

Hansard

30th October 2008

WATER (COMMONWEALTH POWERS) BILL

In committee.

Clause 1.

The Hon. S.G. WADE: I want to respond to the comments the minister made in his summing up on another bill, where he referred to section 100. I was certainly well aware of section 100. In fact, I am aware that constitutional lawyers Quick and Garran wrote quite extensively about section 100 in the early years of the new commonwealth government and reflected on the word 'reasonable'. They suggested that the word 'reasonable' is quite important.

It could well be an opportunity to balance the regional expectations of navigators, cultivators, and so forth, and it could be significantly influenced by the context. Rather than it being a 'get out of gaol free' card for the commonwealth to not fully explore its constitutional powers, my understanding of the constitutional consideration on this matter is that there is significant scope for the commonwealth, even under its current constitutional heads of power, to take a more active role in the management of the River Murray.

The fact that the Howard government put through the Water Act in 2007 certainly demonstrates that his government had the courage to explore those opportunities. The people of South Australia expect that the Rudd government will continue in that tradition.

The Hon. P. HOLLOWAY: The commonwealth bill, as I understand it, is an expansion of the Water Act 2007. Therefore, the Rudd government is, effectively, building upon what was in the 2007 act and extending it.

The Hon. S.G. WADE: I do not dispute that. As I said in my second reading contribution, I believe it just has not gone far enough. We need to bite the bullet, we need to remove the veto, and we need to ensure that the commonwealth has the capacity to effectively manage the basin. We are in a crisis situation. We really do not have time for the niceties of Labor's collusive federalism; we need to get on and deal with the crisis that we face.

The Hon. P. HOLLOWAY: History will show that in 1983, which is the last time there was federal and state Labor governments, the Murray-Darling Basin waters agreement was introduced. Of course, Queensland was not then a Labor state and remained outside the basin. Therefore, many of the issues that the Hon. Sandra Kanck talked about today, of course, have their origins in that time. Now that we do have cooperative governments, we have taken this very significant step—the next great step since the early 1980s, which was the first big step since the River Murray Waters Agreement came in in 1913.

Clause passed.

Clause 2 passed.

Clause 3.

The **Hon. R.L. BROKENSHIRE**: I move:

Page 2, line 20 [clause 3(1), definition of *critical human water needs*, 9b]—

After 'national security costs' insert:

or cause permanent plantings that exist on the commencement of this act to be lost.

I will tie together amendments Nos 1 and 2 for the purpose of saving the committee some time. It is the permanent plantings amendment. Section 51 of the Constitution defines the legislative powers of the commonwealth parliament. It begins with matters such as trade and commerce, taxation, quarantine, census, statistics, marriage, pensions, etc. Then, section 52(xxxviii) provides:

Matters referred to the parliament of the commonwealth by the parliament or parliaments of any state or states, but so that the law shall extend only to states by whose parliaments the matter is referred, or which afterwards adopt the law;

My amendment is not only legal but also demonstrates that we are a parliamentary democracy not to be dictated to by the executive of this or any other government. Labor ministers here and east of the border have come up with an agreement or a plan and have then gone to their parliaments and told them that they have to pass this bill.

In my studies and knowledge of politics, it was always the parliaments that ran the country and not the government. If we get this wrong, who will be criticised? Who will the courts look to for clarification and be critical of if there is uncertainty? I remind all my colleagues that in both houses many non-government members have said that this bill is not strong enough and expressed problems about powers of veto, etc.

If we get this wrong, who will be criticised? Who will the courts look to for clarification, and who will they be critical of if there is uncertainty? The answer is: the parliament. It is incumbent upon us as parliamentarians, particularly in this, the upper house—the house of review—to review this bill and, where there is uncertainty, to amend it and not be pressured into rubber-stamping one of the most crucial bills and losing one of the last chances to give South Australians an opportunity for a water supply to address the social and economic stresses currently before this state.

I will come to the legal aspect in a minute, but bear with me as I discuss the parliamentary aspect. This parliament has received a bill that does not provide certainty for a great number of constituents—my constituents and those of every other member in this place. I add that a significant number of those constituents have been under incredible stress for successive years, and they are looking for some strength and direction through legislation for their certainty and that of their family and community.

The lack of certainty is that this agreement does not tell, nor has this government told, the people irrigating from the River Murray what the government's future plans are for irrigation in this great state. Irrigation started with resettled World War II veterans and migrants who, over successive decades, have gone along the River Murray and become great economic generators for the wellbeing of previous South Australians, current South Australians and, we hope, future South Australians.

Let us not forget the heritage of the irrigator, the World War II soldier settlers, those brave men and women who fought for this country. I can clearly remember that it was irrigation along the River Murray that assisted in an incredible way to rehabilitate the state after the State Bank collapse—irrigation which, to a significant extent, paid its own way to fix up its infrastructure, becoming more efficient and effective. South Australia has led the way,

thanks to the initiatives of those irrigators, and it has been very effective at best practice farming methods in growing food for our state and nation and for export.

The parliament of South Australia has a bill which talks about critical human needs and which divides it into two parts. To put these in layperson's terms, they can be best described as human consumption, on the one hand, and other stuff, on the other. I will read again that 'other stuff' definition, which I read in my second reading contribution, because my amendment, and today's debate regarding this amendment, centres upon it, namely, critical human needs. I state again that these include, 'Those non-human consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs.'

I note that this is the same wording that appears in clause 86A(2), definitions, on page 11 of the bill, which comprises the tabled text. I am advised that we cannot amend the tabled text, so the way to do it is to amend the bill before us now which, I might add, has not yet been considered or passed by the commonwealth and has certainly not been passed by some of the other states at this point, namely, Queensland and Victoria.

I return to the second limb of the definition. I have described it as political wording because, given the right circumstances, there is much that a government of the day could include in the definition. Again, due to time, I will not retrace my second reading contribution. I simply point out to honourable members that we, as the parliament of this state, have an obligation—not an obligation to nod along and agree with what the executive gives us to pass, but an obligation to review legislation and consider whether, first, it is in the best interests of our state or, secondly, whether additional clauses could go into this bill to make it better for the ongoing long-term interests of our state.

I turn now to the legality of this clause. If we are the only state to pass it, it binds only us, that is, South Australia. That is not my major intention. My major intention is to pass it and see all other states compelled to pass it, too. I believe that is what a Premier who fights for his state should do, and this parliament should remind our Premier to do that. As I said, many contributions have been critical of the lack of strength in the fight for South Australia in what we are debating now.

Subsection (37) of the Constitution tells us that states can 'afterwards adopt the law'. That applies to a clause of a bill just as much as to a bill in its totality. So, we can pass this, and Victoria, New South Wales and Queensland can adopt it after or during their debate in future weeks. That is what I consider to be desirable and what I believe our Premier should have fought for. To me, that is the best case scenario.

What if we pass it and we are the only state to do so? This wording then binds our state and any commonwealth action under this bill in so far as it relates to our state of South Australia. That is not a disaster, if that is the worst case scenario on the amendments passed: it is clearly a victory for South Australian irrigators. Why? Because it will mean that, when the commonwealth considers what are critical human needs in South Australia, it will see that permanent plantings are one of those needs.

When the new authority prepares the basin plan under section 86B of the draft bill in the tabled text in so far as South Australia is concerned, it will be compelled under direction from this parliament to treat critical human needs as including survival of permanent plantings. The stress, the mental torture and economic pressures through not even knowing whether you have critical water to keep permanent plantings alive has caused enormous problems from Renmark right down to Currency and Langhorne Creeks.

The definition is broad and that was recognised by one of the ministers in this place only yesterday, who I believe is on the record as confirming that. This parliament is saying that, if we pass this amendment, we believe survival of permanent plantings is one such 'non-human consumption requirement that a failure to meet would cause prohibitively high

social, economic or national security costs'. We are talking here of thousands of families, thousands of jobs and billions of dollars for our state, and a sustainable food supply for the whole of South Australia. That is not a phrase we can leave the scientists in the authority to determine, but something parliament has to determine.

By law, if we are the only state with this amendment, the legal effect is simple. Critical human needs will include permanent plantings in South Australia. When the basin plan is prepared, the authority will have to factor-in permanent planting survival as one such need, and that is the emphasis on critical needs and permanent plantings—the survival of those plantings. It takes a minimum of five years, if those permanent plantings die, to replant and start to produce. Is that not our viewpoint in this state? Is it not the case that our critical human needs—remembering the broad wording, the 'non-human' wording in the second limb of the bill's definition—include survival of permanent plantings? Of course it does.

If necessary, I will call the council to divide on this vote, as permanent plantings are a critical human need. My amendment is a line in the sand for this government. I am asking a simple question: are permanent plantings a critical human need in South Australia, that is, within the broad definition of the bill? Should it include permanent plantings? Members can protest at my making it that black and white—and I am keen to listen to any arguments—but that is how I see it because, from multiple advice given to me through my office, the law is clear.

This amendment is either passed by all states or just this state. If all states pass it, we have also protected the survival of permanent plantings in Victoria and elsewhere as well as in South Australia. If we are the only one state that passes it, we have told the commonwealth that in our great state, South Australia, we believe that our critical human needs include permanent plantings. That is what this amendment does, and in good conscience for the future of this state I encourage all members in this place to support the amendment.

In conclusion, I cannot emphasise strongly enough how desperate are our irrigators along the River Murray. They are struggling, discouraging their kids from continuing on the family farm and from becoming second, third or fourth generation farmers. Leaving growers and food producers in limbo with permanent plantings and uncertainty through declining to support and pass this amendment is just not cricket. They are out there now on their tractors listening to us Aussies getting a belting in the cricket from the Indians: let us give them some good news on the next news broadcast they hear that this parliament cares about them, their future and their permanent plantings, and wants to guarantee the survival of those plantings and therefore the survival of those family farms. I commend the amendment to the committee.

The CHAIRMAN: I remind members that I have been tolerant. In committee there should not be second reading speeches, and I ask members to keep that in mind, otherwise we may be here for a month.

The Hon. P. HOLLOWAY: I am sure that all of us would share the honourable member's concerns with the difficulties facing irrigators in our state and elsewhere in the country. However, just because we have concerns we should not pretend that somehow or other this amendment can fix those problems or even contribute positively toward them. The government obviously will oppose the amendment, but in so doing I indicate that it is disingenuous to suggest that the passage of this amendment would offer some benefit for those people who are suffering through the lack of water in the River Murray resulting from the prolonged drought.

It is inappropriate to use this referral legislation to address a short-term drought contingency issue. The definition the honourable member seeks to amend encompasses all types of permanent plantings without consideration of viability, economic or social value and priorities for providing food to communities, or other issues. The amendment seeks to make explicit but narrowly prescribe a definition for a single issue into what is necessarily a

broad definition that recognises the need for flexibility during low water availability situations to respond to the issues at hand.

The current definition of 'critical human water needs' was agreed by all Murray-Darling Basin jurisdictions under the agreement on Murray-Darling Basin reforms signed at COAG on 3 July. It is sufficiently broad to cover permanent plantings and recognises that, while permanent plantings are an important issue, it is only one issue under the critical non-human consumption requirements referred to in the existing definition. It is broad as it recognises that the detail of critical human water needs would be developed under the basin plan.

The basin plan will set out a comprehensive process for addressing critical human water needs under low water availability conditions, including defining the amount of water required in New South Wales, South Australia and Victoria to meet the critical human water needs of communities. Rather than hardwiring the definition into legislation, the process allows the development of detailed arrangements regarding critical human water needs that are tailored to the conditions and issues at hand.

If it were to proceed, this amendment would change only South Australia's amendment reference and not the core definition in the Commonwealth Water Amendment Bill 2008. We have jurisdiction only over our state. All the problems of managing the River Murray over the 110 years since Federation and before have come about because this state does not have the power to tell other states what to do. This amendment could be seen—and I think would be seen—as South Australia entrenching a parochial position and being at odds with the new culture and practice of basin-wide management these reforms seek to establish.

It is worth pointing out that, apart from the political risk to which I have just referred in terms of this being seen as a sort of parochial undermining of the whole agreement, there is a risk that, by adding the additional part to the definition as proposed by the honourable member, that is, the definition of 'critical human water needs', it could be legally argued that South Australia would no longer fall within the definition of a referring state under the Commonwealth Water Amendment Bill 2008. This is because, by changing the definition, the subject matters referred by South Australia will no longer align with the subject matters required for South Australia to be a referring state as defined under section 18B of the commonwealth bill.

Obviously, that commonwealth bill reflected the agreement and the arrangement by all the states at COAG. If this is altered, I think there is that risk. If we consider the application of the amendment (if that amendment were to succeed), the commonwealth parliament would potentially not be able to rely on this amendment if it wishes to amend relevant sections of the Water Act so that they applied uniformly to all basin states. It would be constrained by the narrower subject matter reference given by other basin states. It could enact legislation that applied only in South Australia. However, this could potentially jeopardise the cooperative nature of the agreed reforms.

I understand that, like the rest of us, the honourable member is concerned about the incredibly difficult situations facing irrigators in the River Murray, but what we are dealing with before us today is a reference of powers from this state to the commonwealth. An agreement has been reached with all the states in relation to that. One may wish that some other states were more cooperative, not just now but in the past, but that is what has been achieved. Let us not put that at risk by changing our referral and making us the odd state out and, potentially, I think in a political sense, having the finger pointed at us by other states as being at odds with what these reforms are trying to seek.

The Hon. J.M.A. LENSINK: In relation to this definition of 'critical human water needs', which appears at line 19, page 2 of the bill, paragraph (b), to which the minister referred in his comments, provides:

Those non-human consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs;

As the minister stated, this is quite broad. From my recollection, the minister mentioned that that could anticipate permanent plantings. Could he provide some other examples of what this provision anticipates?

The Hon. P. HOLLOWAY: The definition of 'critical human needs' as it is in the bill provides:

- (a) core human consumption requirements in urban and rural areas; and
- (b) those non-human consumption requirements that a failure to meet would cause prohibitively high social, economic or national security costs;

Clearly, if water was not available for Adelaide, not just for us to drink but if it were to have a severe impact on industry within this state, it would put tens of thousands of people out of work. That is clearly what is envisaged in terms of causing prohibitively high social, economic or national security costs.

The Hon. J.M.A. LENSINK: Is that anticipating a disaster scenario? Is that what it is intended to cover?

The Hon. P. HOLLOWAY: What is envisaged under this reform is that, under the basin plan, obviously there would be negotiations on how this detail would be dealt with. However, I think it is quite clear from the definition and what other states have done. I do not think any other state would argue that those critical needs for Adelaide, which might affect significant employment here, would not be a critical human need. Obviously, it would be anticipated that that would be incorporated as part of the basin plan. Clearly that would be an unacceptable national outcome, should this city not be considered as part of that plan, in terms of these sorts of needs.

The Hon. A. BRESSINGTON: I raise a couple of points on what the minister said about the other states pointing their finger at us. As I understand it, from a briefing that I received from outside the government employees, South Australia is already having the finger pointed at it because it is the only state that has not taken the time to develop and implement a food bowl plan. That means that, in times of severe drought, it has already been predetermined in the other states what areas will be sacrificed and what steps will be taken to either pay out those landowners, irrigators and farmers, or relocate them. The information that I received was that South Australia is the only state that has not gone to the trouble of developing a food bowl plan. I would like clarification on that from the minister, if that is the case.

Also, a point was made about critical need, where South Australia would not be included in the overall national plan and that that would be unacceptable, but we are seeing that now with the situation with the Lower Lakes and the Coorong, are we not? That is a national icon; it is under international protection from the Ramsar convention, but nobody interstate seems to be rushing to our aid to assist us to save that international icon. So, for me, what the minister is saying does not necessarily gel with what we see happening. I think that the Hon. Robert Brokenshire's amendments may go a long way to encourage the government to develop that food bowl plan and to secure, as a critical human need, food for this state and perhaps for other states as well.

I would like the minister to confirm whether or not South Australia has a food bowl plan that has already been developed, or a project that is underway, where we are guaranteed that some of our farms and citrus growers, and those people who provide us with the food that we need, have some protection already in place at a state level; and, if not, why not?

The Hon. P. HOLLOWAY: It is inevitable that other states will try to point the finger at South Australia, just to move—

The Hon. A. Bressington interjecting:

The Hon. P. HOLLOWAY: It is inevitable that they will try to do that, just to move the finger of suspicion from themselves, but I think that everyone knows where water has been overallocated and over-consumed in the past 30 years. That has been well documented, but I would argue that other states are well behind South Australia in the reforms that have been made in relation to our irrigation areas. It was during the 1990s that much of the work was done to convert those open channel irrigation systems that we had near Renmark and Loxton and other areas.

The Hon. A. Bressington: Do we have a food bowl plan?

The Hon. P. HOLLOWAY: What do you mean by a food bowl plan?

The Hon. A. Bressington: If you don't know—

The Hon. P. HOLLOWAY: We've had a food plan in this state for more than a decade. Yes, we do have a plan, but we have done a lot of work in this state—and, yes, I think it was done when Rob Kerin was the minister for primary industry—on our major irrigation areas to replace the open channels with piped water so that the amount of losses was greatly reduced. Significant benefits were made, and significant state and commonwealth money over the years has been put in. Over two or three decades, actually, there have been improvements to the state. This state has far and away the most efficient delivery of water to irrigation systems of any state. Now—

The Hon. A. Bressington: That wasn't the question.

The Hon. P. HOLLOWAY: You are talking about a food bowl plan. This state has had its various food plans in place long before other states did.

The Hon. A. Bressington: So, does that mean that it was known prior to that that all those citrus growers' plantings would be sacrificed in time of drought and they were not told about it?

The Hon. P. HOLLOWAY: The honourable member is coming up with a complete red herring here. The fact is that, until fairly recently, this state had always received its entitlement (the 1,850 gigalitres) that it had under the Murray-Darling agreement. It has been only in relatively recent times, due to the unprecedented drought—remember that it is well documented that in South-Eastern Australia we have had the driest period on record; not just in one year such as we had in 1914, but we have had a series of years in a row—that there has been that serious water deficiency throughout the Murray-Darling Basin.

Obviously, we have to adjust to that, because that is the situation facing us at the moment. However, historically this state has done far more to use the water that it has efficiently, and we are way ahead of other states. So, I really do not think that the honourable member is making any significant point here. If she is trying to compare what we do compared with other states, it just does not gel.

The Hon. A. BRESSINGTON: The points that I made here were raised in a briefing that I received from Professor Mike Young, who is nationally recognised as an expert on the management of the Murray-Darling Basin. He has been involved at government levels all over the country, negotiating how this could work better, and I believe he is in high level talks now. The one thing that he pointed out to me in the briefing was the fact that Victoria

and New South Wales have spent a billion dollars in developing a food bowl project: a stage 1 and a stage 2 project.

He indicated that it is about determining, in times of severe drought, what areas of agriculture and irrigation will be sacrificed, and what farms and plantations will be relocated or bought out by the government; and, in fact, that is why the Victorian government was a little reluctant to come on board with the plan that the Howard government came up with, because South Australia has dragged its feet in this area.

If the minister says this is a bit of a red herring, just because he does not know the answer, then we have a serious problem in this chamber, debating a bill that, as every member in this place has said, is one of the most important bills we will be debating in the history of this parliament. It was not a red herring; it was a serious question. It was a question raised by an expert in a briefing, and all I want is an answer. Do we have a food bowl project plan that determines how our agriculture and irrigation will be managed in times of drought? What areas will be sacrificed or relocated? It is a 10-year plan. The other states have it. We do not have it, obviously, because you do not know what a food bowl project is.

The Hon. P. HOLLOWAY: In trying to catch up to this state, to the work that was done over at least 10 years—

The Hon. A. Bressington interjecting:

The Hon. P. HOLLOWAY: They are. The honourable member should go and see the Mulwala Canal that takes water to the Murrumbidgee irrigation area. It is a big open canal, which loses more water through evaporation and leakage than the entire irrigation consumption in South Australia. I have been a member of the Murray-Darling Basin Commission and have been interested in this subject, and I have been a member of the Murray Valley League for nearly 30 years. I did a lot of work on this matter in my previous employment when the Murray-Darling Basin Act was negotiated back in the early 1980s.

I can tell the honourable member that there is massive wastage of water in upstream states. The delivery of water through our irrigation system is vastly superior to that. Victoria is a little better than New South Wales, I think it would be fair to say. However, they are spending \$1 billion and what they are doing is improving the efficiency of the water delivery in their irrigation system—because they need to. Much of that work has been done here.

Certainly, in this state we do have a proposal to support irrigators who are under stress, and that is part of the Murray Futures Initiative. The Premier and the Prime Minister announced the exit package to support adjustment in the Riverland because of the current drought conditions. Clearly, we need to move towards greater viability within that area, where some of those smaller operations are not viable in the current conditions. Indeed, unfortunately, some of our dryland areas are probably not viable either, if the current drought conditions continue. However, that is another issue.

Highlands irrigation restructuring has led to over \$300 million per annum in economic return to the region. As Minister for Urban Development and Planning, within my portfolio, I have been working with the Minister for Water Security and the Minister for Agriculture, Food and Fisheries, doing my part (in terms of changes to planning laws) to enable this restructuring to take place. The government has been working on the Murray Futures Initiative in great detail. As I have said, I am playing my part in terms of dealing with the situation.

If people have to sell up, they can retain the property they live in but the remainder of their property can be on sold. That is something which is very difficult under current planning laws. That is just a small part. Clearly, my two colleagues (the Minister for Agriculture, Food and Fisheries and the Minister for the River Murray) have been much more involved in that

than I have. However, this state has been working hard for some time to enable that sort of restructuring to occur.

Upstream states need to do a huge amount of work to improve delivery to their irrigation systems. It is quite primitive in many cases—not in all cases—compared to the systems we have in South Australia. We have always had a shortage of water in this state and, as a result, we have developed more efficient systems and far better irrigation practices over time than, unfortunately, some of the upstream states that have had the luxury of being self-indulgent. Those days are over now.

The Hon. R.D. LAWSON: I have a couple of questions for the minister, but I should preface them by saying that I do strongly support the sentiments which underlie this amendment. However, I want to understand its effects, and I believe that the parliament ought to understand whether there might be any unintended consequences to an amendment of this kind. On the subject of unintended consequences, I am reminded of the fact that, in America, state legislatures thought it would be a great idea to pass laws to prohibit banks from pursuing borrowers who were unable to meet their mortgage commitments. This led to hundreds of thousands of borrowers walking; it led to banks losing security and to the subprime crisis; it led to a worldwide financial crisis which will result in millions of people losing their jobs. I think unintended consequences are something we really have to look at here.

My first question to the minister relates to the indication that, if our reference to the commonwealth parliament is extended in the way in which the amendment proposes, the reference itself could misfire—by changing the subject matter of the reference itself. My questions are: does the government have legal advice to that effect; how strong is the legal advice; is this just a mere possibility or is it something the government is throwing up to raise the spectre of some danger—a spectre which does not really exist; and is the minister prepared to table such advice as the government has received on that particular matter?

The second question relating to unintended consequences involves the intention giving additional status to permanent plantings in the water context and, in particular, the permanent plantings in this state. Is the minister able to tell us, in relation to the whole of the basin, whether there are greater permanent plantings in other jurisdictions than we have here? Could it possibly be that, as a result of elevating permanent plantings to the status of critical human needs, we would in fact find that the water available to South Australia as a whole is diminished by reason of the fact that the extensive permanent plantings in other jurisdictions are elevated?

The Hon. P. HOLLOWAY: First of all, the honourable member asks whether we have had legal advice. I understand that we have had some verbal advice from the Crown Solicitor. Clearly, this amendment was tabled only earlier this week. I am sure that the Crown Solicitor would like more time to consider it but we have to deal with it in the time frames available to us. However, I am informed that the verbal advice is that there are some risks with this legislation, and I explained those earlier.

It would seem to me that if you have an agreement among states to refer powers, if every other state does it bar one, and one state for whatever reason in its parliament tries to be different, inevitably there will be risks. First of all, of course, there is the political risk; then, there is the legal risk.

The political risk, I think, is obvious. I imagine that if you were Victoria and it could be perceived that any amendment that we had would somehow impact on you, and you were reluctant to be part of an agreement, would you not like that to happen? Is that the sort of political risk that you would want to take? That is purely my personal observation about what I think could be the political risk.

In terms of the legal risk, which I think the honourable member rightly raises, I can only repeat what I said earlier, that, by adding the additional part of the definition, it could be legally argued that South Australia would no longer fall within the definition of a referring state under the commonwealth Water Amendment Bill 2008. At this stage, that is the only information we have because, of course, this amendment has been there for only a couple of days.

The Hon. M. PARNELL: I want to pose a question or two to the mover of the amendment. The mover, in his second reading contribution, was critical of managed investment schemes and, as I understand it, his criticism was around the distorting role that those schemes have played in encouraging excessive plantings. He referred to almonds being planted interstate.

When I look at the honourable member's amendment, I can see that it relates to permanent plantings that existed at the commencement of the act, so it relates to plantings already in the ground, and my question of the mover is: does his amendment in fact entrench these managed investment scheme plantings of which he was so critical? A subsidiary question would be: would his amendment effectively make it very difficult for us to roll back excessive plantings that may have been put in as a result of managed investment schemes?

The Hon. R.L. BROKENSHIRE: Most of those significant management investment schemes are actually in Victoria and the eastern states; however, there are some managed investment scheme developments of more recent times in the Barossa Valley, where they draw water from the River Murray. I understand there is a problem in trying retrospectively to exclude people who have planted permanent plantings in managed investment schemes by now saying that this applies to all permanent plantings but excludes managed investment schemes. It is out of our control.

I think it should have been addressed as part of this whole debate on water supply and future water supply because this is how ridiculous and absurd this whole thing is at a time when here we are now, in the main, debating the merits of trying to protect generational family farming, when the commonwealth and all these ministers and premiers have done nothing to address the fact that managed investment schemes can still run ahead at a rapid rate if they have the money to buy water allocations.

Again, it highlights, with a good question from the honourable member, how flawed a lot of this is. My proposal seeks to do the best we possibly can to protect and, in the main, support permanent plantings on existing family farms, and that is why I appeal for support there. I will join forces with the honourable member to see what we can do about preventing further managed investment scheme irrigation projects from occurring, with the help of his federal colleagues and those with whom we have contact.

The Hon. R.D. LAWSON: I directed a question to the minister earlier but he did not answer it; instead, he addressed the legal issues. What would be the effect in terms of water flows (if the minister is able to answer this) of this amendment if other states were to adopt the same principle—and one would imagine that everyone would have to adopt the same principle—that critical human water needs now include permanent plantings? I imagine there are vast permanent plantings in New South Wales and Victoria. Could this change to the definition have the effect of diminishing flows to South Australia generally? I simply do not have enough technical understanding of the mechanisms of the basin plans, etc., contained in the agreement to know the answer myself.

The Hon. P. HOLLOWAY: First, we need to make the point that the commonwealth would be unlikely to use any full effect of a reference from just one state anyway—in fact, almost certainly it would not—so there would be absolutely no advantage. The other states would have to amend their legislation request and then get agreement from the commonwealth presumably to do that. If it were sought to cover these permanent plantings (which means

any trees, bushes, vines or palms maintained for the purpose of the protection of food or human consumption) then presumably those permanent plantings in New South Wales and Victoria would get extra protection under this.

Would that mean less water coming into South Australia? Clearly, it would depend on the basin plan. I think it is well accepted what critical human needs are. It should be remembered that provision has been made, and I think at present extra water has been allocated within Dartmouth or one of the major storages which is recognised for South Australia's critical human needs. If we were to expand this definition, other states might well decide that, if it is going to cover an additional range, it might well mean less water for South Australia. I guess that is just one risk, but who really knows? It comes under the basin plan, as I understand it, and it is not as though this is just coming out of thin air. People from the states and the various governments have been working on these issues for many years, so I think there is a good understanding of what is required. If we were to basically put in something out of left field similar to this amendment, it could put in jeopardy all those understandings which we expect would flow through to the basin plan.

The Hon. R.D. LAWSON: I would like to add to that I agree with the sentiments uttered by the mover. He talks about family farms and the like. Mind you, many of the plantings in the Riverland are not family farms at all; they are major multinational corporations planting thousands of hectares of vines and the like. But, I agree with his sentiments. Of course, the value of a family farm in South Australia is the same as the intrinsic value of the family farm over the border in New South Wales and in Victoria. All family farmers are entitled, in a nation like Australia, to the same protection.

I cannot envisage this amendment really operating if we were the only ones to do it. It would be inevitable that the others would seek the same concession; and they are entitled to the same concession, if we think it is a good idea. That is no bad thing, because, let's face it, in South Australia the Labor government always pretends that it is the most innovative. It wants to take the best steps; it wants to lead the nation. Well, here is an opportunity. The mover of this amendment has introduced a measure which will lead the nation in a better direction, if, indeed, it is a better direction.

He is right to say that, until now, this parliament really has not had an opportunity to express a view about this. The Premiers got together, and they reached an agreement, and the state bureaucracies reached a deal. Now it comes before a legislature for the first time. We have an opportunity to improve the deal, and we have an obligation to improve the deal if, in fact, it can be improved.

I do not have any reason to not support the principle or the amendment itself unless there are unintended consequences that have not been explained to us. I have a question of the mover. This, undoubtedly, is a good and popular move in the Riverland, and it is a good political move, but has he had technical advice? He has told us that he has had technical legal advice, but Professor Mike Young has been mentioned by the Hon. Ann Bressington, and other experts such as the Wentworth Group. Is it the sort of measure that would have the support of the scientific and technical community?

One basis of the new package is that we want to get away from parochial political considerations and manage the Murray-Darling Basin on a scientific and technical basis. We complain in this state how parochial Queensland politicians have raped the river in the interests of their voters. We do not want to be guilty of exactly the same offence. Did the mover have technical advice from Professor Mike Young, the Wentworth Group, or other people to suggest that this is indeed a feasible or desirable amendment?

The Hon. R.L. BROKENSHIRE: I have had technical legal advice. I have spoken to agriculturalists about the issues around maintaining and ensuring that permanent plantings survive during the most difficult ongoing drought period, such as that which we are seeing at the moment. I have not spoken to Professor Mike Young about this. I have been

endeavouring to have a meeting with him. I point out that, as was the case with what the minister had to say, with much fewer resources than what the minister and the government had, I have done as much homework as I possibly could in the very short time that we have had to examine the text, and so on. In the briefing that we were given, when it comes to where 'critical human needs' is allocated, together with where water is allocated to the 'Lower Murray swamps, country towns, all other purposes (irrigation, etc.)', I am not quite sure what the 'etc.' means.

The point I am getting at is that the global amount of water is allocated and will continue to be allocated state by state. My understanding from the briefing is that it will still be up to the individual states to see how they cut up the water.

In further answer to the honourable member's question, I put to the minister that what I am proposing is an important intended amendment for the future of the state's best interests. Primarily, we have to look at the best interests of the whole river system, but most members have agreed that this bill does not do that entirely and that there are still many anomalies state by state.

On page 45 of the tabled text there is a specific clause, clause 250C, which provides, 'Commonwealth water legislation does not apply to matters declared by law of a referring state to be excluded matters'. I will not read the whole clause, but my understanding is that that provision is in the tabled text to give states the exact opportunity of doing the things we are debating in this amendment at the moment. To help my colleagues and me, I would like an answer to that.

Finally, my understanding of what the minister said is that he acknowledged that the clause was very broad. He went on to talk about not only potable water for human consumption but also about industry and jobs in Adelaide. Industry and jobs in Adelaide are important, but they are important across the whole state.

The Hon. P. HOLLOWAY: Of course they are important across the whole state and, clearly, there need to be priorities. What we are really talking about here is that, if we are in a situation of an unprecedented drought, as we have been recently, with the lowest levels of inflows into the basin ever recorded over not just one year but over a number of years in a row, then quite clearly we have to have some contingency to deal with it.

We talk about critical human water needs, and we are talking here about rationing. We are talking about being able to deal with limited amounts of water. The more broad you make the definition to deal with it, the less effective it becomes. Of course, what we would like to see happen is all needs being met for human consumption as well as the retention of permanent plantings. That is a high priority for any government, and I guess the only thing above that is critical human needs as they are defined. Clearly, one must have a hierarchy. When you have a situation of serious drought, you have to have a hierarchy about what goes first, if you like. The more you broaden that definition, the more you start to defeat the whole purpose of having the rationing in the first place.

The honourable member asked some questions about the displacement provisions. If one looks at the displacement provision, clause 3.7, declared excluded matters and displacement provisions, clause 3.7.3 provides:

...the referring Basin States undertake to avail themselves of the mechanism referred to in 3.7.1 only in relation to inconsistencies between the commonwealth water legislation and legislation of a referring Basin State that are unintended and where the legislation of the referring Basin State is not inconsistent with the objects of the Water Act.

That makes it pretty clear that these provisions are only quite restricted and only to deal with those inconsistencies that are unintended or where the legislation is not inconsistent with the objects of the Water Act.

The Hon. R.L. BROKENSHERE: On a point of clarification, was the minister talking then about 250C and the exclusion clauses there with respect to commonwealth water legislation as against law of referring state to be excluded?

The Hon. P. HOLLOWAY: I was referring to the agreement on Murray-Darling Basin reform. This is the referral, the agreement signed by all state premiers. The commonwealth has not signed it yet. That is the undertaking it has given.

The Hon. R.L. BROKENSHERE: I ask in the first instance whether the minister would be kind enough to explain to the committee, in the table of the text, the intent of having 250C on page 45 of the tabled text if it does not allow for some flexibility state by state? It says, 'Commonwealth water legislation does not apply to matters declared by the law of referring state to be excluded matters'.

The Hon. P. HOLLOWAY: My advice is that this clause was included only because this legislation is so broad that there may be the potential that it could lead to some inconsistency between that and a state law. However, the agreement I just mentioned was that the agreement, signed by all the premiers, is that those excluded matters to which 250C refers, where it says 'Commonwealth water legislation does not apply to matters declared by the law of referring state to be excluded matters'. The agreement is that the only excluded matters would be those that relate to inconsistencies between the commonwealth water legislation and legislation of referring basin states that are unintended and where the legislation is not inconsistent with the objectives of the Water Act. If you did not have a clause like that in there, there could be the potential for some conflict. I do not think it is foreseen that there is any.

I want to make it clear that we are debating the amendment moved by the honourable member, and there is no way under section 250C that, somehow or other, the state could exclude permanent plantings. That really is a different issue. I guess that the text is about future acts where some legislation might be inadvertently inconsistent. The question of section 250C and that text is quite irrelevant to the amendment before us, because this particular question would not be an excluded matter.

The Hon. R.D. LAWSON: I make an observation on the point raised by the Hon. Mr Brokenshire. I think he is right to the extent that section 250C does envisage that there is a certain element of flexibility and that absolute uniformity in the references is not required. However, I doubt that the honourable member's amendment would amount to an excluded matter. He is not actually seeking to exclude something; he is seeking to add something in with a limitation. I just do not believe that that particular section provides a mandate for what he is envisaging.

The Hon. R.L. BROKENSHERE: I go on to the next page, then, and section 250D. At the moment I understand that what the minister says—and this all ties in quite clearly with my amendment—is that some agreement signed off at COAG has more teeth than the tabled text and the legislation we are debating at the moment. I find that amazing, because I have only ever voted on bills to become law, not what premiers agree to. Section 250D, 'Avoiding direct inconsistency arising between the commonwealth water legislation and laws of referring states', clearly shows to me that there is provision and opportunity there, not for the future but for what we are debating right here and now.

The CHAIRMAN: Order! The Hon. Mr Brokenshire will stand if he continues to speak.

The Hon. R.L. BROKENSHIRE: I am sorry, sir, please, forgive me; I was a bit excited. We have only one chance at this.

The Hon. P. HOLLOWAY: We do have only one chance at this. I would suggest that we should not put it all at risk by this committee supporting an amendment which would put us at odds with the rest of the country. As I said, there is significant political risk, let alone the legal risk, and others better informed than I can talk about the legal risk. Certainly, we have had preliminary advice that there could be a legal risk. I thought that, with a group of politicians here, I need not spell out what the political risk might be if we are the odd ones out.

The Hon. J.M.A. LENSINK: I would like to take this opportunity before we break for lunch to place the Liberal Party's formal position before the chamber and perhaps to give the government some time, because I think that many matters that have been raised this afternoon do relate to legal issues. I place on the record at this point that our water and environment spokesperson, the member for MacKillop, stated in his contribution that this bill had been brought in with indecent haste, and I think that we see the fruits of the manner in which all non-government members have been provided with this bill.

The member for MacKillop is still consulting with stakeholders to gain some better understanding of the implications of this amendment. I request that the government formally table some legal advice to the effect that at this stage it has been verbal, because in our view this amendment has a great deal of merit, and we will be supporting it in a division in order that these matters can continue to be discussed. I think that we are all very well aware of the political risk, namely, that if this is inserted other states may well seek to insert their own matters.

However, South Australia is the most vulnerable state in this system. For that reason and because some 10 per cent of citrus groves are already dead in the Riverland, and while we have seen earlier this year floodwaters in Queensland a significant amount of which have not reached the system, this matter ought to be given some greater consideration. We will support the honourable member's amendment and, if the government wishes to make a case (and we do not believe that it has made such a case thus far) for not supporting it, then we would urge it to do so post-haste.

The Hon. P. HOLLOWAY: How extraordinary that members opposite, who have been criticising this government repeatedly—even though in their second reading speeches they were saying how belated this measure was and how long it has taken—are now turning around and criticising the government in respect of an amendment that is quite clearly flawed. I guess people have always played politics with the River Murray. In fact, it delayed federation for a decade.

I think Professor Sandford Clark once made the comment about the River Murray that the one thing that the history of the River Murray shows is that there has been little change in the genetic stock of politicians in relation to improving the River Murray. I think we have just seen an example of that from members opposite.

Progress reported; committee to sit again.

[Sitting suspended from 13:02 to 14:17]

WATER (COMMONWEALTH POWERS) BILL

In committee (resumed on motion).

(Continued from page 524.)

Clause 3.

The Hon. P. HOLLOWAY: Before we adjourned for lunch today, I mentioned some comments that Professor Sandford Clark had made some years ago in relation to the future of the Murray. For the record, I will provide the correct quotation. He was talking about issues from some 20 or 30 years ago now, but it still applies. He said:

The present wrangle stands as wry testament to the fact that, for all the acknowledged water management expertise accumulated by Australia in the last 80 years, there has been no notable genetic revolution in our political stock.

That is the quotation in full that I was paraphrasing before lunch.

Before lunch the deputy leader of the opposition asked a question in relation to legal advice, and I can provide some more information. I have a statement here, which I will read out and it can then be tabled. It is from the acting assistant crown solicitor, Advising, and the subject is 'Proposed Amendment to the Water (Commonwealth Powers) Bill 2008', dated 30 October. It states:

I understand that an amendment to the Water (Commonwealth Powers) Bill 2008 (SA) has been proposed. The amendment seeks to alter the definition of 'critical human water needs' contained in the bill. You seek advice as to whether the proposed amendment may affect the operation of the Water Act 2007 (Commonwealth).

Altering the definition of 'critical human water needs' in the bill may give rise to an argument that South Australia is not a 'referring state' for the purposes of the proposed section 18B of the Water Act 2007 (Commonwealth). If that was so, then the water Act would not operate in South Australia in many important respects.

The proposed amendments to the Water Act rely on the adoption of a uniform approach across the various basin states. Deviation from the agreed uniform approach necessarily creates a level of legal uncertainty and risk. In light of the very short time frame in which you requested this advice, I have merely stated my conclusions on these issues. Fuller advice, setting out my reasoning for arriving at these conclusions, will be provided in due course on request.

I table that document. Clearly, that is the advice, suggesting that it may well create issues in relation to the referral of powers. I can also advise the council that the commonwealth Solicitor-General, I understand, has provided advice. Of course, it is not our prerogative to provide that advice, but I can inform the committee that the commonwealth Solicitor-General has provided similar advice in relation to this particular matter, so that is the legal question.

In relation to the Hon. Mr Brokenshire's amendment, I can also provide some other information, just from having discussions with some of my colleagues over the lunch break. The Hon. Mr Brokenshire's amendment seeks, under the definition of human needs, to elevate permanent plantings within the hierarchy of essential human needs. At the moment, there are a number of irrigators, for example, who have permanent plantings of valencia oranges which are no longer required. In fact, a number of them have been pulled because there simply is no longer a market for them. In relation to oranges, of course, navels have taken over the market.

Are we seriously suggesting that those plantings should take priority over or be of equal priority with human consumption needs or industry or, indeed, other forms of agriculture like

vegetables, for example? If you are talking about the need for food, why should a valencia orange tree be elevated above the growing of vegetables or other food crops?

The Hon. R.L. Brokenshire interjecting:

The Hon. P. HOLLOWAY: Yes, I know what you are saying; if it was navel oranges that were being produced. However, why would you protect trees like valencias which people are pulling out because there is no longer a market for them? It just does not make sense.

The Hon. R.L. Brokenshire interjecting:

The Hon. P. HOLLOWAY: The honourable member can argue it in a moment, but I simply make the point that this motion, quite apart from the legal threat it poses, is illogical even in terms of what it is seeking to do. Although, what I suppose it is really seeking to do is to play politics in the Riverland. Perhaps, on that level alone, it might make sense.

The Hon. R.L. BROKENSHIRE: On a point of order, twice now the minister has said to this chamber that I am playing politics and referred specifically to the Riverland. I ask that that be withdrawn because I have never referred specifically to the Riverland. I am talking about the River Murray where there are permanent plantings right along the river. That is an offensive comment by the minister and I ask that it be withdrawn.

The CHAIRMAN: I remember that the Hon. Mr Lawson referred to the good politics of it, but the honourable member did not ask that that be withdrawn. I think there is a lot of politics in this bill.

The Hon. P. HOLLOWAY: Indeed, and that is really what we are talking about here. However, let me also develop an argument in relation to this particular idea that, somehow or other, we elevate permanent plantings for crops whether they are in vogue or not. If we accept this principle, that somehow or other we elevate crops to the level of essential human need that we are reserving water for, Victoria could say, 'Okay, South Australia's doing it, so let's do it, too. We've got far more permanent plantings in this state, and we've got limited water so we will store it in our reservoirs because we've got so much more than South Australia.' Will we then have this massive volume of water presumably stored for what will now become essential human need?

I would suggest that that would be very much against the interests of South Australia. While it might sound wonderful to have this particular proposal for South Australia to refer these extra powers because we want to help our irrigators—some of whose permanent plantings will be under threat unless we can get at least 30 per cent of the water allocation this year—if this were to come about, what will be the ultimate outcome?

I would suggest, given the politics that will almost certainly apply to this (Victoria has not yet passed its legislation but is expected to do so very soon) that there is a very real threat in relation to what might happen here given that those upstream states have far more permanent plantings than we have. If we change this bill, we might well be the losers.

I want to make some other comments, now that I have tabled that legal advice from the acting assistant crown solicitor. The opposition has been calling for the commonwealth to have the power to manage the system as a whole in the national interest and to apply water-sharing rules equitably. If we specifically prescribe permanent plantings as critical human water needs—and therefore accord them the highest priority use of water in the basin without any bounds or consideration of equity, viability or socio-economic impact—then any permanent plantings would be provided with water regardless, and this makes a mockery of the definition of what is critical.

I remind members that the current definition provided in the bill is sufficiently broad to encompass consideration of permanent plantings that are truly critical—that is, they have a prohibitively high social, economic or national security cost. It is only appropriate that the authority develop the detail in the basin plan based on independent scientific expertise and in a way that considers all the social, economic and environmental implications.

This amendment would prescribe that such plantings were to be included in relation to critical human needs water, regardless of the severity of the drought situation or priorities for protecting communities and economies in any given circumstance. If South Australia proceeds with this amendment, you can be sure that Victoria and other states would seek to replicate and extend the effect of this to apply to their significant permanent plantings, many of which could not be called family farms and are, in fact, owned by managed investment schemes.

To highlight this fact, I give an example from yesterday's *Weekly Times* where it is reported that Timbercorp has 120,000 megalitres of high security water for its permanent plantings in Victoria, worth apparently \$300 million. This is just one company and hardly a family farm. There are many more such examples, particularly in the Sunraysia, and the effect of this would undoubtedly lead to less water in the bucket for South Australia.

This amendment will only further entrench the past 100 years of parochial interests and divisiveness across the basin. The amendment will not provide certainty for irrigation communities in the Riverland as promoted by the Hon. Robert Brokenshire. For a start, it would apply only if the commonwealth government in future chose to make changes to the critical human water needs sections of its Water Act 2007.

It would not apply under the initial reference of powers, and the authority would not need to take into consideration South Australia's definition in developing the basin plan. It is likely that the commonwealth would be limited in making future changes because it would not be able to make uniform amendments that apply to all jurisdictions. That is against the cooperative spirit of reform.

I remind members that this government has already put in place measures to provide a critical water allocation to viable businesses with permanent plantings as a contingency measure under this drought. This state would continue to have the power to put in place these kinds of measures under extreme circumstances regardless of this legislation.

So, in a number of respects, this is an ineffectual amendment that poses unintended consequences both legally and politically, and puts at risk those family farms that the honourable member now seeks to protect.

The CHAIRMAN: I will give the Hon. Mr Brokenshire the opportunity to respond and then I intend to put the amendment. We have had a fair bit of discussion.

The Hon. R.L. BROKENSHERE: I appreciate your allowing the indulgence. I have just two more things and then I am happy to pull those matters that I was going to raise in further clauses. If I can just have some indulgence on this important clause: first of all, as a member of a small Independent party, I am not privy to information concerning the Attorney-General's Department and Crown Law, but I have actually had further legal advice from a person who is an expert in constitutional law. My advice in summary is that what we are putting forward is right and proper, the way the bill has been drafted. Indeed, if the drafting, in turn, is wrong, the whole bill should be withdrawn and fixed.

I have two questions for the minister, based on everything he said. First, does the same situation apply to all the industry in Adelaide? The minister has indicated that industry would certainly come within the purview of critical human need. Does the same situation

then apply to industry as applies in relation to permanent plantings, in that there would not be the guarantee that he indicated earlier in response?

Secondly, I am still waiting on an answer from the minister. The minister has not answered a question specific to this matter, which I raised in my second reading speech, namely: how did this definition come to be and what did all the ministers consider it to be, given that it has specifically been put in there for a purpose? I think the committee needs some answers to this question. Again, mine is a small Independent party, but another piece of constitutional legal advice says that what we are putting up here is right and proper if the parliament wants to pass it and not rubber stamp the dictatorship of premiers and executive government.

The Hon. P. HOLLOWAY: No-one is suggesting that the state cannot amend its act. We could have done it with the cooperative companies scheme or with terrorism. We could have had a different reference: it is just that it would have run the risk of potentially undermining it. Back in the 1980s when we referred powers in a way similar to this, we could have gone our own way in relation to the companies scheme and made our reference different to those of other states, putting some additional references in that legislation. What would that have done for the companies? It is not that one cannot do it, I would suggest: it is just that it is very unwise to do it, for the reasons I have outlined. I do not think anyone is saying that you cannot do it.

A future government, if it wishes, can take the reference back just as it could in relation to terrorism powers or company powers. The very fact that states have not done it some 20 or 30 years later I think acknowledges that they have been good moves in the national interest, that what has come out of those national schemes has been very much in the public interest, and I have no doubt that that will be the case here.

The other matter the honourable member raised was the background to why the states had put in this definition. In a period of severe drought, as we are, if you have less water than you would like to have, you have to start dividing it up. What we need, and what this program is all about, is developing a basin plan. We have this independent scientific body to do that. Clearly, some recognition is given of the huge social impact that would result should water not be available for essential industries within Adelaide, but that should be incorporated in the measure.

When this basin plan is worked out, the independent scientific experts will need to take into account relative importance. While all of us accept that we need to do everything we can to ensure that permanent plantings are maintained, that is much higher up in the hierarchy than other uses and, if we have a water shortage, any government here is going to ration water across the community, as is being done in this state. There has to be some rationing which states will do. Ultimately, in the allocation of that, this clause essentially provides that, in a situation where you do not have the water that you would like to have, you have to split up the priorities.

I am quite happy to defend the definition that is in there. As I said, it covers some aspects of non-human consumption, but you would expect the independent people to weigh up the relative benefits of that to other uses such as industry in Adelaide. I guess we would know that industry in Adelaide would have a very high level of employment relative to water use compared to some agricultural uses. That is why one would expect that, on that social index, it might be higher up the hierarchy. Clearly, that is what will have to be worked out in the basin plan.

The Hon. M. PARNELL: My question is to you, Mr Chairman, and it is about process. We are debating the honourable member's amendment. I do not want to disrupt the flow of the debate, but I do have some other questions that relate to this clause. So, once the amendment has been dealt with, will I still have the opportunity to ask those additional questions, or should I defer them to a different clause?

The CHAIRMAN: No; you will have the opportunity to ask further questions. If you have any questions for the mover of the amendment, you should ask them now.

The Hon. M. PARNELL: No; they are on a different topic but within the clause still.

The Hon. R.D. LAWSON: First, I thank the minister for tabling that legal advice, although, as he readily acknowledges, as does the author, it is very preliminary advice, but I understand its import. I have a question for the mover so that I can better understand his motivations behind the amendment. The Hon. Mr Brokenshire, as everyone knows, has been a vocal champion of the dairy industry and of dairy farmers in South Australia who have been put upon in recent years.

If one elevates the preservation of permanent plantings to the status of critical human need, that would necessarily mean that, as allocations come out of the South Australian allocation, those dairy farmers who do not maintain permanent plantings as defined but maintain pastures would actually lose water and entitlements. Has the honourable member given thought to that, and how does he justify preferring Plant Corp and other owners of large permanent plantings ahead of dairy farmers?

The Hon. R.L. BROKENSHERE: It is not at all a matter of putting permanent plantings ahead of dairy farmers. The fact is that the global amount of water would have to be divided with absolute priority. At the moment, the bottom line is that right now a large number of dairy farmers do not have any irrigation water, and I refer to areas in the Lower Lakes and the Narrung Peninsula, and around that area. In fact, I have been down there and had a look, and they are not irrigating at all.

The point I make with this is that, when it gets to the two most critical human need factors—and I am not talking about the industry the minister is talking about, an industry that could be quickly weaning itself off using River Murray water if the government had the intestinal fortitude to make that happen—I am talking about, first, the critical human need for potable water for human beings and, secondly, the need for food.

The question is: how are those dairy farmers producing that milk? I feel for them and I would love to see them with a water allocation, but they are still in a situation where they have stayed there producing milk because they can buy in grain, they can buy in fodder and they can grow a cash crop if they get a half reasonable winter. Likewise, with vegetables; vegetables are a three or four month crop.

In the case of permanent plantings, it takes up to five years for permanent plantings to produce anywhere near an economic crop, and it has to be kept alive. The citrus up there has died primarily for one reason, and that is that there has not been enough water for production. Also, just to survive, they have also had to select, within the water allocation at the moment, the most healthy plantings. The bottom line is that I have moved the amendment because, first, there is no room to move when it comes to permanent plantings because of the length of time it takes to produce. The second point is the absolute input cost to get to that time. The third point is that there is no other option to keeping those permanent plantings alive from Paringa through to Currency Creek and Goolwa, other than to give them enough water to keep them alive—and that is what this is about.

The final point is that, within all of this, it is already implied under the critical needs that they would be able to access water for their cows. That is the reason the government is spending mega bucks at the moment to build pipelines to the Narrung Peninsula, etc. to provide water to keep the stock alive, and I commend the state and federal governments for this initiative.

Another point is that they are spending money putting pipes down to Currency Creek and Langhorne Creek—using our taxpayers' money—on behalf of the constituents we represent

in this place. The fact that we are here as members in a democratic parliament has nothing to do with the executive. It is spending money putting pipes in for permanent plantings. This clause allows us to tighten it up and ensure that water is going through the pipe to keep those permanent plantings alive, but at this point the government is refusing to support the amendment.

The Hon. P. HOLLOWAY: Whether or not we have enough water to put down the pipes depends, ultimately, on whether the water is there. The broader the number of ways you distribute it, the less water there will be. It is just a logical deduction. In broadening this out, what the honourable member is seeking to do is move away from what is accepted broadly as the definition of critical human needs. As the honourable member said correctly, it includes water for stock and the like, but what about vegetable growers? Although their crops are perennial, they require significant infrastructure associated with their production. If they do not have water, obviously their long-term viability is just as vulnerable as well.

That is the whole problem: if we start picking winners, we are going back to exactly what we were trying to move away from. Members must remember that the whole purpose of this bill is to refer powers to the commonwealth so that there can be an independent body to determine such things as the basin plan, which will cover such matters as the allocation of water in times of severe need. The more you play around with this, the more there will be the legal risks we talked about that might bring undone the whole fabric of the arrangement. There is also the opportunity for other states to exploit this in ways that might damage South Australia. Again, I urge members to oppose the amendment.

The CHAIRMAN: I have a question for Mr Brokenshire. Does this take in irrigated pastures, such as lucerne and other permanent pastures for dairy farmers?

The Hon. R.L. BROKENSHERE: No, it does not. Because of critical human needs, and the amount of water needed to grow pasture, it does not take in any annual or cash crops at all; it is only permanent plantings.

The CHAIRMAN: Lucerne is hardly an annual crop, is it? If it is irrigated, it is a continuous crop and can yield more than one crop after planting. Does it come under this?

The Hon. R.L. BROKENSHERE: Under the permanent plantings amendment, we are only talking about keeping these trees alive. We are not talking about production.

The Hon. P. HOLLOWAY: As an additional comment, some plantings that are obviously permanent plantings under this definition will be less valuable than others. It may be a variety of grapes, for example, or a variety of oranges, such as Valencias, that may be out of vogue for all sorts of reasons. They are obviously a lot less valuable than crops that may be in vogue.

In any case, often the productivity of these permanent plantings will decline after a period of time. Oranges have a finite life, so does that mean that, if someone has an orchard that is near the end of its life, and productivity is down, do they keep producing, rather than do what would be sensible economically, that is, replace that crop?

The point I make is that there are all sorts of distortions and anomalies that will come into this once we start moving away from the basic principles that this bill seeks to achieve, namely, to have an independent body to develop the basin plan in accordance with the agreement that has been drawn up by the states.

The Hon. R.D. LAWSON: I certainly do not pretend to be an expert in this field, especially in relation to the operation of the irrigation system. Can the minister confirm that currently South Australia's allocation for critical human needs is 291 gigalitres, with a further 196 gigalitres to deliver the 291 gigalitres to South Australia?

The corresponding critical human needs allocation for Victoria is only 53 gigalitres and New South Wales 75 gigalitres, and they do not have any additional allocation for delivery. Will the minister confirm that those figures are correct? If this amendment were to be adopted in Victoria, what would be the additional claim of Victoria upon the critical human needs?

The Hon. P. HOLLOWAY: If we go back to where we were, I understand that the passage of this amendment would not of itself do anything; it would be only if the commonwealth chooses to do it. If Victoria were to move a similar amendment, the commonwealth may or may not seek to amend it at some stage in the future. It certainly would not affect the initial round, as I understand it. Clearly with the critical human needs of this state the agreement recognises that Adelaide alone amongst the capital cities has been dependent on the Murray, along with a number of other towns in the Murray Valley itself but also in the Upper Spencer Gulf region. That is a reflection of that. We need a much higher allowance for delivery because we are further downstream and that water will be consumed in bringing the water down here.

The point the honourable member is making is that, if we open up this debate and Victoria sees that South Australia is trying to get some advantage in relation to additional supply, it might well open it up for further claims. It is pure speculation with regard to what might happen politically, but all of us are capable of working out what the politics might be. Legally the risk is that the whole agreement, which has those sorts of understandings on the figures the honourable member gave, could be at risk if we go down the track of supporting this amendment.

The committee divided on the amendment:

AYES (10)

Bressington, A.
Lawson, R.D.
Ridgway, D.W.
Wade, S.G.

Brokenshire, R.L. (teller)
Lensink, J.M.A.
Schaefer, C.V.

Hood, D.G.E.
Lucas, R.I.
Stephens, T.J.

NOES (9)

Darley, J.A.
Gazzola, J.M.
Kanck, S.M.

Finnigan, B.V.
Holloway, P. (teller)
Parnell, M.

Gago, G.E.
Hunter, I.K.
Zollo, C.

PAIRS (2)

Dawkins, J.S.L.

Wortley, R.P.

Majority of 1 for the ayes.

Amendment thus carried.

The Hon. R.L. BROKENSHERE: I move:

Page 3, after line 3.

Insert:

Permanent plantings means any trees, bushes, vines or palms, maintained for the purpose of the production of food for human consumption, that yield more than one crop after planting if properly maintained.

This amendment is consequential on my first amendment.

The Hon. P. HOLLOWAY: I will not bother wasting time on a division. Clearly, the amendment is totally unacceptable to the government. What can one say? It is making South Australia a laughing stock of the country, and this chamber in particular. Nevertheless, we must move on. We will not waste the time of the committee dividing on it because it is consequential.

Amendment carried.

The Hon. M. PARNELL: I have a couple more questions on this clause. I think this is the appropriate place to raise these questions because it is the clause which refers to the tabled text and which ultimately refers to the agreement between all the states and territories. I note that, in his second reading explanation, the minister states:

These reforms will, for the first time, ensure South Australia has access to the upstream storages of its choice, including Hume and Dartmouth dams, to store water to meet its critical human water needs and for private carryover. This would allow the state to carry over and store around 300 gigalitres of water for critical human needs (18 months supply) and to deliver this water in times of low flows, reducing the risk of a major failure in the supply of potable water to South Australia. Without these reforms, South Australia has no ongoing access to storage.

My question to the minister is in regard to the relationship between that statement and the government's proposal to double the storage in the Mount Lofty Ranges and, in particular, doubling the size of Mount Bold. It seems to me that, if this bill passes and these arrangements between the states come into effect, what we are effectively doing is acquiring additional storage capacity outside the Mount Lofty Ranges; we are acquiring it in these upstream dams and, therefore, I would imagine that the expansion of the Mount Bold reservoir is no longer needed. Will the minister confirm that that is the case; and, on the passage of this bill, will the government abandon plans to increase the Mount Lofty Ranges storage?

The Hon. P. HOLLOWAY: In relation to that latter matter, that is something that I suggest is not related to this bill. The government will make a decision on that at the appropriate time, given the finances of the state and given, ultimately, any environmental impact statement, and so on, should it proceed. The state government is considering the issues about what will happen to the storages at present. We have charged the Water Security Council, through the Adelaide Desalination Steering Committee, with looking at those issues and providing advice to the government, so that it is a work in progress.

Clearly, how we would apply that (where that storage would be) is something that obviously we will have to consider. I would have to say that, given the amendment that has just been applied in Victoria, if we were to adopt a similar attitude and say, 'Okay; we want our share of critical human needs now for permanent plantings', they would probably get at least 1,000 gigalitres extra, and we would not have the capacity up in Dartmouth. This is the sort of nonsense involved in the amendment that we are considering.

Whereas it sort of made sense before and it is a real plus that has come out of this agreement—and the minister who has negotiated it deserves all the credit for it—it is a huge advance that we now have access to storage capacity interstate but, as I said, if this

critical human needs allocation is to go to Victoria, with the thousands of extra gigalitres that it would require, then it could well be worthless. Of course, I guess politics in the Liberal Party always come before good policy; always come first.

The Hon. D.W. RIDGWAY: I have a question that is not related to this topic, but the minister did talk about the Mount Bold reservoir and the Adelaide Desalination Task Force in answering the last question. The minister some months ago said that the government was looking to store water from the desalination plant in Mount Bold. Will the minister provide some clarity on that?

The Hon. P. HOLLOWAY: The honourable member knows that I was referring to the Happy Valley reservoir as obviously the appropriate place. From my understanding, Happy Valley reservoir is supplied from Mount Bold and it has the filtration plant there. That is where water is distributed and that is the closest distribution storage, as I understand it, from Port Stanvac.

The Hon. D.W. RIDGWAY: I have a further question: is the government intending to store water from the desalination plant (whether it is 50 or 100 gigalitres) in the Happy Valley reservoir?

The Hon. P. HOLLOWAY: These are matters that have nothing at all to do with this bill. If the honourable member wants a briefing on it, I am sure my colleague, the Minister for Water Security, would be happy to brief him on matters relating to the desal plant and storage, but it has nothing to do with referring our powers over the River Murray to the commonwealth.

The Hon. M. PARNELL: Just to pursue that line of questioning: if the bill goes through and the plans come into effect, does this government have any plan to reduce Adelaide's reliance on the River Murray?

The Hon. P. HOLLOWAY: If we have a desalination plant that is producing whatever the capacity is—50 or 100 gigalitres of water a year—to the extent that it is producing water that might otherwise come from the Murray then, clearly, we will be reducing our reliance on the Murray.

The Hon. M. PARNELL: In relation to the Murray-Darling Basin plan, is it correct that wetland management plans, such as those for Ramsar wetlands—for example, the Coorong and the Lower Lakes—will not be incorporated into the Murray-Darling plan? If that is correct, what capacity does the state government have to insist that such plans be incorporated?

The Hon. P. HOLLOWAY: My advice is that the wetland management plans will not be incorporated into the basin plan but that it will need to take into account various matters. The basin plan will set sustainable limits on the quantity of water that may be taken from the basin's water resources. This will ensure that there is a greater quantity of water available for environmental needs. The plan will provide for a comprehensive environmental watering plan that will coordinate management of environmental flows throughout the basin and ensure environmental assets are protected.

The watering plan must specify flow and health targets. This includes environmental water recovered by the commonwealth and basin states under water recovery programs such as the Living Murray initiative and Water for the Future program. Ramsar sites, such as the Lower Lakes, the Coorong and the Murray Mouth, will be a priority for environmental watering under the basin plan. Section 21(3)(b) of the Water Act 2007 specifically states that the basin plan must promote the conservation of declared Ramsar wetlands in the basin.

The commonwealth Water Amendment Bill 2008 also proposes an addition to this section to emphasise this requirement under clause 47 of the amendment bill by including an additional requirement that the basin plan take account of the ecological character descriptions of (1) all declared Ramsar wetlands within the Murray-Darling Basin and (2) all other key environmental sites within the Murray-Darling Basin, prepared in accordance with the national framework and guidance for describing the ecological character of Australia's Ramsar wetlands endorsed by the Natural Resource Management Ministerial Council.

The Hon. M. PARNELL: Following on from that answer from the minister, does that effectively mean that South Australia is no longer ultimately responsible for the health of the Coorong? Will the decisions that we have been making up until now—such as decisions to pump water from one lake to another—and perhaps future decisions to pump hypersaline water from the southern lagoon of the Coorong into the sea (decisions that previously have been the domain of the state) no longer be so under these arrangements?

The Hon. P. HOLLOWAY: While water operations in the Lower Lakes are traditionally under the control of the Murray-Darling Basin Commission and funded accordingly, it is my understanding that South Australia has been the authority responsible for undertaking those particular works. Clearly, we have an independent body that will prepare the basin plan, but one presumes that the state will still be responsible for the operation of that plan, certainly within the Lower Lakes area. My advice is that decisions have been made under the auspices of the Murray-Darling Basin Commission, and we have been implementing the decisions. That is what will happen into the future. It will possibly be a new authority that will have independence in respect of the plan that South Australia would remain the operating authority.

The Hon. M. PARNELL: If the minister could please tell us: what is the government's latest understanding of when the preparation for the Murray-Darling Basin plan will commence; and how long does the government expect it will take to prepare?

The Hon. P. HOLLOWAY: Now that we have this amendment, one can scarcely risk the temptation to say, if that is insisted upon, who knows? If common sense prevails and we are able to get all of the states with a common transference of powers, the plan is due in 2011. Of course, a lot will happen in the meantime until that is formally adopted. Existing drought contingency planning will continue, obviously.

The authority will work with the basin states as a priority to establish the three-tier water sharing arrangements under the Murray-Darling Basin Agreement to address low water availability in extreme drought conditions. This will include establishing triggers for when the different management arrangements will apply.

There are initiatives underway to address overallocation, improve irrigation efficiency and provide environmental flows. These include the Living Murray Initiative, which aims to recover 500 gigalitres of water for the environment and \$3 billion to purchase water, and \$5.8 billion to improve irrigation efficiency under the Water for the Future program. This is in addition to state water projects, including the \$610 million Murray Futures program in South Australia.

The Hon. M. PARNELL: I thank the minister for his answer. Does the government expect that, as a consequence of the plan being drawn up and implemented, the dredging of the Murray mouth will no longer be required?

The Hon. P. HOLLOWAY: I would have thought that that would depend on how much rain we get and whether we have inflows into the basin. The mouth has not flowed for possibly five years because we have had some very dry years. Clearly, for the mouth to flow again, we would have to return to the sorts of flows that we have had in previous decades.

If the honourable member is talking about an average year, even then it is difficult to say because it depends where rain falls, whether it falls at the right time, whether it falls in the right areas for catchments and so forth. Clearly, the intention of the Living Murray Initiative is to return water to the river for environmental flows and, obviously, the chances of the mouth opening and remaining open will be much greater than if we do not have those initiatives. A lot will depend on the \$3 billion to purchase water and the money for irrigation efficiency and how quickly and efficiently that money is spent.

Clause as amended passed.

Clause 4 passed.

Clause 5.

The Hon. M. PARNELL: Clause 5 talks about a termination of reference, in particular, by our state. What would the consequences be for any one state withdrawing its reference; would it, effectively, hold the remaining states hostage?

The Hon. P. HOLLOWAY: If the state terminates, management of the system will become more complex; however, those aspects of the Water Act that do not rely on state referral would remain in place because termination would not mean withdrawal from the Murray-Darling Basin Agreement. This means that the authority will remain in operation. The basin plan still applies, setting sustainable caps that can be enforced by the authority and states must not act inconsistently with the basin plan. South Australia's access to storage is retained—that is, that which has been established under the agreement. The authority will continue to manage river operations under the Murray-Darling Basin Agreement in that state (the one withdrawing, I assume). The ACCC would have limited powers with respect to water charging and water market rules, increasing the complexity of water trading.

The state that terminated would not be required to apply the provisions of the basin plan that provide for conveyance water and other arrangements to meet critical human needs under tier two water sharing arrangements. However, the ministerial council is able to make a schedule under the agreement setting out how state water shares will be determined, delivered and accounted for under tier two water sharing arrangements. This would still apply to the terminating states. Notice of the termination is required which would allow the jurisdictions to have notice of a state's intention to withdraw from the scheme and negotiate an outcome and, importantly, the state would lose benefits of the wider scheme. For example, the commonwealth would no longer take responsibility for any reductions in allocations due to new knowledge and the commonwealth would no longer contribute to additional costs to the states of water reform associated with the management of the Murray-Darling Basin. This includes funding for priority projects.

As I said earlier, just as with the ministerial arrangements for dealing with terrorism or those in the mid-1980s in relation to the companies scheme, I have no doubt once this agreement is in place, if all the states agree on the terms of their reference, I think history shows it is highly unlikely that these sorts of agreements would unravel once they have been in place.

Clause passed.

Remaining clauses (6 and 7) and title passed.

Bill reported with amendments.

Bill read a third time and passed.

WATER (COMMONWEALTH POWERS) BILL

The House of Assembly disagreed to the amendments made by the Legislative Council.

Consideration in committee.

The Hon. P. HOLLOWAY: I move:

That the Legislative Council do not insist on its amendments.

We have had a long debate today in relation to the particular amendments that were moved in this place and, at this time of day, I do not believe it is appropriate to repeat all of the issues involved. I will simply state that the legislation before us which refers powers to the commonwealth in relation to water is a very historic bill. It has taken 120 years since this issue was first discussed in the pre-Federation conferences until the actual referral of power from the states to the commonwealth government.

I believe it is imperative that that reference of powers be done in a uniform way from all the states to minimise any risks that could lead to this whole issue being opened up again. We have a very difficult situation in relation to the River Murray at the moment. We are facing one of the worst droughts ever recorded. It is imperative that we take this opportunity to ensure that we have this referral of powers, so I urge the committee to not insist on the amendments.

The Hon. J.M.A. LENSINK: The Liberal Party will be supporting the motion to not insist on these amendments, and I will briefly outline our reasons. During the period from when we first placed our position on the record and in the meantime, a couple of us have spoken to the community liaison, the Hon. Dean Brown, who provided the explanation that unfortunately we did not receive on the record in this place. He has outlined the difference between critical human water needs and high security water needs and explained that, if we were to insist on the amendments, some of that water would be the equivalent of what is nationally high security water. We also do not wish to hold up the passage of the bill. We continue to support the sentiments behind the honourable member's amendments but we will not be insisting.

The Hon. R.L. BROKENSHERE: I understand that it is late but I will spend a few minutes summing up if I may. First, I can count—that is one thing I did learn—and, clearly, the numbers will not be there for me to insist on the amendments. I place on the public record first and foremost my appreciation of the opposition and the Hon. Ann Bressington for supporting the amendments; it is appreciated.

I am disappointed at the way the government has gone about almost holding a gun at the head of many people in relation to the debate in another place (which I did sit in and listen to) with respect to what I reckon was a pretty pathetic reason for not allowing the amendments.

The government has an exit package to say goodbye to permanent plantings for those who want to pull them out. However, this state government has failed, unlike Victoria and New South Wales, to have a proper irrigation plan and a proper food bowl plan for South Australian irrigators. I am very disappointed about that. The irrigators with permanent plantings in particular, but all irrigators, deserve at least a plan. What I heard today was a government that is on the run and scared to upset number one—its federal colleagues. It is very unfortunate that a government—and, particularly, a minister and a Premier—will put the idealistic approach of a partnership between the federal government and itself before the best interests of South Australians.

Family First supports industry, but I find it pretty frustrating that no pressure and no initiatives have been put forward to address water savings by industry, whether it is stormwater harvesting, catchment, recycling or whatever else. Industry has had no restrictions placed on it whatsoever, yet people are bleeding big time right along the River Murray system. I know how some government ministers and members work, and, because I am a dairy farmer, I noted with interest that the ministers in both houses were happy to highlight the fact that my amendment was not doing anything for dairy farmers.

Well, let me say this: I will do a lot for dairy farmers, all South Australians and all industry sectors as best I can for as long as I am in this chamber without fear or favour and without doing deals with the federal government, which tries to get a press release out as quickly as it can to say that, through legislation, it has championed for 100 years to hand back the powers. It is rubbish. Every member who has spoken knows that these powers are a joke, that this legislation could have been much stronger and that the Premier and the minister could have fought so much harder for a better deal for South Australians than they have.

It is about a quick fix, it is about spin and it is about getting to the next election hoping that the government will jump over the line. That is how government has been operating, and that is not good enough for people in the Riverland and along the River Murray. I will be highlighting to those people how pathetic the government really was in working for the best interests of water allocation entitlements. I want to reinforce the fact that New South Wales and parts of Victoria have a 95 per cent allocation or high-security water, yet it is 15 per cent here. When it comes to dairy farmers and vegetable growers, the fact and the truth of the matter is that the amendment I was hoping to get through meant there would not be any irrigation for dairy farmers but they were guaranteed stock water to keep their stock alive.

There was not going to be any water for vegetable growers, and that is most unfortunate. This was an amendment to at least ensure that the permanent plantings could be kept alive. It is a very disappointing situation as far as I am concerned. Again, I thank the opposition and the Hon. Ann Bressington for their support. This is not the bill that it could have been. There are a lot of question marks over whether South Australia—when we finally do see a plan—is going to get any better go than it has in the past. I feel less than confident with the way in which the government has gone about this whole approach. I have been pretty strong, but it is from the heart. This is truthful stuff.

I have had a stomach-full of the spin, the rhetoric and just trying to get that front page story. In my opinion, today the irrigators along the River Murray who have got \$1.5 billion worth of permanent plantings have been done over by the minister, the government and the Premier.

The Hon. P. HOLLOWAY: I have had a gutful of the Hon. Robert Brokenshire grandstanding in here trying to delude farmers in this state that he has some miracle cure for them. He has not. There is lot more one could stay about it, but it is high time that, after 120 years, we got this important piece of legislation passed.

The Hon. R.D. LAWSON: I agree with the Hon. Robert Brokenshire in saying that the Labor government, the minister and the federal government have failed to protect permanent plantings adequately in the agreement they reached in July this year. Having failed to secure an agreement, regrettably it is too late to achieve that same outcome in this legislation. South Australian growers with permanent plantings were sold down the river in that agreement, and it is a matter of regret that we cannot save the situation by this legislation.

The Hon. A. BRESSINGTON: I reiterate that I still support the amendments of the Hon. Robert Brokenshire for the reasons that he stated and also because this parliament is here for the people of this state. We are supposed to be the ones standing up to the federal government, where necessary, looking out for the best interests of this state. As was said in the second reading speeches, this bill could have been better. Just the fact that the minister

could not answer a straight question during the committee stage on whether or not we have a food bowl plan was of concern to me. Obviously, we do not. It is a case of taking it as it comes, flipping a coin and see who comes out of this at the end with land to work on and, for the rest of us, having local food to eat. I think it is a great shame.

The tactics used in this bill are no different from the tactics used in the WorkCover legislation, the legal practices bill and even, this week, also, the Hon. Rory McEwen's tactics to bend and break the cockle industry in the Lower Lakes and the Coorong. There is a pattern here, and we should all hang our heads in shame that we give in to the bullying tactics of this government every single time.

The CHAIRMAN: Order! I remind members that parliament does not always agree with a member's point of view, and I am confident that everybody elected to this council does their best endeavours for the South Australian community. That will be reflected in the vote—whatever the vote may be. I think that when members stand up to put their point of view across they should be prepared to listen to the other members' points of view and, if they are not, perhaps they should not play a role in democracy.

Motion carried.

At 18:22 the council adjourned until Tuesday 11 November 2008 at 14:15.