WATER SERVICES BILL 2011

Consideration in Detail

Resumed from 15 May.

Clause 97: Fire hydrants —

Debate was adjourned on the following amendment moved by Mr W.R. Marmion (Minister for Water) —

Page 83, lines 8 and 9 — To delete the lines and substitute —

(8) Subsection (7) does not prevent the costs and expenses from being recovered indirectly via statutory water service charges.

Mr D.A. TEMPLEMAN: When we last debated this matter, we alerted the minister to our grave concern about the potential for the cost of maintenance of fire hydrants to be ultimately levied against consumers. When the debate on this clause was adjourned, the minister was battling to defend this clause. The minister needs to explain again very clearly exactly what he means by this clause, and allay our concern that this will not be yet another impost, potential or otherwise, on consumers. The consumers of this state have already experienced dramatic increases in the cost of water during this government's term in office. I am sure the shadow spokesperson, the member for Cockburn, will make comments about the imposts that consumers have had to bear under this government over the past four years. Once again, we are extremely concerned about proposed subclause (8) and whether it means an imposition of further costs for the consumer. The minister has a lot of explaining to do. I do not think he will be able to explain it. I assure the minister that we will spend some time on this clause. Unless he can convince the opposition that this clause is squeaky clean, we will oppose it absolutely. We do not have any confidence in what the minister has already said in his attempts to explain the proposed subclause.

Mr W.R. MARMION: It is probably worthwhile revisiting clause 97(6) and (7) and what I said in the house yesterday in answer to a question, and then I will lead on to proposed subclause (8). The opposition is concerned about increasing the cost-of-living pressure on people in Western Australia. Obviously, the government shares those concerns. As I said yesterday, we will not be passing on the costs of maintaining or repairing hydrants to consumers. I am happy to read that into *Hansard*. Proposed subclause (8) ensures that there is a mechanism in place for water service providers to recover from a third party the costs of providing a service. If someone breaks a hydrant, proposed subclause (8) allows the water service utility to recover the costs and expenses from the third party. That is the intention of proposed subclause (8). Subclause (7) refers to the Fire and Emergency Services Authority and to local governments. Proposed subclause (8) makes it very clear that costs can be recovered from a third party. In terms of the funding arrangement, which goes back to subclause (7), I make it quite clear that subclause (7) provides for costs to be recovered from FESA or local governments for installing or maintaining hydrants. The funding arrangements for implementing the transfer of hydrants have been considered now that the budget has been handed down. FESA has an allocation to maintain hydrants. This allocation will be provided to water utilities to maintain hydrants. I make it absolutely categorically clear that we will not be passing this on to Western Australian consumers.

Yesterday I failed to mention where we are at with hydrants. Recommendation 50 of the Keelty report is to transfer the ownership of hydrants from FESA to the water utilities. Further to that, recommendation 51 is that the Water Corporation immediately review the outstanding orders for hydrant repairs and develop strategies to reduce the backlog. That has been happening. It has been dedicating resources to clear the backlog. I can report to the house that, as of 8 March, only 354 work orders were outstanding, representing about 0.51 per cent of the total number of hydrants. I think there are about 70 000 hydrants throughout the state. The intention of proposed subclause (8) is to allow water utilities to recover costs from third parties for maintaining hydrants.

Mr C.J. TALLENTIRE: Given what the minister has had to say on this matter, it makes me wonder yet again why the government has not been more precise with the language used in the bill and in the amendment that is put before us on the notice paper. If we accept what the minister is saying, why would the government not add to subclause (8) words to detail that this is about only situations in which fire hydrants are damaged or broken by a third party? It would be very simple to amend proposed subclause (8) so that it reads "subsection (7) does not prevent the costs and expenses from being recovered indirectly via statutory water service charges where a fire hydrant is damaged or broken by a third party". If the government is not prepared to make that amendment—this is the concern of members on this side of the house—it will leave open the possibility of recouping from the general public all manner of costs relating to fire hydrants and, therefore, imposing a huge additional cost on the community.

Mr W.R. MARMION: I have been advised that parliamentary counsel wanted to insert proposed subclause (8) to make it absolutely clear. Subclause (7)(a), (b) and (c) does not provide clarity that there are other ways to recover costs. In case there was some doubt, the advice from parliamentary counsel, the people who decide what language to use in the bill, was that proposed subclause (8) should be put in with the key words "does not prevent". It is a case of clarifying the fact so that, although subclause (7) refers to FESA and local governments—there is emphasis on the "may"—a person reading it is clear that it does not prevent the recovery of costs from other people. It is a clarity pick-up clause.

Mr C.J. TALLENTIRE: I accept what the minister is saying, but the fact is that, as proposed subclause (8) is presented on the notice paper, it leaves open the possibility for a much broader interpretation of what those costs and expenses might be; therefore, we need an amendment to the proposed subclause to make it very clear that it is about only recouping from third parties the costs that could be associated with damage caused by a third party or some other form of breakage to a fire hydrant. If that is not put in the subclause, the government will leave open the possibility of recouping costs on all manner of things relating to fire hydrants.

Mr W.R. MARMION: It is true that proposed subclause (8) could be interpreted as being very broad. The fact is that this bill must stand the test of time—maybe 20, 30 or 40 years, as did the previous legislation. I take the member's point that that could be the case. However, if there is a possibility of bringing in charges, they would have to be made by way of regulations, which means that the legislation would have to come back to Parliament. This is setting up a framework for the way things could be charged. It is not saying how they will be done. It is a motherhood clause so that the bill remains relevant in 20, 30 or 40 years.

Mr F.M. LOGAN: Nothing the minister has said to Parliament the other night, yesterday via a question without notice or today has allayed the concern that the wording is nothing more than another way of bringing in a charge on the people of Western Australia for the cost of maintaining, servicing and installing fire hydrants. He has given no assurances. I asked for an assurance in a question without notice, but the minister did not give one. In his significantly extensive questioning of the minister about the subclause, the member for Balcatta asked the minister to make it absolutely fundamentally clear that these charges would not be passed on to households.

Mr W.R. Marmion: I said that.

Mr F.M. LOGAN: The minister has again not done that today; these charges may not be passed on to households. The reason I think the minister has left the wording of the amendment exactly as it is, regardless of what parliamentary counsel says, is that it leaves it wide open. If a cost to households is going to increase, it can be done by way of regulation, but this amendment will give the minister the statutory power to do that. The regulations will sit under this act. The minister could make a quick regulatory change to pass on those costs.

Mr W.R. Marmion: It would have to go through Parliament.

Mr F.M. LOGAN: It could go through Parliament. The minister has the numbers in Parliament; if he wanted to do it, he could do it, regardless of whether we moved a disallowance motion.

Mr W.R. Marmion: I dare say that you would oppose it and get a lot of mileage out of it.

Mr F.M. LOGAN: So what? Even if we moved a disallowance motion, the minister would still have the numbers to push it through. This amendment will give him the flexibility to do that, as he talked about the other night. The wording is structured in such a way as to allow the minister to do that. The proposed subclause states that it does not prevent the cost and expenses from being recovered indirectly via statutory water service charges. We know that one statutory water charge is the one that will be on people's bills after 1 July. There are other statutory water service charges. The explanation that the minister has given for the interpretation of the wording of the proposed subclause is that it will be for the replacement of fire hydrants that have been knocked over or for housing development sites that are required to have fire hydrants installed. I would like the minister to run through all the statutory water service charges that this proposed subclause would apply to, and I want him to give an absolute assurance that the one statutory water service charge that it will not apply to is the water service charge on our bills every year.

Mr W.R. MARMION: I will get to the specific ones later on. I have made it reasonably clear. The intent of this proposed subclause is not to pass on the cost to mums and dads, and I have given the house the assurance that we will not do that; that is my undertaking. That is the bottom line.

Mr F.M. Logan: Explain where it is going to apply.

Mr W.R. MARMION: I have given the member an example. It is a cost-recovery mechanism. That is how I intend to set it up in the regulations.

Mr F.M. Logan: To whom?

Mr W.R. MARMION: To a water utility. A water utility will be able to recover costs from a third party for the management, maintenance and supply of hydrants. I gave the example of a developer of a subdivision in which a hydrant was knocked over. The utility, which could be the Water Corporation or some other water service provider, would be able to recover those costs and it could be set up through a statutory charge system. In that way, there would be a cost to replace each hydrant and a third party would have to meet those costs. That is the way I see it possibly being introduced. Let me put it this way: it will give the government of the day the ability to use that proposed subclause in a regulation. There is a suggestion that we do not even need that provision and that it could be done anyway. But proposed subclause (8) makes it clear that costs can be recovered from the Fire and Emergency Services Authority or local governments. I guess I am repeating myself, but that is as clear as I can make it.

Mr F.M. LOGAN: The minister has not come to the house with a piece of legislation that quite clearly states that this is what the government is going to do. That is what is normally done with legislation in this house—it makes the intent of the government very clear.

Mr W.R. Marmion: Not if it's done in the regulations.

Mr F.M. LOGAN: The minister has brought into this house a piece of legislation and said, "This will give us the flexibility to maybe do this, but I'm not too sure exactly what we'll do and we'll do it later. Trust us." That is effectively what the minister is saying. He wants the house and, through the house, the people of Western Australia to give the government the flexibility to do whatever it likes with this charge and it will decide how it will apply later on. That is effectively what the minister has said to the house. That is bad law.

Mr W.R. Marmion: I disagree.

Mr F.M. LOGAN: It is bad law. It is not the way that this house deals with legislation. The minister is supposed to bring into this house legislation in which he makes clear its impact on the community of Western Australia.

Mr W.R. Marmion: I can be clear.

Mr F.M. LOGAN: The minister has not been clear at all. He said that it may do this or it may do that, or it could be applied this way depending on how he writes it afterwards. That is what he has said. That is bad law and it is absolutely unacceptable. Subclause (7) makes it very clear to whom the charge will apply; the service and installation charges for fire hydrants will apply to FESA or a local government. The minister has said that he can give us an assurance that it will not have a major impact on households. In the budget that was brought down today, there is a 5.61 per cent increase in the emergency services levy. How do we know that the cost of maintaining, servicing and installing fire hydrants is not included in that increase? As the minister knows, it is already dipped into by FESA in order to pay for the services of the Water Corporation. The extension of that is: how do we know whether FESA's estimation of the added cost of the fire hydrant service and installation charge, should there be one, is included in that 5.61 per cent increase? It could be there, in which case we are paying for it, even though the minister has said that we are not. We are seeking from the minister an assurance—I have asked him a number of times—that the one statutory water charge that will not increase as a result of the introduction of this wording in the bill is the water service charge that householders pay. If the minister can just stand and say that that will not occur under this amendment, that is fine; we will move on.

Mr W.R. MARMION: If that is all the member wants, that is easy. I can tell him that we will not do that; there will be no increase in the current statutory water charge to customers—mums and dads—in relation to anything to do with fire hydrants. The mechanism will be via FESA. As the member knows, there is the levy. I think that the current amount of the fire and emergency services levy that relates to hydrant maintenance will probably be transferred to the Water Corporation or the utilities via a community service obligation equivalent to that amount. But that is an issue that the Treasurer will work out.

Mr A.P. O'GORMAN: On the amendment to clause 97, "Fire hydrants", I think the minister is referring to recommendation 50 in the report of the Community Development and Justice Standing Committee, which recommendation relates to the transfer of responsibility from FESA to the Water Corporation.

Mr W.R. Marmion: The Keelty report.

Mr A.P. O'GORMAN: It was recommended in the CDJ report long before that. While we were doing that report, it was brought to our attention, particularly by the City of Greater Geraldton and the City of Kalgoorlie–Boulder, that they did not have the capacity for future development. In fact, development was being restricted in towns like Geraldton because of this. If that is to be upgraded and the costs recovered from local government—I think it is a local government district rather than a FESA district; but the minister can correct me on that —

Mr W.R. Marmion: That is correct.

Mr A.P. O'GORMAN: — what prevents the local government from raising the rates to fund that, which means the cost will go back onto the consumer of the water in the first place?

Mr W.R. MARMION: That is the situation now. Local government pays for them anyway. I cannot stop local government: it is up to local government what it charges for rates. The member is right: the water utility, which is, I think, the Water Corporation in Geraldton, will recover costs from the local authority in areas outside a fire management district or the FESA area. They will recover the cost from local government. A service level agreement will be put in place—the Western Australian Local Government Association is negotiating that on behalf of local governments—and the Water Corporation will maintain the fire hydrants as per the level of service that the Geraldton council desires. There will be performance indicators. Obviously, the costs incurred by the Water Corporation will be a part of that agreement by the local authority.

Mr F.M. LOGAN: Minister, we will go over once more exactly what is happening so that we can be absolutely crystal clear on this before we pass the clause. The asset, being the fire hydrant, currently belongs to FESA and is serviced and maintained by the Water Corporation under an agreement. That asset is being transferred to the licence holder, which may be the Water Corporation or a local government authority —

Mr W.R. Marmion: Or Aqwest or Busselton Water or a licensee.

Mr F.M. LOGAN: Yes, a licensee. The asset is being transferred to the licensee. The servicing, maintenance and installation of fire hydrants will continue and FESA will then be charged for that service.

Mr W.R. Marmion: Correct, or the relevant local authority.

Mr F.M. LOGAN: I have two questions: First, does the minister expect to see an increase in the cost to FESA as a result of that transfer; and, if so, by how much? Second, because the licensee is now the owner and maintainer of the asset, subclause 8 allows costs to be recovered indirectly from a third party for damage to a fire hydrant or the installation of new fire hydrants in new housing estates—or whatever. But Water Corp or the licensee—Aqwest or Busselton Water—will specifically not pass on any of that cost to the householder.

Mr W.R. Marmion: Correct.

Mr F.M. LOGAN: I have two questions: As a result of that transfer, will FESA see an increase in its costs? And, just as a guarantee, will the householder not end up being charged by the Water Corporation for that?

Mr W.R. MARMION: FESA believes that this will streamline the process. It believes that it will not add to the current cost of maintaining the asset. The answer to the first part of the question is that I do not expect any increase in the cost to FESA. The other part of the question was a good one and is why there is good reason to have clause 97(8) in the bill. If someone apart from FESA or the local authority damages the asset, the licensee is not going to pass on the costs either to mums and dads or FESA or the local authority. Without subclause (8) the only way to recover the cost would be through FESA or the local authority and those costs would go back to mums and dads.

Mr J.C. KOBELKE: I will take up the minister's last comment because I am not sure how this follows. I do not know if I heard the minister correctly, but if someone damages a fire hydrant or part of the infrastructure required for the hydrant, why would the minister need this extra power to recover the costs through a statutory water service charge rather than by way of an action directly against the person who caused the damage? My question is in two parts. First, did I hear the minister correctly in suggesting that this may be used to recover the cost of repairs from someone responsible for damages? And, if that is the case, how does that relate specifically to subclause (8)?

Mr W.R. MARMION: We could still pursue damages through a court, but this gives the minister the power to set by regulation a certain charge to avoid going to court and to make the charge a reasonable charge. It gives us the flexibility to make sure that the process is streamlined.

Mr J.C. KOBELKE: Is the minister saying that his legal advice is that he can by way of regulation recover, for a specific incident, the costs of repairs through a statutory water service charge?

Mr W.R. Marmion: Yes; if I wanted to—by way of regulation.

Mr J.C. KOBELKE: I put the hypothetical case: Mr Smith drives his car or truck over the verge near his house or a part of the road and damages a hydrant, which has to be fixed by, for example, the Water Corporation, and the charge for that would otherwise be passed to FESA, but the minister is saying that he would use a statutory water service charge to target Mr Smith solely and only in order to recover the costs involved in fixing the hydrant.

Mr W.R. MARMION: That is what I said just before. It gives it more clarity. What the member said is correct. However it can be read the other way: it can prevent the licensee from overcharging Mr Smith.

Mr J.C. KOBELKE: No; my question was: would that happen? Would the minister use a statutory water service charge to recoup money from an individual liable for the repair of a hydrant asset?

Mr W.R. MARMION: The power is already there for the licensee to recoup that money. This subclause will allow the minister—or a minister—to set a regulation to limit that. It would work in reverse. They can already recover the cost, but this allows the minister, via regulation, to set a statutory charge for that incident.

Mr J.C. KOBELKE: I think the minister is tying himself in knots because he really does not want to speak the truth. I picked up on something the minister said before that did not make sense to me, and when I try to get that information out of the minister he goes on to say something else that does not make sense.

Mr W.R. Marmion: Tell me what you want me to say.

Mr J.C. KOBELKE: The last thing the minister said was that we need subclause (8) so that he can limit the costs. I put to the minister that that is already in subclause 7(a), which this chamber passed on Tuesday night, and which states —

> limit what may be recovered as costs and expenses;

That amendment has already been made. The minister has the power to do that.

Mr W.R. MARMION: Subclause (7) is about recovering the costs of installing, removing, repairing and maintaining, whereas subclause (8) will apply to something damaged by a third party.

Mr J.C. KOBELKE: I do not see how, technically, that difference can be derived, because subclause (7), which we have already amended, states —

> A licensee may recover the reasonable costs and expenses of installing, removing, repairing or maintaining a fire hydrant in accordance with the regulations, which (without limiting that) may —
>
> (a) limit what may be recovered as costs and expenses;

It seems to me that the minister has the power to limit it there. If the Water Corporation said that the cost of repairing a hydrant that was broken because a car went over it would be $5 000, and the minister thought that that was exorbitant and it really should be a maximum of $1 000 or $2 000, he could, by regulation, determine the hours of work or the resources to fix a problem. They can be limited by existing regulations. Subclause (8), which the minister is seeking to insert and which is now before the house, states that subclause (7), which we just alluded to —

> … does not prevent the costs and expenses from being recovered indirectly via statutory water service charges.

My experience of statutory water service charges is that they are applied to a class or group; therefore, I see that there would perhaps be a bit of an anomaly in applying it to only those people who are responsible for damaging an asset. There would then be the issue of determining whether they really were responsible, which can be a whole question in itself. Even if they did do it, if they denied that, there would be an obligation to show some evidence that they were responsible and therefore liable for the repair costs. It seems to me that the minister is getting into a whole new area that does not fit neatly, as I see it, with subclause (8), which is really about giving the minister another taxing power—another head of power to charge people a whole new fee. That is something I am totally opposed to.

Mr W.R. MARMION: I will try to explain this, but it is very legal and technical. There is another head of power created in clause 125—which we have not got to—which is, I think, the more general statutory power. This clause has been worded, from what I have been told, so that it is clear that this will not override the more general statutory powers created in clause 125. That is what my legal counsel has told me.

Mr J.C. KOBELKE: Let me try to understand this. Is the minister saying that subclause (8) is somehow to prevent amended clause 97 overriding clause 125? Clause 125 would appear to be a general regulating-making power on water service charges.

Mr W.R. Marmion: Yes.

Mr J.C. KOBELKE: How is it envisaged that this one could override it when it relates to trying to determine the issue between the Fire and Emergency Services Authority and a local government authority, which would currently have responsibility, and the negotiations with the provider on cost for particular work under the water services legislation?

Mr W.R. MARMION: I think it is becoming bit clearer. Subclause (8) states —

> Subsection (7) does not prevent the costs and expenses from being recovered indirectly via statutory water service charges.

If we put a specific head of power in, it would normally override the more general powers. This wording of subclause (8) is making it clear that it does not. The actual main powers take precedence over anything and would still apply.

Mr J.C. KOBELKE: I thank the minister for trying to give me a better understanding, but this is all driven by something the minister said the other night. When the minister was talking about subclause (8), which is currently before the house, he suggested that this would enable a charge to be placed on consumers to help meet the maintenance costs, which does not happen now. That might have been a loose use of language by the minister, but it caused me some consternation because his government does not seem to realise how hard it is hitting the mums and dads and the pensioners of this state. It is putting charge after charge after charge—huge increases—on people, driving more and more people into poverty. The minister suggested that this related to a potential new head of power to provide a charge, should it be required, for water hydrants. That is something we on this side of the house are totally opposed to. We can go on and on about this until we fully understand it, or the minister may wish to reconsider the expression he gave the other night—not to contradict himself. But perhaps he would give an assurance to the house that he will not actually set up a new specific charge, which will fall on consumers, relating to fire hydrants.

Mr W.R. Marmion: I have already done that; I have made the commitment about three times.

The ACTING SPEAKER (Mr A.P. O'Gorman): Now I need somebody on their feet —

Mr R.F. Johnson: Just go to the vote.

Amendment (deletion of words) put and passed.

Amendment (substitution of words) put and a division taken with the following result —

Ayes (25)

Mr P. Abetz	Mr M.J. Cowper	Mr R.F. Johnson	Mr C.C. Porter
Mr F.A. Alban	Mr J.H.D. Day	Mr A. Krsticevic	Mr M.W. Sutherland
Mr C.J. Barnett	Mr J.M. Francis	Mr W.R. Marmion	Mr T.K. Waldron
Mr I.C. Blayney	Mr B.J. Grylls	Mr J.E. McGrath	Mr A.J. Simpson *(Teller)*
Mr I.M. Britza	Dr K.D. Hames	Mr P.T. Miles	
Mr V.A. Catania	Mrs L.M. Harvey	Ms A.R. Mitchell	
Dr E. Constable	Mr A.P. Jacob	Dr M.D. Nahan	

Noes (22)

Dr A.D. Buti	Mr F.M. Logan	Ms M.M. Quirk	Mr A.J. Waddell
Ms A.S. Carles	Mrs C.A. Martin	Mr E.S. Ripper	Mr P.B. Watson
Mr R.H. Cook	Mr M.P. Murray	Mrs M.H. Roberts	Mr M.P. Whitely
Mr J.N. Hyde	Mr A.P. O'Gorman	Mr T.G. Stephens	Ms L.L. Baker *(Teller)*
Mr W.J. Johnston	Mr P. Papalia	Mr C.J. Tallentire	
Mr J.C. Kobelke	Mr J.R. Quigley	Mr P.C. Tinley	

Pairs

Mr G.M. Castrilli	Mr D.A. Templeman
Mr T.R. Buswell	Ms J.M. Freeman
Mr D.T. Redman	Ms R. Saffioti
Dr G.G. Jacobs	Mr B.S. Wyatt
Mr J.J.M. Bowler	Mr M. McGowan

Amendment thus passed.

Clause, as amended, put and passed.

Clauses 98 and 99 put and passed.

Clause 100: Approval required before connecting to sewer —

Mr C.J. TALLENTIRE: I see how firm clause 100(1) is. It reads in part —

> A person must not connect, or permit the connection of, a wastewater inlet on land to —
>
> (a) the sewerage works of a licensee;

But it seems to me that subclause (2) almost negates the first subclause because it reads —

> A licensee may approve of the connection of a wastewater inlet described in subsection (1) even though the connection has already been made.

I would like to hear the minister's view on this type of retrospective approval and whether there is any intent to stick with the rigour that is presented in subclause (1).

Mr W.R. MARMION: There is no change to the existing situation. Subclause (2) will allow for rare instances whereby something has already been installed. I guess it is a matter of retrospectively approving an installation. It might have been put in 20 or 30 years ago and the actual apparatus is being approved.

Mr C.J. TALLENTIRE: Thank you for the explanation. Can I have clarification that this form of retrospective approval is not available to developers, home builders or anyone who has a recent construction underway but will be contemplated only in circumstances in which, for some historic reason, previous approval has not been given and will not be available to people who might have sought a building licence in the past five years?

Mr W.R. MARMION: This clause will be available to developers only for rare instances when, for example, the paper work was lost years ago, and they will then need to prove it exists. I can give the member assurances that it will not be available to developers.

Clause put and passed.

Clause 101 put and passed.

Clause 102: Terms used —

Mr J.C. KOBELKE: My question relates to the whole of subdivision 2, but I think clause 102 is the appropriate place to deal with it as expeditiously as possible. The discharge of trade waste in Western Australia is handled very well. In other states where it is not handled as well, they have major problems in the waste water treatment plants because of the much wider treatment of waste that is going into them in terms of the chemistry. To what extent will there be differences between what is in this bill regarding the discharge of trade waste and the current legislative basis?

Mr W.R. MARMION: Apparently trade waste is not covered by any act at the moment; it is covered by regulation, so this will bring trade waste into the act. That is the only thing that will change.

Mr J.C. KOBELKE: Does it reflect the current regime or will it do anything that is significantly different?

Mr W.R. Marmion: Yes, it reflects the current regime.

Clause put and passed.

Clauses 103 to 110 put and passed.

Clause 111: Minister may require connection to drainage works —

Mr F.M. LOGAN: Division 7 relates to drainage services. "Drainage assets", as defined in clause 109, include —

> … drains, wetlands, swales, infiltration devices, devices for litter, sediment or water quality management, floodgates, pumping stations, culverts, and other similar works and natural features.

Drainage assets are land drainage features, as opposed to sewerage. The issue I wish to raise goes specifically to my electorate, particularly as it is covered by this clause 111, which provides that the minister may require connection to drainage works. I raised this matter with the former Minister for Environment and I have mentioned it briefly to the current minister. I refer to Lake Yangebup in the electorate of Cockburn. Lake Yangebup used to have on its eastern foreshore a series of wooden sheds that were used to clean and dry skins. As the minister knows, a number of heavy metals, including mercury and various other chemicals, were used to clean the skins before drying them. Before the introduction of the Environmental Protection Authority Act 1986, the operators were given approval to dispose of most of the residue from the sheds into Lake Yangebup. Therefore, the bottom of Lake Yangebup is full of heavy metals and seriously bad chemicals. That is acknowledged by the Department of Environment and Conservation and the Water Corporation. As the minister knows, all the wetlands through the southern and northern suburbs are connected by drainage pipes that are the asset of the Water Corporation. DEC is dealing with the contamination in Lake Yangebup by ensuring that the lake always remains full; there is always water in it. DEC does not want the lake to dry out because if it dries out, the dust containing heavy metals will be blown about and pollute the nearby residents. At the Beeliar Drive end of the lake is a sluice system that works like a sluice gate, but it is a sluice system. When the level of the lake fills up to a certain point, it overflows and the water goes into the sluice system. It then travels by pipe all the way along Beeliar Drive and across the Woodman Point waste water treatment plant, up Woodman Point View and then 150 metres out to sea. Lake Yangebup is directly connected to the sea by a pipe. This information was provided to me by the Water Corporation. The minister may remember that about three years ago a number of dead seagulls were found washed up on the beach at Woodman Point. Seagulls had also dropped out of the air

and died on the jetty of Cockburn Cement at Woodman Point. No-one could determine the reason the seagulls died. Anecdotal evidence passed on to me from commercial fishermen in the area is that the timing of the dead seagulls coincided with an incident that the fishermen saw after some of the first rains at around the end of July or the beginning of August.

Mr M.P. MURRAY: I am very interested in this debate. I will let the shadow minister carry on because I would like to hear him continue his question.

Mr F.M. LOGAN: I thank the member for Collie–Preston. The fishermen saw from their boat some black stuff coming out from under the water. Clearly, it was the outfall to Lake Yangebup. The first flush of water brought down all the sediment that was in the bottom of the lake. Naturally, the bottom of the sediment goes into the pipe and gets flushed out to sea.

Mr W.R. Marmion: Possibly.

Mr F.M. LOGAN: The Water Corporation ran 100 miles an hour when I put it to them that I thought it was the cause of the dead seagulls. Regardless of whether or not it was the cause, in the twenty-first century it is not appropriate for a lake that has heavy metals in it to be directly connected to Cockburn Sound, which is a major fishery and sporting ground for snapper. This clause gives the minister the power to require connection to drainage works and it may also give the minister the power to give a direction to the Water Corporation to connect the pipe to the Woodman Point waste water treatment plant. The water from the lake would then be treated at the Woodman Point waste water treatment plant just like any other water that is contaminated with heavy metals and industrial waste rather than be taken out to Cockburn Sound. After that long introduction, my question is: will the minister give a commitment to direct the Water Corporation to connect that pipe into the Woodman Point waste water treatment plan rather than have a possibly highly contaminated lake being directly connected into Cockburn Sound?

Mr W.R. MARMION: This clause is not actually relevant to that matter, but I am quite happy to get some advice from the Water Corporation on it. I have some knowledge of drainage systems and how they work and how heavy metals could be stirred up at the base of the lake. The engineering and technical side probably needs investigating. It could come under the Department of Environment and Conservation. I do not know whether it is classified as a contaminated site, although I imagine that it is if what the member said —

Mr F.M. Logan: It is their site, but the pipe belongs to the Water Corporation.

Mr W.R. MARMION: I will get a briefing and see what we can do.

Mr F.M. Logan: That would be great; thank you, minister.

Clause put and passed.

Clause 112 put and passed.

Clause 113: Requirement to maintain or modify drainage assets, etc. —

Mr C.J. TALLENTIRE: This clause provides penalties that can be imposed on a landowner who does not maintain their land for drainage purposes. I notice that the penalties are of the order of $5 000 and a daily penalty of $250. It might be time for members opposite who represent rural electorates, such as the members for Swan Hills, Darling Range and Geraldton, to bring to the chamber their expertise about drainage costs. It is my view that the cost of maintaining drainage assets in some circumstances would far exceed $5 000. That means someone could choose to incur the $5 000 penalty and thereby avoid having to pay for the maintenance. I know that the daily penalty rate would presumably be imposed until the works were done, but when looking at the cost of hiring earthmoving equipment that could be essential for some of the drainage works required and looking at some of the drainage assets—I refer to clause 101 and the maintenance of swales and other areas—we are talking about the use of expensive equipment to ensure the maintenance of drainage assets. The cost of $5 000 could be trivial in comparison with the cost of hiring a contractor to make sure that drainage assets are maintained. As I said, I hope that members who represent electorates in which this sort of issue arises frequently would be able to bring in their expertise and perhaps convince the minister that in fact those penalties are meagre in comparison with the cost of some of the works that would be required. Therefore, I maintain that we should in fact be increasing those penalties, perhaps bringing them in line with at least the figures in clause 112. We see in that clause that there is a fine of $25 000 and a daily penalty of $1 000. I think that would be far more dissuasive. That would ensure that a landholder would make sure that their drainage assets were properly maintained so that there is no damage going on to neighbouring properties and there is no damage to other community assets. It has to be about making sure that people act properly to maintain drainage assets that are, after all, for the benefit of the whole community.

Mr W.R. MARMION: Clause 113 needs to be read in conjunction with clause 120, which deals with compliance notices. It is possible for the licensee to issue a compliance notice under clause 120, and under that clause a compliance notice could be for the cost of the entire works. So there is the mechanism of a compliance notice under clause 120 to cover the member's concern. The member is concerned about the penalties. This clause is exactly what is applied in other acts currently. However, if the licensee thought that the penalty would not cover the situation, he could go in there and issue a compliance notice.

Mr M.P. MURRAY: I would like to follow on that line and put forward what has happened in my region. I am sure that the minister is aware to some degree of the Yancoal or Premier Coal diversion around Lake Kepwari. There has been a blow-out in the wall and, to me, there is no urgency to fix it because there is no fine as such that worries them. The $5 000 that has been mentioned here certainly should be looked at as well. This is a river that has been diverted, and now people are not quite sure what to do. In the meantime, it is costing the community hundreds of thousands of dollars because the remedy has not been implemented. As I have said previously, the Department of Environment and Conservation also has a role to play. I wonder why that fine is so low when we have a multimillion-dollar enterprise that is not complying with the letter of the law and rectifying the problems on the Collie River that inhibit the use of Lake Kepwari. The clause also says that a minister may, by written notice, require the licensee to modify the connection. I wonder whether that provision will be utilised in the future. In this case, the connection is about turning the river one way or the other to get a proper environmental result out of this situation. People from the Water Corporation and the Environmental Protection Authority have been out there, and other people such as engineers have been there, but nothing has been done. Is this a toothless tiger? Is it because only a $5 000 fine may apply in the future? I suggest very strongly that the minister should look at raising the amount to as high as $50 000 or $100 000, because for large companies, $5 000 in the scheme of things is absolutely nothing.

Mr W.R. MARMION: Obviously, I am not familiar with the issue and the complexities of who owns what and where the water goes. However, I would be interested to know. I do not even know whether it is classified as a drainage asset so that it comes under this legislation or whether it comes under other instruments that the EPA, the Department of Environment and Conservation or a state agreement might have set up. I am unfamiliar with that. However, if the situation did come under this legislation and the company was not complying, under clause 120 a compliance notice could be issued and it would have to comply. If it did not comply, under clause 122 I can remedy the situation by organising for it to be fixed and then recover the costs.

Clause put and passed.

Clauses 114 to 171 put and passed.

Clause 172: Terms used —

Mr J.C. KOBELKE: My question goes to part 8, "Entry for performance of functions". This is an area that can become quite contentious. We are dealing with people's property rights. I want to get some understanding of whether the bill, in covering these entry provisions, is the same as, or very similar to, what we currently have or whether there are any significant initiatives or changes to the processes that currently apply to entry for the performance of functions and the rights of the occupier of a dwelling. Would the minister also cover the use of force and advise us whether that provision stays the same?

Mr W.R. MARMION: Generally, they are the same, but the ones we could highlight that are different are clauses 176, 181, 183 and, in division 3, 185.

Mr J.C. KOBELKE: I will not pursue all those now because we want to get things through. I will wait until we get to clause 181—that would be better—and then we can get some details about how clause 181, "Use of Force", varies.

Clause put and passed.

Clauses 173 to 180 put and passed.

Clause 181: Use of force —

Mr J.C. KOBELKE: The minister indicated that there are changes to clause 181, which is headed "Use of force". Again, that is something that is necessary, but there would be concerns if there was an abuse of it. Therefore, I would like to have some understanding of how this clause varies from the existing provisions.

Mr W.R. MARMION: There is no existing provision. This is a new clause. I think that in practice the authorised officer can gain entry by taking a police officer along with him—that is how it is done now. The purpose of this clause is to make it explicit that the use of force may be only against a thing, not a person.

Mr J.C. Kobelke: So, cutting a bolt or something like that?

Mr W.R. MARMION: Yes, cutting a bolt or a padlock.

Clause put and passed.

Clauses 182 to 208 put and passed.

Clause 209: Authority's capacity to authorise or designate persons —

Mr C.J. TALLENTIRE: This clause raises an issue of accountability. Normally, an employee or a designate must be a person who is governed by the Public Sector Management Act. Subclause (2) states —

> … the Authority may authorise or designate a person who need not be a staff member of the Authority or a public sector employee.

That means that almost any person could be hired to do works under this legislation, such as investigative work and going onto a person's property to check things, with no accountability to a minister of the Western Australian government. The person who does that work might act in a heavy-handed way, and he might then disappear into the night, and because that person was simply an employee of a contractor, it could be impossible to find that person and hold him to account. I am keen to hear the minister's reasoning for allowing such an out-clause that will enable almost any person to work with authority under this legislation, with no accountability to the minister.

Mr W.R. MARMION: This clause relates to the capacity of the Economic Regulation Authority to authorise persons to go onto licensed premises. Obviously, we would not expect the ERA, which is a small organisation, to have expertise in operating water treatment plants et cetera. This clause will enable the ERA to engage an expert in the lower-level technical detail, or in the higher-level engineering side of things, to help it carry out its licensing and compliance functions. We believe that is consistent with the situation that applies currently.

Mr C.J. TALLENTIRE: Can the minister then explain who in government would be held accountable if an outside contractor was found to have acted in a heavy-handed manner?

Mr W.R. MARMION: The member only has to read contract law 101. The ERA would be accountable, because it has employed the person—the person is working for the ERA.

Clause put and passed.

Clause 210: Terms used —

Mr F.M. LOGAN: I want to confirm that the words "contractor, in relation to a licensee", mean "contractor, to a licensee". The contractor could be Serco or it could be Transfield–Degrémont–Suez; these are both contractors to government. Both the minister and the chief executive director of the Water Corporation are quick to define the relationship between the Water Corporation and Transfield–Degrémont–Suez as an "alliance". There is no definition of "alliance" in this bill. Can we assume, therefore—this needs to be on the record—that Transfield–Degrémont–Suez will be subject to these inspection powers, or is it the case that a contractor is caught by this legislation, but somehow an alliance is not caught by this legislation?

Mr W.R. MARMION: This specific part of the bill, division 2, is about inspectors and compliance officers. A licensee, or the Water Corporation, can employ a contractor as an inspector or compliance officer. It is not a contract to provide the services.

Mr F.M. Logan: The wording is "contractor, in relation to a licensee". The ERA is not a licensee.

Mr W.R. MARMION: No, but the Water Corporation is. The Water Corporation would have its own auditors—every organisation has internal auditors and compliance officers—but it could employ a contractor to do that work.

Clause put and passed.

Clause 211: Designation of inspectors and compliance officers —

Mr F.M. LOGAN: This clause deals with the designation of inspectors and compliance officers by the Economic Regulation Authority for the purposes of, obviously, compliance. Currently, the ERA has the power to inspect and ensure compliance with the licence conditions. Does the ERA employ those officers or are they contracted to the ERA? What is the current relationship between the compliance officers and the ERA, and will this clause change that relationship?

Mr W.R. MARMION: I understand that this clause will not change the existing situation. This provision has never been used previously. The ERA already does audits, as the member is aware. This clause will give the ERA the power, if it so chooses, to appoint an inspector to do a more detailed examination if it has some concern about a licensee.

Mr F.M. LOGAN: I notice that in clause 211(2) Department of Water employees may be used as compliance inspectors and compliance officers. That clause allows it to occur, but the minister is saying that this power has really never been used before simply because water —

Mr W.R. Marmion: Not by the ERA.

Mr F.M. LOGAN: But, this clause is actually the power for the Economic Regulation Authority.

Mr W.R. Marmion: Yes; Clause 211.

Mr F.M. LOGAN: Therefore, the policing of the licensing and the control and compliance of the behaviour of licensee falls under the ERA for compliance and inspection, but no officer has ever been used in that role. The minister and his government are changing the nature of the way work is done within our water industry in Western Australia by giving literally more power and control of operations to an organisation such as Transfield–Degrémont–Suez. I would have thought that if the licensee, which may well be the Water Corporation, has contracted out its work to a private company, particularly for sewerage and water operations et cetera, the compliance provisions would be probably used a lot more than simple audits. Although the power has never been used, does the minister believe that it should be used more often for the purposes of spot checks and inspections by the ERA, particularly as this government is changing the very nature of the water industry in Western Australia?

Mr W.R. MARMION: It is a bit hard to give an opinion, but the ERA is the independent inspector, I guess, and in an emergency it might want to step in if it did not have any confidence in the licensee. How I envisage it must have worked in the past—I have been the minister for only a year—is that if a problem was identified in the normal audits, it could have asked the licensee to rectify it. One could envisage a situation in which the ERA was not happy with the response to the audit and the licensee did not fix whatever it was asked to fix. I guess in that case it could threaten to remove the licence. The first thing that would be done would be to get an inspector in there to confirm things. The licensee might say that it thinks it is fine, but the ERA could say, "Well, hang on; we'll have a look at it and see for ourselves", and send an independent inspector so that it did not rely on inspectors of the licensee to tell it that things were right. That is something I just made up on the spot about how I envisage it could work.

Mr F.M. LOGAN: I will come to another question in a minute. How many licensees do we have in Western Australia now?

Mr W.R. Marmion: There are 31 now.

Mr F.M. LOGAN: There are 31 public and private licensees in Western Australia and the Department of Water does not have the authority to inspect and control the conditions of the licences held by those 31 organisations. The Department of Water is only a policy advisory body for the minister. The ERA is the only body that has enforcement capability over those licensees; is that correct?

Mr W.R. Marmion: Yes.

Mr F.M. LOGAN: The only means by which licensees can be inspected to ensure that they are carrying out their functions and complying with the conditions of their licences is through the ERA. The DOW cannot do that; it is only through the ERA, which strikes me as strange. The only tool we have in place in Western Australia for managing the conditions of those 31 licensees is audits that are done from time to time by the ERA, and it has no mechanism for spot inspections and compliance inspections for those conditions. That seems to be the case.

Mr W.R. Marmion: That would be under section 47 of the Water Services Licensing Act 1995.

Mr F.M. LOGAN: What, the ERA?

Mr W.R. Marmion: Yes.

Mr F.M. LOGAN: I know it has that power, but it has never exercised it. This is the point I am making. This is a further question to the point I am making. Should it exercise that power at some stage, and one of these officers was employed to do that, what would be the required qualifications of that person?

Mr W.R. MARMION: It would depend on the issue that was to be inspected. This is almost the same answer as before. Depending on the issue, the ERA would have to appoint an inspector with the skills or expertise to give a proper and learned opinion on that particular issue. If it was an inspection of a fault in a sewerage plant, the ERA would appoint someone who had some knowledge or expertise in sewerage.

Clause put and passed.

Clauses 212 to 220 put and passed.

Clause 221: Limitation of liability for certain actions —

The SPEAKER: Minister for Water, I wonder whether it would be your preference, and whether there would be the opportunity in this house, to move all three of your amendments at this point. That is possible if you would like to do that. You need to seek leave to do that.

Mr J.C. KOBELKE: If leave is required, I will deny it because we may want to divide on one of the later amendments. Therefore, I think it would be more expeditious if we take the amendments one at a time.

The SPEAKER: Thank you, member for Balcatta; leave would not be granted, if the minister was going to propose it.

Mr W.R. MARMION: I move —

Page 178, after line 11 — To insert —

(2A) None of the following persons are liable for any losses, damage or injury resulting from the installation, removal, repair or maintenance of a fire hydrant unless the person was acting in bad faith —

(a) a licensee;

(b) a person authorised by a licensee for the purposes of Part 5 or 6;

(c) an individual acting on behalf of a person (who may or may not be an individual) referred to in paragraph (b).

Mr J.C. KOBELKE: I am a little concerned about how far this goes. The minister is saying here that if someone is involved in loss, damage or injury from the installation, removal, maintenance or repair of a fire hydrant, unless they have acted in bad faith, they have an indemnity under this clause. Maybe it is picked up elsewhere, but I will give the minister a hypothetical situation. In repairing a hydrant that is on a street lawn, major damage is done to a person's garden reticulation. It is totally accidental and the department claimed that it was not responsible but that hoons did a burn-out or something. The issue then is that there is a contested claim. Could this be used to deny any liability because a form of limitation of liability to these people is gained under this clause?

Mr W.R. MARMION: I will explain this clause. The member for Balcatta has actually gone to a side issue. While I am giving him the reason for the clause, my advisers might give me an answer on that particular scenario the member has presented. The hydrant assets are owned by FESA, and section 37 in part 7 of its act indemnifies all its officers and operators for anything they might do that someone might sue them for. The boards of the Water Corporation and other licensees obviously want the same certainty that their officers will be protected and will not be sent to jail if something happens. This clause is about providing the same level of indemnity that FESA has to the water service providers and their boards should something go wrong with the hydrant.

Mr J.C. Kobelke: So it is an identical provision to that for FESA.

Mr W.R. MARMION: Correct.

Amendment put and passed.

Mr W.R. MARMION: I move —

Page 178, line 12 — To delete "Subsection (2) does" and substitute —

Subsections (2) and (3) do

Mr J.C. KOBELKE: This is a trivial technical point and it may be one that the Clerk can fix. Under clause 221, subclause (2) refers to the state, the minister, the authority and the licensee; subclause (2A) refers to people who are licensees, authorised licensees et cetera, so the coverage has been extended; and subclause (3) currently states that subclause (2) does not apply in relation to any rights or liabilities arising under a contract. I presume that the amendment before us will cover subclause (2A). I wonder whether the reference to "3" in the amendment needs to be "2A", or whether it is a trivial matter that the Clerk can fix. I take it that the minister clearly means subclause (2A), not subclause (3), because otherwise the clause would apply to itself.

Mr W.R. Marmion: I also have advice that it is because new subclause (2A) has been put in.

Mr J.C. KOBELKE: So it should be amended to subclause (2A), not subclause (3).

Mr W.R. Marmion: No; we are keeping subclauses (2) and (2A).

Mr J.C. KOBELKE: So the reference to "subsection (2)" will be deleted and substituted with "subsections (2) and (3)". I am suggesting that "3" should be "2A".

Mr W.R. Marmion: Yes; the Clerk can fix it.

Amendment put and passed.

Mr W.R. MARMION: I move —

Page 178, lines 19 to 21 — To delete the lines and substitute —

(5) In this section —

(a) a reference to losses, damage or injury includes a reference to loss of enjoyment or amenity value and to a change in the aesthetic environment; and

(b) a reference to liability resulting from taking an action includes a reference to liability resulting from a failure to take that action.

Mr J.C. KOBELKE: I would like some explanation of this amendment. I will give a hypothetical that has been raised by the member for Cockburn. If there were evidence that the deaths of seagulls related to the actions of the Water Corporation—it is only speculation that that might be the case in the example he gave—would that mean that there would be no claim of liability if the catch of commercial fishermen was affected by the death of fish or if recreational fishermen could no longer catch fish because there had been a fish kill from discharged water that did not meet the standards? The amendment states —

(5) In this section —

(a) a reference to losses, damage or injury includes a reference to loss of enjoyment or amenity value and to a change in the aesthetic environment; and

There may be a head of power under other statutes, but on my first reading of this amendment, it seems to suggest that an immunity will be given to the licensee if they performed an action that had a consequence that directly caused damage to third parties.

Mr W.R. MARMION: I am just getting clarity on this because there is a bit of confusion. Unfortunately, this amendment has to be read in conjunction with clause 219, which makes it a bit complicated. Clause 221 is about limiting the liability for these sorts of actions, but if it is read in conjunction with clause 219, if a person is negligent, they are not. That is the way I read it.

Mr F.M. Logan: It absolves them.

Mr W.R. MARMION: Yes.

Mr F.M. LOGAN: The Water Services Bill is granting extraordinary powers to the state, the minister, the authority, the licensee or an authorised person—including a contractor working for a licensee—because the minister is basically giving himself by way of legislation an exemption from any liability for any damage, loss, injury, loss of enjoyment or amenity value and change to the aesthetic environment. Proposed subclause (5) states —

(b) a reference to liability resulting from taking an action includes a reference to liability resulting from a failure to take that action.

To use a practical example: Water Corp has a spill in Cockburn Sound, as happens on a regular basis, that impacts on the environment and this clause exempts it from liability. Another such example is that if something were to blow out at the Woodman Point waste water treatment plant and the Water Corp did not take action to stop damage to the environment, under this subclause it is still exempt from liability. That is effectively what this proposed clause states. Proposed subclause (5)(a) refers to "a change in the aesthetic environment". In the case of an accident, does the Environmental Protection Act or the proposed water services act take precedence?

Mr W.R. Marmion: I was listening to the member's first two questions and he then asked a third question and I did not hear what it was. And I am trying to remember what my answers will be to the first two.

Mr F.M. LOGAN: I was just giving some examples in reference to proposed subclause (5). I was using the Woodman Point waste water treatment plant as an example. These types of things have happened, but I was not using real examples.

Mr W.R. Marmion: If they are negligent, they will still be liable.

Mr F.M. LOGAN: This gives exemption from liability—either way. I am just asking which takes precedence in law when it comes to liability. Is it the Environmental Protection Act 1985 or the proposed water services act?

Mr W.R. MARMION: The short answer is that the Environmental Protection Act will take precedence in that situation. I refer the member to section 5 of that act.

Mr F.M. LOGAN: Therefore, regardless of the wording in this clause and the minister's amendment, should there be a major environmental spill into any waterway that results in environmental damage, a prosecution brought under the Environmental Protection Act could not be defended by the Water Corp by reference to this proposed subclause?

Mr W.R. MARMION: I am advised that we are talking about two things. We are talking about damages in a court, not damages under an EP act prosecution. That is the short answer to that.

The other point that I want to make is that the wording of this clause is broadly the same as that in the section about liability for physical damages in the Water Agencies (Powers) Act 1984. We are not really making any changes.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 222 to 226 put and passed.

Schedule 1: Transitional provisions —

Mr J.C. KOBELKE: Can the minister give a brief explanation of why his proposed amendment is required?

Mr W.R. MARMION: This simply deals with existing hydrants. It transfers existing hydrants to the licensee, which would be the Water Corporation or Aqwest or Busselton Water.

Mr J.C. Kobelke: Was it an oversight in the draft of the bill?

Mr W.R. MARMION: This is new because the hydrants are being transferred from FESA.

The SPEAKER: The Minister for Water has provided some clarification to the member for Balcatta about why he is endeavouring to amend clause 13 in schedule 1. Does he wish to move the amendments en bloc? If he does, he will need to seek leave. If not, he can move them one by one.

Mr W.R. MARMION: I seek leave to move en bloc the amendments standing in my name on the notice paper.

Leave granted.

Mr W.R. MARMION: I move —

Page 189, after line 35 — To insert —

(3A) Subclause (1) applies to fire hydrants on Crown land or in a road that, immediately before commencement day, were attached to the water service works of a licensee, as if those fire hydrants were property of the licensee at that time.

Page 190, line 1 — To delete "Subclause (1) applies in relation" and substitute —

This clause applies

Page 190, line 9 — To delete "paragraph (a)" and substitute —

subclause (1)(a)

Amendments put and passed.

Schedule, as amended, put and passed.

Title put and passed.

House adjourned at 5.28 pm