

WATER RESOURCES LEGISLATION AMENDMENT BILL 2006

Committee

Resumed from 25 September. The Chairman of Committees (Hon George Cash) in the chair; Hon Kim Chance (Leader of the House) in charge of the bill.

Clause 114: Parts II, IIA and heading to Part IIIB inserted -

Progress was reported after Hon Paul Llewellyn had moved the following amendment -

Page 41, after line 14 - To insert -

- (4) In performing the Minister's functions under this section -
 - (a) the Minister is to have regard to water recycling and efficient water use measures when planning the development of new water resources; and
 - (b) the Minister is to promote decision making processes that involve public consultation.

Hon KIM CHANCE: As I indicated in discussion on this amendment yesterday, the government is inclined to support the amendment, but we wish to propose a minor change. I move -

That the amendment be amended by inserting in proposed section 114(4)(b), after the word "Minister", the following -

, where appropriate,

The first line would then read "the Minister, where appropriate, is to promote decision making processes that involve public consultation."

Hon NORMAN MOORE: The opposition is inclined to support the minister's proposition. However, he might like to give me some indication as to when it would be inappropriate to promote decision-making processes and to not hold public consultation.

Hon Simon O'Brien: When they are in government!

Hon KIM CHANCE: I do not know how to outdo that comment. However, the government's thinking is that without the words "where appropriate", the minister would be bound to promote decision-making processes involving public consultation at every turn when performing those functions. There may be times when the performance of those functions and the processes and involvement that go with public consultation would be an onerous and unnecessary requirement, considering some of the very minor functions that it might involve.

Amendment on the amendment put passed.

Amendment, as amended, put and passed.

Hon NORMAN MOORE: If we go through this chronologically, before we get to the minister's next amendment I have a question about proposed section 14, which comes under "Division 3 - Minister to have access to certain information". Proposed section 14(3) states -

The licensee must comply with the direction even though the direction requires the licensee to give the Minister information that is confidential or commercially sensitive.

What is the justification for having a proposed section of that nature?

Hon KIM CHANCE: I cannot see that it means anything other than what an ordinary person would deem it to mean by a simple reading of the clause.

Hon Norman Moore: I am asking you to justify why the minister should be given confidential and commercially sensitive information whether or not he agrees to it.

Hon KIM CHANCE: Proposed section 14 enables the minister to have access to certain information. That information relates to the functions of the minister and the legislation. There will be occasions when the minister must have access to certain information, and the minister has the right to ask a person holding a licence under this legislation to provide that information. This proposed subsection states that it is not an excuse to not provide the minister the information held by the licensee on the grounds that it is confidential for some reason. The licensee is required to provide it to the minister if the minister needs it. I do not think it means anything other than that.

Hon NORMAN MOORE: I was not asking for an explanation about what it meant; I can read it. I was asking the minister to justify it, bearing in mind that members ask questions of the government in Parliament and the government says it cannot provide information because it is commercially sensitive; yet we are passing a law

that says a licensee must comply with the direction given by the minister even though the information may be confidential or commercially sensitive. I am seeking the justification for the insertion of a proposed section of that nature.

Hon KIM CHANCE: The provision of the information by the licensee to the minister would not in any way absolve the minister from the minister's requirement to keep the matter confidential. It would be a matter of commercial confidentiality. In the hypothetical case that the Leader of the Opposition has provided, assuming a licensee were to provide commercially confidential information to the minister and the minister was then asked a question in Parliament - in other words, in the public - relating to that information, the minister would still be bound by his duty of confidentiality regarding the information from the licensee. The question of commercially confidential information held by the minister is not altered in that regard. This clause requires that the licensee provide the information to the minister, rather than the minister providing that information to other parties.

Mr Chairman, is it possible to couple amendments 14/114 and 15/114? I appreciate that the words are not exactly the same, because one applies to the whole of the Financial Administration and Audit Act and the other applies only to section 66 of that act. It is the same intent.

The CHAIRMAN: They are almost clerical in nature. The committee does not appear to have any objections.

Hon KIM CHANCE: I move -

Page 45, lines 23 and 24 - To delete "section 66 of the *Financial Administration and Audit Act 1985*" and insert instead -

Part 5 of the *Financial Management Act 2006*

Page 51, lines 21 and 22 - To delete "*Financial Administration and Audit Act 1985*" and insert instead -
Financial Management Act 2006

Amendments put and passed.

Hon NORMAN MOORE: Proposed section 15 refers to the use or disclosure of information obtained under section 14. My question relates to a question I asked about a previous matter. I refer to what is done with the confidential information that is provided to the minister. Proposed section 15 provides a penalty for the disclosure of that information. Can the minister be subject to the penalty of a \$12 000 fine or imprisonment for one year if he discloses the information obtained under section 14?

Hon KIM CHANCE: I think the answer is yes. My reading of proposed section 15(1) is that the effect of the first part does not seem to be avoided by any other proposed section. It states that "This section applies to the Minister". I cannot read anything into the rest of proposed subsection (1) or proposed subsection (2), save the defence in proposed subsection (2)(b), that derogates from the original intention that the section will apply to the minister.

Hon NORMAN MOORE: Proposed section 17 deals with the membership of the Water Resources Council. In my second reading contribution I mentioned that a range of people will be appointed to the Water Resources Council because of their particular expertise and experience; that is, they will have experience in water resources management, conservation, economic development, community interests, law, mining and agriculture. Further, the council must also comprise an indigenous person and a person who lives in regional Western Australia. I raised that point during my second reading contribution because on the very same day the other house was considering an amendment to the Rottnest Island Authority Act. For the minister's information, the Rottnest Island Authority Act has a similar provision to the one the government has included in this bill; namely, that people who have particular expertise are to be appointed to its board. The bill that was being debated in the Legislative Assembly was seeking to remove that provision and to insert a provision that states that the minister shall appoint six people who know what they are doing without stating a particular reference to any expertise or experience. Is the government being inconsistent in its approach or is that coincidental? If it is coincidental, can the Leader of the House explain why it is necessary to have people with the particular expertise and experience listed under proposed section 17? Why is it necessary that the council comprise a person who has experience in the law, in agriculture or community interests? Why is it necessary that the board comprise an Aboriginal person? I would like some justification for stating that the members of the council must have specific areas of expertise and experience. When I was Minister for Tourism, I wanted to go down the path that the government is going down with respect to the Rottnest Island Authority. That provision is too constraining in terms of who we can get on boards. A minister should not be limited by the range of people who can be appointed to the board and provide the expertise we want, which might be of a broader nature than that contained within the specifics here.

Hon KIM CHANCE: It is a very good question. I will not go too deeply into the question of the Rottnest Island Authority board, because it is one whereby we would expect to draw fairly broadly across society to identify people who might well be able to serve usefully on such a board. Its function is so broad in one sense and so narrow in another in that it has a narrow geographic function. About the only thing I could say about the qualifications needed by members of the Rottnest Island board is that it should comprise a person whose expertise is knowing how to have a really good time. That would probably be helpful.

Hon Norman Moore: The government has just appointed a person with that qualification to that board.

Hon KIM CHANCE: Exactly! I was not going to say that. I wanted to provide an opportunity for the Leader of the Opposition to say that. It was an excellent choice.

Hon Norman Moore: I have no doubt that the government will put a petrochemical plant on Rottnest.

Hon KIM CHANCE: I am sure that that appointment will lead to a lot of people having a really good time. That is important.

The question of specificity and membership of boards has been the subject of a degree of reform. I am trying to recall which iconic report on public administration in Western Australia led successive governments to the view that the old practice of representation on boards needed to cease because some laws - indeed, some exist in my portfolio - are so specific as to require that a member of the board shall be a nominee of the Western Australian Farmers Federation, the Commercial Egg Producers Association or the Pastoralists and Graziers Association. I hope somebody will remember the name of the report.

The CHAIRMAN: Was it the Burt Commission on Accountability?

Hon KIM CHANCE: I thought it was, but I was not too sure. I suspect it was the Burt Commission on Accountability. It was very critical of that, and said that it is impossible for a person to represent the interests of the Western Australian Farmers Federation on a board of this nature. If a person is a member of the board, he has duties to that board and he cannot have duties to any other person. That led to successive governments going through the process to the degree that they made specific the qualifications required of a board member. Governments limited that specificity by saying a person with expertise or experience in, for example, conservation rather than saying a member of a conservation council. Are we seeing a change? Yes, we are. It is a healthy change that has been evolving over a number of years. Will this lead to generally less specification? I think that is highly unlikely. That was the answer that the Leader of the Opposition was looking for.

Hon BARRY HOUSE: Perhaps it is an obvious point, but the minister will appoint six, seven or eight persons to the council. Nine fields of expertise are outlined. It seems that the government will have to find an Aboriginal person who is both a lawyer and a farmer and who lives in regional Western Australia!

Hon Kim Chance: And who knows how to have a really good time!

Hon BARRY HOUSE: Surely that will severely restrict the sorts of people who may be eligible to fulfil this role.

Hon KIM CHANCE: That is a fair comment. It is unusual to appoint six, seven or eight persons to a board, but require those persons to cover nine areas of expertise or experience. However, the nominees for positions of this kind usually include people who have three or four, or perhaps even all, of the qualifications that are required. This will be an interesting process, because when the minister makes his or her decision about these appointments, the minister will first need to make sure that all nine of these qualifications are covered, otherwise the minister may be open to criticism.

Hon NORMAN MOORE: I would appreciate it if the minister would tell me why an Indigenous person is to be appointed to the council. This is not meant to be in any way a comment of a racist nature. However, I am interested to know what particular expertise or experience - to use the words that are used for most of these positions - an Indigenous person would bring to this particular council.

Hon KIM CHANCE: I thank the Leader of the Opposition for the question. The government's intention in all resource management-related legislation is to ensure that the connection with country, and the role of the Indigenous custodians of that country, is recognised. This is very much part of our natural resource management legislation, and it has been enormously positive, because from the legislative level there has been a trickle-down effect through to the ground level, and a real engagement between all land managers, both Indigenous and non-Indigenous. I am personally delighted that the Minister for Water Resources has chosen to impose in his legislation the same requirement for Indigenous involvement.

Hon PAUL LLEWELLYN: I have always taken an interest in the structure of management institutions and in how people are chosen to be on the boards of these institutions. It is very appropriate that the people who are appointed to this council have expertise or experience in water resources management. Therefore, if an

Indigenous person and a person who lives in regional Western Australia are to be appointed to this council, surely those persons should also have some kind of interest in water resources management. I cannot understand why we need to put a token person into each of those positions. Can the minister put on the record more information about those two criteria?

Hon KIM CHANCE: I deny that there is any tokenism here at all. This is a genuine attempt by the government to establish at the legislative level, in the hope that there will be a trickle-down effect through to the operational level, an engagement by Indigenous and rural people. Yes, those two roles may be filled by the same person; there is no difficulty about that. We want an Indigenous person and a rural person to be engaged in the management of our natural resources. I am surprised that Hon Paul Llewellyn would find that strange.

Hon PAUL LLEWELLYN: I am not saying that an Indigenous person should not be appointed to the council. Frankly, I think that should be the case. This council will play an expert role in advising the minister. Subclause (1) states that the membership of the council is to include persons with -

- (a) expertise or experience in water resources management; and
- (b) expertise or experience in conservation; and
- (c) expertise or experience in economic development; and
- (d) expertise or experience in community interests; and
- (e) expertise or experience in law (in the natural resources field); and
- (f) expertise or experience in mining; and
- (g) expertise or experience in agriculture; and
- (h) an indigenous person; and
- (i) a person who lives in regional Western Australia.

That is somewhat inconsistent, because the Indigenous person should also be expected to have a particular interest in water management, in the same way that the person who is from a regional area should be expected to have a particular interest in water management. I think that because of the way this clause is drafted, it could too easily be seen as simply tokenism.

Hon NORMAN MOORE: I agree with Hon Paul Llewellyn. The Water Resources Council will be established to provide advice to the minister on water resources matters. However, two members of the council - the Indigenous person, and the person who lives in regional Western Australia - will not be required to have expertise in water resources management. Both those persons should be required to have knowledge or expertise in water resources management, because that is what every other member of the council is required to have.

Hon KIM CHANCE: As I recall the situation with the Egg Marketing Board, people need to have certain qualities in order to be appointed to that board. However, that is not the case with the consumer representative on the board. The consumer representative is not required to have expertise in anything. If I can draw an analogy with what Hon Paul Llewellyn is saying, perhaps the requirement should be, instead of a consumer, a person who is expert in eating eggs!

Hon Paul Llewellyn: An "eggspert"!

Hon KIM CHANCE: Yes! This is a nonsense. One of the appointees to the council is to be a person with expertise in community management. These two persons will also be community representatives. One of these persons will represent specifically the Indigenous community, and the hopes and aspirations of that community. That person may know absolutely nothing about water but an awful lot about Aboriginal land law. That person will make a huge contribution.

Hon Paul Llewellyn: I am glad you are putting this on the record!

Hon KIM CHANCE: The same will apply to the person who lives in regional Western Australia. That is almost exactly the position that I occupied on the former Water Authority board. I did not need to be an expert in the use of water in regional areas; I just needed to be a person who understood some of the regional issues involved with the use of water. That was an engineering-based board, and it was very helpful to have someone on the board who was not an engineer and could bring some other knowledge and expertise to the board. That is what I would expect also on this council.

Hon Norman Moore: So why not have someone from the metropolitan area as a designated person?

Hon KIM CHANCE: Because we would assume that a number of these people would have a metropolitan base in any event. Four-fifths of all Western Australians live in the metropolitan area. We want to ensure that the board is not totally dominated by people from the metropolitan area.

Hon PAUL LLEWELLYN: I want to clarify that in no way am I implying that there is not an absolutely essential role for an Indigenous or regional person on this council. That is not what is in question. What I am saying is that that Indigenous or regional person needs to have an interest in water resources management. We all consume water. Perhaps a water consumer should be appointed as a member of the council. This should have gone somewhat further so that we could avoid the obvious implication or accusation that it is simply tokenism. That is all I am saying.

Hon KIM CHANCE: I move -

Page 51, line 24 - To delete "Part II Division 14" and insert instead -

Part 5

This amendment again is a switchover between the Financial Administration and Audit Act and the Financial Management Act. The amendment will remove the reference to "Part II Division 14" and insert instead "Part 5" of that act. The words "of that act" on page 51, line 24 of the bill, unfortunately, refer to the Financial Administration and Audit Act.

Amendment put and passed.

Hon PAUL LLEWELLYN: This concern is out of sequence, but the debate has raced past me. I note some functions and rules of the new Water Resources Council relating to casual vacancies and so on referred to in proposed section 21 on page 49 of the bill, which states -

Members of the Council are entitled to any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Minister for Public Sector Management.

Will the Leader of the House give some indication of the kind of remuneration people serving on these boards are likely to get; whether, for example, they will get only sitting fees or some sort of honorarium and so on?

Hon KIM CHANCE: Although I cannot be specific about that, I can give Hon Paul Llewellyn an indication of the remuneration that is paid to members of like bodies. Clearly, this decision will be made by the Minister for Water Resources, with the consent of the Minister for Public Sector Management. However, on like bodies the members of the board are generally paid a sitting fee. Those fees are published from time to time. They are usually fees that differentiate between a whole day's sitting and a part day's sitting; two different rates per diem. The chairperson of the board is normally paid an effective retainer, which is probably the equivalent of 20 or 30 days' sitting or something of that nature. Entitled board members - that is, those who travel more than 50 kilometres outside the metropolitan area to attend a meeting - are also generally paid travelling expenses in accordance with specifications laid down by the chief executive officer of the Public Sector Management Office.

Hon PAUL LLEWELLYN: The question I have in mind is that previously we had a water resources commission. I have lost it now.

Hon Kim Chance: The Water and Rivers Commission.

Hon PAUL LLEWELLYN: The Water and Rivers Commission, I am sorry; it is late in the week. The bill provides for a term of office of up to three years for these board members. Will the minister give me some comparison between remuneration and so on that a person on the commission had and the remuneration and so on that a person on this new council will have? Will they be identical, will they use the same model, and so on?

Hon KIM CHANCE: I must correct something I said. I talked about the CEO of public sector management. I should have more properly said that in fact the Public Sector Management Office is a division of the Department of the Premier and Cabinet.

The Department of the Premier and Cabinet's PSM people would have determined the rate of remuneration for the members of the board of the Water and Rivers Commission. It is not strictly relevant to my role in handling this bill, but I imagine there will not be any great difference.

Hon PAUL LLEWELLYN: Is the minister suggesting that the commission itself was one of those boards to which people were appointed and that they got an honorarium or some sort of nominal payment just to be there, in the same way as this council will operate with the appointment of people with expertise in the community who will be given a nominal role and paid just to be there? I want to know whether there is some cost-shifting here. With the Water Resources Council, will we save money on sitting fees and so on as a result of shifting from a commission to a council?

Hon KIM CHANCE: Whether or not it is the same is not something on which I can possibly comment. I can tell Hon Paul Llewellyn that I think there would be so little difference that the government would not have wasted its time making the change if that were the only justification for the change.

Hon PAUL LLEWELLYN: That is not strictly my point. My concern is that in establishing the Water Resources Council, a statutory commission that had teeth, legs and the capacity to direct will be replaced by an advisory council. Having worked in a quasi-voluntary role, my experience is that council members get burnt out after three years of frustration at not having practical outcomes and not being able to direct things. My concern is that we will in effect burn out people in the community who have expertise in all these various areas, but they will have very little remuneration and will be unsupported. Not only will we take away the powers of the members of the commission, but also we will now ask them to volunteer for the work and give them nominal funding. Will any other funding back these positions and this council?

Hon KIM CHANCE: The council will have behind it the benefit of the full weight, power and authority of the Department of Water. I have already mentioned that I was a member of the board of the former Water Authority of Western Australia.

Hon Paul Llewellyn: When was that?

Hon KIM CHANCE: Between 1984 and 1991.

Hon Paul Llewellyn: That is when we had all those problems, wasn't it, back then?

Hon KIM CHANCE: No, we did not have any problems; I can assure Hon Paul Llewellyn.

Hon Paul Llewellyn: I thought that was when we laid down all the bad arrangements.

Hon KIM CHANCE: I can assure Hon Paul Llewellyn that we did not have any problems. In fact, I can tell Hon Paul Llewellyn that the Water Authority was the board that came out of an amalgamation of the former public works department with the metropolitan water supply. We therefore brought the two different divisions into one.

Hon Paul Llewellyn: And you were a happy camper!

Hon KIM CHANCE: We were also able to shed some 5 000 redundant positions - 5 000 jobs were shed in my time on that board without losing one day to industrial action.

Hon Norman Moore: Are you proud of that?

Hon KIM CHANCE: Yes; and I tell Hon Norman Moore that the principal union secretary that we dealt with at that time was Jim McGinty from the missos.

Hon Norman Moore: Yes; he was always doing deals with members; that's probably how he got into Parliament!

Hon KIM CHANCE: One of those two bodies that we took over had probably the worst industrial relations record in the Western Australian public service. When we finished we had the best record. I was pretty proud of what we did on that board. We actually brought Water Authority management to a whole new level. At no time -

Hon Norman Moore: Unions and Labor governments.

Hon KIM CHANCE: It was a very effective working relationship between unions and a Labor government. There was no time when any member of that board felt at any time disempowered or burnt out. The board was a decision-making body, but one that knew all the time that the person who answered for what we did in this place was the Minister for Water Resources.

Hon Paul Llewellyn: Did the board have statutory powers?

Hon KIM CHANCE: No.

Hon Paul Llewellyn: None at all? It was an advisory board.

Hon KIM CHANCE: Yes. It was able to bring together and perform some very significant functions. Certainly, there is no way we could take as a generality that boards of this nature ever have reason to feel disempowered. We most certainly never did. However, if the minister told us to do something, we did it.

Clause, as amended, put and passed.

Clauses 115 to 140 put and passed.

Clause 141: Part X inserted -

Hon NORMAN MOORE: I will make some comments about this clause and relate those comments to the report of the Standing Committee on Public Administration which, starting at page 24, contains quite significant comments about this clause. The clause relates to delegation powers of the minister and the people to whom the minister can delegate authority. I quote from paragraph 10.49 at page 27 -

The Committee was concerned that under the Bill powers such as licensing and decisions to pursue a prosecution could be delegated to the broad category of ‘any other person or body’. The Committee raised with DOW the question of whether such powers should only be delegated to senior departmental officers. DOW was of the view that:

Who a power should be delegated to has to be determined by matters such as the nature of the power, the particular expertise of various people within the Department etc. The decision of who to delegate to is ultimately a decision for the Minister or the CEO if the Minister has delegated the power, to make delegations. Again, if the Minister decides to delegate to someone who is not appropriate, then he will have to deal with the consequences.

I am glad that I do not have an agency that speaks about me in those terms if I were the minister! Paragraph 10.50 states -

In response to a question from the Committee, DOW indicated that prescribing ‘any other person or body’ in regulation could ‘*be investigated to ascertain if increased safeguards would outweigh the flexibility gain*’.

Recommendation 1 is -

The Committee recommends that during debate at the Committee stage of the Water Resources Legislation Amendment Bill 2006, the Minister representing the Minister for Water Resources address the relative merits of prescribing in regulations specific persons or bodies to whom delegated authority may be given, rather than “any other person or body”, as stated in clauses 141 and 191 of the Bill.

This matter comes up again in clause 191. I want the Leader of the House to respond to the committee’s request, if it is possible, because my personal view is a little more strident than that of the committee. I am not convinced at all that proposed section 104(1)(f) on page 66 of the bill - which states, “any other person or body (whether incorporated or not)” - is an appropriate section to put into the legislation. Unless the Leader of the House can convince me otherwise, I would give some thought to moving to delete proposed section 104(1)(f). Can the minister respond to those matters raised by the committee?

If I may quickly add to that, although the committee report refers to clause 191 as well as clause 141, it also refers to proposed sections 104(1)(f) and 105(1)(d) contained within clause 141. As such, it is referred to twice.

Hon KIM CHANCE: The Minister for Water Resources has looked very closely at the committee’s recommendation, which is recommendation 1, as well as the issues raised by the committee and the response given by the Department of Water to the committee as reported in the fifth report of the Standing Committee on Public Administration. The use of the term “any other person or body” in the context of clause 141 is one that, as is set out in the reporting of the committee’s deliberations, provides flexibility to delegate powers in particular circumstances. The persons to whom such delegation may be considered appropriate would include bodies such as the water advisory bodies. It is a power that already exists in the Water and Rivers Commission Act 1995; it is not one that moves away from the provisions of the existing regulatory bodies’ powers in any way. As far as I know, it has exactly the same effect.

The proposal is to adopt a more specific wording. The more specific the wording gets in a delegation head of power such as this, the less flexibility exists on the power to delegate. I am not aware of any circumstances with the use of this delegation power under the Water and Rivers Commission Act that have ever given any cause for concern. I do not know why this would give cause for concern. I think the Department of Water made that very clear, and its words are reported on page 28 of the committee’s report -

... if the Minister decides to delegate to someone who is not appropriate, then he will have to deal with the consequences.

He will be answerable for that inappropriate delegation. There are a number of other acts - I have already quoted the Water and Rivers Commission Act 1995 - that have this provision to delegate in identical, or almost identical, form. I am informed that they include the Offshore Minerals Act 2003, the Emergency Management Act 2005 and the Taxation Administration Act 2003. We are not dealing here with a delegation power that is, in any way, unique or, indeed, unusual. In fact, it is the same delegation power that the precursor body already had.

Hon NORMAN MOORE: I am tempted to say that two wrongs do not make a right. I may well have been sitting where the minister is and agreed to a similar clause in some other legislation. I am persuaded by the

committee's report that this needs to be queried. Appendix 5 on page 73 of the committee's report lists all the delegation situations contained in this new legislation. It goes on for about 10 pages. I have not looked at those in any particular detail, but there are lots of things that need to be done in which the minister has power to delegate and which are of great significance. To simply say that the minister may delegate to any other person or body means that he could delegate to the head of the Trades and Labour Council or Joe Blow on the street. The only thing that would constrain the minister, according to the Department of Water, would be if the minister decided to delegate to somebody who was not appropriate and he would have to deal with the consequences. That is what happens. That seems to be a very flippant way of saying, "Do whatever you like, minister, but you'll have to wear it." We could pass legislation to say that ministers could do whatever they liked whenever they liked and they would have to deal with it. The reason we have laws is to put some constraints on what ministers do. Plenty of reasons have been given in recent times on another motion we have been talking about in which some constraints on ministers would have been a good thing; it might have saved a few hundred million dollars. I am not convinced - the minister has explained that it happens elsewhere - that we need to give this delegation power to the minister in such broad terms as is provided for in proposed new sections 104 and 105 and then further down in clause 191 in another set of circumstances. I am tempted to move to delete that. I would be interested to know what the chamber thinks about that.

The CHAIRMAN: Members, we are dealing with clause 141. The question is that clause 141 do stand as printed.

Hon NORMAN MOORE: I do not seem to have attracted much attention. Just to get a response, I will move an amendment. I move -

Page 66, lines 6 and 7 - To delete the lines.

Page 67, lines 19 to 20 - To delete the lines.

I have commented on the fact that I think the delegation authority is too broad. I do not mind if the minister was to insert, as he mentioned by way of example, "members of the Water Resources Council". When we look down the list at whom the minister can delegate to, we see that he can delegate to the CEO; another officer of the department, which could be any one of the hundreds and hundreds of people who work for the department; an officer of another department; an employee of an organisation, which could be anybody too; another minister; or the employing authority of another department or organisation. If the minister cannot find somebody in that lot to delegate authority to, he is not trying very hard. Finally, the minister can delegate to any other person or body. Why do we even have this clause? Why not have a clause that says that the minister may delegate to anybody he likes - full stop. If it was written that way, he would say that that was a terrible thing to say. That is what it basically means. There is a significant capacity for the minister to delegate to appropriate people under proposed new subsections (1)(a), (b), (c), (d) and (e). In my view, there is no need for paragraph (f).

Hon PAUL LLEWELLYN: How many more times does this delegation occur throughout the bill? I understand that similar words must appear several times. Can I get some information about that please?

Hon Norman Moore: It happens twice in clause 141 and twice in clause 191.

Hon PAUL LLEWELLYN: I need to look at clause 191. If this subclause was deleted, would there be any material difference in the way the minister is able to discharge his duties and responsibilities?

Hon KIM CHANCE: I do not know. Clearly, this is a provision that existed in the former legislation and exists in a range of other legislation. I am not aware of it ever causing any difficulties by means of its existence. Whether its non-existence would create any difficulties, I do not know, except to the extent that I have already informed the committee that it would impede the degree of flexibility in the power of delegation that the act has.

Hon NORMAN MOORE: I am sorry to be pedantic about this but I would have thought that proposed new section 104(1)(b), (c), (d) and (e) would provide the minister with enormous flexibility. For example, proposed subsection (1)(b) refers to "another officer of the Department". Can the minister indicate how many employees there are in the Department of Water?

Hon Kim Chance: I believe there are 120-odd.

Hon NORMAN MOORE: One hundred and twenty-odd people.

Hon Kim Chance: And some normal ones.

Hon NORMAN MOORE: I am pleased to hear that. If there are some normal ones, there are plenty to delegate to. There are 100 people in that department for a start. Why do we need to say that Joe Blow can also be delegated to? The only constraint on the minister doing that is if he gets caught or something. It seems to me to be a bit strange. If it is just about flexibility, we then go to proposed paragraph (c), which refers to "an officer of another department or an employee of an organisation". I am a bit worried about that. I did not look at that

carefully enough. That could be the TLC. How many government employees are there? There may be 200 000. That allows for a fair bit of flexibility. The minister may delegate to another minister, which gives him another 16 people to delegate to, or the employing authority of another department or organisation. I am not quite sure what an employing authority is now that I come to look at this much more carefully. Whatever it is, I am sure there are more than a few dozen people in that lot. Just going down as far as proposed paragraph (e), I think I found 200 000 to 300 000 people who would be eligible to have authority delegated to them. I am trying to limit the fact that everybody in Western Australia should not be able to have this power delegated to them. That is why I have moved the amendment.

Hon PAUL LLEWELLYN: When I read the committee report in the beginning, I wondered whether this gave the minister due power to delegate to a private business.

Hon Kim Chance: A functional power, yes.

Hon PAUL LLEWELLYN: So the minister would have a functional power over any citizen or a private business. What is the minister's thought on that?

Hon KIM CHANCE: When that delegation might be to the environmental health officer of the City of Stirling, that is one example.

Hon Paul Llewellyn: That is a good example.

Hon KIM CHANCE: He would not be able to do it if the Greens (WA) support this amendment.

Hon Norman Moore: Why not?

Hon KIM CHANCE: Because there is no provision for him to do it.

Hon Norman Moore: No, it says "an officer of another department or an employee of an organisation".

Hon KIM CHANCE: An employee of an organisation?

Hon Norman Moore: I would have thought that the City of Stirling is an organisation.

Hon KIM CHANCE: I do not know how "organisation" is defined.

Hon Norman Moore: The more I read this the more I am worried about it.

Hon KIM CHANCE: It may not be the environmental health officer; it may be the consultant who provides environmental health services to the City of Stirling. That might be a single-person business; in other words, not an organisation.

Hon PAUL LLEWELLYN: I would like to see whether there is any good reason the minister would delegate some powers under this legislation to the consultant to a local government. It just seems a little bit loose. Let us sort this out.

Hon KIM CHANCE: In fact, the City of Stirling is not an organisation within the meaning of this proposed section. Proposed section 104(9) reads -

In this section, "**department**", "**employing authority**" and "**organisation**" each have the meaning given to them in section 3 of the *Public Sector Management Act 1994*.

Hon NORMAN MOORE: I do not intend to pursue this and, in fact, I will not pursue the amendment I have moved. However, I find this clause to be quite extraordinary. I find the explanation given to the Standing Committee on Public Administration to be a bit odd. In other words, the minister can delegate to whomever he likes, and if he makes a mistake it is on his head. That is a very flippant approach to a serious matter. Delegation means that the minister is saying to a person, "You have my powers; I am delegating to you my power and my authority." The power and authority of ministers is substantial. Appendix 5 of the report lists page after page of delegations that could be provided for under this legislation - some far more important than others. To say in legislation that the minister can delegate that power to anybody he likes, and if he makes a mistake, it is on his head, is very flippant and, in my view, unacceptable. I would like at some time in the future to have a look at this matter through the organisation I belong to, albeit that it is not defined under proposed section 104(9), to see if any policy decisions can be made to avoid legislation of this nature. It is far too broad, and I suspect the minister agrees with me. If it is necessary to be specific about an employee of a local government authority or a consultant to a local government authority, that can actually be put into legislation. We can actually sit down and say what the powers of delegation are, and who are the people that power can be delegated to. They can actually be defined. However, just to have "any other person or body" is far too broad. However, I will withdraw my amendments.

Amendments, by leave, withdrawn.

Hon KIM CHANCE: I move -

Page 69, lines 4 and 5 - To delete "section 66 of the *Financial Administration and Audit Act 1985*" and insert instead -

Part 5 of the *Financial Management Act 2006*

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 142 to 147 put and passed.

Clause 148: Long title amended -

Hon NORMAN MOORE: This clause is an amendment to the Waterways Conservation Act 1976. It amends the long title by deleting the words "for the establishment of a Rivers and Estuaries Council and certain Management Authorities". The explanatory memorandum states -

A consequential amendment. Clarifies the revised scope of the Act as a result of the disbanding of the Waterway Management Authorities and the Rivers and Estuaries Council.

Can the minister explain to me why the waterway management authorities and the Rivers and Estuaries Council are being abolished, particularly the waterway management authorities, which, if my memory serves me correctly as I try to keep up with this legislation as we go along, consists of local people making local decisions about local problems?

Hon KIM CHANCE: I am not sure I can answer the question of the Leader of the Opposition. We are not even sure when the waterway management authorities were abolished. The consequential nature of this clause simply recognises that that has happened. The function of this clause is to make clear the revised scope of the act. This clause does not put into effect the abolition; it simply recognises that there has been an abolition.

Hon NORMAN MOORE: The explanatory memorandum actually says that the amendment clarifies the revised scope of the act as a result of the disbanding of the waterway management authorities.

Hon Kim Chance: Yes, but that does not happen as a result of this clause.

Hon NORMAN MOORE: I understand that, but the reason the long title is being changed is that the authorities have been disbanded.

Hon Kim Chance: I do not know when they were disbanded; it might have happened years ago.

Hon NORMAN MOORE: That was to be the next question as a result of that explanation. Do they exist, or have they been disbanded? If the Leader of the House does not know now, he may tell me later on.

Hon Kim Chance: Yes, I will do that.

The CHAIRMAN: Have any of the clauses in this bill to date caused that to happen?

Hon Kim Chance: I do not think so. I think this just recognises what has happened in the past. It is better that we get back to the Leader of the Opposition.

Hon PAUL LLEWELLYN: This clause signals the removal of those parts of the act relating to the Rivers and Estuaries Council and certain waterway management authorities, as I understand it. I know that we have had part of this discussion, but what is the current status of those bodies, and why are the provisions relating to those bodies being repealed?

Hon KIM CHANCE: That is what I was saying to the Leader of the Opposition - I do not know.

Hon Paul Llewellyn: You do not know? It is just repealed and taken away.

Hon KIM CHANCE: It is something that has already happened. I do not believe it has happened as a consequence of this bill because the bill speaks of the disbandment in the past tense. I do not know whether it happened two or five years ago. That is the question that the Leader of the Opposition and Hon Paul Llewellyn have asked. I am happy to find out the information and to get back to members, but I do not think it is relevant to this clause.

Hon NORMAN MOORE: It may be relevant in the context of this debate because this bill may be disbanding them.

Hon Kim Chance: If it is, that would be the case.

Hon NORMAN MOORE: If that is the case, we would like to know why.

The CHAIRMAN: The leader of the - Hon Paul Llewellyn.

Hon PAUL LLEWELLYN: The leader of the Greens (WA) - just for today!

My understanding is that the management authorities, including the Peel management authority, have already been replaced by advisory committees.

The CHAIRMAN: Keep going, because the debate might seize on this one. It may be useful. It may be the answer that everyone is looking for!

Hon PAUL LLEWELLYN: The Greens have proposed the introduction of independent stand-alone legislation to establish a new management authority for the Peel inlet, for example, in the same way that we passed the Swan Valley Planning Act. It would be appropriate to have similar legislation for the Peel-Harvey system. When we repeal these authorities, they are lost to history. The Peel-Harvey estuary system is a complex system. The Swan Valley is important enough to set in place its own dedicated legislation. Therefore, we might need to introduce legislation and create a specific authority to deal with the Peel-Harvey system. That type of legislation would need strong powers to orchestrate government action and influence on the behaviour of the catchments. Similar powers have been given to the Swan River Trust through the Swan and Canning Rivers Management Act. The Greens believe that in due course it would be good to put in place a similar set of arrangements for the Peel-Harvey system.

Hon NORMAN MOORE: It is hard to keep up with each clause in this bill because it is a very complicated bill that deals with a lot of acts of Parliament. The long title of the Waterways Conservation Act is being amended under clause 148 because at clause 157, sections 11 to 30 of the Waterways Conservation Act are being replaced by proposed sections 11 and 12. Proposed section 11 is headed "Functions of the Minister" and proposed section 12 is headed "Performance of the functions of the Minister". Section 11 of the Waterways Conservation Act 1976 is headed "Rivers and Estuaries Council" and provides that there is to be a body called the Rivers and Estuaries Council and states what it shall consist of. I am interested to know whether that council exists because the act says there shall be such a body. We are getting rid of it and I want to know why. Section 14 of the Waterways Conservation Act 1976 is headed "Management Authorities" and refers to what a management authority is, who should be on it and, in some cases, which ones they are. Section 14 also will be repealed by the bill we are dealing with today. Why is the government getting rid of the Rivers and Estuaries Council, if it exists; and, if it does not exist, why does it not exist because it is provided for in the act? Why is the government about to abolish the management authorities that are provided for in the legislation? I raise this matter because it is important from the point of view of people having some involvement in water management issues. Many of the authorities are in regional Western Australia. The bill puts the minister in charge of the management authorities and the Rivers and Estuaries Council. I have been arguing against the amount of power the minister is getting under this legislation. This is just another of the minister's increased powers. Can the minister explain why that is happening?

Committee interrupted, pursuant to standing orders.

[Continued on page 5914.]

Sitting suspended from 3.45 to 4.00 pm