NSW Legislative Council Hansard

Water Management Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 1 December 2005.

Second Reading

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [4.18 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.
Leave granted.

This bill covers a raft of significant changes which are essential to protect our fragile river and ground water ecosystems and ensure the prosperity of our regional communities that depend on continued and certain access to water. This bill will strengthen and improve the provisions of the Water Management Act, an Act which, when passed by Parliament in December 2000 and significantly updated in June 2004, represented a major overhaul of the State's previous water legislation and heralded a new approach to water management in New South Wales. At the same time the bill will align our reforms in New South Wales with the broader platform of the national water initiatives agreed to by the Council of Australian Governments [COAG]. The New South Wales Government has clearly indicated its willingness to work with the Commonwealth and the other States to ensure that our water policies represent best practice and promote long-term sustainability.

At this point I would like to put the legislative changes that I am tabling today into perspective by outlining some of the major outcomes that have been achieved in water management in the past few years. These cover both real environmental outcomes as well as substantial progress towards a sustainable water industry in New South Wales through a transparent and community-involved planning process. Eighty per cent of water extracted in New South Wales is now managed through statutory water-sharing plans. In July 2004, 31 water-sharing plans commenced setting the rules for allocating water between water users and the environment for the next decade and, therefore, guaranteeing environmental and water users' rights. The gains New South Wales has made have been recognised nationally and internationally.

The Murray-Darling Basin Commission, for example, has stated that New South Wales is leading the way in implementing sound ecological water management. New South Wales water reforms are also directing much of the broader national water agenda. Through the water-sharing plans we have now preserved the majority of water in the State's major inland river systems for the environment. Some 200 gigalitres, or 200,000 megalitres, of water have been returned to the environment. These rules not only preserve water for the environment, they also are designed to help reinstate natural flow patterns to critical wetland areas. In New South Wales we have also provided for the important Aboriginal cultural connections to water.

The Murrumbidgee water-sharing plan allocated more than 2,000 megalitres of water to be granted under licence for indigenous cultural activities. I am pleased to advise that the first Aboriginal cultural access licence has been issued to the Nari Nari Tribal Council for the inundation of a culturally significant wetland on their lands. In the overallocated ground water systems, New South Wales is committed to an approach of reducing entitlements to achieve sustainability, while also recognising the impacts on water users and their local communities through the dedication of substantial funds totalling $110 million to assist in their adjustment to the new levels. It must be noted that if ground water resources continue to be mined, the eventual result is the collapse of the aquifer and the industries and communities that depend on this water.

While the water-sharing plans focus on providing water through the environmental rules and managing extractions to a set limit, we are also looking at other innovative ways to provide additional water for the environment that will not impact on the water availability to licence users. As a result the Government has committed substantial funds to improve the efficiency of water delivery as a means of freeing up water for the environment. For example, under the Living Murray initiative, New South Wales, in partnership with the Victorian, South Australian, Australian Capital Territory and Australian governments, will invest $500 million over the next five years to recover up to 500,000 megalitres of water to improve the environmental health of the Murray River. Similarly, through the Snowy Joint Government Enterprise, the Australian, New South Wales and Victorian Governments have committed $375 million over the next eight years to water-efficiency projects to increase environmental flows to the Snowy River and the River Murray systems.

Under the Wetland Recovery Project we have also allocated $13.4 million to improve water efficiencies in the Macquarie Marshes and Gwydir wetlands. Major water savings from our artesian aquifers are being achieved through the Government's Cap and Pipe the Bores Program. In addition we are developing a program of

measures to minimise the release of cold deoxygenated water from the bottom of major storages. Release of this water can have significant effects on the environment downstream, often for many kilometres. The significant advances in environmental initiatives have not come without acknowledging the importance of our $3 billion irrigation industry.

The water-sharing plans not only specify the environmental rules but provide licence holders with greater certainty over their allocations of water and open up water trading opportunities. Last year we also legislated for perpetual water licences for commercial users and for guaranteed water titles, similar to land titles, for water licences. This increases the value, mortgageability and tradeability of water licences, encouraging investment in water industries. A whole new expanded range of water-dealing or water-trading options are now also available to licence holders. The legislative amendments which I am tabling today are designed to build on and support the substantial achievements that have already been made. In New South Wales we have done more than any other State to ensure that water users can act with confidence about their investment in water businesses such as irrigation.

This has been demonstrated through the introduction of perpetual water licences and the statutory water-sharing plans. These water-sharing plans are backed by compensation provisions providing a significant safeguard for water users. In June last year the COAG agreed to a further refinement of these compensation arrangements through what is called a risk assignment framework. The COAG risk assignment framework specifies when and how the costs of future reductions in water availability should be shared between licence holders and governments, including the Australian Government. The COAG risk assignment framework recognises that reductions can arise as a result of three factors—firstly, natural events such as climate change; secondly, via improvements in knowledge; and thirdly, as a result of changes in government policy.

The risk assignment framework is to be implemented in two stages: until 2014 and after 2014. The initial stage of the framework is consistent with the Government's existing compensation provisions. Compensation is already available to licence holders if the Government makes a change to a water-sharing plan which is not provided for in the plan irrespective of the factor driving the change. The post-2014 risk assignment framework provides for different arrangements for the sharing of the costs of reduction in availability of water. Climatic changes will be borne by the licence holder and policy changes will continue to be borne by government. The significant difference, however, is for changes arising from improvements in knowledge or science. The first 3 per cent of the change would be borne by the licence holders. A reduction between 3 and 6 per cent would be compensated by both the State and Australian governments—one-third paid by the State and two-thirds by the Australian Government. Reductions above 6 per cent would be shared equally by the State and Australian governments. I believe that the national risk assignment framework is an appropriate compromise between the concerns of government and stakeholders. It excludes government compensation for natural events which are outside our control, retains the status quo on government policy changes and addresses industry concerns about investor certainty. The risk assignment framework applies to water-sharing plans that are amended and implemented after 2014. As we already have 31 water-sharing plans in place and plans will be completed for the rest of the State before 2014, the risk assignment will apply to all second-term plans in New South Wales.

Although the provisions of the risk assignment framework will not commence until after 2014, it is important that the framework be reflected in our legislation now. This will give farmers sufficient time to take into account the new arrangements in their future planning and investment decisions. Certainty over future access to water is essential for licence holders and lending institutions to invest in the productive capacity of the State. To provide licence holders with confidence in the risk assignment process, the Minister has given the independent Natural Resources Commission an extended role. Currently the commission can recommend that a water-sharing plan be rolled over unchanged at the end of its 10-year term or that a replacement plan be made. The commission will now also be asked to specify the factor responsible for any change and the impact on a licence holder's water availability when it makes its recommendation.

If a new plan is to be made the Minister will specify the reason for this in the order for the plan, and compensation will be paid according to the risk assignment framework. Another key obligation of the national water initiative is the achievement of an open water trading market, and a particular focus is the removal of trading restrictions imposed by irrigation corporations on their members. There are five private irrigation corporations in New South Wales—Murray Irrigation, Western Murray Irrigation, Murrumbidgee Irrigation, Colleambally Irrigation and Jemalong Irrigation. The irrigation corporations hold the water licences on behalf of their members or shareholders. Their entitlements can represent the majority of the water in a valley.

For example, Murrumbidgee Irrigation and Coleambally Irrigation together hold 70 per cent of the total entitlement of the Murrumbidgee Valley and so have the potential to be a major player in the water trading market. The national water initiative requires the irrigation corporations to permit permanent trade out of their areas up to an interim threshold level of 4 per cent per annum of their total water entitlement that is available for irrigation. These corporations, through their constitutions and other contracts, have restricted permanent trade of water out of their areas because of concerns about the remaining members having to bear higher infrastructure and overhead costs. In the extreme case, the assets could be stranded and the whole corporation scheme made unviable. Numerous discussions have been held with the irrigation corporations and most of their

concerns can be alleviated through the imposition of exit fees on the seller.

They have agreed in principle to amend their memoranda of articles of association where necessary to permit open trade up to the threshold level and they are taking the proposals to their shareholders for endorsement. However, the national water initiative still requires New South Wales to have back-up legislative powers to enforce these changes. As a result, the bill amends the Water Management Act to allow for civil penalties if the constitution of an irrigation corporation prevents trade up to the threshold. New South Wales is required to have this legislation in place by January 2006. Although representing smaller entitlements, I believe it is appropriate that similar principles be applied to other licences held by multiple persons.

For example, there are thousands of former water authorities in New South Wales in which the landholders have a holding in a common licence. Currently a co-holder can only exit or trade out of his or her holding with the agreement of all the other co-holders. This can represent a major stumbling block for such trades. To facilitate the sale of a licence holding the bill, therefore, provides for majority consent. If majority consent cannot be obtained, the parties may apply to the Supreme Court to allow the trade. The court must take account of whether the remaining holders would be unduly burdened by stranded water-supply works.

An important part of the bill covers the need to extend the definition of "environmental water" in the Act to provide a more practical definition and one that reflects how water access is managed on a daily and long-term basis. This will not alter the intent of the legislation, that is, the environment and its dependent ecosystems will continue to have priority in the sharing of water. A Court of Appeal decision on the Gwydir regulated river plan last year confirmed that the plans comply with the intent of the environmental provisions of the legislation. However, the amendments will allow clarification of two aspects: first, that environmental water can be expressed by reference to extractive requirements for water; and, second, that it does not have to be provided at all times. This will not change the significant commitment of water to the environment already provided for in the current water-sharing plans. As I have already stated, some 200,000 megalitres of water have been reallocated to the environment under the regulated river plans.

All the current water-sharing plans have specific environmental rules, which have to be met or delivered and, in addition, the plans preserve all water left over after extraction for the environment. The water taken by licence holders is directly controlled and managed within the extraction limit set in the plan so as not to erode the share to the environment. In the regulated river systems from 50 per cent to 80 per cent of the flow is reserved for the environment, clearly demonstrating that, as required under the legislation, the environment is given priority in the allocation of water. Whilst over the year the majority of water is committed for the environment, it is not appropriate for environmental water to be provided at all times.

Under natural conditions there are dry periods when the environment does not receive any actual water. One of the aims of environmental water rules is to replicate natural flow patterns and requirements, which means that at times it is natural for there to be no or little flow in a river. Our native flora and fauna have adapted to such extremes of nature, and to do otherwise would be detrimental to our aquatic ecosystems. The bill includes a provision to ensure that such changes required to clarify the wording of the Act will not invalidate the existing water-sharing plans.

Another key part of the bill focuses on clarifying the circumstances under which compensation will be paid for changes to a water-sharing plan. The Government last year deferred the commencement of the five inland alluvial ground water plans that had been gazetted. While it is clear that reductions in access are necessary to ensure the sustainability of the ground water systems and the regional communities—and this will occur—there was concern over the across-the-board approach to reducing entitlements in these overallocated aquifers, and some of the plans were appealed against on this basis. The method has now been refined and will take into account the past water use of licence holders when determining their entitlement reductions. This recognises the significant investment some farmers have made in obtaining and using ground water for irrigation. In the past few months the Australian Government has also agreed to contribute $55 million dollars in matching funds to the structural adjustment package to be paid to affected ground water irrigators and communities.

Some $100 million will be provided to these farmers and an additional $10 million to affected regional communities once the plans commence, which is expected to be in July 2006. As a result of the changes to the entitlement reduction approach, amendments will now need to be made to the five inland ground water plans. This could give rise to claims for compensation on the grounds that the plans as made—that is, as gazetted—are now being changed. Given that some 650 ground water licence holders will receive substantial financial assistance under the structural adjustment package, other claims for compensation would simply be double dipping. As a result the bill includes amendments to the compensation section of the Act clarifying that compensation is not payable for financial loss arising out of the development of a plan, including representations, consultation and changes that occur prior to its commencement.

In addition, the validating provision will ensure that these plans are still valid. As the legal appeals to some of these ground water plans were held over awaiting the changes to the entitlement reduction method, the Minister has determined that the Government will now pay the costs of these appeals. The entitlement reductions in the

overallocated ground water systems, and those that have also recently been agreed to in the Barwon-Darling river system, require another consequential amendment to the Act. As the legislation now stands, entitlements when converted from the former legislation to the Water Management Act must be equivalent. The wording needs to be changed to provide for a methodology that will provide a lesser entitlement to some licence holders to account for overallocation.

In the inland catchments, some water users pump or gravity feed floodwater into large storages using pumps that have not been metered or licensed. The Murray-Darling Basin cap requires all water extraction to be accounted for and controlled. A floodplain harvesting policy and rules for managing floodplain water are being developed. As a result changes may be needed to the water-sharing plans to incorporate these rules. The bill allows these necessary changes to be made without invoking the compensation provisions of the Act. As a result of the water-recovery projects I earlier outlined, substantial water savings will be created that can then be used to provide additional water for the environment. Licence holders may also choose to commit all or part of their licence to environmental water purposes, or to do this as result of an agreement with the Government on funding of on-farm or other efficiency measures.

This water will be licensed as adaptive environmental water. In contrast to the water that is committed as a priority under the environmental rules in a water-sharing plan, adaptive environmental water may be temporarily traded when not required for the environment. The funds generated from this trade can then be used to implement further environmental measures. The bill, therefore, includes a number of provisions to ensure the proper management and use of this water. This includes the granting of the licences, the conversion process, the accounting process and reporting requirements and conditions, such as the need for a plan that specifies how the water will be used and when it can be traded.

While the Government's focus is on the use of water savings to provide additional environmental water, in some cases the most cost-effective use of public funds may involve the purchase of water. For example, the purchase of supplementary water and its conversion to rules-based water is being investigated as a means of topping up critical environmental allocations to the Macquarie Marshes. A reduction in supplementary water would reduce the extraction limit for irrigators and require a change to the water-sharing plan. There has also been some concern from industry that the removal of supplementary water would expose general security irrigators earlier to reductions in their annual allocations if total extractions increase. Under the Government's growth-in-use strategy, supplementary water—which is opportunistic and lower-priority water—is the first to be cut to maintain extractions within the plan's extraction limit.

After supplementary water has been effectively extinguished, general security users would then have to bear the brunt of their growth through lower annual allocations. This should not be compensatable as it is the general security irrigators that are causing the growth. Similarly, they should not be granted compensation for the loss of the supplementary water buffer since this becomes an issue only if there is growth in the first place. Those who sold their supplementary water licences to the Government would, of course, be compensated through the sale price they would receive, which would be the market value of the water.

I said that the Government is currently developing a statewide program of works and operating protocols to minimize the impact of cold-water releases from dams. To enable these measures to be implemented, the bill allows agreed modifications to smaller dams or the protocols for releases from all dams to be enforced through the water management works approval for the dam. For the major storages, modifications to the dam wall and outlet structure may be applied under the Environmental Planning and Assessment Act. Across New South Wales there are hundreds of local water utilities providing water to towns outside the major metropolitan areas. The Act currently provides for automatic review of all local water utility entitlements every five years. This will produce unnecessary work as not all rural towns will grow in the next five years. The bill replaces the automatic review with one that would be undertaken when required, such as when the population is increasing or when the utility requests such a review. This is a prudent risk management approach.

Although under the Act local water utility licences have priority over most other licences—as part of the consideration of the entitlement increase—the local water utility will now need to demonstrate to the Minister for Utilities that it has implemented the best practice management guidelines for water supply. It is important to point out that the entitlement granted to a local water utility under the Act is already relatively generous and any increase will impact on the water available to the environment and other users in the water system. In addition, civil penalties as currently apply to major utilities are to be introduced when a local water utility breaches the conditions of its licence.

The Act specifies that the review of the water utility's entitlement is to reflect any variation in population and associated commercial activities. At the request of local water utilities the requirements of food and fibre processing will now be included in the definition of associated commercial activities. Under the current Act, in times of restricted supply the allocations for water utilities must be reduced at a lesser rate than allocations for other licence holders. The Greater Sydney water sharing plan will require the Sydney Catchment Authority, by far the major water user in the system, to operate within a benchmark extraction level. The bill allows for a water-sharing plan to change the priorities for water allocation, and the amendment is primarily to accommodate

the requirements of the Sydney plan.

A number of amendments to the Water Management Act are also required to facilitate trading and water licensing arrangements. To assist with the accounting of water traded within New South Wales between the Murrumbidgee, Murray and Lower Darling regulated river valleys, the bill incorporates a system of tagging of all or part of the water allocations under a licence. Tagging has already been adopted by New South Wales as the preferred method for the trading of water between States. This means that if a Murrumbidgee licence is traded downstream to another river system the water can still be debited from the original source. The Minister's access licence dealing principles will specify where tagging can occur.

Four other procedural changes are included to improve water trading. The first involves a term transfer that was added as a new water dealing in the Act last year. A term transfer allows a licence holder to effectively lease the water licence to another person for a period of time, usually a couple of years. A more flexible arrangement allowing a term transfer to be extended before the current period expires is now included. The second procedural change requires applications for all types of dealings to be assessed in accordance with the Act and the dealing principles. In error, the Act currently excludes water allocation assignments from this requirement.

The third change enables conditions to be added to the works and water use approval when a water access licence is changed through a water dealing. For example, if a licence is moved to another location the impacts of this will be assessed and, as a result, new conditions may need to be added to the water use approval. The fourth change allows the Government to auction or tender the right to transfer a licence into a water source or zone that has a limit on the quantity of licences within it. This situation could arise when an opening is created because a licence has moved out of the water source. Rather than the opening going to the first person who lodged an application, a tender or auction process would provide a fairer solution. Currently the auction-tender process is permitted under the Act only when there is unallocated water.

To provide licence holders with a guaranteed legal water title the Water Access Licence Register has been established and water access licence certificates are being issued by the Department of Lands. This places water title on a similar footing to land in New South Wales. The process of listing a water access licence on the register involves checking the licence details, verifying its ownership and confirming the details of any security interest. Security interest holders are companies or mortgagees who have an interest in the licence. As with land, they would want to be party to any agreement to sell or significantly change the licence. This bill builds on the significant work already undertaken by this Government to provide a sustainable and secure resource for the environment, farmers and the community. It focuses on providing certainty for licence holders, opening up the market in water, clarifying and supporting our environmental initiatives and driving greater water efficiencies. I commend the bill to the House.