

WATER RESOURCES LEGISLATION AMENDMENT BILL 2006

Committee

Resumed from an earlier stage of the sitting. The Chairman of Committees (Hon George Cash) in the chair; Hon Kim Chance (Leader of the House) in charge of the bill.

Clause 1: Short title -

Committee was interrupted after the clause had been partly considered.

Hon NORMAN MOORE: Before question time, I was responding to the minister's comments about the fundamental purpose of this bill; that is, to get rid of the Water and Rivers Commission. I have perhaps strayed a little, in that the debate has gone beyond that decision into the realm of statutory authorities versus government departments. I was intrigued by the very open way in which the minister described the government's position on this, and I look forward, in due course, to significant numbers of statutory authorities being removed from the statute book. I should not say that I look forward to it, but I would expect that if the government has this view, that is what we will see. I do not necessarily agree with it, because there are a significant number of government activities in which statutory authorities are preferable to government departments. If the government wants to be in total control of everything that happens within government, then it should go down this path. That is a decision for the government. However, I was interested that the Leader of the House said that with government departments the minister is directly responsible to Parliament and, therefore, by having a departmental structure, the minister is significantly more accountable because the minister can answer questions in Parliament. The house has just been through a question time in which five questions were put on notice that may or may not get answers at some time in the future. A correction was made to the answer to a question I asked the other day asking for some documents to be tabled. The correct answer was that the documents could not be tabled because of commercial confidentiality attached to them. How accountable is that? There may be a very good reason I am not entitled to know, but Parliament is a place where questions can be asked. If I am told that I cannot be given the answer because of commercial confidentiality, where is the accountability in that? I am intrigued at the way the Leader of the House answered the matter, but I am delighted that he did.

The Leader of the House mentioned a little about the history of the Water and Rivers Commission, and how it got amalgamated with the Department of Environment and Conservation, or whatever it was called in those days. Then he explained why the government, through another task force report, determined that that was not a good place for it anyway. As I understand the Leader of the House's answer, he said something to the effect that he did not want the Water and Rivers Commission, or the things that it does, totally controlled by the Department of Environment and Conservation. I thought that was a very good answer, and I am delighted that that is what the government is actually doing.

Hon Kim Chance: I did not even write that bit, and I am even more proud of it.

Hon NORMAN MOORE: I would have thought the Minister for the Environment would be absolutely horrified at what the Leader of the House has just said. I would expect the Greens to be tearing their hair out at that answer.

Hon Paul Llewellyn: There is not much left.

Hon NORMAN MOORE: I understand that. The government is now saying that it cannot let the Department of Environment and Conservation get involved in making decisions about our water resources. That is basically what the Leader of the House was saying, and I actually agree with him, because at times decisions need to be made that should be separated from the people who work in environmental departments, who would seek to make sure that nothing ever happens. I am delighted that the Leader of the House has given us that explanation, as those of us who do not hold my views or his views might take the government to task about that.

The Leader of the House also mentioned that one of the problems of statutory authorities is that ministers can be called to account for their behaviour, yet have no authority over what they do. We have already talked about that, and I can understand why the Leader of the House would want to do that. However, there are circumstances in my view when arm's-length statutory authorities can be quite a good way of carrying out government administration and, indeed, helpful to governments and ministers, as ministers can say that it was a statutory authority that made a certain decision and not the minister; and if ministers can find a journalist who understands these things, he or she would acknowledge that the minister had no authority over the statutory authority. One of the great shames of those people who write about Parliament is that they do not understand the difference between a statutory authority and a government department. They do not understand the responsibilities of ministers in respect of both; they do not understand the arm's-length nature of statutory authorities; and they do not understand that sometimes statutory authorities do things with which governments

do not agree and for which ministers cannot be held responsible if in fact the legislation says that the minister is not responsible. Often journalists do not understand that. Therefore, when the Finance Brokers Supervisory Board went astray, the poor minister carried the can, which was very unfair in my view.

The matter I raised - the Leader of the House responded by giving us an explanation of the Water Resources Ministerial Body - was why the government is going from "statutory authority" to "ministerial body" and not giving the powers that it is vesting in the ministerial body to the Department of Water? As I tried to explain the other day, the previous coalition government split the former Water Authority into provider and regulator and created a statutory authority called the Water and Rivers Commission. This government, having decided that a statutory authority is inappropriate, is not putting these land and timber dealings that the Leader of the House talked about into a department, where they could easily reside, but into this new creation that will be called the Water Resources Ministerial Body. This is only the second time, as I understand it, that the government has gone down this path. The Leader of the House has not explained it to my satisfaction yet - I do not mind whether he deals with it now or when we come to the clause dealing with the ministerial body - but I think he needs to tell us why he wants the minister to have the capacity to deal in land and timber and to have perpetual succession and all the rest of it through a ministerial body. Why not simply have the assets that the minister can deal in reside with the Department of Water, as happens with many other government departments in the state of Western Australia?

I thank the Leader of the House very sincerely for the very open and accountable way in which he has responded to my queries of the other day. I am delighted that it is now on the record that the government does not like statutory authorities because they get in the road of the government! I am delighted that the Leader of the House has now explained that the Water and Rivers Commission should not have an environmental bent, and that that is why we must get rid of it! That is good, and I am sure the Greens (WA) will appreciate that!

The Leader of the House might want to have another go now or might prefer to leave it until we talk about the ministerial body - I do not mind. However, I come back to the issue of why land, timber and other resources and assets are being vested in a ministerial body rather than a government department, which is what happens in many other circumstances.

Hon KIM CHANCE: I will come back to the question raised by the Leader of the Opposition on the ministerial body, as it is an interesting question that has been raised more so in the other place than in this place, significantly in respect of recent legislation. I therefore think it is a good thing for us collectively to steadily work our way through the meaning of "ministerial body".

The reason I stood, though, was to comment on the issue of responsiveness by statutory authorities. I share the view expressed by the Leader of the Opposition that some statutory authorities do an excellent job and there is a place for them. In my electorate, the statutory authorities that deal with agricultural marketing, for example, are extremely valuable as far as I am concerned; it is certainly not something I would want hanging on my shoulders. However, on the question of responsiveness, a statutory authority can be responsive, but it depends on how it is structured. If a statutory authority is structured such that the general manager of the corporation does not report directly to the minister but reports only to the chairman of the board, that creates a problem for the minister, because when the minister wants the statutory corporation to do or not to do something, he can go only to the chairman. If the general manager does not report to the minister and is not even a member of the board - in some circumstances the general manager is not formally a member of the board - he or she does not actually answer all that directly to the board either. That is a problem, or at least a potential problem.

I believe we can fix that problem without disposing of the statutory authority, which might be doing a very good job in 99 per cent of respects, simply because its lack of requirement to report directly to the minister as well as the chairman can create problems. I relate this matter directly to question time, as the Leader of the Opposition did. I can receive some notice of a question without notice about the functioning of a statutory corporation. Bear in mind that these can be quite small organisations and the one person with the skill to answer the question might be unobtainable and in Kalgoorlie that day. The statutory corporation is likely to tell the minister that it will not answer the question but will wait until Fred comes back from Kalgoorlie tomorrow. The department will then give the minister an answer. I do not like that. I want Fred called in Kalgoorlie, and I want him called now because I want to answer the question. That is the kind of responsiveness that I am talking about. Do I think it was a mistake to take those major corporations, such as the Water Corporation and Western Power, out of direct contact with the minister? Yes, I think that was a mistake, but that is a personal view.

Hon BRUCE DONALDSON: I apologise to the Leader of the House as, unfortunately, I was away on parliamentary business last week when debate on this legislation commenced. The Water and Rivers Commission had a very important role to play in identifying and overseeing the supply of water to the former Water Authority. I never agreed with the break-up of the Water Authority in the first place; I have a similar

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view on the break-up of Western Power. Nevertheless, they have happened. The term "Water Resources Council" reminds me of the Water Resources Council of old. Is that what we are going back to?

Hon Kim Chance: No.

Hon BRUCE DONALDSON: If I recall, the Leader of the House was a member of the Water Resources Council.

Hon Kim Chance: No, I wasn't; I was a Water Authority board member.

Hon BRUCE DONALDSON: I am sorry.

Hon Kim Chance: But I did deal with the Water Resources Council.

Hon BRUCE DONALDSON: The Water and Rivers Commission became a de facto second Department of Environment and Conservation in some of its dealings, although I do not think it was designed in that way.

Hon Kim Chance: Yes.

Hon BRUCE DONALDSON: There was a conflict, quite frankly.

Hon Kim Chance: Yes.

Hon BRUCE DONALDSON: There was the Department of Environment on one hand and the Water and Rivers Commission on the other hand, and the poor old Water Authority was trying to create a vision for the future on where it was going to obtain water, and it was being squeezed from both sides.

Hon Kim Chance: I think that is a fair comment.

Hon BRUCE DONALDSON: The Leader of the House probably explained this during his response to the second reading debate, but who will now oversee the Water Resources Council on where it goes with surface water and, for argument's sake, groundwater? Will it go back to the water authority for departmental and environmental approval? I would like to hear about the situation.

Hon KIM CHANCE: Given the time, I might partly finish this answer and then come back on my feet after the dinner suspension. I can answer one part of Hon Bruce Donaldson's two-part question that does not relate to the function of the Water Resources Council, which I will leave until after dinner because I want to think about it. The answer to the main part of the question is that the Department of Water will make those decisions, but it will make them after seeking the advice of the Water Resources Council. It will take the advice as from a reference body.

Sitting suspended from 6.00 to 7.30 pm

Hon NORMAN MOORE: Prior to the dinner break the Leader of the House was in the middle of responding to some questions.

Hon Kim Chance: I was going to come back with some answers.

Hon NORMAN MOORE: If the Leader of the House is not ready to continue with his response, I have another question. Would the Leader of the House prefer that I ask that question?

Hon Kim Chance: Yes, and I will gather my thoughts.

Hon NORMAN MOORE: The Leader of the House said that one of the problems with statutory authorities was their lack of responsiveness and he went to some trouble to explain that if the Parliament requires an answer to a question and the information has to come from a government department it can be obtained quickly, but with a statutory authority the person who can provide the answer might be in Kalgoorlie and cannot be found and so on. I wonder what the Minister for Education and Training's excuse is when it comes to answering questions in the house, because he regularly does not answer questions. I am suggesting to the Leader of the House that he might try to instil in him the same enthusiasm that he himself has for answering questions and giving the answer on the day the question is asked. The way in which the Leader of the House does business is perfectly legitimate and proper. Unfortunately, the way in which the Minister for Education and Training does business is not.

The Leader of the House made the point in generic terms that statutory authorities could be unresponsive. Was it a criticism of the Water and Rivers Commission that led to it being abolished?

Hon KIM CHANCE: Not as far as I know. It is a question the member would have to ask the Minister for Water Resources, because I do not know the answer to it. I will go from there to the question I was supposed to be answering.

The Leader of the Opposition was seeking the reason for going to a statutory authority to a ministerial body for the issues I mentioned, such as the holding of vested land and rights in timber, and why those powers are not

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vested in the department. The reason, as I understand it, is that the primary function of the Department of Water is water resource management. That in itself is not a commercial activity. We do have other statutory authorities - for example the Forest Products Commission - that have an entirely commercial function. The Forest Products Commission is the state's seller of forest products, whereas the Department of Water is a resource manager that, in the analogy I gave, is more akin to the functions of the former Department of Conservation and Land Management than the Forest Products Commission. It occupies the other part of the spectrum. It is therefore reasonable, from an accountability point of view, for a minister to sign off on a commercial activity rather than the agency when that agency is concerned with resource management rather than a commercial activity. There is a difference in the form and function of the body's process.

Hon NORMAN MOORE: Further to that explanation, and I may well be wrong, but I thought that the Department of Education and Training deals with land on a regular basis.

Hon Kim Chance: It does.

Hon NORMAN MOORE: I have never regarded that as a commercial organisation; it is anything but a commercial organisation. All the school land owned and controlled by the Department of Education and Training is not somehow or other controlled by the minister as a body corporate or ministerial body. I understand the Leader of the House's explanation in terms of the Forest Products Commission, but I am talking about a department that does not have a commercial function; namely, the Department of Education and Training. It deals in land. Therefore, why cannot the Department of Water deal in land?

Hon KIM CHANCE: There is an unwillingness by government to delegate to the chief executive officer of a body that has a non-commercial function and is primarily concerned with water resource management the capacity to deal in land and other land-based assets, such as timber or, conceivably, water, because sometimes water rights are attached to land. A body that is concerned with water management is necessarily quite a small body. The capacity to have CEOs of organisations that are not landholding in their nature dealing in land is something the government would prefer to avoid. The example that the Leader of the Opposition used of the CEO of the Department of Education and Training is probably historical and I will not argue a logic into that. The Department of Education and Training, as the Leader of the Opposition said, has a long history of dealing with its own land. I cannot offer any other explanation. It is probably something that has been determined to be a function. However, the dealing in land owned by the Department of Education and Training could conceivably be argued to be a function of the Department of Housing and Works.

Hon NORMAN MOORE: I will not pursue this matter further, other than to say that the Department of Health has hospitals. Those hospitals might come under the Department of Housing and Works, but the Department of Housing and Works is a department of the Crown and it has a CEO.

Hon Kim Chance: Established to deal in land, though.

Hon NORMAN MOORE: The argument I used a moment ago does not vary. In this case, we have a government department, whether it be the Department of Education and Training, the Department of Health or the Department of Housing and Works - the Department of Housing and Works definitely deals in land - and there is no need, or so we are told at this point, to make the Minister for Housing and Works a ministerial body to handle the sale and so on of land.

I will conclude on this point. Can we expect a raft of legislation from the government to do two things: first, to get rid of statutory authorities, because they interfere with ministerial decision making; and, secondly, to take away the capacity of those government departments that currently have the capacity to deal in land and to turn the ministers responsible for those departments into ministerial bodies of the sort established under this bill? I say to the minister that prior to the next election I will be asking our party to have a very hard look at this, because I am a little concerned about what it might mean ultimately. I am having difficulty putting my finger on it exactly, but when I see a bill of this magnitude, which is all about giving more and more power to the minister, and taking into account the minister's response to the question about statutory authorities, I am very concerned that we may be going down a path that gives extraordinary powers to a minister and his office. The capacity of the minister and his office to deal in land raises some interesting questions in my mind, because at the moment these sorts of matters are dealt with by chief executive officers running government departments, and one would expect that they would not have any political agendas, other than the implementation of government policy. We must look very carefully at allowing these sorts of powers to reside in a minister's office to make sure that we do not create a set of circumstances in which political decisions can be made in ministers' offices that relate to the assets of the state.

Hon KIM CHANCE: I will be just as brief in summing up. The answer to the first question, as far as I can see, is no. The recommendations of the Machinery of Government Taskforce have now been fully considered. The

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machinery of government report made a clear differentiation of which statutory authorities have probably served their purpose. The answer to the second question is probably not, except when it is clear that there is a dislocation of function between the statutory authority's role and its capacity to trade in land.

Hon PAUL LLEWELLYN: I have been listening to this dialogue with some interest. The Greens (WA) have had some reservations about the way in which water governance in Western Australia is being reorganised. We also asked whether the Water and Rivers Commission and these other authorities or commissions were underperforming and whether there was some substantial basis for reorganising the entire governance structure. It seems that every government that comes into power wants to do its own bit of re-engineering of the public service, its structures and so on. In this instance, this bill will amend 10 major acts and reassign effectively the responsibilities from an arms-length statutory authority or commission to the minister in the hope that we will achieve what? The question that I have in mind is: will we get better water governance, better water management and better performing assets in the public service as a result of these changes? I am utterly unconvinced that the arrangements that will be put in place as a result of this bill will necessarily deliver better water governance and tangible outcomes.

I will take on the chin the idea that the function of the Conservation Commission of Western Australia is an environmental one; therefore, it is an agency that obstructs anyone who wants to access water. I do not know why we would in this day and age collapse an agency - the Water and Rivers Commission - whose primary function is to manage water assets under the notion that it has an oppositional and antidevelopment function. It does not. In fact, the Water and Rivers Commission was set up to manage the natural assets - the water assets, the ecosystems and the land systems - that protected the water resources. It was right and proper that there be an arms-length commission that had that as its view. It does not necessarily follow that it is an agency that is attempting to stop this and that. In fact, I think the legacy of the overallocation of our water resources that we have witnessed - there are a few that have been critically overallocated and have created more problems than they are worth - suggests that the Water and Rivers Commission was not set up just to obstruct things; the Water and Rivers Commission was set up to manage the assets in a responsible way and to balance the protection of the flow of ecological, industrial and social services that come out of water. I think it did a very good job of doing that.

The question that now arises is: who in effect will independently determine the right mix of environmental and social services to be derived from the water assets. This legislation is creating a no-man's-land. In fact, we have quite possibly embedded conflicts of interest in the way in which water will be managed, because it is very unclear whether any agency will be specifically and clearly responsible for making the calls on how the resources are allocated in a responsible way. I think the Leader of the House has answered this in a roundabout way, but the question I had in mind was: will this bill deliver a genuinely beneficial outcome for water governance in Western Australia? My view is that it is a touch-and-go matter. In effect, we are relying on a considerable amount of wisdom and integrity being delivered by the minister in this matter. It seems to me and the Greens that the pendulum has been pushed a little too far towards executive governance. The Water Resources Council will have no powers whatsoever to do anything other than make recommendations to the minister. The constitution of the Water Resources Council - in other words, the representation on the council - could easily change to represent one interest over another. In any case, it will not have any statutory powers. The minister will have to take on an extraordinary role. I note also that the minister will have a series of powers to delegate those roles. I have some questions in that regard. How much of the power being invested in the Minister for Water Resources will he be obliged to delegate because he simply cannot discharge all of those responsibilities?

Hon KIM CHANCE: Hon Paul Llewellyn asked who is the independent judge and whether this is no-man's-land. This legislation is the first tranche of a major reform of our water legislation. It will enable things to happen that will simplify and make more accountable the government's decisions on water management. There is a clear attempt by the government to make the issue of our water management more vested in the minister; however, the government will be more accountable to questioning, more open to the processes of the Parliament and more directly responsive to the needs of the community. It is at the core of this legislation that the local water committees will enable the views of local communities, key stakeholders and the providers of expert advice to be at the centre of that decision making and policy formation role in relation to each resource. We have seen the benefit of this. I give full credit to the former government for going down the road of breaking down the old departmental models for some of our irrigation schemes and putting the decision making and, indeed, the ownership of schemes in the hands of the people who use them. Hon Barry House, Harvey Water is a great example. Indeed, not only is it seen as a model for the rest of Western Australia, but also it is quoted frequently by commonwealth government officers as an example of how reform should happen in eastern Australia, and for very good reasons.

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The DEPUTY CHAIRMAN (Hon Ray Halligan): Leader of the House, I think we are moving beyond what a clause 1 debate would normally involve. The policy of the bill was decided at the second reading. I allowed Hon Paul Llewellyn to continue his line of questioning, if I can put it that way, because I thought in part it would allow for the clarification of some issues. We must now progress the bill. That part of the debate on clause 1 should be concluded.

Hon KIM CHANCE: Thank you, Mr Chairman. I refer Hon Paul Llewellyn, because I cannot answer all the questions he has asked without going into the policy of the bill, to page 2 of the second reading speech and to paragraphs one, three and four.

Hon BARRY HOUSE: The Leader of the House referred to this being the first tranche of a bundle of legislation. The Standing Committee on Public Administration's report refers to that. However, for the record, it is worth stating exactly where this legislation fits into the scheme of things and what is to come in the second phase so that we are all familiar with what we are doing in terms of creating a piece of legislation which will put the legislative framework in place and which will be followed by other bills that will refer to different aspects of governance.

Hon KIM CHANCE: The Department of Water will have a broader brief than we are used to from the old Water Corporation. Its brief will entail policy. I started to go through the explanation about how local people will be involved in policy formation, and that is also an important part of it. As I understand it, two legislative packages are still to come. One deals with water services and the other deals with water resource legislation. This is very much the beginning of the process. Those are the two areas in which there will be further legislation.

Hon Barry House: Is there a third - a water corporations bill?

Hon KIM CHANCE: No, that will come under water services. It will be a separate act, but it is all a part of the water services function. It may come under another act of Parliament, but it is the same legislative package.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Regulations - power to amend certain statutory rules -

Hon NORMAN MOORE: As defined in clause 3, a "statutory rule" is a regulation, rule or by-law. Will the minister explain what a rule is in the context of this definition?

Hon KIM CHANCE: I understand that in this context, the word "rule" is analogous to the use of the word "code" in other legislation, or a rule could be a specific component of a code. The kind of codes that might be used in the context of this legislation could be a water service quality or supply code. A water service provider, for example, could be required to adhere to a range of supply quality issues expressed as a code. In that context, we could use the word "rule" as a component of the whole of a code applying to that industry sector.

Hon NORMAN MOORE: Can I ask why the term "statutory rule" is used? It means, as the Leader of the House has explained, a regulation, rule or by-law. The Interpretation Act does not refer to statutory rules; in fact, it refers to subsidiary legislation, which covers most of these things. I wonder why that definition is used. Clause 3(1) states -

The Governor, on the recommendation of the Minister, may make regulations amending a statutory rule.

Further on there is a definition of "statutory rule". Why use that phrase rather than "subsidiary legislation" or something of that nature?

Hon KIM CHANCE: The reason for the definition of "statutory rule" in this legislation could well be that the Interpretation Act does not provide a convenient, generic description. However a code, or a rule within a code, as I have explained it, can have statutory effect. Certainly in the livestock industry, for example, there is a range of statutory and non-statutory codes that apply to the operation of a livestock transport industry. More generically, within the transport industry there is a range of statutory codes, such as the extra mass gross loading limits, under which it is a defence - as it is under the animal welfare legislation - to be able to show that one has adhered to the statutory code within the legislation rather than to a specific component of it. It is a defence to a charge of cruelty, for example, under the Animal Welfare Act to show that one has complied with the statutory code. It certainly is a concept that exists in other legislation, and I can see how it could be readily applied to a code established within, say, water supply quality parameters.

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Hon NORMAN MOORE: I do not mean to be pedantic, but it might have been helpful to have a definition of “rule”, because the Leader of the House said that “rule” could mean “code”. Who knows that? Where can it be found? The definition of “rule” under the Interpretation Act actually says that a rule is a rule. It states -

“rule” means a rule made under the Act in which the term is used . . .

We do not know where the definition of “rule” is in fact “a code”, or something other than a rule - which, we are told, is a rule. It might just be helpful to have a definition that covers that, from the point of view of people understanding what the legislation means.

Hon KIM CHANCE: I can only speculate that the word “code” has been avoided because when codes are used in other legislation, they are sometimes voluntary and sometimes compulsory. Perhaps the draftsman preferred to use the word “rule” to give clarity to the fact that this is a statutory rule and that it is, in fact, a compulsion.

Hon GEORGE CASH: I listened to the Leader of the House’s view about the interpretation of “statutory rule”. The Interpretation Act sets out the definitions of “rule”, “by-law” and “regulation”. It later sets out the definition of “subsidiary legislation”, which includes all those things and other things. Rather than spend an awful lot of time tonight worrying about whether “rule” includes “a code”, would the Leader of the House take the question on notice? I do not think the definition extends that far at all.

Hon Kim Chance: I am happy to, Mr Chairman.

Hon GEORGE CASH: I do not think we should spend the rest of the night arguing about it, either, because I am quite sure the Leader of the House could come back with some advice in due course. The Interpretation Act is very clear about what rules, regulations and by-laws are, and for the time being I think that is what is intended to be meant by a statutory rule, because it includes all three. The question that really comes out of that is whether section 42 of the Interpretation Act is affected in any way by clause 3. It is interesting that there should be included in clause 3 what amounts to a regulation-varying power. I suppose one could call it a regulation-making power, but it is worded in such a way as to be a regulation-varying power. All the acts that are proposed to be amended under this bill will, as I understand clause 3, be subject to clause 3. An examination of every specific act mentioned in the long title reveals that each of the acts has regulation-making provisions and/or by-law making provisions. For instance, the Water Agencies (Powers) Act 1984 has a by-law making power at section 34. The same act discusses regulations and by-laws generally at section 36. There is a regulation-making power at section 37. It states -

Regulations may be made under this Act for or in respect of all matters that are required or permitted, or are necessary or convenient, to be prescribed for the purposes of this Act or any relevant Act.

I think that is the regulation-making power that one would normally expect to see in the act; it is a broad regulation-making power. I have been through all the acts, and they certainly all have a regulation-making power. Some of them include a by-law making power, and that is interesting in itself. By-laws are certainly part of subsidiary legislation, because the Interpretation Act provides, under the definition of “subsidiary regulations”, that those three matters and other matters are part of subsidiary legislation. I ask why clause 3 is necessary, because it affects all the acts that are proposed to be amended, and I do not fully understand what it is intended to do.

Hon KIM CHANCE: The only way one can answer that question, or try to work through the answer to that question, is to try to imagine what the state of the legislation would be in the absence of clause 3. Save for the existence of clause 3, what would we not have? It defines -

Hon George Cash: We would still have a regulation-making power in respect of every act, because they exist, and we know that a regulation can be amended or changed, because a new regulation can be brought in if necessary. A regulation can be changed at will, so to speak, as long as it conforms to the act.

Hon KIM CHANCE: What about legislation under this act?

Hon George Cash: The act we are talking about?

Hon KIM CHANCE: Yes.

Hon George Cash: They all have regulation-making powers.

Hon KIM CHANCE: Those acts mentioned in the long title all have regulation-making powers, but the Water Resources Legislation Amendment Bill actually has repealing powers, and it significantly alters a range of other acts as denominated. My understanding is that were it not for the existence of clause 3, there would not exist the capacity to make the consequential amendments to the statutory rules, regulations and by-laws that have yet to be prepared as omnibus regulations.

Hon George Cash: I think the operative word is “consequential”.

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Hon KIM CHANCE: Yes, because in the transition there is a set of regulations to which, but for clause 3, those changes could not be made. One would not be empowered to make those changes.

Hon GEORGE CASH: There is only one question outstanding, and that is whether clause 3 is intended to vary section 42 of the Interpretation Act, which is the provision that requires regulations to be laid before the Parliament within six sitting days etc. The Leader of the House knows section 42. I want confirmation that clause 3 is not intended in any way to bypass or vary section 42 of the Interpretation Act.

Hon KIM CHANCE: I can find nothing that leads me to the view that there is an intention to compromise the effect of section 42 of the Interpretation Act.

Hon George Cash: When the Leader of the House is checking on the word “code”, would he -

Hon KIM CHANCE: Yes; sure.

Hon PAUL LLEWELLYN: Clearly this clause implies, as it should, that by introducing this complex array of changes to a range of acts, a series of consequential regulations and amendments will arise. Is that true?

Hon Kim Chance: Yes.

Hon PAUL LLEWELLYN: Quite clearly. In that instance, could this bill effectively set out or direct the nature of new regulations? Will the Leader of the House answer that?

Hon KIM CHANCE: I have to answer that in the affirmative, because I cannot see how a logical and consistent legislative stream across so many acts could be brought together without those changes enabled by primary legislation being backed into something cohesive from the secondary legislation stage. I feel sure that is the case. What members will see from this process will be regulations consistent with the act amendments carried forward and the consequential provisions that are also made. This clause is about the consequential provisions, not the outcome provisions.

Hon BRUCE DONALDSON: I am still a little confused by this bill, which is not surprising. As the chamber has already learnt, a statutory rule can mean a regulation, rule or by-law. What statutory rules are in place in other legislation for which this amendment is needed? If “rule” is being referred to in its own right and if that rule has legislative effect, the only way it can be dealt with or used is by way of a regulation. Are there rules in the acts to be amended which have legislative effect, but have not been empowered with legislative effect, which could make them invalid? I distinctly remember this issue from some years ago - I wish I could remember word-for-word what it was about. The Joint Standing Committee on Delegated Legislation discussed the use of rules, and cases in which the acts were utilised, and when the acts were amended, the existing rules continued to be used. I went to see a former schoolmate of mine, Peter Pelejuris, and we had a very interesting discussion. I am not a lawyer, and he and his people brainwashed and confused me further. The interesting part was that the delegated legislation committee proved its argument, and rules that had legislative effect were taken out because they were invalid. I wish I could put it in a better sense, but I am confused. The Governor is being given the power to make a recommendation to the minister about making regulations, yet that power is standard in most bills that come before this place. What does “statutory rules” mean? The government is making a power that allows regulations to amend statutory rules. Are these the rules that are in other acts that are invalid because they have legislative effect and have not been treated as such?

Hon KIM CHANCE: I think the question was: which of the acts mentioned in the long title contain statutory rules and, to the extent that they may contain statutory rules, are they invalid? The answer is that a number of them contain statutory rules. One act I know of, without even consulting the regulations of the act, is the Country Areas Water Supply Act 1947. It contains a range of rules about, sometimes, the strangest things, but I will not go into those. I am also informed that the Water Agencies (Powers) Act 1984 contains rules. Other acts may contain statutory rules, but I know that those two do. The second question is whether those rules are invalid. That allegation has never been made.

Hon GEORGE CASH: If clause 3 provides a regulation-making power that allows us to vary some of the acts - the chamber accepted earlier that clause 3 was necessary for the consequential amendments that might be required - why is clause 232, the further transitional provisions clause, needed? My question is: why are clause 3 and clause 232 included in the bill, rather than the normal situation in which the last provision is reserved for the making or varying of regulations? Again, if the Leader of the House wanted to take some advice on that question, I would be happy to hear about it in due course.

Hon KIM CHANCE: Clause 232 seems to have specific relevance to only that part of the bill.

Hon George Cash: That part?

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Hon KIM CHANCE: Yes, division 2 of part 12 of the bill, which deals with transitional provisions. Division 1 of part 12 deals with interpretation, and division 2 of part 12 deals specifically with the transfer of assets, liabilities, accounts, proceedings, etc. Perhaps the draftsman felt that a particular provision was required for that part of the bill.

Hon PAUL LLEWELLYN: Before we were interrupted, I was laying out a line of thinking on this clause because it has certain implications for the amendment to clause 76 listed first on the supplementary notice paper, issue six, concerning regulation-making powers. This bill amends other acts; in effect, it amends the regulation-making arrangements in other acts. As a consequence, we can introduce a clause into this bill to vary the regulation-making powers of, for example, the Rights in Water and Irrigation Act 1914.

Hon KIM CHANCE: I am not sure where Hon Paul Llewellyn has picked that assumption up from. This clause cannot affect the regulation-making powers of any other act. It can affect only the regulations themselves. By definition, it can make consequential amendments to the provisions of regulations and rules made under those acts; however, it cannot, and does not purport to, affect the regulation-making powers of those acts.

Hon Paul Llewellyn: I understand it can actually affect the regulation-making powers.

Hon Kim Chance: It cannot affect the regulation-making powers. It does not pretend to.

The DEPUTY CHAIRMAN (Hon Ray Halligan): If members wish their conversation to be included in *Hansard*, they must seek the call.

Clause put and passed.

Clauses 4 to 6 put and passed.

Clause 7: Section 11 amended -

Hon BARRY HOUSE: The Standing Committee on Public Administration took a bit of interest in this clause, and page 6 of the committee's report noted in point 5.7 the following -

The Committee inquired as to whether there was currently uncertainty about the application of Part III of the *Rights in Water and Irrigation Act 1914* to the Water Corporation.

The report then considered the Department of Water in point 5.8 -

DOW advised that there is no uncertainty about the application of Part III of the *Rights in Water and Irrigation Act 1914* to the Water Corporation . . .

Part III of the Rights in Water and Irrigation Act refers to control of water resources. To clarify in my mind the uncertainty that was posed by the committee, do we assume that the Water Corporation is treated in the same way as any other water user or any other water applicant to the Department of Water, and is therefore subject to all provisions in Part III, which runs from page 6 to page 75 of the Rights in Water and Irrigation Act? Basically, the question is: is the Water Corporation considered in the same way as a private individual or any other commercial applicant, and so on?

Hon KIM CHANCE: The answer is yes. The correction that is contained in the amendment is to make it clear that the powers of the Water Corporation to divert, to intercept and to store water within the boundaries of the catchment area or a water reserve as laid down in the appropriate act are subject to the corporation complying with any applicable licensing requirements in part III of the Rights in Water and Irrigation Act. It is the same for everyone else.

Hon Barry House: I just couldn't see any direct reference to the Water Corporation in that section.

Hon KIM CHANCE: No.

Clause put and passed.

Clauses 8 to 20 put and passed.

Clause 21: Section 116 replaced -

Hon NORMAN MOORE: I ask the Leader of the House to explain the meaning of a section in the act that is similar to the provision in clause 21. In the Country Areas Water Supply Act 1947, which is amended by clause 21, section 116 reads -

Commission or the Corporation may be represented by officer

In any proceedings in the Children's Court or the Magistrates Court any authorised officer of the Commission or the Corporation may represent the Commission or the Corporation in all respects as if he were the party concerned.

When I first looked at the amendment, I thought that it was simply getting rid of the commission. Proposed section 116 reads -

Corporation may be represented by officer

In any proceeding before a court, judge or person acting judicially, any authorised officer of the Corporation may represent the Corporation in all respects as if he were the party concerned.

The wording is very similar to that in current section 116, with the exception that the proposed section does not refer to the Children's Court or the Magistrates Court, but rather to any court, or any judge, or any person acting judicially, and removes all reference to the commission. I thought that was quite simple until I looked at the explanatory memorandum, which reads -

It is considered unnecessary to provide powers for officers of the Department to represent the Minister or the Department in court as such representation would generally be effected by an admitted legal practitioner. In cases where it is necessary for persons other than an admitted legal practitioner to represent the Department or the Minister, that person can seek leave from the Court.

Will the Leader of the House explain what the explanatory memorandum is all about because it does not seem to refer to anything contained in the new provision?

Hon KIM CHANCE: To the extent that I understand the explanatory memorandum, I think it does directly relate to the proposed insertion of new section 116. The new section 116 makes a provision for any authorised officer of the corporation to represent the whole of the corporation in the aforementioned places as though that nominated officer were the party concerned. The EM is consistent with that intent when it states that it is considered unnecessary to provide separate powers for officers of the department to represent the minister or the department in court because such representation would generally be effected by a legal practitioner. I do not see the lack of clarity. I do not know why there is confusion. It seems clear to me.

Hon NORMAN MOORE: The point I was making is that it is a very simple change to section 116. The only changes made are to get rid of reference to the "Commission" from the section and to change references to the Children's Court and Magistrates Court to a "court, judge or person acting judicially". That is all the proposed section does, as I read it. I do not know where all this other stuff about not having departmental officers in court and being represented by lawyers has anything to do with what is being changed in the proposed section.

Hon KIM CHANCE: If the issue is removing the reference to the Children's Court, that seems to be unnecessary. The words in proposed section 116 refer to any proceeding "before a court". A court includes the Children's Court -

Hon Norman Moore: I understand that.

Hon KIM CHANCE: - or the High Court or the Supreme Court. That seems to be a relevant and effective change. The reference that remains is one to a legal practitioner. The proposed section 116 wording does not mean that a person representing the corporation must be an authorised officer of the corporation. It simply states that if the corporation determines, it can be any authorised officer of the corporation who may represent it. The corporation may not make that determination. The corporation may make the determination that it will be represented by a legal practitioner. Again, I do not see the difficulty.

Hon NORMAN MOORE: The explanatory memorandum states that the corporation would generally be represented by a legal practitioner. I am reading this as a bit of a lawyer's clause; there will be a lot of business for lawyers. If it is necessary for a person other than an admitted legal practitioner to represent the department or the minister, that person can seek leave from the court.

Hon Kim Chance: That's right.

Hon NORMAN MOORE: As I read it, an authorised officer could be any person the corporation so chooses. It does not have to be a lawyer.

Hon Kim Chance: The court may or may not give leave for that person to appear representing the corporation.

Hon NORMAN MOORE: If the corporation has the capacity to determine an authorised officer to represent the corporation, I would have thought it could have done that without a person having to be a lawyer. Is that my misunderstanding?

Hon Kim Chance: The court may not give that leave.

Hon NORMAN MOORE: Does a court have to give leave to someone who is not a lawyer to represent the corporation?

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Hon KIM CHANCE: I am not legally qualified but I would imagine that there would be occasions when a court would not give leave to a person who was not legally qualified to represent a client.

Hon NORMAN MOORE: I am seeking to not be pedantic. We will leave this in a minute but proposed section 116 states that any authorised officer of the corporation may represent the corporation. It does not state that it has to be a legal practitioner. It also does not state that if a person is not a legal practitioner, he will have to get leave of the court. I am a bit interested to know whether the proposed section will be interpreted to ensure that, on every occasion, lawyers do the representation and experts who may be able to represent the corporation need to get leave, which may not be granted.

Hon KIM CHANCE: The process of whether a person may appear for a client in a court of law is not influenced by this legislation.

Clause put and passed.

Clause 22 put and passed.

Clause 23: Various references to “Commission” changed to “Minister” -

Hon PAUL LLEWELLYN: This clause amends the Country Areas Water Supply Act and variously replaces the term “Commission” with the term “Minister” in a number of places. The explanatory memorandum states -

A consequential amendment. Consequential amendments are proposed in this clause to vest powers and functions in the Minister (instead of the Commission), including the Minister being empowered under section 104 of the *Water Agencies (Powers) Act* to delegate those functions and powers (see clause 141).

That last reference is to clause 141 of the bill. There is a string of powers to delegate under clause 141, which is cross-referenced in the explanatory memorandum. The question - we might come to this when we discuss clause 141 - arises in relation to delegating the powers: where does the buck stop, and who ends up being responsible for any liabilities or issues that arise from the minister sequentially delegating powers to the new agencies?

Hon KIM CHANCE: Issues surrounding delegation are, of course, addressed in the bill. The second reading speech spent some time discussing the function and purpose of that delegation. To summarise what I said on that occasion, the minister can delegate his powers to a range of people - the chief executive officer, another officer of the department, an officer of another department or an employee of an organisation, another minister, the chief executive officer of another department or organisation, or to any other person or body. Since the majority of the commission’s powers will be vested in the minister, it is necessary to have those broad delegation powers in order to ensure that the operational efficiencies that arise from the day-to-day administration of water resources under this legislation can be achieved.

Hon PAUL LLEWELLYN: The question then arises that if there were some pitfalls or legal liabilities, presumably those responsibilities flow back to the minister. In the previous instance it would have been the commission. Clearly, what the Leader of the House is saying is that in delegating those powers, the responsibilities and liabilities that might arise from them flow all the way back to the minister. Is that right?

Hon KIM CHANCE: Yes. They flow all the way back to where they would have been anyway, which is the minister in both cases.

Clause put and passed.

Clauses 24 to 36 put and passed.

Clause 37: Section 57C amended -

Hon PAUL LLEWELLYN: This deals with an amendment to the Metropolitan Water Supply, Sewerage, and Drainage Act 1909. I note that this amendment to section 57C allows the minister, as opposed to the commission, to grant a dispensation from observance of any by-law. Basically, it can grant dispensation. This sort of broad power ought to be subject to a constraint, such as the requirement to table any exemption in Parliament as a disallowable instrument - as is the case, for example, with exemptions granted under the Environmental Protection Act. Could the Leader of the House please comment on the principles I am outlining here? If the minister, in this case the Minister for Water Resources, grants dispensation, surely there needs to be some check and balance, some procedure, for reviewing them in Parliament.

Hon KIM CHANCE: That would be the case only if we believed that that check and balance was required when the commission had precisely the same powers. We are not doing anything new with this clause. The same powers exist; only the person who holds those powers has changed. If there was a reason for the commission, in exercising those powers, to deal with the checks and balances, which would be provided by the

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tabling of an order or exemption in Parliament, of course the minister should do so. However, the legislation makes no such provision. Nothing is being changed here other than the person who makes the exemption.

Clause put and passed.

Clauses 38 to 52 put and passed.

Clause 53: Section 5 amended -

Hon NORMAN MOORE: We are told in the explanatory memorandum that clause 53 is a consequential amendment to the Rights in Water and Irrigation Act 1914. It states -

A consequential amendment. Some springs are not regulated under the *Rights in Water and Irrigation Act 1914*. Section 5 sets out a process by which springs that would otherwise be unregulated can be prescribed under local by-laws and brought within the scope of the Act. This clause removes the role of the Commission in that process.

Will the Leader of the House explain to me why we need this amendment and what springs are not currently regulated - not by name individually, but the type of springs?

Hon KIM CHANCE: All those that are not covered by regulation! There is an enormous number of little but very significant springs in the hills areas, particularly in the Shires of Chittering and Toodyay. Some springs have a tremendous history. Some were important springs in the early development of the road to the goldfields. Some are important from a biota sense. Despite their historic or ecological importance, they are not springs that are of any importance to the protection of our water resources. There are a range of springs that are not regulated. That does not mean they are not important. This is simply a provision that was seen again in the old legislation under the Rights in Water and Irrigation Act, which perhaps one day did need to be prescribed under the local by-laws but which at the moment do not. What is essentially changing in the outcome of clause 53 is that, whereas the commission had that power, now the minister will have that power.

Hon PAUL LLEWELLYN: Will this clause effectively expand the scope of the parent act by elaborating on it so that springs that previously were not in the scope of the act are now to be brought into the fold as it were? Is that precisely what this clause is doing?

Hon KIM CHANCE: No, it does not change the scope of the act. It simply changes who has the power of prescription in this case.

Clause put and passed.

Clause 54: Section 5A amended -

Hon NORMAN MOORE: This clause simply deletes the word "appropriate" and inserts the word "allocated". Can the Leader of the House explain the difference?

Hon KIM CHANCE: There is very little difference in the actual effect. Indeed, using the word "allocation" or the past tense "allocated" simply reflects the language of the act more appropriately. We now talk about allocations of water and rights in water; we do not talk about appropriation of water and exploitation of water. I think it is a language issue. Nothing in my advice gives me any reason to believe that there is a fundamental outcome from this change of wording.

Hon Norman Moore: Or sinister motive!

Hon KIM CHANCE: I absolutely deny any sinister motive!

Clause put and passed.

Clauses 55 and 56 put and passed.

Clause 57: Section 26B amended -

Hon BARRY HOUSE: The Standing Committee on Public Administration also showed some interest in clause 57, which amends section 26B of the Rights in Water and Irrigation Act 1914 and refers to non-artesian wells to be licensed or otherwise authorised. An item on page 8 of the committee's report refers to that. Item 8.4 states -

There are two situations under the RIWA Act where the requirement to license a non artesian well will not apply:

- where the non-artesian well is subject to an exemption order made under s26C; and
- where the well has been exempted from the licensing requirement by by-laws made under s26L.

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Section 26L refers to exemptions. I am interested, from a practical point of view, in some examples to give us an idea of what we might be talking about in terms of the exemptions, bearing in mind that this is a section relating to non-artesian wells.

Hon KIM CHANCE: I do not think there is anything more in this than the will to correct an error in the act. As I understand it - I cannot go through it in detail because I do not have the act with me, nor do I have an explanation of what the error is - there was an error in the act that may be able to influence the effectiveness of an exemption issued under section 26L of the act. An example of such an exemption could be one issued in the metropolitan area for garden bores, of which there are about 150 000 around the metropolitan area.

Clause put and passed.

Clauses 58 to 75 put and passed.

Clause 76: Section 27 amended -

Hon PAUL LLEWELLYN: I move -

Page 27, after line 2 - To insert -

(2) At the end of section 27 the following subsection is inserted -

“

(3) Without limiting the generality of paragraph (g) of subsection (1) the fees referred to in that paragraph may be set by reference to the volume of water allocated under a license.

”.

By way of explanation, water licensing arrangements under the Rights in Water and Irrigation Act 1914 have been negotiated for some time. As members know, those negotiations have been somewhat controversial. Members of the community have sought to have the regulations either disallowed or amended because they believe them to be unfair, inequitable and disproportionate. This amendment has effectively arisen from discussions that the Greens (WA) had today with the minister and staff from the Department of Water. The Greens are of the view that a fairer arrangement than that which exists under the current licensing system would be for licence fees to be set in accordance with the proportion of water entitlement. As a consequence of the way in which fees are currently calculated, consumers who are entitled to 80 per cent of the water resources are paying just 20 per cent of the licence fees while landowners who are entitled to 20 per cent of the water entitlements are paying 80 per cent of all the fees for recovery. If it were possible to amend the regulation-making powers to ensure some proportionality in the way in which licence fees are calculated, as this amendment seeks to do, we would be able to move past the impasse in negotiations on water licensing arrangements. Clause 76 of the bill amends section 27 of the Rights in Water and Irrigation Act 1914. Section 27 of that act allows for a series of arrangements for the making of regulations, and states -

- (1) Without prejudice to the generality of that power, the power conferred by section 37 of the *Water Agencies (Powers) Act 1984* to make regulations may be exercised to make regulations prescribing all matters that are required or permitted by this Part to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Part and, in particular as to -
- (a) the establishment and functions . . .
 - . . .
 - (e) well licences, . . .
 - (f) the furnishing of information as to wells;
 - (g) the forms to be used and the fees payable in respect of applications and the grant, variation and renewal of licences . . .

The subsection goes on. It seemed to the Greens (WA) when looking for a way in which to resolve the impasse in negotiations on water licensing arrangements that this was a good place to make a small amendment. The amendment seeks to add at the end of section 27 -

(3) Without limiting the generality of paragraph (g) of subsection (1) . . .

Paragraph (g) of which concerns -

the forms to be used and the fees payable in respect of applications and the grant, variation and renewal of licences under section 26D;

The amendment continues -

... the fees referred to in that paragraph may be set by reference to the volume of water allocated under a license.

Therefore, the fees would be set in proportion to the size of the licence allocation. In that regard, we would be able to resolve an impasse that has clearly emerged from the process of introducing new legislation and of revamping all water legislation in Western Australia. The government introduced a set of regulations that have become controversial and are unacceptable to the community. I would like the Leader of the House to give some feedback on my proposition.

Hon KIM CHANCE: I seek a ruling, Mr Deputy Chairman (Hon Ken Travers), on Hon Paul Llewellyn's amendment. I have three questions. The first of those questions is probably more important than the other two. It seems to me that the scope of this bill concerns the abolition of the Water and Rivers Commission, the establishment of the Department of Water, the Water Resources Council and the ministerial body, and the making of consequential amendments to other legislation, and that it is not specifically about amending the Rights in Water and Irrigation Act for other purposes, such as the way in which fees and charges are set. My primary question is: is this amendment outside the scope of the bill on those grounds? The second question I have is: does the consideration of issues relating to fees and charges go beyond the power of the Legislative Council? I do not think that that question will take long to answer because I think it will probably be in the negative. The third question relates to the wording of the amendment, which seems to imply the imposition of a volumetric charge. To me, a volumetric charge equates to the possibility of it being deemed an excise. Again, that is probably a tenuous question, but I thought I would ask those questions anyway. I seek the ruling of the Chair in particular on the scope of the bill. I am happy to ask the Deputy Chairman to leave the chair until the ringing of the bells.

The DEPUTY CHAIRMAN (Hon Ken Travers): I will need a little time to consider the points that the Leader of the House has made, so I will leave the chair until the ringing of the bells.

Sitting suspended from 8.59 to 9.31 pm

Deputy Chairman's Ruling

The DEPUTY CHAIRMAN (Hon Ken Travers): Members, prior to my leaving the chair, the Leader of the House asked me to consider whether the amendment moved by Hon Paul Llewellyn was within the scope and purpose of the bill as provided for under standing order 237(a) and, further, whether the amendment was within the powers, and whether the implication of volumetric charge would be considered an excise.

With respect to the first point raised by the Leader of the House, obviously many of these amendments can variably be viewed in both lights. However, the practice and procedures of this place has been to seek to ensure and not limit the house in exercising its rights and privileges. I draw the attention of members to the ruling that was made on 26 October 2006 and I will briefly quote one line as follows -

Members will know that this place has always applied standing order 237(a) in a very wide manner so as not to restrict this house's rights and privileges.

Obviously, that ruling included a lot more detail on these matters.

Further, in considering the question raised by the Leader of the House, I accept that the primary purpose of the bill relates to the administrative framework relating to water resource legislation within Western Australia, but it does deal with the consequential implications of the manner in which the powers under the various water acts in this state can be exercised.

The member's amendment does not seek to introduce a new power, but simply highlights an option that may be considered under section 27(g) of the Rights in Water and Irrigation Act 1914, but it is certainly not a mandatory provision. It provides an option for how the existing powers of the bill can be administered under the administrative framework. In light of that, I believe that on that point the member's amendment is within the scope of this bill. As I mentioned earlier, the member's amendment does not seek to introduce a new power, but simply provides an option under an existing power within the substantive act.

Finally, the question of whether it is an excise can be determined only by the commission. If the commission chooses to exercise that power, it can only look at the question of an excise when it seeks to implement and set

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the fee. That is the appropriate time to consider whether it is an excise. It is my intention to accept the member's amendment.

Committee Resumed

Hon KIM CHANCE: Thank you for that ruling, Mr Deputy Chairman. In consideration of the ruling and the fact that it would be advisable for discussions on this amendment to happen behind the Chair, I move -

That further consideration of clause 76 be postponed until after consideration of clause 233.

Hon NORMAN MOORE: I support that proposition. Mr Deputy Chairman, this amendment turned up only at a very late stage of the consideration of this bill and the opposition would like some time to consider its position on the matter now that you have ruled that it is in order.

Hon PAUL LLEWELLYN: I thank members for considering that view. I also thank the Leader of the House for agreeing to defer consideration of this clause.

Question put and passed; clause thus postponed.

Clauses 77 to 88 put and passed.

Clause 89: Schedule 1 clause 12 amended -

Hon KIM CHANCE: I ask for your advice, Mr Deputy Chairman. The amendments to clauses 103 sequentially through to clause 109 are identical. Is it possible that we might put all those clauses together?

The DEPUTY CHAIRMAN: We are dealing with clause 89, but certainly when we get to clause 103, I am happy to deal with that proposition.

Hon KIM CHANCE: I am sorry. Yes; I was getting ahead of myself, but now I do not have to ask that question later. I will be asking that members vote against clause 89. I am sorry. No; I am getting ahead of myself again. I move -

Page 30, line 10 - To delete "officer" and insert instead -

authority

The reason for the amendment is that when this bill was first drafted, the Financial Administration and Audit Act was the appropriate legislation to which this clause applied. That legislation has been now replaced by the Financial Management Act. The appropriate wording, given the change in those acts, is no longer "officer", but instead is "authority".

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 90 to 102 put and passed.

Clause 103: The Act amended; Clause 104: Section 3 amended; Clause 105: Section 12 amended; Clause 106: Section 18 amended; Clause 107: Section 19 amended; Clause 108: Section 31 amended; Clause 109: Section 64 amended -

The DEPUTY CHAIRMAN: If the chamber agrees, the Leader of the House has requested that we consider the amendments to clauses 103 to 109, which will effectively delete the whole of part 6 of the bill. I will put the question that clauses 103 to 109 stand as printed, and instead of moving the amendments, members need only vote no if they wish those clauses to be removed. That will occur if the chamber agrees to deal with the clauses as a whole.

Hon KIM CHANCE: Thank you very much, Mr Deputy Chairman. I should explain why I am proposing to do this, because not everyone has all the detail in front of them. Clauses 103 to 109 represent part 6 of the bill in its entirety. Part 6 of the bill deals with amendments to the Swan River Trust Act 1988. The Swan River Trust Act has been repealed and replaced by another act and the whole of part 6 is no longer relevant.

Hon NORMAN MOORE: The act that has replaced the Swan River Trust Act is the Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006, and I refer in particular to section 4. Has that been proclaimed?

Hon KIM CHANCE: I do not know. We are making an assumption that it has, but, notwithstanding that assumption, there is nothing of relevance in this act any more to the new act, proclaimed or not.

Hon NORMAN MOORE: If it were to transpire that it has not been proclaimed, and if for some reason the government does not proclaim it in the future - which has been known to happen, I might add, on more than one

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occasion - what is the effect of that in getting rid of part 6 of this bill? I do not mind if the Leader of the House puts it off to get it clarified.

Hon KIM CHANCE: Yes, I think it would be a dangerous assumption to make that the parliamentary counsel would not have included these amendments had the new act not been proclaimed and the Swan River Trust Act not been repealed upon that proclamation. Therefore, I am not prepared to give the committee assurances that that has occurred. I will have to go away and check that.

Further consideration of clauses 103 to 109 postponed until after consideration of clause 233, on motion by Hon Kim Chance (Leader of the House).

Clauses 110 and 111 put and passed.

Clause 112: Section 3 amended -

Hon PAUL LLEWELLYN: This clause is part of a clutch of clauses in part 7 that amend the Water Agencies (Powers) Act 1984. In 1984, I daresay that we did not have the kind of water crisis that we have today. I notice that in clause 112(1) there is a series of definitions. It states -

“water resources” includes -

- (a) watercourses, reservoirs, wetlands, estuaries and inlets, together with their beds and banks;

That is fair -

- (b) aquifers and underground water; and
- (c) drainage, surface and surplus water;

I want to know what “surplus water” is and why, for example, waste water is not included in this definition. Can we have some clarification of what is intended by the term “surplus water”? When does water become surplus?

Hon KIM CHANCE: This will not be the best explanation in the world. However, I believe it is a definition drawn from the Rights in Water and Irrigation Act. That being the case, it has the same meaning.

Hon Paul Llewellyn: Really?

Hon KIM CHANCE: Yes.

Hon Paul Llewellyn: What does it mean in that act?

Hon KIM CHANCE: Good question, Paul! I was hoping Hon Paul Llewellyn would not ask that question. Surplus water can have a number of meanings. It can be industrial water.

Hon Paul Llewellyn: In what way is industrial water surplus water?

Hon KIM CHANCE: It may be water that has been used for cooling purposes.

Hon Paul Llewellyn: That is surplus water?

Hon KIM CHANCE: Yes, indeed. It is certainly surplus to the requirements of the industrial user.

Hon Paul Llewellyn: So when it has been used for cooling it is surplus water?

Hon KIM CHANCE: For that user it may well be. Coming as I do from the wheatbelt area, I can also recall -

Hon Murray Criddle: There is no commercial water out there.

Hon KIM CHANCE: I can recall driving from point to point over a relatively short distance and counting 27 culverts in 35 kilometres.

Hon Murray Criddle: That must have been about 40 years ago.

Hon KIM CHANCE: I did not say that they all had water in them.

Hon Murray Criddle: You must have been going past Coomberdale.

Hon KIM CHANCE: The water that was designed to be dealt with by those culverts was clearly surplus water to the land users who occupied the upstream ground in relation to that particular shire road. That would fit the description of “surplus water”. In the parlance of the water industry, these days that would be called overland flow. I think this is designed to deal with overland flow, although one could reasonably say it also applies to some elements of grey and black water. Indeed, it seems to me to be a catch-all term. I think that is its intended meaning.

Hon PAUL LLEWELLYN: We have to modernise the meaning of “surplus”.

Hon Bruce Donaldson; Hon Kim Chance; Deputy Chairman; Hon Barry House; Hon Norman Moore; Hon George Cash; Hon Paul Llewellyn

Hon Kim Chance: I meant to say that it will be modernised in later legislation.

Hon PAUL LLEWELLYN: Let us hope that it is modernised. I put on the record that in a modern context of water management, water that might be encapsulated as “surplus” might be the waste water that flows out of our waste stream and our waste water treatment plants. Arguably, that is surplus. In a thoroughly modern construction of water management, the water that flows out of waste-treatment facilities is hardly surplus at all; in fact, it is a water resource. It is simply a water resource that has been used once and then allowed to flow to the ocean. Perhaps the ocean is surplus water in a general sense.

The point I am making - I want the Leader of the House to take notes on this - is that the definition of “water resources” should include a paragraph (d) that refers to waste water. I will not introduce that now, unless the Leader of the House feels moved to accept an amendment like that -

Hon Kim Chance: I would rather you did not.

Hon PAUL LLEWELLYN: Exactly. However, I am putting it on the record that in the Perth metropolitan area, for example, in the order of 108 gegalitres of water flows out of our waste water treatment facilities straight through pipes and into the ocean. That water may well be part of the surplus. However, in a thoroughly modern sense, waste water should become part of the definition of water resources.

Hon Kim Chance: We could not agree with you more.

Hon PAUL LLEWELLYN: The government should make that part of the next piece of water legislation. In the future, governments all over Western Australia, and in fact across Australia, will need to treat waste water as part of our legitimate water resource and internalise that water into our water assets. We look forward to seeing in the next round of legislation an expanded definition of water resources so that it will be a more modern construction that includes all our water resources.

Hon NORMAN MOORE: This may sound like a very silly question, but where does the ocean fit into that definition of water resources, bearing in mind the recent decision by the government to provide water from the ocean through a desalination plant?

Hon KIM CHANCE: The ocean is not within the scope of the meaning of the word “surplus” as it is defined in this bill. I suppose I could say, in direct answer to that question, that the ocean is part of an unharnessed resource.

Hon Norman Moore: I am not asking whether the ocean is considered to be surplus water. I am asking whether the ocean is considered to be a water resource at all. Bearing in mind that the government is using the ocean as a water resource, should it not be included in the definition of water resource?

Hon KIM CHANCE: That why I used the term, off the top of my head, an “unharnessed” resource. The ocean becomes a resource once it has been processed. Until it has been processed, it is only a potential resource. As I said earlier, if we were in a boat that was leaking, that part of the ocean that was entering the boat would definitely be surplus water!

Hon BARRY HOUSE: I suppose, to extend that argument, I could ask: under what authority is the state taking water from the ocean for the desalination plant? However, I will not ask that question! In general terms, I want to support the contention of Hon Paul Llewellyn -

Hon Kim Chance: So do we.

Hon BARRY HOUSE: - which is supported by the minister - that treated waste water, recycled water, stormwater and all the other secondary water sources should be considered a water resource. Those water resources are an asset to the state. The attitude that has existed within the Water Corporation, I suggest for years, is that once the water in a waste water plant, for instance, has been treated to a certain level to meet the safety and health requirements, it is discarded as surplus. It then fits the definition of surplus water, and up to 80 per cent of that water is allowed run into primary dunes and into the ocean. However, that begs another question. The Water Corporation has entered into agreements and partnerships with various organisations around the state to use that treated waste water in a secondary state. There are numerous golf courses in this state that use treated waste water. Broome, Manjimup and Busselton are just a few that come readily to mind.

Hon Kim Chance: There is also the Kwinana industrial water - 22 gegalitres.

Hon BARRY HOUSE: Yes, if that is surplus water.

Hon Paul Llewellyn: The Kwinana industrial water is surplus, even though it is a highly valuable asset and can be treated.

Hon Bruce Donaldson; Hon Kim Chance; Deputy Chairman; Hon Barry House; Hon Norman Moore; Hon
George Cash; Hon Paul Llewellyn

Hon BARRY HOUSE: If the technical definition of waste water means that it is surplus water, what right does the Water Corporation have to charge for that water? The Water Corporation does, in fact, charge a fee for the water that is used by industry, that is used on public open space and that is used by local authorities, so it is clearly an area of water management that needs to be updated. We know that places such as London and Singapore use their water seven times. We certainly are not anywhere near that stage, but the time has arrived for us to recycle the water we use to a far greater extent - once, twice, three times - and we have to make better use of an excellent asset such as treated waste water. It can be used very effectively for irrigation.

Hon KIM CHANCE: The government absolutely agrees with everything that Hon Paul Llewellyn and Hon Barry House have said. Water is treated as a resource. Indeed, it comes under the specific definition of “water resource”. As to whether we have the right to charge for what we now call “surplus water”, this is probably not the time for a lecture on Islamic law, but under Islamic law the Koran specifically provides that there can be no charge for water. However, the service of delivering water can be charged under Islamic law. It works in a very similar way here; we are allowed to charge for the cost of processing and delivering water, even in an Islamic society.

Hon BARRY HOUSE: Earlier this year I attended a water conference along with a couple of other members of the Public Administration Committee. The Department of Water actually gave a presentation on mapping south west water resources and I specifically asked about secondary water sources. Everything else was covered - surface water, underground water supplies and so on - but secondary water sources had not entered the department’s calculations at that stage. Clearly, the Department of Water will have to address this.

Progress reported and leave granted to sit again, pursuant to standing orders.