Legislative Council

13/06/2002

Western Lands Amendment Bill

Hansard - Extract

Second Reading

The Hon. MICHAEL COSTA (Minister for Police) [8.42 p.m.]: I move:

That this bill be now read a second time.

The Western Lands Amendment Bill represents the most important and historic package of reforms to the management of the Western Division to come before this Parliament in more than 100 years, since the enactment of the Western Lands Act in 1901. The bill will enable a system of legal roads to be established, together with legal access to all rural properties. It will replace the outmoded rental system with a new scheme that is more equitable and simpler to administer. It will establish a broadly based advisory council to advise the Minister on matters affecting the Western Division. In addition, the bill contains many other reforms that will introduce greater efficiency and flexibility into dealings with, and management of, Western Lands leases. In the past century the Western Division has changed a great deal, but the legislation underpinning its management has lagged behind. The result has been that social and economic opportunities for Western Lands residents and visitors have been unnecessarily restricted. This bill is designed to remedy that situation.

The Western Division is that part of the State situated to the west of a line running from the Victorian border near Balranald to Mungindi in the north, and covers 42 per cent of New South Wales. The division is special in many ways and its people have a distinct identity. It is sparsely populated, with few towns and cities. Rainfall tends to be low and unreliable. Scientists classify much of it as rangeland, but its semi-arid ecosystems have important biodiversity and other conservation values. A significant portion in the north-west, known as the unincorporated area, does not have sufficient population to support its own local government. The principal land-use since the area was opened to European settlement in the nineteenth century has been sheep grazing. No region has been more sensitive to the fluctuations in wool prices, which, I am pleased to say, have recovered after many years of serious depression.

However, the long-term trend for wool—like most other commodity prices—will probably continue to be downward. Economic development in the division has tended to occur in other farming activities, and in tourism and recreation. In recent years there has been increased use of dryland and irrigated agriculture, particularly along the rivers, in the north-east and along the eastern and southern margins of the division. An urgent matter has arisen and I am required to leave the Chamber immediately. I therefore ask my colleague the Minister for Juvenile Justice to continue the second reading speech.

The Hon. CARMEL TEBBUTT (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [8.37 p.m.]: The differences in climate and landscape across the division are reflected in the sizes of average rural properties. They range from 5,000 hectares in the Wentworth and Carrathool local government areas to 54,000 hectares in the unincorporated area. The total area of grazing leases is approximately 30 million hectares, which includes 883,000 hectares of land where cultivation permits are in force. The total area of agricultural leases is approximately 337,000 hectares. Another special feature of the Western Division is land tenure. Like rangelands in other States and overseas, 95 per cent of the division has been retained as Crown land, with pastoralists holding leases in perpetuity rather than freehold title. These lands have been administered since 1901 under the Western Lands Act.

This bill will give effect to proposals arising from the Western Lands Review, undertaken by a team led by the Hon. John Kerin between 1998 and 2000. The previous Minister, the Hon. Richard Amery, announced the independent review of Western Division legislation and administration on 11 March 1998. The review team, chaired by the Hon. John Kerin and assisted by consultants, undertook an extensive public consultation process over an 18-month period. The first round of public consultation identified issues impacting on long-term sustainable management of the Western Division. The outcomes of this consultation resulted in the review team preparing an options paper entitled "Improving the Western Division: Have Your Say", published in August 1999. Drawing on the public responses to the options paper, six independent consultancy reports and meetings with over 400 stakeholders, the review team prepared its Western Lands Review Final Report. The report was released in March 2000 for a five-month feedback period. The report made 57 recommendations, and attracted a total of 216 submissions.

This bill gives effect to many of the final report's recommendations. It will be clear to honourable members who are familiar with the final report that the Government has not adopted all of Mr Kerin's recommendations. Clause 3 of the bill is a formal provision which gives effect to the amendments to the Western Lands Act 1901, set out in schedules 1, 2, 3 and 4. The principal focus of the bill is to put the legal infrastructure in place to improve legal access across the Western Division. This is the most critical issue for most stakeholders. This bill will amend the Western Lands Act to enable cost-effective implementation of a legal road and easement access network. The need for this bill cannot be understood without reference to the history of access arrangements in the Western Division. From the time of the commencement of the Crown Lands Alienation Act 1861, the former Department of

Lands adopted a policy, when subdividing Crown lands for sale or lease in the Eastern and Central Divisions, of ensuring that each parcel intended for separate occupation would as far as practicable be serviced by land reserved as a road.

However, this policy was not routinely followed in the Western Division, and settlers used a series of undefined tracks to provide practicable means of access through the division. In many cases these tracks remain in use today, although most have never been formally opened by the Crown as public roads or dedicated to the public. Currently, few roads within the division have been properly established by being formally removed from leases and gazetted as public roads. This applies even to main transport routes such as sections of the Silver City Highway. No legal access has been created for the great majority of the 5,000 rural leases within the division. The current system of access is far from satisfactory for a number of reasons. First, there is uncertainty about the public's right of access through leases and to places of interest. This acts as a break on the development of the tourism and recreation industries.

Second, there is the problem of legal liability should a road accident occur. Third, many lessees can only reach their properties by crossing neighbouring properties, and there is the potential for access to be obstructed when disputes between neighbours arise. Fourth, in the absence of an official legal system of roads, land-holders have little control over who enters and crosses their land—a situation that threatens the safety and security of their families. Western Lands lessees and other interested parties have quite reasonably expressed dissatisfaction at a system of access that they consider is uncertain, unsafe and associated with unknown legal liability. This was reflected in the findings of the Western Lands Review. Schedule 1 makes amendments to the Act to provide for the establishment of public roads and rights of way. It would be possible to create legal roads and easements using existing legislation.

This would entail acquisition of roads under the Roads Act, pursuant to the Land Acquisition (Just Terms Compensation) Act 1991. However, because the task entails the provision of roads and easements for some 1,500 individual land-holdings comprising approximately 5,000 leases, proceeding under existing legislation and processes would be an administrative task of enormous proportions. To illustrate the size and complexity of this task, the 271 kilometres of the Cobb Highway between Wilcannia and Booligal pass through 30 leases. It is estimated that the administrative and legal costs associated with using existing legislation would be in the order of $10 million. This bill contains an alternative legislative scheme that empowers the Minister to compulsorily acquire land needed for roads without complying with the pre-acquisition provisions of the Land Acquisition (Just Terms Compensation) Act and without the payment of compensation.

The Hon. Dr Brian Pezzutti: Why not? You are joking!

The Hon. CARMEL TEBBUTT: I have just explained that. The estimated administrative costs for this scheme are only a quarter of the costs that would be involved if the existing legislation were relied upon. It would not be appropriate for compensation to be paid to land-holders affected by the creation of roads. The roads already exist in a physical sense, and lessees will be the net beneficiaries of the creation of a legal roads system. As a matter of administrative policy, decisions to designate routes as public roads will be made only after consultation with local government, lessees, the Roads and Traffic Authority [RTA] and other interested parties. It is proposed to identify those routes that provide essential linkages between towns and other popular locations, and to create them as public roads. Maintaining the roads will become the responsibility of local government when they lie within a local government area, or the RTA when the roads lie within the unincorporated area.

It is not anticipated that new roads will be physically created. These thoroughfares are already in use, and it is only the legal entities that will be created. The vast bulk of roads to be dedicated are already maintained by either the RTA or councils. Land-locked land-holdings are properties that have no road access and where current access is through other properties. The most cost-effective way to provide clear legal access to them is to create a system of easements. The creation of an easement rather than a road has advantages for both Western Lands lessees and the State. Only those people who are authorised under the terms of the easement—that is, the lessees and the lessees' licensees and invitees—are entitled to use the easement. The land, and improvements thereon, remains with the lease and consequently no severance or loss of property occurs. The State does not become liable for the maintenance of the road or for compensation. And the cost of survey and recording the easement title is significantly less than the cost of creating a public road.

The creation of an easement out of the leasehold interest will not affect any native title rights and interests. In the case of the easements, compensation would certainly not be appropriate, as easements will be created only with the agreement of land-holders, and land-holders will be the principal beneficiaries. In implementing this scheme, the Government will endeavour to maximise the creation of easements to deal with lease access issues. This will have the advantage of minimising the burden on local councils, which do not have the resources to maintain a more extensive road network. The legislation also provides that when lessees are in dispute over the creation of an easement the parties may take the issue to the local land board for mediation. Tracks that are not required to serve public or lessee access requirements will become private routes accessible to the land-holder only. As public roads and easements are gazetted, the current access provisions in the Act and in Western Lands leases will be progressively withdrawn.

I emphasise that the public roads within local government areas [LGAs] will continue to be maintained by councils. The Roads and Traffic Authority will maintain the public roads in the unincorporated area. Matters such as weed control within the road corridor are the responsibility of the relevant roads authority. Within the LGA, that is the council; in the unincorporated area it is the Department of Land and Water Conservation. Easements will be

maintained by the lessees through whose leases they pass. That is, local government and the RTA will continue to maintain much the same roads as they do today. Land-holders will not be compelled to fence public roads once they are created. In many cases major roads are already fenced on one side or on both sides, but neither the Government nor councils will compel land-holders to put up fences.

Once the new access system is in place, the public's rights of access will be limited to public roads. A person will be permitted to use an easement if that person falls into the class of person permitted to use that particular easement. This will be set out in the instrument that creates the easement and will be displayed on signs on the easement. Of course, the creation of easements, however restricted their legal instruments may be, will not affect the entry rights of Government officials who have a statutory right of entry to carry out their duties under State or Commonwealth laws. I also note that the access arrangements will be rolled out gradually so that current general access across leases is not withdrawn until the system of roads and easements is in place. Similarly, opal miners have relied upon the general access provisions in schedule A of the Western Lands Act. They have expressed concern that they will lose this provision before new access arrangements are in place. I can assure them that this part of the legislation will not commence until new access infrastructure is in place.

I am also aware that opal miners have long-term problems with planning and access matters. The Government will continue to assist in the resolution of these matters, and the Department of Land and Water Conservation will work with the Department of Mineral Resources, the Department of Planning, lessees and miners to find a workable solution to these problems. I also note that the Minister for Land and Water Conservation has discussed with the Minister for Fisheries the access issues for those who engage in fishing. Fishers organisations will be invited to be involved in the consultation process on which routes will become public roads. Proposed section 35U enables a dispute over a proposal to create or release an easement to be referred to a local land board for mediation. Participation in mediation proceedings is to be voluntary. The parties to the proceedings are to bear their own costs. Evidence in the proceedings is to be inadmissible in other proceedings, and the local land board and the parties are to have the same protections and immunities as apply to civil proceedings before a Local Court.

Schedule 2 deals with the proposed Western Lands Advisory Council. Although the Government decided not to adopt the more radical institutional changes proposed by the Western Lands Review, it did support the recommendation that the Minister should be advised by a broadly based statutory advisory body. The proposed Western Lands Advisory Council [WLAC] is similar in its functions and breadth of membership to existing advisory bodies established under the Water Management Act 2000 and the Native Vegetation Conservation Act 1997. It will replace the administratively created Western Lands Advisory Board. The bill establishes a Western Lands Advisory Council comprising specified individuals and representatives of groups that have an interest in the Western Division.

I cannot emphasise too strongly the significance of section 8B (3). Subsection (3) states that the members of the Western Lands Advisory Council must have, in the Minister's opinion, a current or recent connection with, or a relevant interest in, the Western Division. In the consultation process associated with this bill, it was indicated on many occasions that there is a need for the council members to have past or present knowledge of the Western Division so they can make informed decisions. The principal functions of the Western Lands Advisory Council as set out in the bill are to advise the Minister on matters relevant to the objects of the Act, to advise the Minister on matters affecting the administration of the Western Division, and to consult with persons and bodies having an interest in any matter affecting the administration of the Western Division.

Further provisions relating to the constitution and procedure of the Western Lands Advisory Council are set out in proposed schedule 5. The 14 members comprise: an independent chairperson; four people representing lessees in the Western Division, with two to be nominated by NSW Farmers Western Division Council, one to represent pastoralists of West Darling, and one to be non-aligned; a person representing the interests of environment protection groups; two people representing local councils; a person representing catchment management boards; two people representing the interests of Aboriginal people, the Western Lands Commissioner; a person representing the Minister for the Environment; and a person representing the Minister for Agriculture.

As recommended in the Western Lands Review, the bill establishes a completely new system for setting and periodically adjusting rents. The existing rental system is anomalous, subjective, inequitable and out of date. The inequity is demonstrated by the fact that some land-holders are paying up to 30 times as much rent as their neighbours for the same land use on similar land. These anomalies arise, in part, from a system that sets rent on leases for agriculture and leases for grazing in different ways. For example, rent on leases for agriculture is set at 2.5 per cent of capital value, which is about 1.5 per cent of land value per annum. By contrast, rent on leases for grazing is related to the sheep-carrying capacity of the lease, and the average rent on a grazing lease is equivalent to only 0.6 per cent of land value per annum.

Nevertheless, the holder of a grazing lease may, for a fee, obtain a cultivation permit that allows the farmer to undertake similar activities to those undertaken by holders of an agricultural lease, yet for a much lower rent. An alternative system has therefore been devised. I am pleased to report that it has been developed in conjunction with, and is supported by, the NSW Farmers Association and other pastoral and local government interests in the Western Division. Under the new system, rent will be set by a formula that reflects both the environmental impact and the profitability of different land uses, and will be calculated on an enterprise basis, rather than on individual leases. It will achieve this outcome by basing rent on both land use and land area.

I will now briefly outline how rents will be calculated. A base rent will apply to the entire land-holding, regardless of land use. The base rent will be set on a sliding scale so that a lower weighted average per hectare charge applies to larger land-holdings. This is in recognition that many of the largest grazing properties are on the least productive land in the north-west of the division. Where lessees use some or all of their farms for cultivation

and/or intensive agriculture, then additional higher charges will apply to these areas. The unit charges for these land uses will be higher than the base rent. These charges will represent premiums for land uses that impose greater wear and tear on the environment. In cases where a portion of a land-holding is specifically managed to achieve a positive environmental outcome, then a managed rehabilitation rebate will apply. The rebate will be set at a level equivalent to the cultivation rate.

Eligibility for the managed rehabilitation rebate will be determined by the Western Lands Commissioner, in accordance with principles prepared by the Western Lands Advisory Council and approved by the Minister. To cover the costs of lease administration a minimum rent for each enterprise will apply. Rents will be adjusted annually, based on 50 per cent of the movement in the Australian consumer price index. Overall, the new rental system will be revenue neutral. The total revenue generated in the first year by the new rental regime will approximate the total rebated rental revenue under current arrangements. This, in effect, continues the 50 per cent rebate that has applied since its introduction in 1994 by the former Government.

I turn now to modernisation and miscellaneous amendments. Schedule 3 contains miscellaneous amendments. A modern objects clause, based on the principles of ecologically sustainable development, is proposed to be inserted into the Act. The proposed objects of the Act are to establish an appropriate system of land tenure for the Western Division; to regulate the manner in which land in the Western Division may be dealt with; to provide for the establishment of a formal access network, by means of roads and rights of way, in the Western Division; to establish the rights and responsibilities of lessees and other persons with respect to the use of land in the Western Division; to ensure that land in the Western Division is used in accordance with the principles of ecologically sustainable development referred to in section 6 (2) of the Protection of the Environment Administration Act 1991; to promote the social, economic and environmental interests of the Western Division; and to make other provision for the effective integration of land administration and natural resource management in the Western Division.

It is proposed to extend the delegation powers of the Minister and the Western Lands Commissioner so as to enable them to delegate their functions to public and local authorities. This power will allow the Western Lands Commissioner to transfer the administration and rental income of urban and residential leases to a local council with its consent. This is in line with the Western Lands Review recommendation that urban leases and planning functions should be transferred to local government. Also consistent with the recommendation of the Western Lands Review, the Government has adopted a policy of encouraging the holders of residential and business Western Lands leases within urban areas to convert their leases to freehold. This policy is designed to free the Western Lands Commissioner and the Department of Land and Water Conservation from the burden of administering urban leases that provide little income and are in public ownership for historic reasons only.

I now turn to reforms in land tenure and lease purpose. The bill includes measures to relax unnecessary restrictions that currently apply to transfers and other dealings with respect to lands held under a Western Lands lease, and to enable greater flexibility of lease purpose arrangements. It is proposed to amend the Act to streamline the process for sub-leasing, consistent with the purpose of the lease. The new section prohibits the transfer of land held under a Western Lands lease except with the consent of the Minister, but for small residential and commercial blocks the Minister can waive this requirement. Currently, the Minister's consent is needed for all dealings in respect of land held under a Western Lands lease.

The bill provides for the Act's lease forfeiture provisions to be simplified and consistent with those of the Crown Lands Act 1989. This will be effected by amending schedule B so as to adopt the provisions of the Crown Lands Act 1989 with respect to the forfeiture of leases. Consequential amendments are made by schedule 3, including the substitution of section 18 in a simplified form. Currently, the holder of a Western Lands lease can convert the lease to a purchase only if the land is used for residential, business, motel or similar purposes.

The bill will amend the Western Lands Act to allow applications for conversion to freehold title of leases for agriculture, and similar leases, to be considered on a case-by-case basis, and where the proposal is ecologically sustainable and there is a clear public and economic benefit. Native title is not a barrier to conversion with leases for agriculture created before 1996, as the Commonwealth Native Title Act 1993 recognises that this type of lease has extinguished native title. The bill amends section 28BB so as to extend the range of purposes to include agricultural and community purposes, subject to appropriate protection of native title interests, so that the only land not able to be converted in this manner will be land the subject of a lease for grazing or pastoral purposes.

A similar amendment is made to schedule B in relation to the purposes for which land in the Western Division may be sold pursuant to the adopted provisions of the Crown Lands Act 1989. The bill amends schedules B and D, which relate to the conversion of leasehold land, to ensure that the sale or conversion will proceed only if the Minister is satisfied that the use of the land concerned for the purchaser's proposed purpose is ecologically sustainable. The bill makes provision for the creation of licences for public purposes such as telecommunications and other infrastructure. The provisions are similar to those contained in the Crown Lands Act. Currently, the maximum area of land that can be withdrawn from a lease for public purposes is 80 hectares. It is proposed to amend section 43B so as to remove this limit, which is arbitrary and may not be sufficient for pipelines, communications facilities and similar infrastructure. It is further proposed to amend schedule B so as to enable the Minister to grant a licence over land the subject of a Western Lands lease pursuant to the adopted provisions of the Crown Lands Act 1989, but only with the consent of the holder of the lease.

Other minor amendments include an amendment to section 35N so as to extend the range of matters for which the Minister can enter into an agreement under that section; an amendment to schedule A so as to update certain references relating to noxious weeds; an amendment to schedule B so as to extend the operation of the adopted provisions of the Crown Lands Act 1989 with respect to easements over Torrens title land and land the

subject of a lease in perpetuity; and an amendment to schedule D enabling a more flexible approach to be taken to payments made in relation to land being purchased. This will facilitate the conversion of urban and business leases.

The bill also amends schedule C so as to enable regulations of a savings or transitional nature to be made in connection with the proposed Act, and enacts specific savings and transitional provisions in connection with the proposed Act. Schedule 4 makes amendments by way of statute law revision. The proposals outlined in the bill represent an historic package of reforms that will bring up to date many aspects of Western Lands management and administration. The improved flexibility and efficiencies that this legislation will achieve will have a marked positive impact on the rural communities of western New South Wales. They will modernise the Western Lands Act and make it more flexible to enable the Minister and commissioner to deal with needs and socioeconomic changes that were not foreseen when the Act was drafted more than a century ago. Rural communities are keen to see resolution of access issues in the Western Division.

The proposed access measures will increase family security, particularly families living in isolated homesteads in Western Lands leases. The formalisation of public roads and easements will give lessees a greater capacity to regulate public access to and across leases. The uncertainty regarding legal liability for motor vehicle accidents on public roads will also be resolved. The new rental system will be more equitable and flexible for land-holders, and simpler and cheaper to administer. It breaks away from the cumbersome complexities and inequities of the current model, and sensibly links rents to the environmental impacts of land uses. The bill will remove or reduce government ownership and control of land when this is no longer in the public interest, such as with residential and business properties in urban areas, and in the case of sustainable agricultural leases.

The bill will also allow greater flexibility in dealings involving leased Crown lands, including sub-leasing, licensing and the provision of public infrastructure. Finally, the bill will establish a broadly based body to advise the Minister, and remove a number of archaic and redundant features of the Act. This is a worthwhile and well-balanced reform package that will be welcomed by the Western Division community. I thank all those who participated in the public consultation of the drawing up of this bill. I thank particularly the honourable member for Murray-Darling for his singular contribution to bringing this bill into being. I commend the bill to the House.