

WATER SERVICES BILL 2011

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Col Holt) in the chair; Hon Helen Morton (Minister for Mental Health) in charge of the bill.

Clause 96: Fire hydrants —

Committee was interrupted after the amendment moved by Hon Alison Xamon had been partly considered.

Hon SALLY TALBOT: For clarity and continuity, I will repeat the two questions I asked the minister before we broke for question time. First of all, the minister said that the provisions canvassed by the proposed amendment may be inserted in a service-level agreement. Does that mean the option is there to do that or does that mean they will be inserted? The second part of my question was: will the information canvassed in the proposed amendment be publicly available?

Hon HELEN MORTON: Madam Deputy Chair, welcome to the Chair.

The DEPUTY CHAIR (Hon Alyssa Hayden): Thank you.

Hon HELEN MORTON: In response to that last set of questions—some of it related to what was asked prior to question time—there was an assumption about what I had said. I have not gone back and checked my uncorrected *Hansard*, but it may be reported. The notes that I was reading from at the time state that non-statutory options exist for reporting hydrant maintenance information, and the Fire and Emergency Services Authority and water utilities are currently developing a service-level agreement that will ensure regular reports on hydrant maintenance are provided to FESA. I do not know whether I used the word “may” subsequent to that —

Hon Sally Talbot: It was in an earlier part of your answer—it was the first part of the answer.

Hon HELEN MORTON: Okay. I am clarifying that the advice I have is that the service-level agreements will ensure that the regular reports on hydrant maintenance are provided to FESA. With regard to the suggestion that those reports be made public, I am advised that the answer to that is: not in a specific manner; however, agreements are being developed between the various agencies around the time frames for reporting and those sorts of things.

Hon SALLY TALBOT: Given that the minister’s answer is basically that if the information is available, it will be available in a non-statutory form, and that regulations may be devised that will cover this—but these are regulations that we are not in a position to see now—I repeat that the opposition intends to support the amendment.

Amendment put and negatived.

Clause put and passed.

Clauses 97 to 114 put and passed.

Clause 115: Entry for compliance purposes —

Hon ALISON XAMON: This is probably more of a comment: this clause comes under division 8, which deals with enforcement provisions. The Greens (WA) are concerned about water service providers that are a private entity, in which case the application of penalty provisions in the relationship between the user and the service provider would more likely be categorised as a contractual relationship under civil law. I have a number of questions pertaining to some of the provisions that follow this clause. However, in order to contextualise it, I wanted to state that that is the basis of the Greens’ concerns about the way in which these penalty provisions may be rolled out. I will ask the specific question now, if that is okay: will each water service provider employ its own enforcement officers?

Hon HELEN MORTON: I want to make certain that the member is aware that this clause 115, which is what I think we are talking about here, is about Economic Regulation Authority compliance officers and is not the clause about which she might like to ask about private and other service providers having authorised people to carry out compliance functions. However, the answer to her question is: yes, they will have authorised people to carry out compliance functions.

Hon ALISON XAMON: I am sorry, minister, I am trying to cross-reference the bill. I had a fully marked up copy of the first version, but my copy of the second version is not quite as marked up. Do the issues I address come under clause 118 onwards, or another provision again?

Hon HELEN MORTON: I agree that the member is probably referring to that clause; therefore we should pass from clause 115 to 118.

The DEPUTY CHAIR: Can I clarify that Hon Alison Xamon is happy to move to clause 118?

Hon Alison Xamon: Clause 118, yes.

Clause put and passed.

Clauses 116 and 117 put and passed.

Clause 118: Application of Subdivision —

Hon ALISON XAMON: I ask the same question I asked before; that is, whether each water service provider will employ its own enforcement officers. The secondary question I ask is: who gets any penalties paid? Is it the service provider or the public purse?

Hon HELEN MORTON: As mentioned before, the water service providers will have people authorised to carry out compliance functions and that is related to compliance for ensuring that people are properly connected et cetera. Penalties will be paid to the public consolidated fund.

Clause put and passed.

Clauses 119 to 123 put and passed.

Clause 124: Regulations may provide for water service charges —

Hon ALISON XAMON: This clause deals with fees and charges for water services. These provisions allow for the imposition and collection of charges to be determined in accordance with prudent commercial principles and may allow for profits and a depreciation of assets. The use of regulations for the determination of any details of the charges is permissible. The privatisation of the water service does not have any impact on the fact that the details on the contractual obligations are determined by regulation. Traditionally, the Greens (WA) have been critical of the privatisation of public services and the retention of the fees and charges component of a public authority. Can the minister please explain the construction of these provisions and also clarify the character of a statutory water service charge, as mentioned in clause 124(3), compared with a contractual water service charge?

Hon HELEN MORTON: I am always surprised by the concerns that the member has about privatisation.

Hon Alison Xamon: Water is a public right.

Hon HELEN MORTON: If I understood correctly, the member's concern is that a private operator could set fees that are too high or the operator will pocket the money or make a profit out of it or something of that nature.

Hon Alison Xamon: They need to make a profit; there is no reason for them to exist otherwise.

Hon HELEN MORTON: The point is that the minister makes the regulations for the maximum level that can be charged. If, as is probably the case, a private operator could do it more efficiently, it might find that it can profit from that process. However, the same maximum charge is applicable whether that is to be applied by a private operator or one of the government utility providers. The regulations that are made are specific to a particular type of service or area. They do move up and down in relation to where they are applied, but their applicability at that stage is to whoever the service provider is.

Hon ALISON XAMON: To make it clear, as I said in the second reading debate, the Greens are not opposed to the privatisation of water services per se and we recognise that in some instances it is an opportunity to look at alternative water sources such as water recycling and a range of other water areas that otherwise may not be taken advantage of, which is completely consistent with Greens policy. We recognise that potentially there are positive policy implications by going down that path. To make it clear, our concern is about the need to make a profit and that particular imperative may be at odds with the public good. I want to be very clear that that is one of the reasons we are keen to unpick what exactly is the role of the private providers.

Clause put and passed.

Clauses 125 to 136 put and passed.

Clause 137: Exemption of water service works from certain planning laws —

Hon ALISON XAMON: This clause gives the minister the power to exempt waterworks from planning provisions, even if privately owned, in the case of a dispute with the local government. It also makes provision that a private water service provider is to be treated as an agent of the Crown, and no appeal is available following the minister's decision. I have a couple of questions. Firstly, what does it mean that a water service provider is to be considered an agent of the Crown?

Hon HELEN MORTON: This part of the bill is covered in the explanatory memorandum. I will just read that out to the member because it covers this point —

Under section 6 of the *Planning and Development Act 2005* works that are regarded as “public works” are not subject to the normal planning approval processes under that Act.

This clause provides that water service works constructed by a licensed water service provider will be treated as though they are public works. The clause is based on section 38 of the *Port Authorities Act 1999*. Section 60 of the *Electricity Corporations Act 2005* provides a similar type of exemption for the Electricity Networks Corporation and the Regional Power Corporation.

Hon ALISON XAMON: In that case, would this provision potentially apply to a private water service provider of a mining company that aims to put waterworks across a private landholder’s property and is unable to obtain agreement from the property owner?

Hon HELEN MORTON: This provision would apply to any private water provider, wherever they are.

Clause put and passed.

Clauses 138 and 139 put and passed.

Clause 140: Entry for provision of works etc. —

Hon ALISON XAMON: This clause mandates notification only for entry to a place; it does not mandate notification of adjacent residents. Do adjacent residents also have a right to be notified?

Hon HELEN MORTON: No.

Clause put and passed.

Clause 141: Special provisions applicable to road works —

Hon ALISON XAMON: In the case of a major obstruction of a road or breaking the surface of a road through roadworks, the clause says that the licence holder must give notice to the public authority that manages the road, but not to the people who live there. I suppose this question is similar to the one I just asked. Is there any right for adjacent residents to be notified?

Hon HELEN MORTON: The member’s assumption is correct. The answer is no.

Clause put and passed.

Clauses 142 to 168 put and passed.

Clause 169: Subdivision of land — planning approval —

Hon ALISON XAMON: This provision allows a licensee to apply for a subdivision of land even if he or she does not own it. Why is the appropriate approval from the current owner of the land not mandated prior to an application being made?

Hon HELEN MORTON: This is a similar provision to that which is currently in section 79 of the Water Agencies (Powers) Act 1984. It is there to ensure that when water utilities need to do this, it cannot be blocked by the landowner not allowing the land to be subdivided.

Clause put and passed.

Clauses 170 to 186 put and passed.

Clause 187: How application to be made —

Hon ALISON XAMON: I move —

Page 148, lines 8 to 14 — To delete the lines.

Currently clause 187 allows for a warrant to enter to be made by remote communication and orally. Effectively, my concern is about the process, which is why the Greens are suggesting that subclause (2) be deleted. Basically, we need to ensure that people know what is happening and are able to respond appropriately. I also ask the minister why oral warrants are deemed necessary.

Hon HELEN MORTON: This amendment proposes to remove subclause (2). The intent of the amendment is to require applications for warrants to be in writing. This reduces the transparency of the process, as the reasons for the warrant may not be obtained by the owner or occupier until a later date. The intent of amendments 2/187 and 3/187 on the supplementary notice paper appears to be to require justices to send a copy of the warrant by remote communication when an application has been made by remote communication. Warrants may be required in very remote locations where a justice is not readily accessible. There are times when a person seeking a warrant does not have access to a printer or fax and therefore may not have the capacity to receive a copy of the warrant by remote communication. Therefore, it is appropriate that the bill allows applications to be made in these circumstances. This clause is consistent with section 13 of the Criminal Investigation Act 2006. I note that clause 175 deals with the rights of the occupier of the dwelling.

Amendment put and negatived.

Hon ALISON XAMON: I move —

Page 148, line 26 — To delete “, if practicable,”

The amendment proposes to mandate that a copy of the original warrant be available.

Hon HELEN MORTON: That was covered previously in my overall response.

Amendment put and negatived.

Clause put and passed.

Clauses 188 and 189 put and passed.

Clause 190: Execution of warrant —

Hon ALISON XAMON: I move —

Page 150, line 28 to page 151, line 1 — To delete the lines and insert —

- (4) An authorised person executing a warrant must give a copy of the warrant to the occupier of the place.

The purpose of this amendment is to ensure that a landowner is entitled to have a copy of the warrant. I am concerned because at the moment the warrant is to be produced only for inspection and occupiers do not have the right to a copy of it.

Hon HELEN MORTON: I recommend that the member looks at clause 175, which concerns the rights of the occupier of the dwelling. It might give the member some comfort about the concerns she has with this clause.

I turn to the amendment before us. Clause 190 concerns the execution of a warrant. Clause 190(4) deals with circumstances in which an authorised person is not required to give a copy of the warrant. Hon Alison Xamon’s amendment proposes a new subclause (4) to require that a copy of the warrant is supplied to the occupier of the place concerned. This amendment is not supported because it is not always possible to give a copy of the warrant to an occupier of a place. For example, an occupier may not be home. As I mentioned, clause 175(5)(b) requires that in such circumstances a copy of the warrant be left in a prominent place. Further, there may be circumstances in which a warrant is required where entry has been prevented, and in these cases there are concerns about how the requirement in this proposed amendment will be effected. Some examples of where this might be played out relate to water utilities needing powers of entry to do things like fixing a leak or a blocked sewer and reading a meter. The powers of entry in the Water Services Bill replace similar existing powers with some important new protections for the dwelling occupiers, and the exercise of these powers may be guided by a code or licence condition. I refer members to clause 12(1)(j), which can set limits on the use of these powers of entry; for example, the code can specify that non-emergency work is to be done.

Amendment put and negatived.

Clause put and passed.

Clauses 191 to 225 put and passed.

Schedule 1 put and passed.

Title put and passed.