

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

*Assembly's Message*

Message from the Assembly notifying that it had agreed to amendments Nos 1 to 64, 66 to 75 and 78 made by the Council; had disagreed to amendment No 79; had agreed to amendments Nos 65 and 77 with further amendments; and had disagreed to amendment No 76 and substituted new amendments in its place, now considered.

*Committee*

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

The Council's amendments Nos 65, 76, 77 and 79 were as follows -

**No 65.**

Clause 51, page 86, line 26 to page 87, line 28 - To delete the lines.

**No 76.**

Clause 64, page 100, lines 23 to 26 - To delete proposed section 26GJ.

**No 77.**

Clause 69, page 101, line 18 to page 105, line 17 - To delete the clause.

**No 79.**

New clause 80, page 110, after line 18 - To insert the following new clause -

**80. Standing to bring proceedings in respect of breach of this Act**

- (1) Any person may bring proceedings in the Supreme Court for an order to remedy or restrain a breach or a threatened breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.
- (2) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

The amendments made by the Assembly were as follows -

**No. 65**

Amendment agreed to with the following additional amendments -

Clause 51

Page 86, after line 25 - To insert the following new Division -

**Division 9 — Compensation**

**39. Compensation**

- (1) If a person suffers damage, including loss of profit —
  - (a) due to the exercise of a power under clause 24(2)(e)(i) in relation to a licence held by the person;
  - (b) due to the exercise of a power under clause 25(2)(e) in relation to a licence held by the person;
  - (c) due to the exercise of a power under —
    - (i) clause 24(2)(b), (e)(ii) or (iii), (f) or (h);

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- (ii) clause 25(2)(a), (b) or (d); or
  - (iii) if so prescribed for the purposes of this paragraph, in particular circumstances prescribed under clause 25(2)(g) in relation to a licence held by the person;
  - (d) due to the exercise of a power under clause 7(1) to refuse an application for a licence, as a result of which the continued taking of water from a water resource to which section 5C applies is not authorized, where, before, and at the time of, the application of section 5C to that water resource, water was taken periodically or continually from the water resource; or
  - (e) in circumstances prescribed by a local by-law,
- the Commission is, in accordance with this clause, to compensate that person for the damage, to the extent that it was due solely to the exercise of a power referred to in paragraph (a), (b), (c) or (d) or is in a circumstance prescribed under paragraph (e), if the person requests compensation.
- (2) Damage may be compensated for only if —
    - (a) it is due to the loss of a use which was —
      - (i) reasonable;
      - (ii) authorized by the relevant licence, or not inconsistent with this Act; and
      - (iii) consistent with the objects of Part III; and
    - (b) the person requesting compensation is not responsible for the damage and has attempted to offset or mitigate the damage as far as is practicable.
  - (3) Local by-laws may prescribe —
    - (a) the time within which compensation may be claimed and the procedures for making claims;
    - (b) the types of damage for which compensation is to be made; and
    - (c) how compensation is to be assessed.
  - (4) The Commission may require the person requesting compensation to provide information to it to enable it to make a decision with respect to compensation, and may require that person to verify that information by statutory declaration.
  - (5) Compensation is not payable in respect of an exercise of power referred to in subclause (1)(c) to a person who has requested compensation, unless —
    - (a) the effect of the exercise of the power on the person is permanent; and
    - (b) the Commission is of the opinion that the effect of the exercise of the power on the person is not fair and reasonable having regard to the exercise of the power in respect of other licence holders in the surrounding area.
  - (6) Compensation is not payable in respect of an exercise of power referred to in subclause (1)(d) to a person who has requested compensation, unless —
    - (a) the effect of the exercise of the power on the person is permanent;
    - (b) the Commission is of the opinion that the effect of the exercise of the power on the person is not fair and reasonable having regard to the exercise of the power in respect of other applications for a licence in the surrounding area; and
    - (c) the Commission is of the opinion that the damage suffered by the person is in respect of the lawful taking and use of water by that person since 1 July 1999 or before.

- (7) The Commission is to notify the person who made the request for compensation of the outcome of the request and, if the request is refused, the Commission is to notify that person of the reasons for that decision.
- (8) A dispute about the amount of compensation is to be determined by arbitration under the provisions of the *Commercial Arbitration Act 1985*, unless the parties agree on some other method of determination.
- (9) Compensation under this clause, and any costs incurred by the Commission under subclause (8), are to be charged to the Consolidated Fund, which this section appropriates to the necessary extent.

Clause 64, Page 100, after line 13 - To insert the following new subclause –

- (2) A person who requested compensation may appeal under Schedule 2 if the person is aggrieved by a decision of the Commission to refuse compensation under clause 39(5)(b) or (6)(b) or (c) of Schedule 1.

**No. 76**

Amendment disagreed to and the following amendments substituted -

Clause 64, Page 99, lines 17 and 18 — To delete “ to the Minister” and insert instead —

“ under Schedule 2 ”.

Clause 64, Page 100, lines 11 and 12 — To delete “to the Minister” and insert instead —

“ under Schedule 2 ”.

Clause 64, Page 100, line 16 — To delete “to the Minister” and insert instead —

“ under Schedule 2 ”.

**No. 77**

Amendment agreed to with the following additional amendments -

New Clause 69, Page 101, after line 17 — To insert the following new clause —

**69. Schedule 2 added**

After Schedule 1, added by section 51, the following Schedule is added -

**Schedule 2 — Appeal provisions**

[s. 26GJ]

**1. Definition**

In this Schedule —

“**appeal**” means an appeal under Part III Division 3B;

“**decision**” means a decision, direction or variation of a direction against which an appeal may be brought;

“**tribunal**” means a tribunal established under clause 5.

**2. Bringing an appeal**

- (1) A person who is entitled to bring an appeal against a decision may do so by lodging a written notice of appeal with the Minister within 21 days of being given notice of the decision.
- (2) The Minister may accept a notice of appeal after the expiry of the period of 21 days referred to in subclause (1) if the Minister considers it would be equitable to do so.

- (3) An agent may bring an appeal on behalf of a person entitled to bring the appeal, but the agent must, if required by the Minister, satisfy the Minister of the agent's authority.

**3. Notice of appeal**

A notice of appeal must —

- (a) state the name and address of the appellant;
- (b) set out or otherwise identify sufficiently the decision appealed against;
- (c) set out the grounds of the appeal and state briefly the facts on which the appellant relies; and
- (d) indicate whether the appellant wishes the Minister to exercise the power conferred on the Minister by clause 4.

**4. Decision may be suspended**

The Minister may suspend the operation of the decision appealed against during the period when the appeal is pending, but otherwise the bringing of an appeal does not affect the decision during that period.

**5. Referral of appeals to tribunal**

- (1) If a notice of appeal is lodged with the Minister under clause 2 the Minister, with as much speed as possible, is to —
- (a) establish a tribunal consisting of not less than one person and not more than 3 persons appointed by the Minister —
    - (i) from a panel of names submitted to the Minister in accordance with the regulations; and
    - (ii) who in the Minister's opinion have suitable expertise to hear and determine the matter; and
  - (b) refer the notice of appeal and any other relevant materials to the tribunal for the hearing of the matter.
- (2) Subject to subclause (3), the tribunal is to hear and determine the matter and is to make such decision as it thinks fit.
- (3) Before taking action under subclause (2), the tribunal may appoint a person to assist the Commission and the appellant to resolve the issues on which the appeal is brought with a view to the appeal being withdrawn in whole or in part.
- (4) The Minister may —
- (a) direct that any person who is appointed under subclause (1) or (3) is to be paid remuneration or allowances, or both; and
  - (b) determine the amount of any such payments on the recommendation of the Minister for Public Sector Management.
- (5) A decision of the tribunal on an appeal is final and must be given effect to by the Commission.
- (6) The tribunal is to give notice of the decision on an appeal and of the reasons for the decision in writing, or in such other manner as is prescribed, to —
- (a) the appellant;
  - (b) the Commission; and
  - (c) any water resources management committee established under Part III Division 3C for a locality to which the subject matter of the appeal relates.

**6. Hearings**

- (1) A tribunal may sit at such place and time as it considers appropriate or the Minister directs.
- (2) The tribunal is to afford —

- (a) every person who has appealed; and
- (b) any other person who, in the tribunal's opinion, should be given the opportunity to respond to any appeal,

a reasonable opportunity to call or give evidence and to make submissions (whether written or oral) to the tribunal.

- (3) A person may appear before the tribunal personally or be represented by counsel or, with the leave of the tribunal, by any other person.
- (4) The chief executive officer of the Commission, counsel for the Commission, or a person employed or engaged in the Commission and authorized by the chief executive officer to do so, may appear before the tribunal to represent the Commission.

**7. Proceedings at hearing**

- (1) The tribunal is to act according to equity and good conscience and the substantial merits of the case without regard to technicalities and legal forms and with as much speed as possible.
- (2) The tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.
- (3) To the extent that it is not prescribed by the regulations the tribunal is to determine its own procedure.

**8. Case stated**

- (1) If a question of law arises in proceedings before the tribunal, the tribunal may, in accordance with the rules of court, state a case for the opinion of the District Court upon the question.
- (2) The District Court has jurisdiction to consider and determine any case stated and to make such orders as it thinks fit with regard to the case and to the costs of and incidental to the consideration and determination of the case.

**9. Costs**

The tribunal may make such orders for costs as it thinks fit.

**10. Tribunal may dismiss frivolous or vexatious appeals**

The tribunal may dismiss any appeal if in the tribunal's opinion the appeal has been made frivolously, vexatiously or for an improper purpose.

**11. Powers of tribunal**

The tribunal may —

- (a) by summons require any person —
  - (i) to attend before the tribunal; or
  - (ii) to produce any document before the tribunal;
- (b) inspect any document produced before it, and retain it for such reasonable period as is required, and make copies of the document or any of its contents;
- (c) require any person to swear to answer truly any relevant question put to that person by the tribunal or any person appearing before the tribunal (and for that purpose may administer any oath or affirmation); or
- (d) require any person attending before the tribunal (whether that person has been summoned to appear or not) to answer any relevant question put to that person by the tribunal or any person appearing before the tribunal.

**12. Offences**

- (1) A person who —
  - (a) having been served with a summons to attend before a tribunal, fails without reasonable excuse to attend in obedience to the summons;
  - (b) having been served with a summons to produce before a tribunal any document, fails without reasonable excuse to comply with the summons;
  - (c) misbehaves before a tribunal, wilfully insults a tribunal or a member of the tribunal, or interrupts the proceedings of a tribunal;
  - (d) refuses or fails without reasonable excuse to swear, or to answer any question, when required to do so by a tribunal; or
  - (e) makes, before a tribunal, a statement that —
    - (i) the person knows to be false or misleading in a material particular; or
    - (ii) omits anything without which the statement is, to the person's knowledge, misleading in a material particular,commits an offence and is liable to a fine not exceeding \$2 000.
- (2) For the purposes of subclause (1)(d), it is not a reasonable excuse for a person to refuse or fail to answer any question, on the ground that the answer to the question might incriminate the person or render the person liable to a penalty.
- (3) Despite subclause (2), an answer given by a person pursuant to a requirement under clause 11 is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence against this clause.

**13. Staff of tribunals**

There are to be appointed under Part 3 of the *Public Sector Management Act 1994* such officers as are necessary to assist tribunals to perform their functions under this Act.

**14. Regulations relating to tribunals**

- (1) The regulations may provide for any matter necessary or convenient to give effect to this Schedule.
- (2) Without limiting subclause (1), the regulations may —
  - (a) provide for the procedure for selecting a panel of names with relevant expertise for submission to the Minister under clause 5(1)(a)(i), including, but not limited to, the persons who are to select the panel, the number of persons in the panel, and the collective expertise of the panel;
  - (b) prescribe matters relating to the practice and procedure of tribunals;
  - (c) provide for the enforcement of orders of tribunals; and
  - (d) prescribe fees payable in respect of anything done under this Schedule.

Clause 72, Page 106, after line 29 - To insert the following subclause -

- (2) After the commencement of this Act but before regulations under Schedule 2 of the Principal Act regarding a panel of names from which a tribunal is to be appointed are made, an appeal to which that Schedule applies —
  - (a) if the appellant so agrees, is to be heard and determined as if clause 5(1)(a)(i) of that Schedule were deleted; or

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- (b) if the appellant does not so agree, is to be heard and determined as soon as is practicable after those regulations are made.

Hon M.J. CRIDDLE: I move -

That the Council agree to the Assembly's further amendments to the Council's amendments Nos 65 and 77.

Amendment No 65 deletes the unsatisfactory compensation provisions proposed in the Bill. Further amendments introduced in the lower House will expand the compensation provision as suggested in recommendations 4, 5 and 6 of the Legislation Committee's report. The Government agreed to implement all the Legislation Committee's recommendations. However, because of the limit in section 46 of the Constitution Acts Amendment Act on the Council's powers to introduce amendments that have financial implications, these amendments had to be introduced in the other place. With the introduction of these amendments, compensation can be paid if the licence is altered. Compensation will also be payable if a licence for existing use is refused when licensing is introduced. These amendments also provide for exemptions from compensation, as recommended by the Legislation Committee. Compensation will not be paid if the change is fair or reasonable. A change that is fair and reasonable will apply equitably to all water users in the area. Compensation will be paid only if the reduction by one user was unfair because there was no commensurate reduction in the licence of another user in the same area; for example, compensation will not be paid if all water users are required to operate efficiently, even if the users with less efficient practices have a larger reduction in use. What is fair and reasonable will be influenced by local practice. It will be up to the Water and Rivers Commission to decide whether the change is fair and reasonable. If people do not agree with the commission's decision, they have the right of appeal. Further exemptions for compensation apply to the water use that was established after 1 July 1999.

The Legislation Committee recommended that compensation should not be mandatory for those water users when licensing is introduced. I understand the committee considered this restriction was necessary to prevent the explosion in the demand for water, which could jeopardise the environment and existing water users. Should disputes arise over the size of compensation, amendments provide for arbitration under the Commercial Arbitration Act 1985 or in any other agreed way.

Amendment No 77 removes schedule 2, which would have established a ministerial appeal system. A further amendment was introduced and passed in the other place to insert a new schedule 2, which will establish a tribunal system and transitional provisions for appeals that were made before the regulations establishing a tribunal were formulated.

Hon KEN TRAVERS: It is incumbent on me to speak on these points. I agree that, in essence, these amendments pick up the recommendations of the committee, and I congratulate the Government for that. The Australian Labor Party has long campaigned for amendments to enhance the compensation provisions of the legislation and to make the appeals mechanism truly independent. The only regret I have with the whole process is that the shift by the Government to accept these amendments was not made earlier, so there could have been broader consultation on the remainder of the Bill, which members previously indicated was very good and which the community accepted.

These were two of the key sticking points. They were not picked up at an early stage and, as a result, there was not extensive consultation, other than one side saying that broader compensation provisions and independent appeals mechanisms should be included and the other side saying they should not be included. The Labor Party is pleased, and appreciates, that the Government has come to the table and supported these amendments to the original draft legislation that was brought before the Chamber.

I have one question of the minister, which relates to amendment No 77. Obviously, the whole point of this legislation is to set up an independent appeals tribunal, which will be independent of the minister. Clause 13 of amendment No 77, headed "Staff of tribunals", states -

There are to be appointed under Part 3 of the *Public Sector Management Act 1994* such officers as are necessary to assist tribunals to perform their functions under this Act.

I am interested to know whether that provision concerning those appointments under part 3 of the Public Sector Management Act means the minister will be able to direct in any way any staff assisting the tribunal. I do not know whether the minister is in a position to answer that. If the Attorney General is not far from the Chamber on urgent parliamentary business, perhaps he will advise whether that clause provides for ministerial direction to

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those staff working on the tribunal or whether they would be answerable only to the tribunal members appointed by the minister.

Hon M.J. CRIDDLE: The person is a part-time officer, as is the situation with Fisheries WA. My understanding is that even if the minister directed those staff, the tribunal would still make the decision.

Hon Ken Travers: So they are not subject to ministerial direction?

Hon M.J. CRIDDLE: The tribunal is not.

Hon Ken Travers: But what about the individual staff members?

Hon M.J. CRIDDLE: I understand that the minister is able to direct the commission, and this person would be a commission officer. However, I will clarify that.

Hon Ken Travers: It is not a huge point, but I would appreciate it if that point could be clarified.

Hon NORM KELLY: I take it that the staff of the tribunal would ordinarily be staff working for the commission, and they would be seconded to assist the tribunal in its duties. The normal work of these officers would be covered by the provisions of the Public Sector Management Act, which would include their being under the direction not of the minister directly but of the Chief Executive of the Water and Rivers Commission when carrying out their work.

Hon M.J. CRIDDLE: Yes.

**Question put and passed; the Assembly's further amendments to the Council's amendments agreed to.**

Hon M.J. CRIDDLE: I move -

That the Council agree to the substituted amendments made by the Assembly to the Council's amendment No 76.

The Legislative Council cannot introduce an amendment to create a tribunal or appeals system in accordance with the recommendations of the Standing Committee on Legislation for the same reason that prevented the Council from making amendments to the compensation provisions; that is, the establishment of a tribunal would have financial implications for the State. Amendment No 76 would have removed proposed section 26GJ, which requires appeals to be dealt with under schedule 2. The other place disagreed with that amendment, as section 26GJ is required to ensure that appeals are dealt with under new schedule 2, which has been re-introduced by the Assembly's amendment to amendment No 77. Proposed section 26GJ should stand, and the Government supports the decision of the lower House to disagree with amendment No 76. The lower House's further amendments to amendment No 76 change the wording of the Bill's provisions to delete any reference to the minister determining appeals, as they are now to be determined by the tribunal.

**Question put and passed; the Assembly's substituted amendments agreed to.**

Hon M.J. CRIDDLE: I move -

That the Council do not insist on its amendment No 79.

This amendment would allow any person to take legal action to obtain an injunction to restrain a threatened breach of the Act. As I have said, the Government is opposed to this type of provision. The Government's policy is that the court is the proper jurisdiction to determine who should be able to bring legal action of this type. Currently, a person must convince the court that he or she has sufficient interest in the matter to bring legal proceedings to restrain a breach of the Act. Such action will be allowed if the person is affected by a breach of the law. The courts have established their rules, and it is appropriate for them to change those rules if they think that justice may be done. Each case is considered on its merits. This is a separation of powers issue, and the courts should have the discretion to decide on not only matters brought before them, but also who should have the right to take action.

This amendment is modelled on section 123 of the New South Wales Environmental Planning and Assessment Act, which restricts such action to the Land and Environment Court of New South Wales. That specialist court was established in 1979 to deal with environmental and land planning actions. Western Australia does not have a court of that nature; therefore, general proceedings for legal actions should apply. It is not necessary for Parliament to restrict the court's discretion in this matter.

Hon NORM KELLY: It is interesting that the policy the minister alluded to is the opposite to that which is contained in the law and order legislation passed by this House tonight. The National Party must hold cabinet meetings separate from the Liberal Party for the coalition to come up with such contradictory policies for the two Bills, and for us to hear about them in the space of one or two hours. I agree that the issue is the separation of



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powers, although I do not support the minister's motion. I support giving Parliament the ability to determine who has standing before the courts. This has been debated at length. Members may recall Hon Bruce Donaldson having a touch of the Wilson Tuckeys and being worried that all the dreadlocked people would turn up to the Supreme Court.

Hon B.K. Donaldson: And the Rebels motorcycle gang.

Hon NORM KELLY: That is right; the Rebels motorcycle gang will ride up from Dunsborough, concerned about water use by the horticultural industry.

If that was the standard of debate in the coalition party room, I can understand why the Government does not want this clause in the Bill. The New South Wales experience has shown that this clause will not open the floodgates to a range of actions; it will allow the courts to determine the outcomes of prerogative writs. This clause simply allows a person to initiate a prerogative writ before the courts. The arguments the minister has put forward do not hold water. For those reasons the Australian Democrats will not support the motion. We believe this clause should stay in the Bill.

Hon GIZ WATSON: As this was a Greens (WA) amendment in the first place, we do not support the amendment before the Committee. Currently, because of the way in which standing is interpreted, there must be a financial or proven economic impact on the party. To me that is an aberration. The party has no standing in the court unless it can prove that it will be affected by a decision for financial or economic reasons. As I mentioned in the previous debate on this issue, one of the cases in which I was involved was the coastal waters alliance when it took the Environmental Protection Authority and the Minister for the Environment to court over the issue of shell sand dredging in Cockburn Sound. The issue of standing was the first matter we encountered to determine whether we could bring a case. It was interesting that because that alliance involved fishing groups, there was no question about standing in the court. However, if that alliance had comprised only environmental groups, it would have had to overcome an initial barrier in order to bring the case. That is rubbish. Everybody has a right, if they wish to exercise it, to see environmental protection enforced.

I hope this legislation will enforce protection of water resources. If the matter of standing is still in question, the only people able to bring cases will be water users.

Hon Ken Travers interjected.

Hon GIZ WATSON: They may or may not. Why not make that clear? More and more courts are accepting that not only those who have a financial or a commercial interest have standing; however, that being the case, why not make that explicit in the legislation? That is the point of this amendment. It simply indicates that people on the other side of the Chamber are only about protecting those with a financial interest.

Hon B.K. DONALDSON: I cannot contain myself. Hon Giz Watson is simplifying her amendment, because it is about third party rights. The amendment would be abhorrent for Western Australia. One of the great aspects of the Bill is that it has enough provisions as far as the environmental situation is concerned. Part of the compensation is environmentally based. The Bill clearly states what people can do with the water; those provisions are already in the Bill. There is an old saying that one does not go to a third world country and find a national heritage trust fund, for argument's sake. It is an old adage that a country will have a healthy environment if it has a healthy economy.

Several members interjected.

Hon B.K. DONALDSON: Let us take it to the next degree. I talked about the dreadlocks and the Rebels motorbike riders, but let me give members another example -

The CHAIRMAN: Order! The member may wish to address the Chair rather than interjectors.

Hon B.K. DONALDSON: I thought I was talking to you, Mr Chairman, and ignoring the unwelcome interjections.

I will give another example of what third party rights would mean. Hon Kim Chance might be busy putting in a crop along the Kellerberrin-Doodlakine road. A third party driving along there might say to himself that Hon Kim Chance was damaging the environment because a bit of dust was rising from behind the machine. He could be off to the Supreme Court applying for an injunction. Hon Kim Chance would have to defend the case to allow his normal farm management practices to continue.

Hon Mark Nevill: It would be all for his own good.

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Hon B.K. DONALDSON: The point is that he would have to prove his innocence, irrespective of the fact that the court would throw it out -

Hon Ken Travers: It would not.

Hon B.K. DONALDSON: It would. Hon Giz Watson may shake her head, but she should look very carefully at her amendment, because it is, quite frankly, one of the most outrageous amendments I have seen in this Parliament. With all due respect, I do not think the member looked very closely at the Bill and understood it.

Hon Giz Watson: I looked at it for at least 12 months.

Hon B.K. DONALDSON: I am disappointed that she has raised the issue at a later date when it could have been raised in the forum of which she was part.

Hon Giz Watson: I did raise it.

Hon B.K. DONALDSON: I cannot remember whether -

Hon Norm Kelly: It is in the report. Have another read.

Hon B.K. DONALDSON: That is fine, but the third party rights would never be successful. I am vehemently opposed to their imposition, because it would set one of the most dangerous precedents I have ever seen in Western Australia. The rights that would be given to a third party would be incredible. The member may think that I was joking about the dreadlocks and the Rebels bikies coming out of the forest, but there are some environmental Nazis. I gave the example of some poor guy trying to plant vines. I support the minister and the Government in absolutely opposing what Hon Giz Watson is trying to impose on the people of Western Australia. It is more than a mere simplification; obviously the member does not understand the consequences of what she has proposed.

Hon MARK NEVILL: I must defend Hon Wilson Tuckey from the arrogant views that have been expressed about him. He is doing a fine job on salinity and making sure we have a sustainable forest industry, and he is not supporting the mob that is trying to wipe it out. He is also doing a fine job on Derby tidal power.

Hon Norm Kelly: You do not think he is the problem, then?

Hon MARK NEVILL: I do not think he is the problem; some of his critics are. At least he has the guts to stand up to a few of them.

Hon Giz Watson said that it was rubbish that rich countries had the best environments. She should compare Switzerland and Sweden with India and China. She will find out which countries have the best environments by far. If an economy is in a bad state, the environment usually wears the consequences.

The amendment was obviously moved when I was paired, because I would have opposed it. Lawyers and courts rarely resolve issues. They seem to be the favourite place to which people go to try to resolve issues and get compensation. Other countries do not experience the large number of court cases dealing with workers compensation and so on that we experience in this country. There are better methods to resolve issues. I will look very critically at any future Bills, and if the role of lawyers is not productive, I will move amendments. There is a place for lawyers, but they have been overused - they are determining what happens in every field of human endeavour. Native title is a classic case of lawyers doing well to the detriment of everyone else.

This is a bad precedent. The courts should determine standing, although in some cases they interpret it too narrowly. In years gone by I have felt that people should have been given standing but they have not. That is up to the courts to determine. Anyone who lodges a prerogative writ in any court must have standing to do so, and there should be no difference in a case involving rights to use water. I support the minister's view that this amendment should be rejected.

Hon KEN TRAVERS: During the original debate on this matter I outlined the ALP position on this amendment. Labor members have heard nothing from Hon Bruce Donaldson tonight or the last time he got to his feet to rant and rave to convince us not to support this amendment.

This Bill is about modernising water legislation. There is no doubt in my mind that the courts have moved a long way during the past few years.

Earlier tonight the minister interjected on Hon Giz Watson and I said that the courts would recognise standing quickly on this matter because of the way the Bill has been drafted. I looked forward to the minister's disagreeing, but I think he agreed and said that he expects the court to recognise standing. If that is the case, let us modernise the legislation and pass this amendment. We should do the job properly. The member can rest

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easily because the bikies who came from New South Wales two weeks ago have not gone running to the New South Wales Land and Environment Court to extort money from people. The president of the bikie gang did not appear to be aware of it. Perhaps after reading the member's speech he will take it up. I assure the member that those who wear dreadlocks and the bikies will not be able to misuse it.

This is a simple matter. We are modernising the legislation. We have not modernised other legislation tonight, but we are modernising the Rights in Water and Irrigation Act 1914. It is time we modernised it completely, not in a half-hearted fashion.

Hon NORM KELLY: I appreciate the ALP's continued passion about and support for the passage of this amendment.

Hon Ken Travers: It is only because it is a Greens' amendment.

Hon NORM KELLY: I am fully aware of that. Some members are aware of how these amendments came to be introduced by the Greens (WA) and the Australian Democrats. If the ALP is in government after the next election, I hope that it will expedite this matter with a further amendment Bill, which will, once again, have the support of the Australian Democrats and the Greens.

Question put and a division taken with the following result -

Ayes (14)

Hon M.J. Criddle	Hon Ray Halligan	Hon M.D. Nixon	Hon W.N. Stretch
Hon Dexter Davies	Hon Barry House	Hon Simon O'Brien	Hon Muriel Patterson ( <i>Teller</i> )
Hon B.K. Donaldson	Hon Murray Montgomery	Hon B.M. Scott	
Hon Peter Foss	Hon Mark Nevill	Hon Greg Smith	

Noes (13)

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

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Pairs

Hon N.F. Moore	Hon Christine Sharp
Hon Max Evans	Hon Ljiljana Ravlich
Hon Derrick Tomlinson	Hon Tom Helm

**Question thus passed; the Council's amendment not insisted on.**

*Report*

Resolutions reported, the report adopted, and a message accordingly returned to the Assembly.