**IRRIGATION ACT AMENDMENT BILL (No. 3) 1981**

**Legislative Assembly, 2 December 1981, pages 2279-80**

Second reading

**The Hon. P. B. ARNOLD (Minister of Water Resources)** obtained leave and introduced a Bill for an Act to amend the Irrigation Act, 1930-1981. Read a first time.

The Hon. P. B. ARNOLD: I move: That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it. Leave granted.

Explanation of Bill

The principal objects of this Bill are twofold; first, to permit the freeholding of Crown tenures over land within irrigation areas and, secondly, to exempt holders of perpetual leases, agreements to purchase and land grants, where appropriate, within those areas from the requirement to obtain the consent of the Minister of Lands to transfer, mortgage or otherwise deal with their interest in the land.

These proposals are consistent with the Government’s land tenure policies under which it has clearly indicated that freehold (fee simple) is the most desirable form of tenure. The intention to give holders of permanent Crown tenures the freedom to deal with their interest in the land without the consent of the lessor is consistent with the Government’s deregulation programme.

At present, the provisions of the Irrigation Act restrict the sale of land for cash or on terms through an agreement to purchase to town lands only. Fee simple title is available under all other land tenure Statutes covering all areas of the State except those lands subject to the provisions of the Marginal Lands Act and the Pastoral Act, which are currently under review. It is now appropriate to allow land in irrigation areas to pass into private ownership as the basic reasons for the Crown to retain the fee simple in those areas no longer apply.

The proposed amendment will enable the present freeholding policy that applies to other forms of perpetual leases to be extended to all perpetual leases in irrigation areas, including leases granted under the Discharged Soldiers Settlement Act and the War Service Land Settlement Agreement Act. Although the Bill provides for the freeholding of war service leases, certain administrative aspects involving the Commonwealth remain to be finalised.

Land tenure legislation relating to limitations on the maximum area that could be held by any person was repealed in 1971. It is generally accepted in the market place that there is little difference between the interest of a perpetual lessee and that of a freehold proprietor, particularly in other areas of the State. Consequently, the requirement for the lessee to obtain consent to deal with his interest no longer serves any useful purpose. The Bill relieves lessees, etc., in irrigation areas from complying with that condition. It is proposed also to amend other land tenure Acts to free all holders of perpetual leases from this requirement.

There are numerous parcels of land throughout irrigation areas on which various irrigation and drainage headworks are located. These are licensed to the Minister of Water Resources, but many of them are used to gain access to leasehold properties. This arrangement is unsatisfactory and, in order to assist in resolving the problem, it is proposed to grant easement titles where required, and then add the land, subject to those easements, to the adjoining perpetual leases as a prerequisite to freeholding. Currently the Act precludes the granting of easements over Crown lands, and the Bill corrects this deficiency.

The administration of those sections of the Act which relate to the irrigation and drainage functions and related charges have been delegated by the Minister of Lands to the Minister of Water Resources. Under the provisions of the Act, the latter Minister can exercise various rights over leasehold land, but, as freehold tenure over broad-acre areas has not previously been available, those provisions do not contemplate the need to exercise the same rights over lands held under free simple title. In order to ensure the continued efficient operation of the water supply and drainage systems, and the recovery of charges, it is essential that all existing rights be maintained over all land in irrigation areas irrespective of tenure. The Bill gives the Minister of Water Resources that authority.

The current rehabilitation programme has been generally designed on the basis that each property has a metered irrigation connection and one drainage outlet. It is essential that fragmented or haphazard subdivision of irrigated lands be controlled in order that the efficiency of the system can be maintained, irrespective of tenure. For the purpose of ensuring continuity of irrigation water and drainage services where partition of a holding could occur, it may be necessary to issue conditional land grants if it is not practical to consolidate holdings into one land parcel by administrative action. Furthermore, some perpetual leases may be subject to other special conditions which may need to be carried forward on to land grants. The Bill makes provision for the Governor to include special conditions in fee simple titles.

Clause 1 is formal. Clause 2 provides for the commencement of the Act upon proclamation. Clause 3 is a consequential amendment to the arrangement of the Act. Clause 4 inserts a definition of owner that includes a reference to a person who is purchasing lands in an irrigation area under an agreement to purchase. Clause 5 repeals the section of the Act that presently entitles lessees of town allotments in irrigation areas to surrender their leases for a land grant. This section will be covered by a later section to be inserted.

Clause 6 provides for the granting of easements by the Governor over certain lands within irrigation areas—a power that he does not currently have. The present system is for lessees or purchasers to surrender the necessary rights to the Crown so as to enable bodies such as the Engineering and Water Supply Department to carry out works. It is desirable that, before applications for freeholding are approved, such easements should be registered so that land grants issued will be subject to those registered interests.

Clause 7 provides that any lessee or licensee of lands within irrigation areas may apply to the Minister for the freehold of the lands comprised in his lease or licence. This section applies to leases and licences under the Irrigation Act, the Discharged Soldiers Settlement Act and the War Service Land Settlement Agreement Act. The Minister will determine the purchase price for the lands, and must give the applicant full details of all the various terms and conditions on which the application is granted. It is made clear that land grants issued pursuant to this section may be subject to conditions and reservations determined by the Minister.

Conditions and reservations attached to land grants will be carried over to subsequent certificates of title, if still current. New section 48d attracts certain enforcement provisions of the Crown Lands Act in relation to breaches of agreements to purchase or conditions attached to land grants. New section 48e provides that lessees, purchasers and owners of land within irrigation areas no longer have to seek the consent of the Minister to any dealings with their land (unless, of course, the Minister stands in the position of mortgagee in any particular case). Again, this section applies in relation to leases, etc., under the Irrigation Act, the Discharged Soldiers Settlement Act and the War Service Land Settlement Agreement Act.

Clauses 8 to 23 (inclusive) effect consequential amendments that apply to those provisions of the Act to deal with such matters as rating, maintenance of drains, etc., to persons who obtain the freehold of their leases in irrigation areas. Clauses 24 and 25 effect consequential amendments to the form of leases as set out in the schedules to the Act.

Mr KENEALLY secured the adjournment of the debate.