Agreement in Principle

Mr PHILLIP COSTA (Wollondilly—Minister for Water, and Minister for Corrective Services) [10.10 a.m.]: I move:

That this bill be now agreed to in principle.

Water management is a key policy issue of our times. It is critical to the environment, the economy and our very lives. The challenges of severe drought and, paradoxically, lately floods, the uncertainty of climate change, population growth and the ever-rising infrastructure costs have made the sustainable and forward-thinking management of water a key priority for the Government. We have risen to these challenges and forged a sound public policy framework within which the proper management of water can be assured. The Water Management Amendment Bill 2010 builds on that framework by implementing reforms that have been developed in consultation with stakeholders. I acknowledge their contribution and support for the reforms. The primary feature of the bill is that it modernises the governance arrangements for shared water supply infrastructure. I shall dwell at some length on this. I will then discuss how the bill enables appropriate trade in specific purpose licences and facilitates government investment in environmental water. Finally, I shall make mention of some miscellaneous refinements such as finetuning the offence provisions.

In modernising the governance framework for the sharing of water supply infrastructure, the bill recognises the diversity of private statutory bodies that have developed over time to address issues such as installation, maintenance and operation of such infrastructure. The bill seeks to retain the flexibility that these bodies need while providing the legislative bedrock to allow them to impose necessary rates and charges, make decisions and determinations, provide rights to enter land, deal with drought and so on. There are two key elements to the modernisation reforms: cutting red tape and providing flexibility for the private infrastructure bodies; and enhancing the powers that these bodies need.

The bill cuts red tape by applying a consistent and simpler structure to bodies that exercise water supply or drainage functions, namely, private irrigation boards, private drainage boards and private water trusts. The current governance arrangements for these bodies are unnecessarily prescriptive, highly complex and inconsistent with recent Commonwealth legislative reforms. The bill renames these bodies "private water corporations" and consolidates their functions into a single governance structure. It is important to emphasise a couple of things about the changes. First, the legal status of the current irrigation boards, drainage boards and trusts will be unchanged. They will operate in the same areas, own the same assets, have the same directors or trustees until their next election and be the same legal entity as before. Second, the provisions relate only to internal governance. While the private water corporation or trust will have the power to take water and to go onto land and construct works, it will still need to hold water licences and approvals required under the legislation to perform those functions.

The Government recognises that irrigation boards and trusts are highly variable bodies. The boards and some irrigation trusts are large bodies, in some cases with hundreds of members, water entitlements of up to 80,000 megalitres and hundreds of kilometres of works such as channels and pipes. Conversely, many of the bore trusts supply water for stock and domestic purposes and have significantly smaller water entitlements and far fewer members. This means that a one-size-fits-all approach will not work. For this reason, the reforms take a three-tiered approach. At the top level the Act sets the broad framework within which the irrigation and drainage functions are undertaken. At the middle level the regulations will enable the Minister to impose requirements, where necessary, to provide fundamental safeguards for members and customers of schemes.

It is intended that the regulations will set benchmarks that must be met by the organisation's rules. It is not intended that the regulations will be highly detailed. To give one example, it is anticipated that the regulations will provide a framework for the conduct of elections. At the lower level the rules of each body will define the relationship between the members and the corporation or trust. These rules will be under the control of the scheme and its members and can be changed without amendments to the regulations or proclamations by the Governor. However, to ensure that there are safeguards for members, the rules will need to comply with the requirements of the regulations. This is similar to the constitution of an association under the Associations Incorporation Act. It is a more flexible version of the by-laws that can currently be made by private irrigation boards.

The second aspect of the modernisation reforms is that the powers available to water managers have been enhanced. The intention is to get Government out of the way and give the people who operate the infrastructure and know the business the flexibility and powers they need. There are two key parts to this: enabling irrigation operators to comply with the Commonwealth market rules and improving the framework for management of water supply works. New Commonwealth market rules require irrigation infrastructure operators to allow part of the group's water entitlement to be transformed into an individually held water licence on application by a member if that individual wishes to trade their individual entitlement.

This bill gives the schemes the power to transform entitlements as follows: First, it allows members to apply to the corporation or trust to have their member's water entitlement determined. This entitlement is the share of the group entitlement that is available to the member. It does not include water such as conveyance water that is required to deliver the supply to a member, but is not available for use by the member. This should not place an undue burden on either private irrigation districts or trusts. Even where there are currently no formal arrangements as to water shares, there generally have been informal arrangements about water sharing in place. Second, the water supply scheme is required to determine only the individual member's entitlement in relation to irrigation water. There is no right to have the member's share of stock and domestic water determined, but the scheme can do so if it wishes. If the member does not agree with the determination, they can lodge an appeal with the Land and Environment Court.

Third, once an entitlement is determined the private water corporation or trust can apply under the trade provisions of the Water Management Act 2000 to have part of the group licence subdivided and transferred to the member. The Act does not require the schemes to apply for transformation and does not govern the terms on which transformation occurs. If a member has concerns about refusal to transform or the terms on which transformation has taken place, this is a matter for the Australian Competition and Consumer Commission and not something that the New South Wales Government regulates. Lastly, the bill gives the corporations and trusts clear powers to impose termination and delivery fees in relation to members who have elected to transform their entitlement.

The fees are essential to ensuring the ongoing viability of the schemes. The bill does not prescribe what fee can be imposed; they are determined by the Commonwealth rules. The bill also improves the framework for the management of water supply works. The bill gives the schemes much greater flexibility to amend and update their water supply works plan without any need for government intervention. The water supply works plan is a document that defines the works and land that the corporation or trust manages. As the works plans are important documents, it is intended that the regulations will require a scheme to enable any member or person whose property is affected to view the works plan during business hours.

The Government recognises that many of the private irrigation districts and trusts have been operating for a long time. We are not going to burden the schemes with a requirement to go out and survey the hundreds of kilometres of supply channels and pipes that they administer to produce a works plan. Instead, the savings and transitional regulations will deem all works that are currently used by the irrigation board or trust to deliver water to be part of the works plan. A key feature of the works plan is that it will continue to apply, even if a former member has transformed their entitlements and terminated their water delivery rights. This is critical to ensure that a member selling their share does not prevent ongoing use and maintenance of channels or other water supply infrastructure that exist on their land. Failure to ensure this could result in outlying members becoming landlocked.

The final point to make in relation to the modernisation of the governance framework is that the bill will enable certain provisions to be commenced immediately while further work is done on the broader governance reforms. The reforms are significant and the Government will not commence every aspect of them until there are supports in place for the irrigation districts and trusts to ensure a seamless transition. There has been consultation with these groups and general support for the amendments. Following passage of the bill, further consultation with stakeholders will occur about transitional issues and additional support that can be provided by the New South Wales Office of Water, such as fact sheets and model rules. As further work will be undertaken to ensure a smooth transition, schedule 1 to the bill has been drafted to enable members of irrigation districts and trusts to commence transformation in the absence of the broader governance reforms. This means that it could be commenced at an earlier date.

The second component is enabling trade in special purpose access licences [SPALs]. The second key feature of the bill is that it opens up opportunities to trade specific purpose access licences. Special purpose access licences include water access licences held by local water utilities for the purpose of town water supply, major utilities for water supply and electricity generation, and by farmers for the purpose of domestic and stock use. Currently the trade in special purpose access licences is highly restricted. Most types of trade are prohibited, which means that there is little or no incentive for licence holders to improve their water efficiency and use water wisely. By opening up opportunities to trade, these amendments allow licence holders to consider means by which they can make efficiencies and create savings. I can confirm that these opportunities to make efficiencies and create savings are voluntary only. No-one will be under any obligation or compulsion to do so.

Licence holders can then trade these savings on the water market, enabling this water to be available to other users. Of course there will be safeguards to prevent abuse. Local water utilities and major utilities will need to establish scientifically and astringently that they will achieve the savings that they forecast. They will be required to do so through drought management plans or integrated water cycle management plans, which will be scrutinised before being approved by the Minister. This requirement provides an incentive for such utilities to undertake better water planning. In addition, such utilities will not be allowed to permanently trade water. Trades will be allowed only for defined terms of, for example, three to five years under what will be known as term transfers. They will not be open-ended. These protections will ensure that the security of water supplied by such utilities will not be endangered.

Another safeguard is that such utilities will not be allowed to use their inactive entitlements to supplement the water they have traded. This will prevent double dipping and a potential for growth of such use as a result of the trade. Inactive entitlements are those portions of an entitlement that are not used by the licence holder. For example, a town may have an entitlement that is divided into 40 per cent used, and 60 per cent inactive. If it can find efficiencies within the 40 per cent, say of 10 per cent, it may trade a proportion of that 10 per cent. However, the inactive 60 per cent will not be able to be used for the term of the trade.

In relation to domestic and stock licence holders, no requirement for drought management plans will be imposed. Instead, farmers will decide for themselves, based on their own needs, how much of their stock water they wish to trade. Trade of domestic and stock licences will be allowed on a permanent basis. However, the farmer's water use will be required to be metered. In addition, a portion of the licence will be required to be retained for domestic use.

The bill does not affect basic landholder rights. However, a person will be able to trade their stock and domestic licence only if they agree not to exercise basic landholder rights for stock and domestic water. This is a basic precaution to ensure people do not double dip, and, in doing so, reduce the water that is available to other users. Impacts on other water users also could arise if the holder of a stock and domestic licence trades an inactive part of the licence and keeps taking the same volume of water, thereby triggering a growth in use of the resource. To prevent that, it is proposed that a proportion of water must be committed to the environment to ensure that there are no inappropriate environmental or third party impacts caused by such trades. This proportion will be developed in consultation with stakeholders and implemented by regulation. A final point to make is that while this measure is locally important in opening up trade, total domestic and stock entitlement generally is only a small percentage of total valley entitlement.

The bill also facilitates the investment by the Commonwealth and other government bodies in environmental water recovery programs. The amending provisions will enable a licence for environmental purposes to be granted to the Commonwealth environmental water holder, or a State when it is necessary to give effect to agreements. Any licence granted to the State will be part of the licensed environmental water regime. This safeguard ensures that water secured by these licences will be used for environmental purposes. These provisions are intended to facilitate investment in infrastructure projects. Such projects generate water efficiencies in our rivers and groundwater sources, which ultimately result in substantial and lasting returns of water to the environment and secure real improvements in river health. But to secure investment in these projects we need to be able to create licences that embody these water savings. The licences will also offset the impacts of extraction reductions that will be implemented in the Commonwealth's proposed Basin Plan.

The investment that will flow to these projects in the Murray-Darling Basin will also provide a much-needed economic boost to our rural communities at the same time as providing water for the environment. New accounting rules will also ensure that this environmental water is properly accounted for and will not adversely impact on the existing entitlements of users. This is simply a sensible and logical way of ensuring that all water is properly accounted for and that the amendments are consistent with the arrangements under the Commonwealth's proposed Basin Plan.

I conclude by making mention of a few refinements to existing offence provisions of the Act. These include closing loopholes in the current tier one offences, which target the deliberate, negligent or reckless theft of water or meter tampering; clarifying the current position that mining companies must hold a water access licence for water taken both directly and incidentally as a result of the mining operations; and improving the operation of the offence provision concerning faulty water meters, which allows greater flexibility for a water user with a faulty meter to take water if they reported that their meter is not working and kept appropriate records as set out in the regulations. This is about ensuring security of the system and protecting users as well.

These reforms build on the strong foundation set by the New South Wales Government and will stand us in good stead to address looming challenges. The reforms respond to issues such as the new Commonwealth market rules, the proposed Commonwealth Basin Plan and reduced water availability that may arise from drought and climate change into the future; they help regional communities to participate in trade in water without breaching Commonwealth laws; they facilitate greater investment in water for the environment; and they strengthen the regulatory tools we have in place to ensure that the water market works to the benefit of all—farms and communities as well as the environment.

Over the coming months the Commonwealth Murray-Darling Basin Authority will be developing the Basin Plan for the Murray-Darling. I assure the House that the New South Wales Government will continue to advocate strongly on behalf of all stakeholders, including regional communities, to ensure that the final reforms are a balanced package of providing additional water for the environment and maintaining agricultural production and our rural communities, in keeping with the philosophy of good governance that the New South Wales Government has lived by. New South Wales leads the way in Murray-Darling Basin reform through measures such as having the largest and most open water-trading market, sharing 90 per cent of water used in New South Wales through statutory water-sharing plans, and proactively reducing entitlements in six groundwater systems. The reform package proposed in the Water Management Amendment Bill 2010 builds upon our achievements in

reform to date. I commend the bill to the House.