

## **WATER SERVICES BILL 2011**

### *Consideration in Detail*

#### **Clause 1 put and passed.**

#### **Clause 2: Commencement —**

**Mr J.C. KOBELKE:** My question relating to clause 2 is: when does the Minister for Water hope that the bill will receive royal assent and be proclaimed? Are there any issues that require the legislation to be in place? When I was the minister, we had this bill largely drafted in 2008 and one of the things on the horizon was the Water Corporation's need for water for the growing demand in the Dunsborough area. As the minister is probably aware, difficult restrictions in the legislative framework meant that transferring water from the Bunbury Water Board to the Water Corp was a problem. I think at the Bunbury regional sitting of parliament in 2009 we had to bring in a small bill to fix that problem. I imagine that a range of ongoing issues will be easier to handle once this legislation is passed. Does the minister have an indicative time line for the completion of the passage of the bill and the proclamation? Are there issues on the horizon that will be more easily handled when this legislation is passed; and, if so, what are they?

**Mr W.R. MARMION:** I thank the member for a very good question. In answering that, as soon as the bill goes through both houses, we will get royal assent for the first part of the bill, so we can get the title in. However, both bills will not be able to be assented to until the codes and regulations are drafted. The indicative time frame on that is six months. They are being worked on now and there will be some consultation. Parliamentary counsel will not draft the regulations until we go through both houses to get the priority.

The member raises a good example of one of the issues that this bill will address. We have the unfortunate situation in which the water boards cannot go outside their boundaries. Busselton cannot and Bunbury cannot. This bill will address that. Apart from the current red tape and the encumbrances of having all these different acts, there is no specific issue burning a hole in my floor such as what happened with the Bunbury Water Board and getting water down to Dunsborough. Who knows; one could happen in the next six months. My plan is to get royal assent as soon as possible.

**Mr J.C. KOBELKE:** I thank the minister for that reply, but that would suggest that if there is any delay in passage through the other place, we might not have the legislation operational, because of the requirements for regulations et cetera, prior to the next election. Is it the minister's ambition to have this legislation in place by the time of the next election, given the legislation is three and a half years behind time already? Just how optimistic is the minister that he will be able to have it proclaimed and various regulations developed so that it can be operational by March next year?

**Mr W.R. MARMION:** My desire is for it to be in operation before the election, which means that the member is right; it will require being pushed through this house and the other house as soon as possible. If the bill is delayed in the other house, that will be an impediment. It is my intention to use all my best endeavours in this house to ensure that it is seen as a high priority in the other house. Otherwise, I must say, as a minister I will be terribly disappointed.

#### **Clause put and passed.**

#### **Clause 3: Terms used —**

**Mr C.J. TALLENTIRE:** I am particularly concerned with the definition of "dwelling" as outlined in clause 3(1). I note that the definition suggests that it is a building that is occupied. That would seem reasonable at first glance, but I would point out to members that there would be many circumstances in which we may want to evoke clause 96, which is about disconnection and reduction, and enable a licensee to use those powers when the supply of water to a dwelling or property could be quite essential to, perhaps, the watering of livestock. Therefore, I am concerned that if we keep this narrow interpretation of "dwelling" as our guide, we will enable some licensees to cut off water to properties or reduce the flow rate such that we could find that livestock dependent on water from some sort of scheme water supply could die.

**Mr W.R. MARMION:** Under the legislation there is flexibility in the codes. The codes will be a separate part and will also go through Parliament. The codes could have rules around that to make sure provisions are put in place for when water is provided to a farmer. I guess the member is raising the possibility of a property that does not have a residential place on it, but to which water is being supplied to, say, a dam or some water trough for cattle. I assume that is where the member is coming from. We could put in a code for those situations in which water is being provided to animals and cannot be cut off. One would assume that a farmer or a person properly managing such a property would check the troughs on a daily basis, but I guess we could say it could be a large trough that someone may not have to check for a time. As I said in my reply to the second reading debate, the

restriction would be for only 14 days regardless. Nevertheless there could be a situation, as the member pointed out, if water is not provided in 14 days or at a lower rate, but that could be addressed by a code.

**Mr C.J. TALLENTIRE:** I thank the minister for that response. I wonder whether we should consider broadening this definition of “dwelling”. Reliance on a code does not necessarily provide me with confidence. I can accept the intent of the clause. Of course we want licence holders to be empowered to disconnect water when we suspect there is wastage or when someone is refusing to pay their bills. That seems only reasonable. However, I wonder whether we should look to include in the definition of “dwelling” or in a separate clause something that highlights the situation in which a water supply is used for the preservation of the lives of livestock.

**Mr W.R. MARMION:** The member has raised an interesting point. But why would we adjust a definition for a property that was not a dwelling? This is a standard definition used for a property that has a dwelling on it. What the member is talking about probably does not relate to this definition. This is defining a property that has a dwelling on it.

**Mr C.J. Tallentire:** I accept what the minister is saying. But if we do not put in this definitions clause some provision for livestock, then I do not see where else such a provision can be put in this legislation. We will then have to fall back on the position that the minister mentioned earlier, which is reliance on a code, when really this is something that should be in bill itself.

**Mr W.R. MARMION:** I have been told by my advisers that we could take that into consideration in a code. That is the best that I can give to the member as a response.

**Mr C.J. Tallentire:** But what legislative power would that code have?

**Mr W.R. MARMION:** The code will have to come through the Parliament, so it will be binding, and it will be enforced by the Economic Regulation Authority.

**Mr C.J. Tallentire:** It would not be legally binding on the licence holder, though, would it?

**Mr W.R. MARMION:** It would be a licence condition.

**Mr J.C. KOBELKE:** I have a very quick question on that, and we may come to it later. When the minister refers to a code, will that code have the same status as a regulation and be disallowable by the house?

**Mr W.R. MARMION:** Yes. Both the code and the regulations will come to both houses to be assented to, so they will have the force of both houses of Parliament.

**Mr J.C. Kobelke:** So, like a regulation, it will take effect, but it will be disallowable under the procedures of both houses?

**Mr W.R. MARMION:** In terms of the mechanism, we will bring them both on together; so both bills will be assented to at the same time and will come into operation at the same time.

**Mr F.M. LOGAN:** I refer to the following definition at page 7 —

*water service works of a licensee* means water service works used by the licensee in the provision of water services and to which one of the following paragraphs apply —

...

- (b) The works not held by or for the licensee but, under an agreement in relation to the works, the licensee can operate and maintain the works to the extent necessary for the licensee to comply with the licensee’s obligations under the licence and this Act;

That specifically applies, does it not, minister, to the alliance contract, of which the minister has just informed the house, between Water Corp and Transfield–Degrémont–Suez? So this bill needs to be passed with that definition in it, and with the relevant clauses further on, to enable the Transfield–Degrémont–Suez–Water Corp alliance to carry out the contractual entitlements that the minister announced to the house prior to its rising for Easter. In fact, the minister told this house that this alliance was nothing more than a rollover of the type of alliance that existed between Water Corp and the two maintenance contractors, north and south of metropolitan Perth, and that I, in raising this matter with the minister, was simply jumping at shadows. However, that is clearly not true, and the minister knows that is not true, because the difference between the old alliance contract between Water Corp and the two contractors, and the one that the minister announced to this house before Easter with Transfield–Degrémont–Suez, goes to the operation also of waste water treatment plants, dams, and water services from our aquifers, and in fact it is defined here in clause 3(b) in the definition of “water service works of a licensee”, and that is one of the reasons that the minister has included this wording in this bill.

**Mr W.R. MARMION:** I thank the member for the question. The member has got this wrong. This particular wording is to allow for a situation in which the licensee, which in the member’s example would be the Water

Corporation, could go back in and take over the assets to make sure, as the licensee, that they were meeting the licence requirements. So if there was a contracted provider of services that was not providing the services, paragraph (b) would allow the Water Corporation to, as it says, “operate and maintain the works to the extent necessary for the licensee to comply with the licensee’s obligations”.

**Mr F.M. LOGAN:** That is not the way I read it, minister. The way I read this is that the principal licensee, the Water Corp, can allow another licensee, in this case Transfield–Degrémont–Suez, to carry out its legal obligations under the licence held by Water Corp. That is clearly what this clause means.

**Mr W.R. MARMION:** I thank the member for further elaboration on the question. Under the Water Corporation Act 1995, the Water Corporation already has extensive powers to enter into contracts. So there is no change to that. This is actually a protection. This does not change anything that can currently happen. This is a protection so that the Water Corporation can get back in there and operate and maintain the assets if it so chooses.

**Mr F.M. LOGAN:** Regardless of what it says in the Water Corporation Act, we are dealing now with the Water Services Bill, and this bill deals specifically with the type of work that will be done under the alliance contract between Water Corp and Transfield–Degrémont–Suez. This new alliance is completely different from what has been done before, because the contractors to Water Corp will be operating the plant—the minister knows they will be operating the plant—with Water Corp employees under their direct control. Where do we find that in the definitions clause that we are dealing with now?

**Mr W.R. MARMION:** That is not dealt with in this clause. This clause simply defines what certain words mean. The member’s question might be relevant to some other clauses of the bill. Basically, these acts are just a consolidation of what is already there. There is nothing new. As I have said, this specific bill is just to make sure that the Water Corporation can take over and do works and maintain its assets if it so chooses. The main reason for that, as I am advised, is to make sure that the assets of the licensee, which is the Water Corporation, are protected.

**Clause put and passed.**

**Clause 4 put and passed.**

**Clause 5: Requirement for licences —**

**Mr J.C. KOBELKE:** My question is not about the adequacy of the clause, because I think it is a pretty standard requirement. When was this type of provision last used and a prosecution taken against someone for providing a water service when they were not licensed?

**Mr W.R. MARMION:** I am advised that it has not happened and that no-one has been prosecuted.

**Mr F.M. LOGAN:** Along a similar line of questioning to that asked by the member for Balcatta, have any applications for a licence been made in the past three years? Is any application for a licence before the minister; and, if so, by whom?

**Mr W.R. MARMION:** Off the top of my head I cannot give the member an exact number but they are on the Economic Regulation Authority’s website because the ERA approves the licences. My advisers have brought to my attention that Peel Water is the most recent applicant. There may be others, but the ERA is responsible for issuing the licences. I understand that on its website is a list of all those who have a licence.

**Clause put and passed.**

**Clause 6 put and passed.**

**Clause 7: Minister may grant exemption —**

**Mr J.C. KOBELKE:** This clause gives the minister the power to grant an exemption from the requirement to obtain a licence. Has either the minister or his predecessor used this type of provision to grant an exemption? When I was the minister, we gave an exemption to a company that did not need the water for which it had a licence for a period and another company was able to take it over. That exemption was given about five years ago. I would like to know roughly how frequently exemptions have been granted by ministers, and perhaps it would be useful if the minister could give a recent example, if he has any.

**Mr W.R. MARMION:** I recall about three exemptions that I have given. The ones that I have given have usually involved a mining company supplying water to an adjacent mining company. Exemptions, as the member would be aware, go through to the Governor.

**Mr J.C. Kobelke:** Were they all for non-potable water?

**Mr W.R. MARMION:** All the recent ones have been for non-potable water.

**Mr F.M. LOGAN:** Again, I have a question following on from the question asked by the member for Balcatta and on the basis of the minister's answer that he has granted three exemptions, all of which were to mining companies. Was one of those exemptions to allow the mining company Gindalbie Metals to take water?

**Mr W.R. MARMION:** The one for Gindalbie Metals was just a licence application; it was not an exemption. We are trying to think of the names of the companies off the top of our heads. I think it is either BHP Billiton or one of its subsidiaries around Kambalda. I am advised that an exemption was required for the Mundaring water treatment plant and there was one prior to my time probably around Margaret River.

**Mr J.C. KOBELKE:** I will follow up on something the minister just said and then I have a further question. The minister said that the Mundaring water treatment plant was given an exemption. Can the minister explain why that was the case? Is it because of the alliance that is operating there on a contract to the Water Corporation or was it a side issue altogether?

**Mr W.R. MARMION:** The member is right; because it has been operating under a contract, the new licensee needed an exemption.

**Mr J.C. KOBELKE:** Under the new legislation before us now, would that exemption still be required, or does the bill give greater flexibility to deal with those sorts of alliances for the provision of water services?

**Mr W.R. MARMION:** In this case, an exemption would still be required.

**Mr J.C. KOBELKE:** I have a question about exemptions generally. Perhaps I am going a bit beyond clause 7, because division 1 deals with the licensing of water service providers. Earlier the minister made a distinction between a licence for a water service provider, and a licence to take water, which is totally different. We are talking about a licence for a water service provider. Has there been an increase in the number of that type of licence issued; and, if so, what is driving that? A mining company does not necessarily need a water service provider licence but it is likely to need a water licence, even if it is only for watering its stockpiles et cetera. A mining company would require a licence to extract water, but has there been an increase in the number of water service providers in either the resource sector or other sectors that now have to be licensed; and, if so, can the minister provide the current number of licences?

**Mr W.R. MARMION:** I have been advised that over the past two to four years there has been very slow growth. My figures show that it is 29, but I am told there might be 30 water service providers. There might have been one new water service provider in the last two to four years.

**Clause put and passed.**

**Clause 8 put and passed.**

**Clause 9: Operating areas —**

**Mr J.C. KOBELKE:** The minister may wish to direct me to another clause if I am incorrect. Clause 9 relates to operating areas. My question goes to the ability to modify those areas and the process to do that. The clause provides that operating areas need not be contiguous to be specified. If a shift in the boundary makes good sense and the parties agree to it, what are the processes involved in modifying the operating areas?

**Mr W.R. MARMION:** The short answer is that if there was an existing boundary, an application would be made to the Economic Regulation Authority for the boundary to be changed and it would be considered on its merits at that stage.

**Mr J.C. Kobelke:** So the issue is a modification to the area. Is it treated the same as when you are actually applying for a licence or is there a separate process for that?

Debate adjourned, pursuant to standing orders.