it. If the EPA decides not to assess a proposal, it gives advice; if it decides to do an assessment, it does a full-blown assessment. One argument is that it is not much different from what happens currently under the Environmental Protection Act. One part of the Act refers to high level environmental impact assessments. Another part refers to licensing works and approvals, which are lesser functions but are not seen to be conflicting, although at times different people carry out those functions. We believe those conflicts, to the extent they exist, are more tensions than conflicts and can be managed.

Mr P.D. OMODEI: I understand the minister's argument very clearly. It is exactly the same argument that occurred under the Conservation and Land Management Act when, going back 20 years to 1983, the Burke Government amalgamated forestry, fisheries, wildlife and national parks. Ultimately the Government referred the matter to the responsible body and came to a compromised decision. However, in reality over time the public of Western Australia demanded that the organisation be split, as there was a conflict of interest in that it was regarded as both gamekeeper and poacher. The coalition Government of the day moved to split the department into commercial and management sides. It is plain that the current Labor Government would have done exactly the same, yet it is embarking on the very act of creating a gamekeeper and poacher arrangement. Water would be better managed by having separate, independent departments that could give clinical and independent views of the situation rather than, as proposed by the Government, having people compelled to come to a compromised decision. The bureaucrats in the Chamber this evening know exactly what I am talking about. It would be better to have separate government departments, in a practical sense, not a bureaucratic sense, as has been done with the Department of Conservation and Land Management.

Dr J.M. EDWARDS: We could have some really interesting arguments. I would argue entirely the other way.

Mr P.D. Omodei: Of course you would, because you argue for this legislation.

Dr J.M. EDWARDS: Exactly. If someone proposes to do something that will have an impact on a wetland, the Water and Rivers Commission will consider the impact of the proposal on the wetland. However, it will then trot off to the Department of Environmental Protection and ask what it thinks will be the impact on the wetland.

Mr P.D. Omodei: You could have an independent DEP.

Dr J.M. EDWARDS: Not so much an independent DEP, but more an independent Environmental Protection Authority. I would rather have all that expertise scattered not across three agencies as occurs now, but across two agencies, and have that advice available immediately to people. One benefit that has occurred already was brought home to me in Geraldton. The owner of a business told me that previously a DEP inspector would come out to his land and consider the proposal and maybe a month later the water inspector would come out to the land and consider it. Recently one person came out and carried out the two inspections on the same day. I am happy for the member for Warren-Blackwood to argue for sequential processes that will take more time for approvals and more time to get developments through. However, this legislation will speed things up.

Mr P.D. OMODEI: I understand the argument and I know the minister has custody of this legislation. She has the numbers on her side of the House and ultimately, no matter what I say, she will win the debate. However, what I am saying, and as I said during the second reading debate, currently a large number of people in Western Australia are concerned about the bureaucracy going mad and not applying practical, sound commonsense to these matters. The minister might say in response that my proposal is an exercise in futility; however, the legislation must be applied practically to the people in the regions who put bores into the ground or construct dams and who have to deal with the bureaucracy on a day-to-day basis. The minister is proposing that a government department will come to a compromised decision and that the poor little bloke out in the regions will be forever beholden to somebody in one department that has no independence between management on one side and the environmental aspect on the other side. I reiterate that I do not believe the minister understands the great groundswell of opinion in Western Australia against that notion. I see the member for Moore sitting at the end of the Chamber and nodding with approval. He has been a member of Parliament for a long time and he is getting the same feedback that I am getting; that is, the bureaucracy is not listening to the great number of people in Western Australia, particularly in rural Western Australia, who are concerned that the bureaucracy is out of control. It would be a good move if the Government of today did not proceed with this legislation, because it will create another monster.

Dr J.M. EDWARDS: I am somewhat at a loss to follow the member's logic.

Mr P.D. Omodei: Maybe I should draw you some pictures, minister.

Dr J.M. EDWARDS: I do not think the member is that good! We say that it is not good enough for someone from Perth to go up or down to a property to give an opinion on someone's proposal. We say that that expertise is not unique and can be provided in one entity closer to where people want things done. That is what we intend to do.

Clause put and passed.

Clauses 2 to 89 put and passed.

Clause 90: Schedule 1 clause 29A inserted -

Mr P.D. OMODEI: The agreement to 88 clauses without dissent, because they are machinery-type clauses, indicates the level of cooperation that the Opposition is prepared to give this very important legislation. Proposed clause 29A states -

- 29A. Transfers of licence - death of licence holder**
- (1) If the holder of a licence (the "**original holder**") dies, the licence does not cease but continues, under this subclause, until the sooner of -
 - (a) the end of the 12 months immediately following the death of the original holder; or
 - (b) the time at which probate of the will, or letters of administration of the estate, of the original holder is granted.
 - (2) Any thing done, or omitted to be done, under the licence while it continues under subclause (1) by or on behalf of the estate of the original holder is as valid as it would have been if done, or omitted to be done, by the original holder.
 - (3) If probate of the will, or letters of administration of the estate, of the original holder is granted before the end of the period referred to in subclause (1)(a) (or that period as extended under subclause (5)), the executor or administrator becomes, on the grant of probate or letters of administration, the holder of the licence.
 - (4) This clause does not apply so as to extend the term of a licence that is for a fixed term.
 - (5) The CEO may, on application, extend the period referred to in subclause (1)(a) if the circumstances of the case warrant it.
 - (6) In this clause -

"estate" has the meaning given by the *Public Trustee Act 1941*.

This important clause deals with a matter that the Government recognises has not been covered in the past. Will the minister in her response explain what the situation would have been if the clause had not been inserted into the legislation? In other words, what action was taken in the past if a person died to whom a licence had been issued?

Dr J.M. EDWARDS: The member asks a very good question. Essentially, I understand that in the situation the member outlined, the department organised to issue a new licence as soon as possible to cover that effect. The situation needs to be clarified through this provision. Essentially, if a person dies, the licence is lost.

Mr P.D. OMODEI: Is the minister saying that in the past when somebody died, it was arranged, although it was not legal, for the licence to be transferred to another person? How was it done?

Dr J.M. EDWARDS: To ensure that the process was legally appropriate, a new licence was issued. A practical approach was taken to the problem. I need go no further.

Mr P.D. OMODEI: That is a very sensible answer. It is the way things should be done in a practical sense. I may be diverting from this clause slightly, but has the Government considered allocating the licence to the property rather than the person, so that the land use is protected by attaching the licence to the property? Attaching the licence to a person leaves open the possibility for good, viable agricultural and viticultural land to be taken out of production because the water licence is taken away from the land. In other words, through a transferable water licence entitlement, a person or a corporate body could buy a range of licences in a very fertile and productive valley or water catchment. It could then either sit on the allocation or allocate the licences to other parts of the State or district. Many unanswered questions remain regarding whether the water licence could be transferred outside the district to another part of the State or within the district, or taken out of production. It begs the questions. I do not make any excuses for former Governments. This is a vital issue relating to a practical and commonsense approach to the administration of the law in this State. Although this is a commonsense issue regarding the transfer of a licence within a family, it does not address the issue - I can find it nowhere in the legislation - of a Wentworth Group-type corporation buying licences willy-nilly. That corporation is on the other side of Australia, where water issues are of huge importance. Western Australia's water resource is much better managed than that elsewhere in Australia through good governance over time. This is a developing situation, and it could become serious. If somebody came in tomorrow and bought all the licences, what would the State do immediately - that is, if an entire district were taken out of production? Even if we moved to change the legislation, such action would have a major economic and social impact on that district. The answer is not in this clause, as I see it.

Dr J.M. EDWARDS: The member raises an issue addressed not in either of the two Bills before the House, but in the Rights in Water and Irrigation Act.

Mr P.D. Omodei: It should be!

Dr J.M. EDWARDS: No. The purpose of these two Bills is not to address the issues the member raises.

Mr P.D. Omodei: Why not?

Dr J.M. EDWARDS: Interestingly, we had an extensive debate in this very Chamber in 2000 during which the member put in place the rules by which we operate.

Mr P.D. Omodei: The then Minister for Water Resources did.

Dr J.M. EDWARDS: Will he come back? I refer to the Government of which the member for Warren-Blackwood was a minister and member of Cabinet. Presumably, there was some cabinet solidarity - although maybe not.

Rules apply to the allocations of licences. A difference in WA compared with other States is that people here need legal access to the land to get a licence. I assume that the member's hypothetical situation did not involve the Wentworth group of scientists, but some commercial entity.

Mr P.D. Omodei: It is a commercial entity in the eastern States that bought up a lot of licences.

Dr J.M. EDWARDS: The rules are different in this State from those found elsewhere. One needs legal access to the land to gain the licence. Generally speaking, people can only transfer within the catchment or water body from which the water is coming.

Mr P.D. Omodei: Are you saying that the licence is also applicable to the land, not only the individual?

Dr J.M. EDWARDS: One must have legal access to the land, which is different from what the member alluded to.

Mr C.J. Barnett: Can you separate the licence from the land?

Dr J.M. EDWARDS: It can be done, but one must still have legal access to the land. One must have a lease or contract.

Mr P.D. Omodei: That's nothing.

Dr J.M. EDWARDS: It is the member's legislation.

Mr P.D. Omodei: You're the Government, minister. You can't just pretend you're not the Government.

Dr J.M. EDWARDS: I confess that this issue has not been raised with me until the member mentioned it now.

Mr P.D. Omodei: And you are the minister in charge of this big thing!

Dr J.M. EDWARDS: Yes, and I meet a lot of people who talk about water. That is right.

If there was an assessment of the licence, and then a request for a transfer, it would be subject to exactly the same assessment as first occurs when a licence is issued; that is, the economic and environmental issues are assessed, along with the public interest. I believe that the public interest test alone would rule out any one corporation tying up a lot of licences in an area.

Clause put and passed.

Clauses 91 to 133 put and passed.

Clause 134: Section 5 amended -

Mr B.K. MASTERS: I have not had the opportunity to read section 5 of the Waterways Conservation Act that is to be amended by clause 134. I put to the minister the following statement that was put to me -

Local Governments currently have input into matters affecting their districts under the Waterways Conservation Act with an appeals mechanism to government where Local Government is in dispute with the Water and Rivers Commission over management of water management areas.

Under the proposed changes, Local Government will be in dispute with the Minister with inexpensive and simple appeal mechanism to government being replaced with recourse to the Courts. It will become a battle of David and Goliath in terms of resources to resolve disputes through the Courts.

Can the minister advise whether those comments are accurate, and whether local government will lose some significant ability to interact with the Water and Rivers Commission over the management of water management areas when the Bill is enacted, or am I looking at this from the wrong side of the argument?

Dr J.M. EDWARDS: I am informed that operationally it will be the same, except that the minister will be able to make the decision rather than the commission if there is a dispute.

Mr B.K. MASTERS: So local government will be able to get involved in the appeal mechanism to whatever will replace the Water and Rivers Commission; in other words, appeal to the minister? Is that a fair summary of the new position?

Dr J.M. EDWARDS: Yes. There will be no change in how it operates.

Mr J.P.D. EDWARDS: What costs will be involved if local government has to go through the courts? Has that been taken into consideration?

Dr J.M. EDWARDS: I am informed that it has never been the case that local governments have had to go to the courts. We have no intention of wanting that to happen. If that were to happen, we would deal with costs at that time.

Clause put and passed.

Clauses 135 and 136 put and passed.

Clause 137: Section 10 amended -

Mr P.D. OMODEI: The explanatory notes state -

Previously the EPA had the power to recommend which areas were to be declared 'management areas for the purposes of this Act'. These management areas were to be proclaimed and Management Authorities constituted for each area. With the dissolution of Management Authorities, reference to Management Authorities is removed and declared areas will be administered by the CEO and the Department . . .

The Minister will now have the power to make the recommendations to the Governor to declare management areas for the purpose of this Act.

The other part of the advice states that management areas will be administered by the CEO. Will the minister please advise who will actually be doing the administering? Obviously the minister will have the power to make recommendations to the Governor about the declared management areas. However, is the minister also saying that although she will have that power, the CEO will manage the administration of those areas? It seems to me that the CEO will have inordinate power. I am sure that when this Bill gets to the Legislative Council, not only this issue but the whole of the legislation will warrant a good looking over by a standing committee of the

Legislative Council, which appears to have more time and resources to look at these issues. It appears to me this CEO will have far more powers than any other CEO that I have had experience with in the past. Under this legislation, the CEO will have almost as much power as the minister. I put to the minister that, from past experience, the CEO will probably be more influential than most ministers, which will give truth to the old saying that Government never changes; only the politicians do. I am concerned about that, because I would like to think that the elected Government of the day will make the decisions rather than the bureaucrats, who sometimes tend to treat ministers with some disdain. How could it be that the lowly bureaucracy could know more about the running of the State than ministers of the Crown?

Dr J.M. EDWARDS: The minister will determine strategic matters, including the approval of plans and by-laws, and ensure that matters of state importance are decided according to government requirements. The CEO will have the operational power, including the issuing of licences and permits, and monitoring and enforcement duties. As we have discussed at some length tonight, the minister will retain the power to direct the CEO. The minister will make the recommendations to the Governor to declare management areas for the purposes of the Act. The CEO and the department will administer those areas.

Mr P.D. OMODEI: So what the minister is saying is that the CEO will run the show, and the minister will just sign off on orders and whatever. Talk about a cop-out! What about the minister of the day taking control of the legislation and telling the CEO what to do on a daily basis rather than some jumped-up bureaucrat telling the Government of the day how it should be running the State? This is what is happening in Western Australia. I see the member for Moore sitting behind the Speaker's Chair. The member for Moore is a statesman in his own right. He has great affinity with his community, and he communicates with his community and delivers that communication back to the Parliament. I have great admiration for the member for Moore. It is a shame he is not staying in this Parliament for another 20 years. The bureaucracy in Western Australia is taking over the running of Western Australia. When is the minister going to do the job that she is being paid to do?

Dr J.M. EDWARDS: I can only be amused by those comments, because one of the complaints that I get from my departments is that I am too hands-on and tend to interfere, so this is a really good balance; I really like what is coming forward. If the member cannot work out the difference between ministerial responsibility and CEO responsibility, then I can only despair at what he did when he was a minister.

Clause put and passed.

Clauses 138 to 206 put and passed.

Title put and passed.

Third Reading

DR J.M. EDWARDS (Maylands - Minister for the Environment) [9.40 pm]: I move -

That the Bill be now read a third time.

MR P.D. OMODEI (Warren-Blackwood) [9.40 pm]: I cannot let this Bill go through without making some final comments, although I have probably already made enough. It is a little sobering when members on this side of the House know that the Government has the numbers and it will pass this legislation, which I do not think is good legislation. I dare say that Oppositions have experienced it in the past and will continue to experience it in the future. We are creating a government department that will have a large staff and that will not have true accountability or independence. The Government is proposing that this legislation be covered under the Environmental Protection Act.

Dr J.M. Edwards: How?

Mr P.D. OMODEI: In its administration. Is the minister not the Minister for the Environment?

Dr J.M. Edwards: My portfolios are subject to various Acts.

Mr P.D. OMODEI: Yes, single ministers cover many aspects of portfolios. What would be the difference if the minister were called the Minister for Water Resources? She would still be the same minister but have several titles and therefore several responsibilities. It may be that some kind of independence would be created under that scenario. Why not have one minister for the whole of the Government? We could just have the Premier because we would not need 14 ministers. The minister could then say that instead of having 17 ministers under the previous Government, this Government used to have 14, but it has saved so much money because it now has one minister. What a lot of rot, and the minister knows it. She knows that a whole lot of line managers under her authority need to be paid the same amounts of money, whether S1, S2, S3, S4 or whatever. The minister should not give us that nonsense. She might be able to con the public but she will not con members of Parliament who have been here for a while.

The truth of the matter is that the minister's department will manage water and rivers, and where water and rivers have an environmental impact, they will be subject to another part of the department which is responsible for the environment. The minister might say that is exactly the same as if she had separate departments. It is not, and the minister knows it, because government departments retain their separate identity, professionalism and pride in what they do. The minister is doing a snow job on the public of Western Australia; it is as simple as that. As a city-based member of Parliament and minister, she fails to understand that the practical application of legislation around Western Australia no longer exists. The people of Western Australia, particularly of rural and regional Western Australia, have lost confidence in the Government and its bureaucracy and their ability to administer the laws of this State. That is a serious matter. The minister will see that reflected in the ballot box at the next election. As I said earlier, an old man will be prosecuted tomorrow or the next day for taking flora because he ran over them with his ute when he was crossing a salt pan. When people damage plants, it is referred to as the taking of plants -

Dr J.M. Edwards: May I ask how this is relevant to the Bill under discussion? This is the third reading in which the debate is much tighter than that for a second reading.

The DEPUTY SPEAKER: I am sure that the member is aware of the rules pertaining to a third reading speech and will direct his comments to that end.

Mr P.D. OMODEI: I am indeed, Madam Deputy Speaker. In the past you have always been very generous when I have strayed from the path.

The DEPUTY SPEAKER: Not too far.

Mr P.D. OMODEI: This is an environmental issue. I am talking about the attitude of people in rural Western Australia to what is happening in the bureaucracy of this State and how people are being penalised. This matter is probably sub judice, but an old man is about to be prosecuted for running over a few bits of scrub that kangaroos usually eat. Do we prosecute the kangaroos or the Department of Conservation and Land Management for allowing its kangaroos to eat these flora? It is a nonsense. What is happening out there is that people are losing confidence.

With the creation of this huge amorphous body, nobody will be responsible to anybody else. The minister might say that they are technically, but the minister will come up with a compromise decision. From a whole-of-government point of view, that might be a good thing because one government department or one CEO will never be in conflict with another. In fact, that is what needs to happen; we need independent government departments that put their point of view and strenuously stick to it. The minister does not understand that out there in the practical world of Western Australia where people make their living from grubbing in the dirt that certain practical things happen that must have a practical solution, not an academic solution or an amorphous government decision. This State has lost sound, commonsense government. As the shadow Minister for Agriculture and the shadow Minister for Regional Development, wherever I go I am asked what is happening to this State and where has commonsense gone when it comes to the laws of the State. That is what I am worried about, that is why I raise the issue and that is why I oppose this legislation.

Question put and a division taken with the following result -

Ayes (24)

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|------------------|--------------------|---------------------|---------------------------------|
| Mr P.W. Andrews | Mr J.C. Kobelke | Ms S.M. McHale | Mr J.R. Quigley |
| Mr C.M. Brown | Mr R.C. Kucera | Mr A.D. McRae | Ms J.A. Radisich |
| Mr J.B. D'Orazio | Mr F.M. Logan | Mr N.R. Marlborough | Mr E.S. Ripper |
| Dr J.M. Edwards | Ms A.J. MacTiernan | Mrs C.A. Martin | Mr P.B. Watson |
| Mr S.R. Hill | Mr J.A. McGinty | Mr M.P. Murray | Mr M.P. Whitely |
| Mr J.N. Hyde | Mr M. McGowan | Mr A.P. O'Gorman | Ms M.M. Quirk (<i>Teller</i>) |

Extract from *Hansard*
[ASSEMBLY - Tuesday, 2 December 2003]
p13969b-13975a

Mr Paul Omodei; Dr Judy Edwards; Mr Bernie Masters; Deputy Speaker

Noes (17)

| | | | |
|-------------------|---------------------|-------------------|------------------------------------|
| Mr R.A. Ainsworth | Mr J.P.D. Edwards | Mr B.K. Masters | Dr J.M. Woollard |
| Mr C.J. Barnett | Mr B.J. Grylls | Mr P.D. Omodei | Mr J.L. Bradshaw (<i>Teller</i>) |
| Mr M.J. Birney | Ms K. Hodson-Thomas | Mr R.N. Sweetman | |
| Mr M.F. Board | Mr R.F. Johnson | Mr M.W. Trenorden | |
| Dr E. Constable | Mr W.J. McNee | Mr T.K. Waldron | |

Pairs

| | |
|-------------------|-------------------------|
| Dr G.I. Gallop | Mrs C.L. Edwardes |
| Mr A.J. Carpenter | Mr A.D. Marshall |
| Mrs M.H. Roberts | Mr D.F. Barron-Sullivan |
| Mr D.A. Templeman | Mr M.G. House |

Independent Pair

Dr J.M. Woollard

Question thus passed.

Bill read a third time and transmitted to the Council.