**WATER RESOURCES (MISCELLANEOUS) AMENDMENT BILL 2002**

**House of Assembly, 23 October 2022, pages 1708-9**

Second reading

**Mr WILLIAMS (MacKillop)** obtained leave and introduced a bill for an act to amend the Water Resources Act 1997. Read a first time.

Mr WILLIAMS: I move: That this bill be now read a second time.

The Water Resources Act has been in existence for some five years, and a number of inadequacies, anomalies and flaws have been identified in that time.

I believe that in many ways the act fails to deliver on the hopes expressed at the time of its gestation. Principally, the act and its administration have proven to be very costly to many communities, with catchment water management boards across the state collecting and spending levies of in excess of $20 million per year. A considerable proportion of this money is swallowed up in either supporting a newly burgeoning bureaucracy or endless consultancies which produce reports which, by and large, do little to address the practical issues confronting the management of our water resources, other than collect dust. However, the bill that I bring before the house today does not seek to tackle these major issues. Indeed, it endeavours merely to correct just two matters which have recently come to my attention. One matter is quite minor and could best be described as the rewording of a clause to provide clarification. The other is significant and will correct a major anomaly which has meant that at least one board, that one of which I have considerable knowledge, the South-East Catchment Water Management Board, and I suspect all other boards, has acted in contravention of the act.

In response to the recommendations of the first select committee of the 49th Parliament into water allocations in the South-East, a new class of water licence was created in that region. This is known as the ‘water holding allocation’, and it gives the owner of such an allocation a right to a share (which is quantified) of the permissible annual volume of a particular water management area without bestowing a right to extract that quantity of water without conversion of the same to a water-taking licence, and also satisfying other appropriate hydrogeological criteria.

In acknowledging the unique nature of this type of licence, the parliament voted to allow the waiver of the payment of a water levy on such a licence if the owner could demonstrate his or her willingness to trade the licence to any other person wishing to convert the same to a water-taking licence. This principle is expressed in section 122A(2)(c) of the Water Resources Act and it provides:

The levy for a financial year is not payable if the licensee, on application to the minister, satisfies the minister that he or she made a genuine but unsuccessful attempt throughout, or through the greater part of, the financial year to find a person who is willing to buy the water (holding) allocation subject to the condition of that allocation.

The South-East Catchment Water Management Board is in the process of having a study undertaken into how a trading water market in the region might be enhanced. There are a number of impediments to water trading which, if removed, could increase the willingness of potential participants in such a market. The most serious of these involves the mountains of red tape that the department puts in front of people, both regarding restrictions on the availability of information regarding existing water licences and the information on the history of the use of such licences. I have been calling for this information to be made available on an open access web site for many years, only to be told repeatedly that the department is working on it.

Potential water traders (buyers and sellers) remain highly confused about their rights, and departmentally imposed obligations seriously hamper the water market. Only this morning a constituent telephoned me with a series of complaints on this very issue, one being that he has been told that he can only lease a water licence for a maximum of up to five years. Why, if he and the lessor desire to enter into a 10-year contract, or a contract for any other length of time, can this not happen? He is making a sizeable financial commitment, and he may find at the expiry of a mere five years that the department may disallow him obtaining another lease. I get the impression that the department is trying to discourage lease-type trades in favour of permanent sale arrangements. I cannot understand the rationale behind this, but a body of evidence convinces me that this is the case.

The first amendment in the bill that I have introduced today is designed to clarify section 122A to make it obvious to owners of water holding licences that they have an option of trading that licence on a temporary basis, as well as on a permanent basis. I am assured by parliamentary counsel that this amendment will not alter the intent of the act but will merely clarify, particularly to the layperson, the full range of options available to such owners and, hopefully, it will thus, in some small way, give additional encouragement to these people to enter the water trading market.

The second matter addressed by this bill is much more serious and will indeed alter the effectiveness of the act in a substantial way. The Water Resources Act 1997 has contained in schedule 2, at clause 10, very onerous conflict of interest provisions. These provisions are so onerous that I believe boards would be able to legally carry out their complete range of functions only if those persons comprising the board had no interests, and these include such interest as land ownership within the area of the board’s jurisdiction. This would obviously conflict with the intended spirit of the legislation, which was designed to devolve much decision-making back to local communities, utilising their local knowledge. It is my understanding that this opinion is indeed shared by Crown Law and that Crown Law has previously recommended the action which this bill proposes.

Clause 10 of schedule 2 of the act prohibits members of a catchment water management board from participating in proceedings of the board if they have ‘a direct or indirect personal or pecuniary interest. For a person to have a personal interest in any matter, the interest must be peculiar to that person, and not be shared universally or even with a significant number of others. However, a pecuniary interest is held irrespective of the fact that that may be shared by many others or even universally. 10(8) of schedule 2 stipulates that ‘a member will be taken to have an interest in a matter for the purpose of this clause if an associate of the member has an interest in the matter,’ with subclause 11 defining an associate of another person as including a person who is ‘a relative of the person or of the person’s spouse’.

These provisions, certainly with regard to the South-East Catchment Water Management Board, would ensure that for at least some of the functions with which the board has an obligation a quorum would be impossible to achieve if the members also complied with the other provisions prohibiting them from remaining in the room during the discussion on matters in which they held a pecuniary interest.

One such example is when the board is taking a decision on the financial contribution of councils. Such contributions are reimbursed to the said councils through a levy on rateable land. Any board member who owns or has a relative or a spouse with a relative who owns rateable land within the area concerned is ineligible to consider any such contribution at a meeting of the board. I suggest that there probably would not be a board anywhere in the state which could achieve a quorum to consider a matter such as this under the current provisions. I suggest also that there are many more examples where boards have taken decisions where the conflict of interest provisions have been contravened including, in many cases, the establishment of water allocation plans and the setting of water taking levies.

Whilst I in no way wish to insinuate that action should be taken against board members, it is worth noting that breaches of the conflict of interest provisions carry a maximum penalty of $20 000. I find it incongruous that board members who have been aware of this problem for some time have seen fit to continue to break the law without insisting that this anomaly be corrected.

My amendment, which reflects the thinking expressed on this matter in the Local Government Act, will not only remove this impossible burden from board members in the future, but is also retrospective, in that it absolves past transgressions. This is a very serious matter, and I would be delighted if the minister, upon his reflection on the bill that I have introduced today, recognised the importance and urgency of this measure, and ensured its speedy progress through the parliament. I commend the bill to the house.

Mrs GERAGHTY secured the adjournment of the debate.