PETROLEUM AND GEOTHERMAL ENERGY LEGISLATION AMENDMENT BILL 2013

Consideration in Detail

Resumed from 6 August.

Clause 82: Section 70 amended —

Debate was adjourned after clause 81 had been agreed to.

Mr C.J. TALLENTIRE: Clause 82 makes a fairly simple change; it changes the term "reservation" to "reservation area". I want to check with the minister whether there are implications in broadening that term. Under various aspects of petroleum law, does "area" have a much broader meaning than the term "reservation", which the minister seeks to delete?

Mr W.R. MARMION: No. We discussed it in previous amendments; it was a drafting error. It makes no change. It is just a clearer wording which parliamentary counsel recommended.

Clause put and passed.

Clauses 83 to 87 put and passed.

Clause 88: Section 91 amended —

Mr W.J. JOHNSTON: If the minister does not mind, I will refer to proposed section 91A(2) of the marked-up bill. I am looking at the words on page 113 beginning at line 10 of the bill. I am wondering about the fact that the term "'potential' GHG storage formation" is used.

Mr W.R. Marmion: What page?

Mr W.J. JOHNSTON: Page 113 of the bill, beginning at line 10, subclause (e).

Mr W.R. Marmion: I am now trying to find that.

Mr W.J. JOHNSTON: I have just done the same myself, minister. I think it is on page 194 of the marked-up bill. My apologies; I am wrong on that. It is actually on page 192 of the marked-up bill. It is proposed paragraph (e) in the middle of the page.

Mr W.R. Marmion: I have it.

Mr W.J. JOHNSTON: I think I am right, too.

I am reading now from the marked-up bill. Proposed paragraph (e) states —

> prevent water or any other matter entering any petroleum pool, geothermal resources area, potential GHG storage formation or potential GHG injection site through wells in the permit area, drilling reservation area, lease area or licence area except when required by, and in accordance with, good oil-field practice.

The question that I have is it only refers to "potential GHG storage formation or potential GHG injection site". Why are we excluding sites that are not just potential but known to be suitable as GHG?

Mr W.R. Marmion: I will just confirm what I think the answer is.

Mr W.J. JOHNSTON: That will be great. Thank you, minister. I will happily await the answer.

Mr W.R. MARMION: I have just been proven right: when exploration is carried out, it is still only a potential GHG storage site until it is confirmed. This actual work practice covers it. It is still only a potential. When it becomes a proven GHG storage formation, I understand there is another work practice that deals with that.

Mr W.J. Johnston: Could you direct me to that other clause?

Mr W.R. MARMION: I will have to find it.

Mr W.J. JOHNSTON: Thank you very much, minister. We understand that a petroleum pool or a geothermal resource area includes operations as well as potential operations.

Mr W.R. Marmion: Yes.

Mr W.J. JOHNSTON: In respect of the GHG we are now only saying "potential" GHG. I wonder if the minister could refer me to the section that deals with GHG opportunity—once it is proved up, it is more than potential. I cannot remember but I can look it up about the permanent GHG formation.

Mr W.R. Marmion: I will get the answer.

Mr W.J. JOHNSTON: Thank you. Again, I will stand until the minister is ready.

Mr W.R. MARMION: This is work practices of developing and proving up. It obviously covers petroleum, geothermal and now greenhouse gases. This is good work practices. They do not want water running while that is done. That is what that is about. Once it is proven up, a site plan will have to be done. All the information will be provided to get signed off before injecting can start. That will be covered by the program of works and site plan; the usual material provided to the Department of Mines and Petroleum.

Mr W.J. JOHNSTON: Is the minister saying that it will not be covered by the legislation itself but rather by the licence conditions that are attached to the licence for the injection?

Mr W.R. Marmion: I am just checking the clause in which the site plan is referred to. It is actually covered.

Mr W.J. JOHNSTON: That would be great. Thank you very much, minister.

Mr W.R. Marmion: There are quite a few clauses in this.

Mr W.J. JOHNSTON: Absolutely. It is not the easiest bill to read.

Mr W.R. MARMION: It is covered under 69I, "Approved site plans". Well picked up, member.

Clause put and passed.

Clause 89: Section 91A amended —

Mr C.J. TALLENTIRE: Section 91A is headed "Conditions relating to insurance". Much of this amendment bill brings greenhouse gas storage into line with issues to do with petroleum and geothermal energy resources. I wonder, though, what the nature of the process would be by which the minister could direct a proponent to take out insurance. I note that the amended bill will state that the minister can from time to time direct a permit holder to take out insurance. I will directly quote from the legislation —

> … including expenses of complying with directions with respect to the clean-up or other remedying of the effects of the escape of petroleum, geothermal energy resources or greenhouse gas substances …

Therefore, we are dealing with insurance around potential escape. How do we go about calculating that level of insurance and what would we do if there was not an insurer available willing to take on the insurance responsibility?

Mr W.R. MARMION: Putting it in context, under the proposed amendment to section 91A we are actually expanding the normal insurance provisions for petroleum and geothermal energy to greenhouse gas. The member for Gosnells asked the question: who would calculate that? Insurance would have to be taken to cover whatever might go wrong. The insurance company would calculate the premium that the proponent would have to pay for coverage. As we know with insurance policies, whatever liability is worked out—$2 million, $20 million or $100 million—is the premium paid. I understand there are two insurers that insure in this area, but if it eventuated that insurance could not be obtained, then a permit to operate would not be granted.

Mr C.J. TALLENTIRE: Further to the response from the minister, my understanding is that the insurance industry works on a precedent. The minister indicated there are a couple of insurers around working in this space, but is he then suggesting that one of the geosequestration projects already in existence somewhere around the world is using those insurers? Is the Sleipner project offshore from Norway using one of these insurers?

I want to be absolutely sure that there is an insurer with expertise in this area; that the process that it uses for determining the level of risk and therefore the premium to be charged to a permit holder is a robust system; and that it would be accurate and would not put an overly onerous premium on a permit holder such that suddenly the project could become non-viable. It would be terrible if we had gone to all this trouble to find and develop these locations, gone through the process of putting in place very well thought-through sections in the main legislation only to find that insurers make the whole operation impossible. We really must be sure about the actual cost. The best way would be to look at international examples and know the rate of insurance premium charged elsewhere.

Mr W.R. MARMION: This insurance is about insurance around the operating of the well, doing the well, doing all the work. Just putting the framework in place means they have to have insurance. It is not for the state government to actually be involved in that commercial transaction. I am going outside my area of expertise, but the member for Gosnells talked about how the insurance system works. The premium is related to risk. There may be a different risk profile with different operators with experience in the area. If they do not have experience, they might put a buffer; but that is how it works in the real world.

Mr C.J. TALLENTIRE: Again just to remind the minister, although this clause states that we are not dealing only with the operational side of things, it does say that we are looking at insurance that would relate to the escape of greenhouse gas substances. To me, that means that this is the insurance policy that would come into

play if we were to find that, despite our best efforts, the area was to leak. Already we have touched on how we could be talking about hundreds of millions of tonnes of CO_2 leaking.

Mr W.R. Marmion: This is during operations. It is actually drilling the hole and injecting. It is not —

Mr C.J. TALLENTIRE: Sealed off in the future insurance. This is insurance around the actual working on the site; that is, drilling a hole and then injecting. Although there could be leakages at that stage that could involve many millions of tonnes of CO_2; correct?

Mr W.R. Marmion: Correct. They would have insurance for that, but that is what it says.

Mr C.J. TALLENTIRE: That is why I want to be sure. We must have the right mechanisms in place to take out that insurance. I understand this is not an insurance bill and the minister is not an insurance expert, but I would have thought there would have been some reference about how we would go about determining what a reasonable insurance premium rate would be.

Mr W.R. MARMION: There must be insurance so the risk is covered by an insurance policy; that is the normal business. That is why we have the clause in the bill; risk is covered. If the company does not have insurance, I can actually direct them to get it. If they cannot get it, then obviously we would not have confidence in letting them go ahead with the drilling.

Mr W.J. JOHNSTON: I have two questions on this clause. I might ask one, sit down and then ask the second one separately. The first question is very simple: does the minister ever approve of self-insurance for companies involved in accordance with this clause? Could a company, like what the government does for workers' compensation, obtain self-insurance? Is that satisfactory under this clause?

Mr W.R. MARMION: My advice is that in the past—obviously not in relation to greenhouse gases, but in terms of petroleum—the large major companies like Chevron and Shell had insurance. It is because of their overall insurance and capabilities that they have been able to progress with a program without having specific insurance written into that particular project.

Mr W.J. JOHNSTON: I thank the minister for that answer. In respect of this clause, is there anything that would prevent the minister specifying that the insurance has to include a period after the injection? This seems to be quite a broad arrangement and, although the minister has, in his comments to the member for Gosnells, directed his mind to the process of the injection, I am wondering whether this clause authorises the requirement for insurance that relates to a period after the actual process of injection—if the minister is happy with that description?

Mr W.R. MARMION: Obviously, they retain the risk until we sign off in 15 years, et cetera. Whether they carry on with the same insurance or other insurance, they have to have that insurance covered. After they have done the operations this insurance could be rolled over to the same company or another company. They need to have it because they have the liability until the state takes over, which could be many years away, yes.

Mr W.J. JOHNSTON: The minister does not seem to have answered the question I asked. I understand that they have liability under the act, but liability is a different issue from insurance. What I am asking is: can the conditions imposed by the minister include a requirement that they have insurance that goes up to that limit of their liability? I cannot imagine them insuring against a liability that they do not have. Therefore, once the closure certificate is issued and the state becomes liable for those liabilities, then they would not be insuring because they are not liable for that. I asked the question because it goes to the question my colleague and good friend the member for Gosnells asked—that the minister was minded to the actual operation of the injection, the drilling and the operation. But what I am asking is whether the minister could make it a condition for that insurance to be for the totality of the liability that it has in this process?

Mr W.R. MARMION: Yes. I can do that.

Mr W.J. JOHNSTON: Let me ask, unless my colleague has more questions: has the government given any consideration to using this as a mechanism to ensure small-cap operators insure their risk? On the first occasion the chamber dealt with this bill I raised the question about what liability a $2 company would have. Of course, the problem is that effectively there is no liability because it is only a $2 company. Has the minister and the department given policy consideration to this provision to ensure that small-cap companies that get involved in this practice would then insure themselves for the total liability so that the state government does not end up, in the period before the state government accepts the liability, being left with it anyway because the company is too small to deal with the liability that is left over from the greenhouse gas injection?

Mr W.R. MARMION: The department requires all operation people to be covered by insurance, except those that are big enough, such as Chevron and Shell, to self-insure. The direct answer is that everyone would have to have insurance. Indeed, in this case it would be difficult for a $2 company, with that amount of capitalisation, to

get the requisite insurance required for a major project like greenhouse gas. That would be one way to exclude a $2 company from even entering the market.

Mr W.J. JOHNSTON: I am glad to hear the minister say that because I did make comments about shelf companies. It is one thing for their involvement in the oil and gas sector, and it is one thing for their involvement in the geothermal sector, but in this particular issue of long-term, future liability, it is not clear that these small-cap companies are suitable. The issues that my colleague the member for Murray–Wellington raises highlights the risks and issues we are all trying to confront. That is a good thing if the government is going to use this clause as an opportunity to impose a more rigorous obligation on those people coming forward with proposals for GHG injection, and the opposition would support that.

The discussion here has made it clear that a future minister—you, or the member for Murray–Wellington, when he is rotated back into cabinet, or the member for Southern River, Mr Acting Chairman, whoever gets rotated back into the job—will have that power, and that will give members of the opposition security, because it knows that the government has thought about this important issue, that companies are made to insure themselves against what would be an extraordinary liability for the period prior to that liability moving to the state, because we do not want them running away from their obligations. I am pleased to hear that the minister and the department have already considered that as an opportunity.

The member for Murray–Wellington is somewhat right when he says it is difficult to graft the greenhouse storage issues onto a petroleum and geothermal energy resources bill. The member for Gosnells has highlighted a number of those issues in his contribution to the debate. Although the Labor Party is not opposed to what is being done here, it has been harder for the Labor Party because the bill is not stand-alone legislation. The Labor Party is somewhat reassured by the fact that the insurance obligations can be extended not only to the drilling problems, such as those that occurred in the Gulf of Mexico with Deepwater Horizon or the problems with Montara in the Timor Sea—that is, something going wrong with the integrity of the well while it was being drilled—but also those long-term obligations, such as what happens to the GHG material once injected. It will be interesting to see what the first experience is, and it could be quite some time, because, as we understand, the costs are enormous.

The department advised the opposition in the briefings that it expects the costs for transport and injection to be about $70 a tonne. My research shows that it will cost about $70 a tonne for the post-combustion capture of GHG. On Barrow Island they have to remove the carbon dioxide from gas anyway to get it to specification for export, so they are already doing it as part of the process, whereas the post-combustion capture, or the pre-combustion for capture with Perdaman, either way, is very different from what is being done up there. The opposition is pleased that this matter has been considered, and it would be a useful way of insuring against the incredible risks that we are not able to look at yet.

Clause put and passed.

Clauses 90 and 91 put and passed.

Clause 92: Section 95 amended —

Mr C.J. TALLENTIRE: Clause 92 will enable the minister to direct not only the permit holder, the instrument holder, but also people who might be described as subcontractors, consultants, advisors, or other hired people who are not the direct subject of an instrument the minister may have served on the permit holder. That raises some interesting issues. Members have just discussed insurance and liability, and the fact that $2 shelf companies would be unlikely to be accepted in the space of greenhouse gas storage at all because of long-term liability problems. However, when it comes to arrangements a major company may have with consultancies, and the responsibilities of those consultancies, or outside contractors—it might be the firm that is responsible for the drilling work, that that is not the headline company at all, but it is some subsidiary or a contractor—this clause is saying that the minister can direct that company in certain ways. I think it was suggested that that direction can be down to a level of detail. I am concerned this could be a way to circumvent the liability and insurance issues that the chamber just discussed. The main company may be held responsible or liable for a particular way of proceeding, and if there were a leak, that company would pick up the tab for that; but if that work is subcontracted out, where does that liability go? Does it get handed on? What would happen if a rigorous process had been gone through to make sure that those companies were major players that could be held liable for an extended period and would have the financial reserves to meet any liability, only to find that the minister had directed some smaller subcontractor who did not have the capacity to deliver on those responsibilities? I know that the short answer to this might be that this is a practice that is commonly used in the petroleum exploration field or in the emerging geothermal energy resource sector, but again we get to the issue of how we translate those things across to the issue of greenhouse gas storage—an area in which there are any number of other technical aspects not normally considered in the petroleum or geothermal sectors that we have to face here in the greenhouse gas storage area.

I put to the minister that there is reason for concern here about the use of subcontractors. With the best of intentions, the minister may want to direct those subcontractors, but will they have the means to fulfil those obligations? What sorts of tests will be applied? Would the minister even know about some of these subcontractors until a problem emerges? We heard of that in the Gulf of Mexico case. BP was the headline company there, but my recollection is that it was subcontractors who really let BP down, and from there we saw a whole host of problems. Obviously, our legislation is different from whatever applied in the Gulf of Mexico, but I suppose the same principles apply. There is always that risk when subcontractors are being used and a system is being set up that allows for the direction of those subcontractors without checking their suitability and their capability to honour the commitments that may be expected through the direction that comes through in clause 92, which will be section 95 of the amended act.

Mr W.R. MARMION: Clause 92 of the amendment bill that we are putting forward, which will be inserted into section 95 of the amended act, is a very powerful clause. It gives me the power to, I guess, intervene. However, it was perhaps used more before the development of good regulations and safety cases. Basically, everything should operate. The operator will have its program of works, its safety cases and everything else that it has to do—all the commitments required under the regulations. This clause provides the opportunity for me or my delegates to direct in a situation in which direction might be required, and to do so quickly, which sometimes is necessary on petroleum, geothermal and greenhouse gas sites.

Mr C.J. TALLENTIRE: I thank the minister for that. I think there is some detail that the minister may yet want to come to with that response. But I will turn to another aspect of this, and that is the penalties outlined in section 95 of the main act. I realise that this amendment bill does not go to those penalties; nevertheless, the provision that we are inserting into section 95 places that responsibility on those subcontractors, so I was inclined to look to see what the penalties are for any deficiency. I found that the penalties are very minor. There is a fine of $5 000. How does that correlate with the sorts of problems that we could have if there were a deficient subcontractor? Is a $5 000 penalty still relevant in these cases? Perhaps in amending the Petroleum and Geothermal Energy Resources Act we should have also considered amending the penalties, especially in the section of the act that we are amending right now.

Mr W.R. MARMION: These penalties are for individuals, so they relate to a direction. The penalty for an organisation would be five times that amount. That is what the penalties are now. We periodically review penalties in all our legislation and regulations. That will happen, and when that happens, these penalties may be reviewed. At the moment, as the member quite correctly said, this bill is about making sure that we have a framework in place for greenhouse gases. We are making sure that a direction can be given, as it can already for petroleum and geothermal operations. Under this legislation, I can, or my delegate can, give a direction in relation to work being conducted in the GHG space. The penalties are $5 000, but they will be reviewed in the normal course of business from time to time. When we do that, we will do it right across the board so that there are relativities right across the board, rather than doing it in a piecemeal way, one at a time, when we might be lucky enough to get an act through Parliament in one, two or three terms. It is better if we deal with the fines all in one go. It is outside what we are talking about now, but members can understand the benefit of that; otherwise someone would say, "Why did you put the fine up to just $5 000?" A person would put forward another bill, saying that that penalty seemed to be pretty light compared with what we did previously. Those penalties are reviewed right across the board, and I think that is a very good process.

Clause put and passed.

Clauses 93 to 99 put and passed.

Clause 100: Section 117A amended —

Mr W.J. JOHNSTON: Clause 100 is on page 122 of the bill, and it starts at the first line. It seeks to amend section 117A of the act. In the marked-up copy of the act it starts at the top of page 231. What we are seeking to do here is to include GHG operations in this clause. What this clause does in the act is provide a penalty of 10 years' imprisonment for people who engage in certain activities. I will read out what the marked-up act with the proposed amendments says. It states —

> A person must not intentionally or recklessly —
>
> (a) cause damage to, or interfere with, a well or any structure or vessel in the State that is, or is to be, used in a petroleum operation, geothermal energy operation or GHG operation; or
>
> (b) interfere with any petroleum operation, geothermal energy operation or GHG operation.
>
> Penalty: imprisonment for 10 years.

We are extending an existing provision that applies to geothermal and petroleum operations to GHG, so we are intending to provide a penalty for people protesting against GHG operations. I am wondering whether there has

been any consideration of issues related to that, because obviously these GHG operations are of some great controversy even in this chamber and even in the Liberal Party. Whilst we have an understanding of the effect of petroleum activities, they are not intended to be within the proximity of the built-up residential parts of Western Australia. Indeed, geothermal operations, whilst they need to be close to the metropolitan area, tend to be outside built-up areas. But here we have this GHG operation which is targeting the farms, families, businesses and homes of people in the electorate of the member for Murray–Wellington. I am wondering whether we will see the sorts of protests that have happened in respect of petroleum and geothermal operations, which are pretty small, being lumped together with the ongoing protest movement of the good people of the electorates of Murray–Wellington and Bunbury. What happens if they interfere with any GHG operations? Will they be subject to 10 years' imprisonment if, for example, they move a surveyor's mark involved with a GHG operation? Will they be interfering with a GHG operation by laying down in front of a departmental vehicle at the government's Bunbury office? If they let down the tyres of a Department of Mines and Petroleum vehicle, will they be subject to a 10-year penalty? Would it be fair and reasonable for the good people of Murray–Wellington to be exposed to such large penalties for protesting what they see as being a very important issue? Is this a situation in which we are bringing GHG operations into a bill that is primarily about other matters? Is this another situation in which we will end up doing something that we really did not want to do, because of that decision?

Mr W.R. MARMION: There are no examples for why we should not be bringing these together. The member has drawn a long bow to read into "intentionally and recklessly cause damage to" a structure or vessel, and then talk about a survey peg on the road. This clause is specifically about people doing wilful damage to the actual structure, or the vessel carrying the gas or GHG. It is not about peaceful protests, as long as they are not damaging the pipeline, as happened in Nigeria; they damaged the pipeline in Nigeria. In another example, although it was not a mining project, the person who blew up a woodchip terminal in Bunbury, right across the road from where I lived, spraying metal around, ended up going to jail. This is about wilful damage and sabotage, and I think it is a reasonable clause to have.

Mr M.J. COWPER: I am interested in the minister's response. Would that not be covered under section 444 of the Criminal Code in respect of wilful damage? Why is it included here, given that there are already provisions under the Criminal Code to deal with such matters?

Mr W.R. MARMION: Although I am not a legal expert at referring across different acts, it is in this legislation to make it quite clear that it is a serious offence. Given the member's previous experience, he would probably know more about this than I do, and about what may take precedence, but this provision is included to make it clear that it is a serious offence with a penalty of imprisonment for 10 years. It is already there for petroleum and geothermal, and there are similar risks in respect of what happens when we are drilling. That is why we have included greenhouse gas operations in this particular clause.

Mr W.J. JOHNSTON: I appreciate the minister's answer to my previous question, but I am not sure that he actually directed himself to the issue I raised with him. I understand paragraph (a) of the existing section 117A, which is what clause 100 seeks to amend. I was actually referring to paragraph (b). The clause is designed to amend both (a) and (b). Paragraph (b) reads —

> interfere with any petroleum operation or geothermal energy operation.

The word "interfere" appears to be very broad; I am sure members can understand the issue I am raising here. I understand that we do not want people running around and blowing up woodchip mills or interfering with pipelines. If ever there is to be a pipeline built for GHG injection, I would not want it to be interfered with— apart from any other reason, because of the likelihood that GHG substances would leak. That is perfectly understandable, in the same way that it is understandable in the example the minister referred to in Nigeria. Cases of deaths occurring as a result of interference with pipelines are well known and well understood; we do not want to have that. But paragraph (b) uses the word "interfere". If the Department of Mines and Petroleum is currently involved in a GHG operation in the Murray–Wellington electorate, it appears that we are saying that we do not want any interference with that. If someone lets down the tyres of a Department of Mines and Petroleum car while it is being used to carry out duties involved with GHG operations, it appears that we are proposing a 10-year imprisonment penalty. It also appears that a person who goes out and moves a surveyor's peg would clearly be interfering with GHG operations, which means that the good burghers of Murray–Wellington would be exposing themselves to 10 years' imprisonment just for removing a surveyor's peg that is involved in a project that will probably never actually come to pass. I do not support the current section 117A(b). As the member for Murray–Wellington said, if someone interferes with an operation on a small scale, the criminal law is already in place to deal with that.

It seems excessive to have a penalty of 10 years' imprisonment for people protesting in a peaceful way about something that they feel very strongly about. There are many examples of peaceful protests that could be seen as

interference; indeed, is it interference to lobby the minister against the proposal? Is that interfering with the operation? Is it interference in the GHG operation to buy one share in the company and attend the annual general meeting just to protest? Is that interfering with the operation? I am no lawyer; as the minister says, there are people who provide this advice and help him with these things, but I question whether that is a sufficient standard for the protection of the people of Murray–Wellington. I am sure there are going to be protests as this policy is rolled out. I understand that the department is even bringing people in from interstate to lobby people in that area, and meetings will be held at which the people from another state will tell the good burghers of Murray–Wellington that these proposals are not bad; if those meetings are disrupted, will that be regarded as interference with the GHG operation? This could be quite broad, and we would like to know why these penalties are appropriate.

Mr W.R. MARMION: There is a definition of what constitutes operation and the operation is quite specific. It refers to drilling, petroleum, drilling recovery and injection.

Mr W.J. Johnston: Where is that?

Mr W.R. MARMION: I am looking at the definition in section 5 of the Petroleum and Geothermal Energy Resources Act 1967. That is what it means. I have been advised by my legal counsel that if it is a minor interference, the judge would probably not sentence the offender to 10 years' imprisonment. Under the act there is a possibility of 10 years' imprisonment if the interference is dangerous or a serious sabotage of an operation which might constitute risk to the community and individuals. There has to be a penalty. That is how it works.

Mr W.J. JOHNSTON: I thank the minister for directing me to that definition, but I do not think that that helps us, because, firstly, the definition of a GHG operation includes the necessary technical work to support that. For example, surveying the country clearly falls within the definition the minister directed me to.

Mr W.R. Marmion: That is not the advice. No, it does not.

Mr W.J. JOHNSTON: I do not see how it could be excluded. It would be interesting to have that one tested. The minister has directed me to paragraph (d) of the definition on page 7 of the act, which reads —

> (d) any other kind of operation that is prescribed by the regulations to be a geothermal energy operation for the purposes of this definition,

The definition that the minister has directed me to is a definition that could change on the day after the enactment of the legislation because the minister can prescribe anything for the purposes of this definition.

Mr W.R. Marmion: But one would assume it would be associated with drilling.

Mr W.J. JOHNSTON: Yes, I know, but I cannot see how the process of defining the location of the lease and GHG formation is not part of the operation. The first paragraph to which the minister referred me, paragraph (a), refers to a GHG exploration operation. Clearly, finding the location of the GHG formation cannot be anything but part of that operation. Therefore, that would include the necessary surveying and groundwork et cetera. I accept what the minister said; a judge would be unlikely to put somebody from Harvey into jail for 10 years because they moved a surveyor's mark, but clearly that is what is contemplated by the legislation. If that is what the government wants, the government will get it. We are not divided on this clause and we do not oppose the legislation. Of course, we again point out that if we were to be successful in forming a government, we would come back and look at this legislation because we think it could be improved in a range of ways. I am flagging that this is one of those things that we should consider in more detail.

Mr M.J. COWPER: I appreciate the point that the member for Cannington made, but I am not sure that I entirely agree with everything he said. It raises some interesting questions around the purpose of this. In my view, it highlights one of the issues about grafting this greenhouse gas legislation to the petroleum and geothermal legislation. That marriage creates the same penalties for interfering with operations. Of course, petroleum and geothermal pipelines carry energy sources that are vital to the greater good of Western Australians, Australians and people across the world. I do not believe that greenhouse gases, on the other hand, are of the same ilk. Petroleum and geothermal energy are extracted from the ground while extracting greenhouse gases involves an injection of waste CO_2, basically. This clause highlights that there are some difficulties in dealing with this issue across the various pieces of legislation. If an exploration group, for example, wished to go on to Mr Paravicini's property on Riverdale Road to conduct some seismic work and Mr Paravicini was not inclined to allow access, the minister, as we know from clause 11, can through a process of some negotiation after 90 days make application to a court to allow his workmen or an agent on that property. If Mr Paravicini was to be somewhat belligerent in protecting his own likelihood, there could be a confrontation.

My experience in these matters goes back to my time as a police officer in Denmark where I ran the forest protesters down at Sharp block and Rocky block at Walpole back in the days of the old-growth forest debate. I have some experience in dealing with confrontation in somewhat controversial situations. I assure members that

the police officers will not look at this section as their first port of call in dealing with the operations. They would declare a certain area as a premise, as we did down in North Walpole, and they would make an exclusion area by way of gazettal. Under the former Police Act, now the Criminal Code, there would be an offence of remaining on premises when it is unlawful to do so. When dealing with interferences with the operations of greenhouse gas operations, I suggest the police will not look at this bill to apply a relevant law. I think they would simply use the Criminal Code or more commonly used legislation that operates from day to day. I do not really think this clause is that obnoxious, to be honest. It is more an outcome of trying to graft GHG to petroleum and geothermal energy. I know that this is not a question for the minister, but I wanted to put on record my interpretation of this clause.

Clause put and passed.

Clause 101: Section 119 amended —

Mr C.J. TALLENTIRE: Clause 101 seeks to amend section 119 of the act, which refers to the powers of inspectors. I understand that the powers of inspectors as they relate to the petroleum and the geothermal industry are fairly well documented. Inspectors can arrive on site armed with clipboards and checklists. An adopted understood set of procedures enables an inspector to check that all the obligations and commitments made by a proponent are all being adhered to; that those processes are being respected; and that the proponent is doing exactly what was said in its initial approval documentation. Here we have new technology. Straightaway we are talking about all kinds of new technology that may be associated with intellectual property. I acknowledge that could exist as well in the petroleum and geothermal sectors, but when intellectual property is associated with something as new as greenhouse gas storage, there is every likelihood that someone who has the licence to that intellectual property would guard it preciously. I am therefore concerned that, having made amendments to bring in powers for inspectors to look at GHG operations, we have made no provision in this clause to ensure that an inspector would not be thwarted by a proponent, the owner of a GHG operation, suggesting that they had some sort of intellectual property right that would prevent the inspector going further in an investigation. Some provisions of the bill provide for an inspector to enter any structure, vehicle, aircraft, building or place in the state. I note the desire for non–gender specific language but the assumption seems to have been made that the inspector would be male, curious as that is. The provisions go on to state that access to documents will be made available with the opportunity to take extracts and to make copies of documents, but there is no information about how to deal with a proponent who claims the right to intellectual property. That leads me to another stage of this bill that is of real concern; that is, for the work of inspectors to have credibility, there must be transparency. Really the work of an inspector should be openly available to members of the public and perhaps to people on neighbouring properties who may have concerns. There is no point in those people alerting inspectors to a concern only to be told that there is an investigation going on, inspectors are on site, but they do not have the right to know about any of the information that has been revealed. We must make sure than an inspection can be done without any obstacle at all and that the information found through that work of the inspector is freely available to people and that people can be a part of that investigation.

Again I come back to the concern I have with intellectual property or some sort of commercial-in-confidence claim held up to obstruct the powers of inspectors. Companies involved may say they have a competitive edge because of the way they are proceeding, the techniques they are using and the technology they have a licence for, and that they deserve to protect their competitive edge. But when we are talking about maintaining public confidence and about ensuring the public is a part of this whole process, we must make sure that the public has the right to be involved in the inspection and not held at bay not only by the proponent, but also as often seems to happen now, by those who have that inspecting authority. I seek the minister's comments on that issue.

Mr W.R. MARMION: The member is seeking my comment. This proposed subsection gives the inspector the power to be involved in inspecting GHG operations as they can inspect petroleum and geothermal operations. The member is saying that he is concerned that a proponent with intellectual property will not let them inspect a certain part of the operations. Further on, the bill states that the proponent cannot obstruct an inspector without a reasonable excuse to do that.

Mr C.J. Tallentire: Can commercial in confidence be a reasonable excuse?

Mr W.R. MARMION: No. We are talking about safety. We are not there yet, but when we get to it the member will see that schedule 1 goes into more detail about what inspectors will do in terms of occupational health and safety.

Clause put and passed.

Clauses 102 to 109 put and passed.

Clause 110: Section 153 amended —

Mr W.J. JOHNSTON: This is the regulation-making power and I can see there is a broad power here. I would not mind having some comment from the minister about proposed subsection 153(2)(g) of the marked-up bill on page 259. It is equivalent to subclause 110(1)(f) on page 126 at line 1. I would also like commentary on the fees expected to be charged in accordance with paragraph (l) of the marked-up bill on page 260, which is subclause (j) on page 126. I would not mind commentary on the first one and an indication of what the fees are expected to be on the second one.

Mr W.R. Marmion: Do you have any particular comment on paragraph (g)?

Mr W.J. JOHNSTON: Clearly the issue of damage to the petroleum-bearing strata is well understood. Although geothermal energy is at an earlier stage of development, there is some understanding of the implications there. I am just wondering what we are expecting in respect of GHG storage areas. This goes particularly to the questions we talked about. I do not know whether I raised them in the chamber but I certainly had a discussion with the minister's advisers in the briefing about—what is the proper word?

Mr W.R. Marmion: Inadvertent!

Mr W.J. JOHNSTON: No. It is seismic activity. There is an argument from England, of which the minister would be well aware, about seismic activity having been caused by fracking in the United Kingdom. What are we expecting? One of the dangers of GHG that I have been advised about is that when the substance is injected, it then reacts with the rock, and as it moves through the aquifer it has been injected into, it reacts with the environment and turns from one substance to another compound. Then if it is continued to be injected, it continues to react. It is fine as long as there is a sealed geological formation because the end of the injection will be the end of the reaction. But I am advised that if there is a failure to properly see a flaw in the rock or if the action taken damages the rock, then some of the GHG substance, which would be in liquid form where it was injected, would move up through the rock formations and return to a gassy state because it will go to the path of least resistance. That is why I am looking for some commentary about what is expected in respect of proposed section 153(2)(g), when as I understand it, there are many more unknowns on that issue. I also have a pretty simple question about proposed section 153(2)(l); namely, what fees are expected to be charged for these activities?

Mr W.R. MARMION: Just answering one question at a time, proposed section 153(2)(g) is about putting in regulations to make that sure that during operations no damage is done to the greenhouse gas formation. Someone else might have a lease on some other aspect of the formation and so proponents have to make sure their operations are confined to their areas. There are also regulations about how drilling is conducted, ensuring the integrity of the well, how the casing is put and that everything is satisfactory. It basically gives the department the opportunity to put regulations on how things will operate to make sure that no damage is done, as it says in the legislation, in respect to a permit in our state or outside that area. We are putting in regulations to make sure that in any operations there is no damage done to the formation, even inadvertently.

Mr W.J. JOHNSTON: I wonder whether the minister has some drafts in mind for those regulations. I will take the minister's answer by interjection if he prefers.

Mr W.R. Marmion: Yes, we are currently working on the regulations specifically in this area. The regulations for petroleum will be extended to cover greenhouse gas.

Mr W.J. JOHNSTON: So the minister does not expect new regulations just to extend the existing ones.

Mr W.R. Marmion: Yes.

Mr W.J. JOHNSTON: That is fine, thank you very much, minister. Could the minister let us know what fees he expects to be charged for these operations?

Mr W.R. MARMION: I have a sheet in front of me with fees. As for petroleum fees, these will be extended in a similar manner.

Mr W.J. Johnston: Do you have in mind what sort of money you are talking about or not yet?

Mr W.R. MARMION: I will just see whether we have got any aspects of it. When the regulations are amended, the fees will be there so there is opportunity for both houses of Parliament to look at them. I would imagine they would be commenced at —

Mr W.J. Johnston: But you don't currently have them?

Mr W.R. MARMION: No.

The ACTING SPEAKER (Mr P. Abetz): The member for —

Mr R.S. LOVE: Moore.

The ACTING SPEAKER: The member for Moore!

Mr R.S. LOVE: I do not speak very often, so I understand!

As the minister will know, I have concerns about land access in this legislation and I take the opportunity to flag with the minister that I feel that the regulations, when adopted, may need to include some provisions about better codes of access around some of the procedures for granting land access.

Mr W.R. MARMION: I will make sure that when the regulations are drafted there is some clarity and when they come through members will be given an opportunity to look at them.

Clause put and passed.

Clause 111 put and passed.

Clause 112: Act amended —

Mr M.J. COWPER: The reason I have cast a very close eye across this piece of legislation is, as I have mentioned before, the relation to the impact it has on the rights of property owners. One of the things that many people in my electorate find invasive to their operations are the corridors that cut through valuable farming land in the form of powerlines, gas pipelines, water pipelines, roads and the like—although some are unavoidable. There just seems to be a never-ending stream of workers who enter farmers' properties. I was out at Doug and Gordon McLarty's farm in East Pinjarra the other day and while we were standing there, a group of Western Power workers were just coming down McLarty Road, virtually straight past the house, without any manners really. They went straight past the house through a gate and followed the powerlines down, obviously doing some sort of maintenance, checking or whatever they do. Gordon explained to me that this was a very common occurrence. When that is compiled with all the other activities of utility companies, it almost becomes a procession. This clause deals with the amendment of the Petroleum Pipelines Act. It highlights a situation in which greenhouse gas is afforded the same level of support, if you like, as petroleum. As I say, I struggle with that and that is probably the crux of my stance on this matter on behalf of my constituents. I understand that the notion of storing greenhouse gases is agreeable.

The ACTING SPEAKER: Member, I am not sure that that is relevant to the clause we are dealing with. It just deals with the amendment of the Petroleum Pipelines Act 1969.

Mr M.J. COWPER: Correct, and I am talking about these very pipelines that will potentially traverse the lands of constituents. The way I look at things, this pipeline is not an essential service. It is carrying CO_2; it is not carrying oil, gas or power, and it is not a road or any other thing that may be regarded as a priority for the people of Western Australia.

The ACTING SPEAKER: Members, can you please refrain from talking. The member is on his feet and has the floor.

Mr M.J. COWPER: However, it still has the same capacity to impact on landowners. The notion is that CO_2 needs to be transmitted from point A to point B and of course the South West Hub project deals with the capture of carbon from the Alcoa refineries in Kwinana, Collie and the like. I understand there will be significant cost involved with the transmission of CO_2 via pipeline. For a start, why do we need a pipeline to transmit CO_2 given that it is omnipresent? We know CO_2 is everywhere. Why not just have a capture? It could be anywhere; it could be in Harvey, Kununurra or Outer Mongolia. The fact is that CO_2 is omnipresent. Why do we need a pipeline in the first instance? Why do we not just capture the carbon and store it in the ground? In fact, that is exactly what trees do. I want to clarify the need for a pipeline to transmit CO_2.

The ACTING SPEAKER: Members, I ask for silence; the minister is on his feet.

Mr W.R. MARMION: I thank the member for the question. The simple case is that if we want to geosequester CO_2 in the ground, we have to get it there from somewhere, and the only way to get it there—the way we are doing it—is through a pipeline. That is why we are amending the Petroleum Pipelines Act. Therefore, it relates to not only petroleum and geothermal but also transmission of greenhouse gases. We are amending the pipelines act so we can transmit CO_2 via a pipe into the ground.

Debate interrupted, pursuant to standing orders.

[Continued on page 2869.]