

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

ECONOMIC POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Water Further Amendment Bill 2019

1.30 pm, Wednesday, 21 August 2019
Litchfield Room, Level 3, Parliament House

Members:

Mr Lawrence Costa MLA, Member for Arafura
Mrs Kate Worden MLA, Member for Sanderson
Mrs Lia Finocchiaro MLA, Member for Spillett

Witnesses:

Joanne Townsend, Chief Executive, Department of Environment and
Natural Resources
Christine Long, Executive Director Water Resources, Department of
Environment and Natural Resources

WATER FURTHER AMENDMENT BILL 2019

Department of Environment and Natural Resources

Mr DEPUTY CHAIR: On behalf of the committee, I welcome everyone to this public briefing into the Water Further Amendment Bill 2019. I welcome to the table to give evidence to the committee Joanne Townsend, Chief Executive Officer, Department of Environment and Natural Resources and Christine Long, Executive Director, Department of Environment and Natural Resources.

Thank you for coming before the committee. We appreciate that you have taken the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public briefing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you please each state your name and capacity in which you are appearing. Ms Townsend, would you like to make an opening statement?

Ms TOWNSEND: Thank you, Deputy Chair. My name is Joanne Townsend. I am the Chief Executive Officer for the Department of Environment and Natural Resources.

Ms LONG: Christine Long, Executive Director, Water Resources, Department of Environment and Natural Resources.

Ms TOWNSEND: I will make a very brief statement. Chair and members of the committee, thank you for the opportunity to speak on the Water Further Amendment Bill 2019 introduced to the Northern Territory Legislative Assembly earlier this month. This is the third bill to amend the *Water Act 1992* introduced this year.

The bill before you seeks to amend the *Water Act* to support the ongoing implementation of strategic Aboriginal water reserves in the Northern Territory. I am sure the committee is aware, but strategic Aboriginal water reserve is a proportion of the water available for development in a water allocation plan that is reserved for access by Aboriginal land owners for their economic development.

It is an election commitment of the current government that a strategic Aboriginal water reserve policy applies and it is intended to ensure greater equity of access to the water resources for those land owners. The Minister best described the intention of the strategic Aboriginal water reserves in her explanatory speech, in which she stated that the reserve recognises that Aboriginal people with eligible rights to land and direct access to water resources may not have the current capacity to use those resources today. What the reserve actually does is reserves that water for future development.

Aboriginal water reserves are already in effect in the Northern Territory—this legislation does not give effect to the water reserve—with policy and subsequent approval of the strategic Aboriginal water reserves policy framework in October 2017. They are actually given effect with the declaration of each water allocation plan by the Minister for Environment and Natural Resources, that has been declared since that time. This bill is therefore not required to enable the strategic Aboriginal water reserves to apply.

What the bill does is provide greater certainty in the reserve in the longer term by ensuring that Aboriginal economic development is specifically provided for in the *Water Act* as a new beneficial use category, and by enshrining eligibility and consent to access the reserve arrangements in the act. As the controller of water resources, this level of clarity assists me to ensure good licensing decisions are made that are not vulnerable to challenge.

The success of the reserve is, of course, based on water being allocated from it. For Aboriginal water reserves to achieve economic development to benefit Aboriginal people, water extraction licences must be granted from it. With that in mind, it is very much recognised by the department that work is needed now and before

the first water extraction licence being issued from the reserve to encourage and support the opportunities that arise from it.

In the Western Davenport water allocation plan, for example, which is a plan that was declared earlier this year, the central zone in that plan includes an Aboriginal water reserve of 26 091 megalitres per year. Government agencies are, therefore, working together with the land councils to look at building capacity in the regions where there is potential for industry growth or third party access through the use of this water. There is a lot more work to be done to support the policy and the bill to ensure that Aboriginal water reserves result in economic opportunities for Aboriginal land owners. It is not just about creating this legislative framework.

As committee members will see, this bill deals with some quite complex matters such as Aboriginal land tenure. I acknowledge the effort that was put into drafting of this bill and the significant support provided by the Solicitor for the Northern Territory in ensuring the constructions in the bill are accurate.

Christine Long, my colleague, was integral in the construction and design of the bill, so I will ask her to run through how the bill integrates with existing water legislation.

Mr DEPUTY CHAIR: Thank you.

Ms LONG: Christine Long, Executive Director, Water Resources. As Jo mentioned, there is an existing government policy framework, which is the Strategic Aboriginal Water Reserves Policy Framework. The bill takes the key elements of that framework and integrates them with the *Water Act*.

The key construction in the bill is what is eligible land. That is in section 4B on page 2. For land to be eligible land, there needs to be existing land rights or connection to land. It relates to people who already have rights to take water. You will note in section 4B(2) that the bill specifically excludes subleases. This is for clarity.

Section 4B needs to be read in conjunction with section 22C, which is in clause 8. This establishes some overriding parameters for what constitutes eligible land. The land has to be more than one hectare in size and there have to be water resources on, under, or adjacent to the land. There has to be direct physical access to water. That is reflective of the policy framework.

It also specifically excludes residential land. The reason for that is that water for residential land is for drinking water, and that is provisioned through public water supply or rural stock and domestic beneficial uses that have priority over all other consumptive beneficial uses of water.

The list of eligible land in a water allocation plan determines the Aboriginal water reserve. You will see in section 22C(2) on page 4 that the bill requires a Minister to consult with land councils. This is similar to the processes undertaken currently where the department consults with the land council representative in developing eligible land lists in a draft water allocation plan. So, that provision would be dealt with administratively as it is now.

Clause 6 talks about beneficial use categories. That starts on page 3. The bill establishes a new beneficial use category, which is called 'Aboriginal economic development'. That is to avoid confusion in the naming between what is a beneficial use category and the actual Aboriginal water reserve itself, which is a volume of water.

You will also note that the new beneficial use category, 'Aboriginal economic development', has become a default category for any water control district that is declared. It does not require a separate declaration to be made in the *Gazette* to apply.

Throughout you will see in subsection (3) that we apply what is called the 'all or none' criteria. These also exist in the policy framework. Where all of the land in a water control district, or none of the land in a water control district, to which a water allocation plan area applies, the declaration of the beneficial use category of Aboriginal economic development becomes irrelevant, so the bill reflects that. You are not requiring it to be in place in that situation.

Clause 9 on page 5 deals with the fact that the NT Government will not get involved in the consent process. The Controller of Water Resources in her decision-making will have the evidence of consent presented to her. You will see that section 71BA(2) points to the regulations. Regulations will be drafted that will outline the manner and form of consent that is required. For each land title type, the consent body will be defined and that consent will be provided to the Controller.

Clause 10 refers to section 108 which is the clause in the *Water Act* that lists the matters that can be prescribed in the regulations. Clearly, with Aboriginal water reserves, there is a function for land councils that would include reaching agreements with third parties to access Aboriginal water reserves, but most importantly, obtaining the consent of eligible Aboriginal people to access the Aboriginal water reserve.

There are two ways we could have expanded the function of land councils. The first was to amend the *Aboriginal Land Rights (Northern Territory) Act*. The second is to use section 23(2) of the *Aboriginal Land Rights (Northern Territory) Act* which provides that a law of the Territory can confer a function on land councils providing the Federal Minister agrees. That is how we have constructed it in this bill. The water legislation as a whole will confer a function through the regulations on land councils, and that will enable land councils to act in terms of Aboriginal water reserves.

I will quickly run through how Aboriginal water reserves arise. As a water allocation plan is being prepared and drafted, an eligible land list will be prepared. In that process we would be talking to land councils about which land titles in the area comprise eligible land. Of course, we would be getting some assistance from the Solicitor for the Northern Territory as well. When the Minister declares a water allocation plan, the water allocation plan then defines the Aboriginal water reserve.

The bill is a fairly short bill. It is a bit hard to follow but I hope those explanations have helped explain how it integrates with the existing water legislation.

Mr DEPUTY CHAIR: Thank you. Are there any questions?

Mrs FINOCCHIARO: This is obviously a highly technical type of matter but essentially is it trying to quarantine a quantity of water within a water catchment area for use by Aboriginal people for economic development?

Ms TOWNSEND: Yes. That is a very succinct description. Across the Northern Territory we have water control districts. There are not water control districts everywhere, but a water control district applies where you have some competition for a water resource and different rules will apply in a water control district and plans can also be declared in those control districts.

Mrs FINOCCHIARO: Could you give an example? Are you talking about, perhaps, mango farmers competing for water with people grazing cattle?

Ms TOWNSEND: There is a water control district that exists over the Katherine-Daly-Beetaloo area and within that you have the Katherine Tindall water allocation plan, the draft Ooloo water allocation plan and we are working on the Mataranka Larrimah water allocation plan. Those plans set rules about how water will be shared across different beneficial uses. As Christine said, some of those beneficial uses are for the environment, cultural, public water supply and stock and domestic—that is a very important beneficial use—then there is a range of development type beneficial uses.

The strategic Aboriginal water reserves would be a new one of those, so when a plan is being developed you make sure that you account for the sharing of water not just for cultural, environment and public water supply but for industry, agriculture and Aboriginal economic development.

It is fairly simple in one sense. It is about setting up a new beneficial use within the *Water Act* so that we make sure the thinking about what we might reserve for consumptive use for Aboriginal economic development is done. The second part of the legislation is really about ensuring that those matters which could be complex and difficult around consent and eligibility are set in law so they do not become matters that are difficult to navigate otherwise.

Mrs FINOCCHIARO: That is where you are talking about this eligible land. The water needs to be accessible from the land?

Ms TOWNSEND: Yes. The Strategic Aboriginal Water Reserve Policy does not confer a new right. If you are the Aboriginal land owner and you have water underneath you ...

Mrs FINOCCHIARO: Underneath you, yes.

Ms TOWNSEND: ... or adjacent to you, you already have a right ...

Mrs FINOCCHIARO: Yes.

Ms TOWNSEND: ... but if the person next to you exercises their right to access the water underneath them and takes a very large share, then the neighbour ...

Mrs FINOCCHIARO: They are encroaching on your rights.

Ms TOWNSEND: Yes, it is just trying to reserve it so that there is an opportunity for Aboriginal economic development to catch up.

Mrs FINOCCHIARO: That will be calculated by volume, is it? It is not literally, 'That is my fence-line and that is your fence-line, that bit of water is under my fence, that bit of water is under your fence'? It is a quantity?

Ms TOWNSEND: Yes. When we develop a plan—and there is a very good example in the pack we have for you where, say, in the Western Davenport plan which has a water allocation plan, we have a schedule that identifies the management zone, the name of the Aboriginal land, their land area and the percentage of that land and the proportion of water underneath that.

Mrs FINOCCHIARO: Oh, yes, right.

Ms TOWNSEND: So this is quite the technical part ...

Mrs FINOCCHIARO: Formulated, yes.

Ms TOWNSEND: ... that sets it all out. It is important to have this done because if you are a third party wanting to access that reserve, you want to know ...

Mrs FINOCCHIARO: How much is available.

Ms TOWNSEND: ... who to deal with and what is there.

Mrs FINOCCHIARO: Yes. So, part of the opportunities then for Aboriginal people on their land to use their water is to not necessarily use that water themselves, but sell that water to someone who might want to do whatever.

Ms TOWNSEND: Yes, to potentially engage with a third party to use that water.

Mrs FINOCCHIARO: Yes, right.

Mr DEPUTY CHAIR: This is where it will be useful for a lot of the homelands in Aboriginal towns?

Ms TOWNSEND: Yes, the Strategic Aboriginal Water Reserve only applies where there is a water allocation plan and it does not apply if water is already fully allocated. So, where you will see the greatest benefit from the reserve is where water is not fully allocated, like the Western Davenport, and when new plans are developed into the future.

Mrs FINOCCHIARO: What does it mean, 'it excludes subleases', when talking about eligible land?

Ms LONG: When a water allocation plan is drafted, there will be an examination of every land title within that water allocation planning area boundary. Subleases might exist as an overlay of tenure. The bill is just being very clear about the fact that subleases are not a consideration in determining eligible land.

Mrs FINOCCHIARO: Okay. So, if you are a sublease holder, you negotiate your water allocation with the person you got the lease from?

Ms LONG: That is correct, generally, yes.

Ms TOWNSEND: That applies broadly, not just to Aboriginal land.

Mrs FINOCCHIARO: Yes. No, no. Yes. So, this is just putting into legislation the policy with it. So, there is the vision for it and this is the mechanics of it?

Ms TOWNSEND: In summary—sorry. The policy framework is pretty clearly spelled out in here. It provides some certainty about eligibility and consent, because they are hard to do in policy. It ensures that there is a

new beneficial use category in the *Water Act*. There is a lot of detail in policy. I think I said this in my opening statement, but it is worth repeating—Strategic Aboriginal Water Reserves have effect now through declared plans. This just provides some certainty for a range of reasons. It helps it endure political cycles, but it also means that if you are a third party starting to enter into an arrangement with a land owner you have some certainty of the process and on how decisions will be made, so that does not change suddenly.

Mrs FINOCCHIARO: Who was consulted prior to the development of this bill?

Ms TOWNSEND: I will let Christine talk about who was consulted in the construction of the bill, but the policy was extensively consulted back in 2017 when it was developed. One of the strong recommendations that came through that was that there would be some certainty through an amendment to the *Water Act*.

Ms LONG: The consultation was undertaken prior to the policy framework being developed. That was a standard consultation process with the release of a discussion paper, some draft policy work et cetera. There was a lot of one-on-one consultation with individual stakeholders.

The people that were included in that round of consultation were: Northern Land Council; Central Land Council; Centrefarm; NAILSMA; the Daly River catchment traditional owners; Alice Springs, Ooloo, Katherine, Ti Tree and Howard water advisory committees, as they existed at the time; stakeholders in the Western Davenport water allocation planning area, which was prior to the declaration of the plan; Power and Water Corporation; Arid Lands Environment Centre; Territory Natural Resource Management; a number of individuals and science professionals contributed to the process; and various other water-use stakeholders as individuals.

That consultation was the consultation step that established the broad policy direction and gave options to government in setting the policy framework. In October 2017, which is the date on the framework, is when the policy environment was established by government. The amendment bill reflects the policy framework.

In terms of a bilateral consultation process, that was limited. However, I spoke to land councils about what was in the bill so they had awareness about what their role might be in terms of the bill going forward. That was more of a one-way informational process rather than a consultation process.

Mrs FINOCCHIARO: With the development of the policy back in 2017, you said other individual stakeholders who use water. Is that your pastoralists, agricultural sector, NT Farmers, Minerals Council and Cattlemen's Association, some of those organisations?

Ms TOWNSEND: Yes, there were written submissions received from the majority of those because we also went out publicly with a discussion paper for consultation. There were written submissions received.

Mrs FINOCCHIARO: Are the regulations prepared with this legislation? When will we be seeing those?

Ms LONG: Drafting of the regulations has not commenced at this point in time.

Mrs FINOCCHIARO: When is this hoping to come into force? I assume it is passed. Is there a long lead time to get the regs done?

Ms LONG: We will be commencing drafting of the regulations in the very near future. Obviously that will involve consultation with stakeholders, particularly the land councils. I would see that happening in the next one to two months' timeframe.

Mr DEPUTY CHAIR: With the land councils, the two smaller land councils, Anindilyakwa and Tiwi Land Council—have they been part of this process?

Ms LONG: In terms of water allocation and competition for water, because both Anindilyakwa and Tiwi are large Aboriginal land trusts and they own their country in entirety, there is actually no competition for water there. We would never find ourselves in the situation where we would need to apply strategic Aboriginal water reserves. Also, it is unlikely that we would prepare a water allocation plan for that country. If we were to do any sort of water planning, it would be a water management strategy and we would develop that in consultation with the right people. It is really the Northern Land Council and the Central Land Council that are the stakeholders in this particular bill.

Mr DEPUTY CHAIR: Thank you very much for your time and for coming today. Thank you very much.

Ms TOWNSEND: Thank you.

Ms LONG: Thank you.

Mrs WORDEN: Nice to see you again.

The committee concluded.
