WATER SERVICES BILL 2011

Consideration in Detail

Resumed from 2 May.

Clause 9: Operating areas —

Debate was adjourned after the clause had been partly considered.

Mr F.M. LOGAN: This clause is under division 2, "Licences". As the minister knows, throughout the whole of this bill I will be raising on a regular basis the Transfield–Degrémont–Suez alliance and whether its operation is covered by the terms we are dealing with in division 2, "Licences", on the basis that that alliance now requires the Transfield group and its partners to be operators of Water Corporation facilities. Are they operating under the Water Corporation licence; and, even if they are operating under the Water Corporation licence, are they bound by the terms and conditions that normally apply to the Water Corporation and its operating licence? Does this clause apply to the alliance; and, if so, how?

Mr W.R. MARMION: This clause does not specifically apply to that alliance. It applies to the licensee and specifies what areas it can operate in.

Mr F.M. Logan: So it doesn't apply to that licence?

Mr W.R. MARMION: It applies to the licence held by the Water Corporation. Are you talking about the Mundaring facility or the desalination plant?

Mr F.M. Logan: It could be either; it could be Mundaring or the desalination plant or the whole alliance contract, which is a separate contract.

Mr W.R. MARMION: This clause allows the ERA to specify the operating area of the licensee. It could be any licensee. If it happens to be dealing with the Mundaring area the licensee is the Water Corporation, so that is in its area of operations.

Clause put and passed.

Clause 10: Application for licence —

Mr C.J. TALLENTIRE: We understand the authority is the Economic Regulation Authority and the licences must be in a form approved by the Economic Regulation Authority. Its role is one thing, but what also has just come into being is the Public Utilities Office. I would like to hear from the minister what consideration was given in the drafting of this legislation to the Public Utilities Office coming into effect. It will of course take over those responsibilities that the Office of Energy had, but given it is an office that has been given broader responsibility, it is to be assumed that while its activities may currently be constrained to energy-related matters, in the future, given it is an office of public utilities, it would also have responsibility for water, and much of its role is around policy setting. I think also it would be ideally set to monitor the operation of licences. I would like to hear from the minister what consideration has been given to the future role of the Public Utilities Office when it comes to the licensing of this very important resource of water.

Mr W.R. MARMION: None. This relates to the regulator, the ERA. The ERA is separate from government policy. The area of government policy comes under the Department of Water. This specifically covers the regulating powers. No consideration has been given under section 10 to anything to do with the Office of Public Utilities.

Mr C.J. TALLENTIRE: I thank the minister for that response but it does give me some concern. However, leaving that matter aside, I note that clause 10(2)(b)(ii) states —

> the methods or principles that the applicant proposes to apply in the provision of the service; …

As the minister knows, I am always very interested in things such as water conservation targets. Can the minister clarify for me that mention of water conservation targets would be made in clause 10(2)(b)(ii); and, if so, how is the Economic Regulation Authority well placed to advise on those matters relating to a licence? If the minister's answer to me is "No, this isn't where water conservation targets would come into the licensing arrangements", where indeed would they come into the licensing?

Mr W.R. MARMION: This clause relates to the Economic Regulation Authority making sure that the ERA is comfortable that the service provider has the financial capacity, wherewithal and expertise to supply safe water, water drainage or sewerage services—then the ERA can issue a licence. The other conditions that might be attached come under other clauses of the bill that we will deal with later. Also, other conditions that could be utilised can be put in codes, which are in another clause. This proposed section of part 2, division 2, relates to the ERA assessing someone's capability, basically, to deliver a service.

Mr C.J. TALLENTIRE: I thank the minister for that response, but it gives me cause for concern because I think it is reasonable to say that if the ERA is assessing some organisation's bid to be issued a water licence, we should have a full understanding of that company's capabilities. To be confident that it has water conservation initiatives and targets in place, to me, would be the sort of thing we would want to know right up-front prior to the issue of a licence. Therefore, to my mind, this is something that the Economic Regulation Authority, or whatever other body is tasked with the issue of the overall licence, would want to know about in great detail. I am concerned that, given the way this has been set up with this overarching licence approach that the minister is outlining, we could miss the opportunity to ensure that the applicants we have coming forward for licences are really the very best sorts of organisations—that they are not simply the ones that will meet certain efficiency criteria, but will also deliver other benefits to us in water conservation.

Mr W.R. MARMION: I draw the member's attention to the words in clause 10(2) that applicants for a licence "must inform the authority"; therefore, these are the conditions that they must inform the authority of, which does not preclude the authority from making inquiries about environmental credentials and other things that the applicant might be doing. It does not preclude that, and, indeed, that could be something that the authority asks anyway. This clause of the bill states the things that applicants must provide the ERA.

Mr F.M. LOGAN: I again come back to the issues that I am trying to get information about from the minister. There are two things with the application for a licence. I accept that these are applications that go to the Economic Regulation Authority. I understand that, but we are not asking a question of the ERA; we are asking a question of the minister about this bill that authorises the ERA to apply these powers. Remember that division 2 deals with licences in a whole series of water services that are set out in clause 8(1)(a) through to (d). Does the operator of the Mundaring water treatment plant require a licence in these terms? Does the operator of the desalination plants in Kwinana and Binningup require a licence under this clause? As I said before, is the alliance contractor Transfield–Degrémont–Suez required to be licensed for its operations? It is doing operations in all of the services in clause 8(1)(a) and (b) for and on behalf of the Water Corporation.

Mr W.R. MARMION: Specifically in relation to the member's question about Transfield–Degrémont–Suez, it will be providing a service, so it will need a licence or an exemption from a licence.

Mr F.M. LOGAN: There were three parts to that question, minister; there was the operator of the Mundaring water treatment plant, and the operators of both the Kwinana and Binningup desalination plants. Can the minister confirm whether Transfield–Degrémont–Suez needs a licence—not that it may need a licence? Does Transfield–Degrémont–Suez need a licence, because its contract is underway now?

Mr W.R. MARMION: I can answer part of the question because I do not know where the sewerage one that the member is talking about is. The Water Corporation is the licensee for the Binningup desalination plant. It is an alliance contract and so the licensee, I have been advised, is the Water Corporation. As I have said before, because it is providing a service through a contract for the Mundaring water treatment plant, it needs to have a licence and it has a licence under an exemption granted by me.

Mr F.M. LOGAN: I am just trying to get some clarity because this is a bill for the creation of not just a new act, but the application of a new act with existing contracts that are in place. Therefore, these are real examples that will be dealt with under this legislation; that is why I am trying to get to the bottom of what is occurring. The Transfield–Degrémont–Suez alliance is for the purposes of both maintenance and operation of waste water treatment plants, dams and aquifer extraction plants. All those services fall within the proposed section that we are dealing under clause 8(1)(a) and (b) of this division. Given that it is an operator and may be working in alliance with the Water Corporation, who is the applicant for a licence to carry out those functions? Given the fact that the operator is a private company, is it required to hold a licence that requires it to comply with all the terms in clause 10 and thereafter in the bill? The minister has indicated that the Mundaring water treatment plant requires a licence to be held, but that the minister has given an exemption to the company that privately operates that treatment plant. Why was that exemption given rather than the company being required to have a licence? Finally, is the Water Corporation the holder of the licence for the Kwinana desalination plant, as it is for the Binningup desalination plant?

Mr W.R. MARMION: I now understand the question and can see where the member is coming from. The member is looking at the Transfield–Degrémont–Suez contract for the maintenance operation as a whole. Whether a provider needs a licence depends on the nature of the contract. The Water Corporation holds all the licences. In the case of the Mundaring plant, because Transfield–Degrémont–Suez is owning and building it—it is the owner of those facilities—the advice is that it either needs a licence, or be exempted. That is the difference.

Mr F.M. LOGAN: The minister has indicated that he has exempted Mundaring. Transfield–Degrémont–Suez is required to have a licence, but the minister has exempted it. Why did the minister exempt that company, and how did he exempt it?

Mr W.R. MARMION: The company was granted an exemption under the Water Services Licensing Act, which is currently in existence. This bill will not change anything that is happening now; it is exactly the same as what is in place now. If an exemption is granted, it goes to the Governor for signing off, on my recommendation and on the advice that I get from the Department of Water. Because the nature of this contract was such that it has performance indicators relating to water quality et cetera, there were very good grounds from a public interest point of view to give it an exemption.

Mr F.M. LOGAN: I now come to another point. Why is there no provision in this clause that would require the Economic Regulation Authority or the minister to publicise who has applied for a licence and who are the holders of a licence?

Mr W.R. MARMION: The granting of a licence is published in the *Government Gazette*, so everyone knows who has applied for a licence.

Clause put and passed.

Clause 11: Grant of licence —

Mr C.J. TALLENTIRE: Subclause (1) provides that the authority must grant a licence authorising the provision of one or more classes of water service if satisfied that the applicant will acquire within a reasonable time after the grant the ability to be a water service provider. I would like to hear from the minister how he defines the word "reasonable". I am concerned that a company with little expertise could come into the field and claim that it would be able to acquire within a reasonable time the necessary skills, capacity and wherewithal to be a water service provider. I am keen to hear how the minister would interpret that, and what he would do if a company turned around and said that it had not managed to get those skills together and was not able to supply water, even though it has identified that somewhere in the state there is an urgent need for water service provision. That work could be held up because the company that has claimed that it will have the capacity to do that work is taking what it deems to be a reasonable amount of time to acquire those skills. How will the minister make the call about what is "reasonable", and what would he do if a potential licensee rejected the minister's view of "reasonable" and insisted that its view of "reasonable" was the one that should carry the day?

Mr W.R. MARMION: I make this comment quite often when we go through these clauses: there is no change to the existing act. This has been going for the last umpteen years. But to answer the member's specific question, the minister has no role in working out whether a licensee or a proposed licensee can deliver the service. That is the role of the Economic Regulation Authority. The ERA is the expert. That is how it is done now, and that will not change. It will depend on what sort of service is to be provided. If it is a simple drainage service, or the supplying of non-potable water, versus the supplying of potable water, which has to meet certain standards, the provider will need to satisfy the ERA that it is capable of doing that and can meet the standards. We are not talking about millions of people. There are 29 water service providers in this state, and they are audited by the ERA every 24 months as part of the process to ensure that they are delivering the service. That is how it works. The minister is advised by the ERA if a provider is not meeting the requirements. But it is up to the ERA to license and authorise the providers.

Mr C.J. TALLENTIRE: I thank the minister for that response. This raises a question about the capacity of the ERA to deal with this workload. I am aware of the many other areas in which the ERA is involved. My recollection is that the ERA has a staff of about 60. I presume that only a small number of those staff work on water-related matters. It states in subclause (4) that —

> The Authority must take all reasonable steps to make a decision in respect of an application for the grant of a licence within 90 days after the application is made.

Can the minister assure us that the ERA will have the capacity to make the decision about a licence applicant within 90 days? Is that really feasible when we look at the staffing levels of the ERA and the range of responsibilities of that organisation?

Mr W.R. MARMION: The ERA was consulted in the preparation of these clauses. It has some very good expertise in-house. I deal with the ERA quite a lot in terms of advice after it has done an audit. The ERA can also engage external resources if it so requires. There are 29 water service providers. The ERA does not get many applications each year—it has had maybe one or two over recent years. I do not have a problem with that. Indeed, I would expect that if the ERA did have a problem, it would talk to its boss, the Treasurer, and it could certainly come to see me as well.

Clause put and passed.

Clause 12: Conditions of licence —

Mr F.M. LOGAN: I take the minister back to what he indicated to the house during the debate on clause 10, and that is the exemption that the minister has given to the public–private partnership contractor for the Mundaring water treatment plant. I asked how and why that exemption was given. Clause 12 deals with the conditions of licence, and they are dealt with in subclause (1)(a) to (s), through to subclause (5). A whole series of different conditions apply as part of a licence. The minister has just indicated to the house that the reason that he gave that PPP company an exemption from the requirement to hold a licence is that he was given assurances—by whom?—about water quality. However, regardless of the assurances that the minister was given, these conditions set out the obligations of a company that provides water services to the state under a licence. How can the minister be sure that all the conditions laid out in this and other clauses will be met by the company that owns and operates the Mundaring water treatment plant; and, if this company does not comply with those conditions, how is the minister able to hold it to account, given that he has given it an exemption from holding a licence?

Mr W.R. MARMION: The contract held by the Water Corporation sets out those conditions, so the company has to meet those conditions. It is as simple as that.

Mr F.M. LOGAN: That is a commercial contract between a government trading organisation and a private company, and it does not have the power of this legislation. That contract can be enforced in court but it does not have the binding requirements of legislation and the series of obligations that are set out in clause 10. I bet that the contract between the Water Corporation and the PPP operator of the Mundaring water treatment plant will not contain the level of detail that we find in the existing act and that applies to every other licence holder providing water services to people in the state. The contract will not be as detailed as the provisions of the act.

Mr W.R. MARMION: On the contrary, I am advised that the contract is far more detailed than a normal licence. The advice from the Department of Water is that the contract is quite detailed on the conditions that must be met, so one could assume we will have more assurance of that.

Mr F.M. LOGAN: In that case, we have two sets of standards. That brings us to the point: What are we doing discussing this bill? Why not let the Water Corporation write contracts with everyone?

Mr W.R. Marmion: It is obvious.

Mr F.M. LOGAN: If we have a situation in which somebody who applies for a licence is bound to comply with all the conditions set out in this legislation, but someone else can simply enter a contract with the Water Corporation and not be bound by any of these conditions, why are we bothering to deal with this bill at all? Why does the minister not get the Water Corporation to write contracts with people and set out all the conditions in the contracts, if he thinks that the conditions in the Water Corporation contracts are tougher than the provisions in this bill? We have a two-tiered system. One is for water licence holders who provide services that are governed by this legislation, and the other does not require service providers to comply with any of the conditions of this bill, simply because they have entered into a contract with the Water Corporation. The minister seems to find this satisfactory.

Mr W.R. MARMION: The member for Cockburn has missed the point. This bill sets out the norm, but there is an option for an exemption. The minister can provide an exemption. The exemption is a rare event. The bill sets out the norm and the advice from the Department of Water is that as minister I can give an exemption. The member would know, for example, that I can give exemptions to mining companies, which sometimes transfer surface water. This clause provides for what is probably a more significant exemption. I would not want to have the Water Corporation in here; but rather the Economic Regulation Authority, which is independent of the Water Corporation, providing the licence. The Water Corporation is a licensee, so the ERA grants the Water Corporation a licence. We cannot have the Water Corporation granting a licence, because it will be in competition with all the other licensees, so this is obviously the way to go. It has been the same for years. We are not changing that; it will be exactly as it is now. The member is saying that an exemption is being made for the public–private partnership, but we can do that now. This bill does not change that at all.

Mr F.M. LOGAN: The point I am making is that if the minister is saying the exemption is an unusual occurrence because that is a PPP, why not migrate that requirement back under this legislation rather than setting the conditions of the exempted licence or conditions of operation by way of contract with the Water Corporation? At the end of the day, as the minister has pointed out, the ERA grants a licence; the ERA manages and enforces the conditions of the licence, with the exception of the Mundaring water treatment plant because in that instance the minister has allowed the Water Corporation to take on the role of the ERA with the responsibility of managing and enforcing the conditions set out in a contract between that PPP operator and the Water Corporation, in contrast to every other organisation that provides water services in the state having its services managed and conditions enforced by the ERA. That is the reason I am saying we have a two-tier standard here—one for operations that are managed and enforced by the ERA and the other for the Mundaring water treatment plant.

Mr W.R. MARMION: The member has missed another point. The member is referring to the third tier down. Every single licensee is looked after by the ERA, and that includes the Water Corporation. In this instance, the Water Corporation has a contract with a private operator to provide the water it wants to distribute. That is the contract. The member is saying that is a two-tiered system because the Water Corporation is setting out the rules of the game there. However, the first tier is actually the ERA, which provides the rules of the game, and the Water Corporation has to comply with those rules. The Department of Water looked at this situation. The department said there was no public benefit in licensing another party that was providing water to the Water Corporation for distribution. We are not dealing with a specific issue in this bill; it is not necessarily relevant to the bill because there is no rewording to what currently happens at the moment. They are the circumstances of how the exemption was applied, and I am happy with it.

Mr F.M. LOGAN: The minister must be the only person in this chamber who is happy with it. From the minister's explanation, I cannot see how he can justify this exemption. I will take it step by step. The minister has told the chamber that the operator of the Mundaring water treatment plant is exempt from holding a licence; therefore, the Water Corporation does not hold the licence on behalf of the operator of the plant. Is it correct, minister, that the Water Corporation is not the primary holder of the licence for the water treatment plant? The minister has said the licence holder would normally be the PPP operator, which is exempt. The PPP operator is exempt from holding a licence, which in any other case would be a requirement under this act because it relates to the provision of a water service. Normally it would be required to hold a licence, but it has been exempted under the current act, because obviously this bill is not in force. From what the minister has told the chamber, I presume that under the existing act the Water Corporation is not the principal licence holder for that operation. Therefore, the only thing that governs the operations and the standards of the Mundaring water treatment plant is a commercial contract between the operator and the Water Corporation, as opposed to the conditions in this clause, which is why I am bringing it back to this, that would normally govern them. I cannot understand why the minister would allow the current situation to exist and why he would not tell the house, which I would do if I was the minister, "You are probably right, member, and when this bill is passed, we will be taking it up with the operators of the Mundaring plant to ensure that they comply with the conditions of this legislation."

Mr J.C. KOBELKE: I want to raise two matters. One is more general. With the approval of the Chair and the minister, I will apply it to clause 12. To save me asking it in other areas, the minister might like to answer it for the whole of part 2, division 1, "Licencing requirement". I think the minister has said more than once that what we have before us is basically no different from the existing legislation. I want that confirmed. The minister said something that suggested there were some modifications. Are there some minor changes in this whole division on licensing requirements that differ from the existing statute? Could the minister put those changes on the record?

Mr W.R. MARMION: It is better if we go through the bill clause by clause because there are changes in some clauses. We cannot generalise because obviously there are some added benefits in these water services bills, as I mentioned in the second reading speech. There are some changes. Rather than say that there are no changes in the whole part, I think we should stick to —

Mr J.C. Kobelke: I am happy with that but I was trying to save us asking the same question on every clause.

Mr W.R. MARMION: I am happy to take a general question but if the member is asking whether there are any changes —

Mr J.C. Kobelke: I am only applying this question to the licensing requirements in part 2, division 1.

Mr W.R. MARMION: We are in division 2.

Mr J.C. KOBELKE: Are there changes in that section or does the minister want me to ask that question on each clause?

Mr W.R. MARMION: Let me see how many clauses are involved. We have gone through the bill up to clause 20. I can advise that the clauses that are consistent with the current bills are clauses 13, 14, 15 and 17. Clause 12, which is the clause we are considering now, is slightly different, as is clause 18, and there are three new clauses—clauses 16, 19 and 20.

Mr J.C. KOBELKE: It is appropriate that I concentrate that question on clause 12, which is currently before the house. What changes have been made to clause 12 in this bill compared with the equivalent clause 12 in the existing legislation?

Mr W.R. MARMION: Clause 12(1)(j) and (k) are new, and they allow for constraints to be placed on the use of these powers. Clause 12(1)(n) is in case a licensee goes into receivership and works may still be needed for continuation of a service. Also, clause 12(1)(p) is new. It allows for the planning of future water services. Clause 12(2) is new. It ensures that there are no inconsistencies between a licence condition and something

subject to the act. Clause 12(3) is new. It is there to ensure that the conditions are consistent with the Water Corporations Act.

Mr J.C. KOBELKE: I thank the minister. I wanted to get that clear because I want to try to get a better understanding of the relationship between what could be codes under clause 12 and codes of practice under clause 26, which I will come to in a moment. Clause 12 sets out the conditions of licence. Clearly, the licensee is expected and required to comply with those conditions. Clause 12 is really just the high level designation of what the issues are. A lot more technical detail will be placed in the actual licences. We need a head of power. The minister also indicated in his last response that some additional things have been put in the bill to ensure there was a head of power for other matters that may need to be designated in licences. That looks good.

Clause 12(1)(c) states —

> the licensee complying with specified standards or codes of practice, with specified modifications, other than a code of practice made under section 26;

I take two things from that. First, there can be a condition of the licence to comply with codes and standards. As we know, codes and standards are a much lower level of regulation and they can be varied from time to time. There is a later requirement in the bill for the process by which those codes can be established and the consultation that needs to take place. All of that is good and proper. But it is seen that in terms of regulating organisations—in this case licensees under the Water Services Act, as it will become—codes should be able to be used when appropriate, and also standards should be set. Clause 12(1)(c) allows for those codes, but it also states —

> … other than a code of practice made under section 26;

Section 26, which we will come to later but I need to refer to, is "Compliance with codes of practice made by Minister". This clause states that if the minister makes a code of practice, then that cannot be a condition of the licence—I think I am correct in saying that.

Mr W.R. Marmion: Actually, once a code is set, it will be a condition of a licence. So when someone gets a licence —

Mr J.C. KOBELKE: But there will be two lots of codes; there will be codes established by the authority and codes established by the minister. Later, I will come to the relationship between the two, which is the real point of my question, but I need to make sure we are on the same page and I understand things first.

Mr W.R. Marmion: The member is right; there are two sets of codes. The code could be a standard set by another authority, like the drinking water standards code. There are codes that I can set, and then there might be industry standards that the Economic Regulation Authority can refer to, to comply with those codes. They are the two codes.

Mr J.C. KOBELKE: I thank the minister for that, but I am still coming to the point I am trying to get to. Clause 12 is about conditions of the licence and makes it clear that the licence may be subject to conditions and may deal with various things. Paragraph (c) states the conditions that may be applied in the licence, which include the licensee —

> … complying with specified standards or codes of practice, with specified modifications, other than a code of practice made under section 26;

I am just seeking the minister's confirmation. The way I read that is that under clause 12—I am not talking about other coverage in the bill—the condition placed in the licence cannot actually cover a code of practice set by the minister. I am seeking the minister's confirmation that I have that correct; if not, can the minister explain it to me?

Mr W.R. Marmion: I think the question is, because it is harder to get to than others: how are the ministerial codes —

Mr J.C. KOBELKE: No, we are coming to that later. I am just trying to tie down whether clause 12(1)(c) actually excludes the licence from requiring compliance with a code set by the minister under section 26.

Mr W.R. Marmion: As I said before, they do not need to because —

Mr J.C. KOBELKE: Perhaps the minister could stand and answer.

Mr W.R. MARMION: It will actually be a condition of a licence, so when codes and regulations are in place and a licence is obtained from the ERA, it will always state that licensees have to comply with the regulations and the codes.

Mr J.C. Kobelke: So, what is point of paragraph (c), which reads "other than a code of practice made under section 26"?

Mr W.R. MARMION: I see where the member is coming from. The question is: why is the last part needed?

Mr J.C. Kobelke: I am not trying to catch the minister out and saying that there is a problem; I am just trying to —

Mr W.R. MARMION: No, I see where the member is coming from.

Mr J.C. Kobelke: What I am trying to get at is the ground rules, so that I can go on to the question I really want to ask.

Mr W.R. Marmion: I will find out if I can get clarity on that last answer, because I can see where the member is coming from and I do not know the answer yet.

The ACTING SPEAKER (Mr A.P. O'Gorman): I am sorry, minister, you cannot get the call; you have to sit.

Mr J.C. KOBELKE: I thank the minister. I would like him to have the call so that he can try to answer the last question I asked.

Mr W.R. MARMION: I see where the member is coming from. The advice I have is that that is put in there for clarity. This is to do with other codes rather than the ministerial codes. The wording that the smart lawyers have chosen is —

> … other than a code of practice made under section 26;

That is to differentiate between the industry types of codes, and the ministerial codes that are covered by section 26. I see where the member is coming from about those words, but they have chosen to put those words in and who am I to argue?

Mr J.C. KOBELKE: As I have tried to indicate, I am just trying to get some of the facts clear so that I can move on to what I really want to get to. But I think what I have established, in terms of the minister's response, is that what we have in clause 12, "Conditions of licence", allows the authority to establish codes, but clearly clause 12(1)(c) recognises that codes established by the minister sit separately.

Mr W.R. Marmion: No.

Mr J.C. KOBELKE: They will apply, but it is a different process.

Mr W.R. Marmion: Can I interject?

Mr J.C. KOBELKE: Yes.

Mr W.R. Marmion: The ERA does not make up these codes; it can apply existing codes in the marketplace.

Mr J.C. KOBELKE: I thank the minister. But the point is that the authority can apply to a licensee the requirement to comply with a code in its licence. Is that correct?

Mr W.R. Marmion: Yes; correct.

Mr J.C. KOBELKE: We are clear on that. Whereas when we come to clause 26 later, the minister can actually establish codes by way of a similar process. Is that right?

Mr W.R. Marmion: Yes.

Mr J.C. KOBELKE: The question I am trying to get to and we are now at is: does the current system work like that, with ministerial codes and authority codes?

Mr W.R. Marmion: No.

Mr J.C. KOBELKE: It does not? Is this new?

Mr W.R. Marmion: Correct.

Mr J.C. KOBELKE: The hub of my questions is: how does the minister see these two things operating, and why is the minister establishing the need for codes to be incorporated in the licence by whatever authority? They can be established as a condition of the licence by the authority, and yet the minister can also establish codes that then become something that the licensee would have to be cognisant of and, in various ways, bound by.

Mr W.R. Marmion: Yes.

Mr J.C. KOBELKE: I can guess at why the minister would want to do it, but I think it is very important that we have it clarified so that there is not undue confusion as to the relative strengths of these two heads of authority.

Mr W.R. MARMION: I will give some examples of why the minister would want to have codes. It is an opportunity to actually implement government-type policy, so it might be for water efficiency standards —

Mr J.C. Kobelke: Or energy efficiency?

Mr W.R. MARMION: Yes; anything that the government might want to run through all the service providers. Codes or operation conditions could be set, even down to how customers with billing or service issues might be handled et cetera. It provides flexibility in the implementation of things at, as the member said, a lower level. Parliament will have an opportunity to disallow those codes. I think it is a practical way of implementing some lower level standards without having to change the act that applies at the time.

Mr F.M. LOGAN: The member for Balcatta raised an interesting point. I am sorry; we have to go to clause 26 to deal with this matter.

Mr W.R. Marmion: Clause 26.

Mr F.M. LOGAN: There is a relationship between the two, and that is the issue of consistency. The way in which I read clause 26 is that the minister can apply a code to a licensee. If the licensee fails to meet that code of practice, it can be enforceable with a payment, but it does not say exactly how it will be enforceable. Clause 26(7) states —

> A provision of a code of practice is of no effect to the extent to which it is inconsistent with a provision of this Act or another written law.

The member made the point that the Economic Regulation Authority can apply its codes as a requirement of the issuing of a licence. Any other code of practice cannot then be imposed on a licence holder if it is inconsistent with that set down by the ERA. That is how I read it. The code of practice the minister may well have put in place under clause 26, even if it was breached, would not result in the cancellation of a licence, whereas it would do if it was an ERA code of practice. The way this bill has been written is quite inconsistent with the way clause 12—the clause we are dealing with at the moment—is read in conjunction with clause 26. The confusion, which the member for Balcatta raised in this house, was that that inconsistency is quite obvious by the fact there are two codes of practice applying to the one licence holder—or could be. Although it is quite clear that the bill outlines that the codes cannot be inconsistent with one another, it means the ERA code of practice would hold sway over that of the minister. It is the minister's bill, and he needs to explain this matter to the house by giving examples of codes of practice that may be applied by the ERA compared with the minister's types of codes of practice and where those inconsistencies would be. We are trying to understand how the bill will work.

Mr W.R. MARMION: As I said, the ERA does not have codes; they might refer to codes.

Mr F.M. Logan: That is not true.

Mr W.R. MARMION: Can I answer?

The minister will make codes under clause 26. If we look at clause 12 —

Mr F.M. Logan: Clause 26(8) states quite clearly that the ERA can.

Mr W.R. MARMION: It has to be looked at in conjunction. We are jumping all over the place. We are on clause 12 and it is quite pertinent that we actually look at clause 12(2) which states —

> The conditions of a licence under subsection (1) —

That is the ERA licence —

> have no effect to the extent to which they are inconsistent with any other conditions to which the licence is subject under this Act.

The ERA has to ensure there is consistency between its licence conditions and any codes that may have been introduced by the minister and gone through the disallowance processes of Parliament. Once the codes are in place, whatever they are, the ERA has to be mindful of those in issuing a licence as per subclause (2). It is quite clear to me. It is very simple.

Mr F.M. LOGAN: The minister has just misled the house. I apologise to the Acting Speaker about jumping to clause 26 but it relates to clause 12. Clause 26(8) states very clearly —

> The Minister's capacity to make a code of practice dealing with a matter does not, of itself, limit the Authority's capacity to —
>
> (a) impose conditions on a licence relating to the matter; or
>
> (b) make a code of conduct relating to the matter.

The minister just told the house the ERA does not have the power to do it. Subclause (8) states that it clearly can. What we are trying to get from the minister is some examples of how the two are read together. Is there any likelihood or possibility of there being an inconsistency?

Mr W.R. MARMION: Jumping around from clause to clause is making it a bit tricky.

Mr F.M. Logan: It does not matter. That happens quite often when considering bills read in conjunction with one another.

Mr W.R. MARMION: We have now brought in clause 27. Clause 27, as we look at it, shows that the ERA may make a code of conduct. I am advised that clause 26(8), which the member is talking about, allows the authority to make a code of conduct and impose conditions that might be brought in through a code by the minister. It does not override, the way I see it, the authority's capacity to impose conditions on licences, as long as they are consistent with the codes put through by the minister, as per clause 12(2).

Mr J.C. KOBELKE: I do not think we actually have an answer to this point. We may still be on clause 12 or clause 26 when we come back after dinner. If I can put the question to the minister, the minister's advisers may be able to give an answer that makes it clearer to me, because currently it is as clear as mud! Clause 22, just to reiterate, is about conditions —

Mr W.R. Marmion: Clause 12.

Mr J.C. KOBELKE: Sorry, clause 12. This clause is about the conditions the authority may place on a licence. The minister rightly drew us to subclause (2), which states —

> The conditions of a licence under subsection (1) —

That covers the issue of codes —

> have no effect to the extent to which they are inconsistent with any other conditions to which the licence is subject under this Act.

That tends to suggest that if there was a code established under this bill by the minister, it would override a code established by the authority under clause 12. I might be wrong—I am not a lawyer—but I think that is open to interpretation.

Mr W.R. Marmion: Correct.

Mr J.C. KOBELKE: I now go to clause 26. This is where the minister establishes a code. It is stated at clause 26(8) —

> The Minister's capacity to make a code of practice dealing with a matter does not, of itself, limit the Authority's capacity to —
>
> …
>
> (b) make a code of conduct relating to the matter.

I read that as saying the minister's code is subservient to the authority's code. Both subclauses tend to contradict each other, as I see it. I am trying to get clarity as to when we have codes established. Keep in mind that the minister said that under clause 26 ministerial codes might relate to more general issues—they "might"—but clause 26 allows the minister to cover everything in clause 12 except paragraph (s), which is —

> the licensee giving the Authority information relevant to the Authority's functions under this Act.

Codes made by the minister under clause 26 cover all the things under clause 12, which is now before us, that they can actually put in the licence. They can make codes on any of those things. I can see why the minister would want to do this, but what I seek to get on the record tonight is that there is a clear demarcation between these two and a way of handling any instances that might arise, however rarely, where one conflicts with the other so we do not have a situation of uncertainty arising. I know the consultation methods required, which we will come to later, in establishing a code, whether it is a code by the authority or a code by the minister—I refer to the little discussion we had earlier—codes will be established by other authorities, but they can be established by the ERA, which is the authority for the purposes of this bill. In circumstances in which different codes are applied, we need to know how they arbitrate. We know the processes they go through and that consultation should weed it all out, but if they do not, we need to know how they arbitrate.

Sitting suspended from 6.00 to 7.00 pm

Mr J.C. KOBELKE: I wonder whether the minister is in a position to explain to us how any inconsistencies or conflict would be resolved by a code of practice put in place as a condition of licence by the authority under clause 12 and a code of practice established by the minister under clause 26; and, if there should perchance be a

conflict between the two codes, which would have precedence, or what other method would there be to resolve any potential conflict? Of course, we know that we are talking about quite a trivial issue. There would be some small detail relating to the codes about which there might potentially be a conflict; nonetheless, that uncertainty may have larger consequences.

Mr W.R. MARMION: The code made by the minister would override any code made by the authority. Under clause 27, after the minister has made a code, the authority can make a code, which is the code to do with customers—that is, a customer code. Once that code has been enacted through the disallowance process, any renewal of that code is made by the Economic Regulation Authority. That is the code that the ERA can, I guess, run, and it can make amendments to it. Clause 26(8)(b) states —

(b) make a code of conduct relating to the matter.

That relates to clause 27 and the ability of the authority to make customer service codes. However, if there is a conflict, which one would hope there is not, because one would assume that when the ERA puts out its licence conditions, it will ensure that all the conditions are consistent, I am advised that the codes enacted by the minister would have precedence.

Mr J.C. KOBELKE: I now turn to ask some questions regarding clause 12(1)(j), which is the exercise of powers of entry by persons authorised by the licensee, including by restricting the exercise of such powers. The minister has indicated that this is a new provision under the conditions of licence, but there has long been some form of statutory basis for allowing employees or people working for a licensee to exercise powers of entry. Therefore, I want this made clear: does the situation change by putting this provision in the bill or are we really dealing with those powers of entry under a totally different clause of the bill?

Mr W.R. MARMION: Yes; the reason is that this is a new provision; it does change the situation. This provision allows the ERA to put some restrictions or some conditions on entry, whatever they might be. It might want to put some constraints on how a person might go about entering a property. This provision gives the ERA the ability to put on some restrictions, as it says clearly, by restricting the exercise of such powers. As it reads is how it works.

Mr J.C. KOBELKE: Paragraph (j), to me, has two parts; that is, it can be a condition of a licence that there be the exercise of powers of entry by persons authorised by the licensee, and, further, it provides that the exercise of those powers can include restricting the exercise of such powers. It may be that the minister wants to refer us to another clause somewhere else in the bill, which is really the head of powers relating to this exercise of powers of entry. If the minister can do that, perhaps we will leave discussion of that until we get to that other clause or clauses.

Mr W.R. MARMION: Yes, the powers of entry are specified in another part of the bill. This just makes it clear that some restrictions can be put around those powers.

Mr J.C. Kobelke: Minister, I am finished, if you can just tell us the other clauses so I can have a note of them when we get to them.

Mr W.R. MARMION: My advisers are rushing through the 450 clauses! They have just given it to me; it is clause 174 in part 8, division 2.

Clause put and passed.

Clause 13 put and passed.

Clause 14: Duration of licence —

Mr F.M. LOGAN: This clause deals with the operation of the licence, so we should bear in mind the discussion we had earlier about the operations of the treatment plant in Mundaring. How does the duration of the exemption work when compared with the conditions that are set out in the bill for the duration of the licence for what would be a normal licence holder? How can the same powers that apply to someone who provides services under this bill be applied to someone who is providing water services in the treatment plant at Mundaring but those services are covered by a contract between the Water Corporation and the alliance?

Mr W.R. MARMION: I do not quite follow where the member is going. The way I read clause 14, it just says that if a licence is granted, it can be from zero to 25 years. I do not have the contract with me, but I think the contract is for 20 years. It does not preclude a licence being for 20 years, 15 years or whatever. I am not quite sure what the point is, because clause 14 just says that the ERA can issue a licence or renew a licence for the period specified in it, but it cannot be for more than 25 years. That is what clause 14 says. Is it something relating to that? The member might be able to give me a bit of clarity around that.

Mr F.M. LOGAN: I will provide some clarity. The provisions that we are dealing with under this clause deal with the provision of water services, and that is governed by a licence. We know that under the existing bill an exemption has been given to the provision of services by a public–private partnership operator of the Mundaring plant. Under these conditions, a duration can be put on the licence. Under that contract, is there a provision that would put a duration on the services provided by the PPP operator, or is the full term of the contract involved? If it is the latter, will the minister at some stage table, maybe in the third reading debate, the contract that we keep referring to?

Mr W.R. MARMION: I know that the member wants to get access to the contract. I do not know what commercial confidentiality is involved. I would have to seek advice on whether we could release the contract.

Mr F.M. Logan: The reason I want to have a look at the contract is that had it not been in place and had this bill been passed, that PPP plant would be governed by these terms and conditions; it would not be governed by this contract unless the minister wanted to step outside this bill for some reason. The bill is designed to provide all the regulations to the operator.

Mr W.R. MARMION: I do not understand. There is no change. Under this bill we can exempt in the same way. Let us say, hypothetically, that the contract was not let now and that we are two years down the track and that this legislation has been passed—it has been signed off by the Governor and is now an act. My advice is that I could still give an exemption for that water service.

Mr F.M. Logan: I am sure you could, but why would you?

Mr W.R. MARMION: Because it might be convenient to do so, rather than asking them to go through a whole lot of different licensing conditions that they might not need to do. It might be convenient, efficient and practical to do it. We might have the safeguards that we have now. There is no change. The situation now is probably the same as it will be in two years' time. I am advised that that is correct in this case.

Clause put and passed.

Clauses 15 to 17 put and passed.

Clause 18: Amendment or cancellation of licence — on application of licensee —

Mr J.C. KOBELKE: The minister indicated that clause 18 is different from existing legislation. Clause 18 relates to the amendment or cancellation of a licence on application of a licensee. It makes sense to me, but I would like to know the import of the differences in this clause to current legislation.

Mr W.R. MARMION: My understanding is that currently the licences spell out how a licence can be amended or cancelled. This clause brings that into the legislation, so it will now be specified here. Previously, those sorts of arrangements were specified in the licence.

Mr J.C. Kobelke: Do I take it from that that it is really just a drafting arrangement—that it has been repositioned—or are there any actual changes in the way in which it will operate?

Mr W.R. MARMION: No. The drafting arrangement is brought into the legislation to make it clear.

Mr F.M. LOGAN: I again come back to the example that we are continuing to use. I do not accept the argument the minister earlier put up about why he has given an exemption to the operator of the treatment plant in Mundaring. Hypothetically, because it was a hypothetical case that we were talking about, had this bill been in force, why would the minister do that? The bill contains every provision that one would want to govern the provision of water services by an operator in Western Australia. Why would the minister want to give a company an exemption so that it could operate outside those conditions? No minister would do that. It comes to this: under clause 18, "Amendment or cancellation of licence — on application of licensee", the bill codifies how to deal with people who hold licences. It might be the Water Corporation, but if it is a private company, what would happen if something happened to that company; that is, it decided to walk away from the licence or went bankrupt?

Mr W.R. Marmion: If the company went bankrupt, the responsibility would be with the Water Corporation. The Water Corporation is responsible for the contract. If Degrémont went bankrupt and then did not deliver the service, it would be up to the Water Corporation to manage that. Under the ERA licence, it has to provide the water. There still is that coverage with the Water Corporation being there.

Mr F.M. LOGAN: I can see that, particularly with the treatment plant. There is a contract between the Water Corporation and an alliance that is governed by the Royal Bank of Scotland. What if, suddenly, the Royal Bank of Scotland did not want to be involved in this business any longer and wanted to get rid of its investment in that asset and walk away from it? The alliance partners would come to the minister and say that they are not interested in running the project any longer because the bank is under pressure—the euro is collapsing and it is

walking away from its investments in Western Australia. In that case I presume that, under the contract, the Water Corporation would step in and take over the operation. I presume that, hence the reason for our investigation of what the minister said to this house tonight—that all the provisions of the contract are equal to or better than this legislation. The minister should show us that by tabling the document. Otherwise, this bill at least provides the minister with some guidance and codification of what to do in that case. I presume that the minister is saying to the house tonight that with the PPP project, those protections for the state and the Water Corporation are in the contract. Is that correct?

Mr W.R. MARMION: That is what I have been advised. I have gone through the contract in detail. I do not have it with me. If we are talking about one specific example, which does not necessarily relate to what we are doing now in going through the clauses of the bill, then, yes, there is a public interest test when an exemption is given. As I said before—I guess I am repeating myself—I can give an exemption. I guess it is on my head if I give an exemption. If they do not deliver, it is on my head as minister.

Mr F.M. Logan: But it is our responsibility as the opposition to ensure that those contracts are open to public scrutiny, because that is on your head.

Mr W.R. MARMION: Sure.

Clause put and passed.

Clause 19: Effect of water resource management plans —

Mr C.J. TALLENTIRE: Clause 19 refers to water resource management plans. I am familiar with a range of water resource management plans. They are generally things that I would very much support. They generally deal with water allocation and talk about things like the percentages of flow that can be allocated to different competing water resource needs. The clause in question states —

> A decision of the Authority —

It is always the Economic Regulation Authority —

> under this Part is of no effect to the extent to which it is inconsistent with any relevant water resource management plans …

I thought that if I went to the definitions I would be able to see a definition of the sorts of resource management plans we are talking about, but I might have missed it. That gives me cause for concern because there are many different types of water resource management plans. As I say, I would be very supportive of most of them. Plans will probably come under the water resource bill when that is introduced.

Mr W.R. Marmion: Water resource management bill.

Mr C.J. TALLENTIRE: Yes. But water resource management plans are developed through the various natural resource management councils. I would say that each of those six in the state have their own water resource management plans, whether we are talking about the Rangelands NRM Coordinating Group, the Northern Agricultural Catchment Council, the South West Catchments Council, the South Coast NRM or the Avon NRM group. I can see nothing in here that says that this legislation refers only to the water resource management plans devised under a bill that is yet to be presented to this Parliament. I think it would be very reasonable for anyone to imagine that resource management plans could be things that are developed through these bodies that have various levels of statutory authority and are often funded through such initiatives as the National Water Initiative. They therefore have a degree of credibility and they have had to meet certain standards to be eligible for National Water Initiative funding to have the research put into developing the actual plan and to have the quality of the plan such that it involves consultation with the local community.

As I say, often an enormous amount of work goes into the development of water resource management plans. They link in with the work of catchment management councils and provide very useful guidance to the Department of Water and to the Department of Agriculture and Food. Plans are devised under the Department of Agriculture and Food, and the Department of Planning has also had its own version of water resource management plans. My question is: looking at this legislation before us, how can we be sure what type of water resource management plan we are talking about? Is it possible that as the bill is currently written, there could be some confusion? As I say, the minister might be able to point me straight to a definition that I have overlooked.

Mr W.R. MARMION: Clause 19 was included so that when the water resource management bill is introduced, it will have some relevance. It states, in part —

> … water resource management plans (however described) made under a written law and prescribed for the purposes of this section.

I understand that other water resource management plans that people might refer to, such as NRM plans, are not of this status, are not under written law and do not have statutory status. When we introduce the water resource management bill it will mean that there must be consistency between any ERA conditions and any conditions related to a water resource management plan.

Mr C.J. TALLENTIRE: Thank you, minister. I am still concerned, though, because I am not sure what time lapse will occur between the passing of this legislation and the water resource management bill, so that could leave us in a phase of uncertainty. The minister says that these other water resource management plans referred to do not have the same sort of standing as the ones that would be recognised by the proposed water resource management bill, which will eventually become an act, but I think that could be quite seriously contested. Statutory planning laws provide for the development of plans. I can think of water resource management plans that would come under various planning legislation. We would have to concede that it is written under a law of the Western Australian Parliament.

Mr W.R. MARMION: On reading clause 19 very carefully, before the last seven words is the word "and". Let us assume the member has a resource management plan in his hand and wonders whether it is covered by this clause. It would have to be "prescribed for the purpose of this section"; namely, clause 19. In relation to the development of any other water resource management plan or whatever definition it has, the way I read it, which I think is correct, there would have to be reference to this section of the legislation. It would be necessary to do that by regulation.

Mr C.J. TALLENTIRE: Obviously water resources can be in an area that is hotly contested. It is not that long ago that there was a move to take water out of the south west Yarragadee. Over that area there would be a number of water resource management plans. I put it to the minister that it would be fairly easy for people who have drawn up those management plans, which may have come under agricultural legislation or legislation covered by the planning portfolio, or wherever, to point to a law under which they have been written, but they would quite easily be able to add that their water resource management plan has been written with due consideration to section 19 of the Water Services Act 2011, when it is enacted. I do not think there would be any trouble having those words inserted into those water resource management plans. That could very easily happen, and then this could not be used as an out.

Mr W.R. Marmion: I missed the point; can you repeat that?

Mr C.J. TALLENTIRE: Basically, it would be very easy for those people who had put a lot of work into developing water resource management plans, be they in the south west Yarragadee area or elsewhere, to add words that say that their management plan is prescribed for the purposes of section 19 of the Water Services Act 2011, as it will be then. Before the minister stands, a solution might be to insert a definition of what is a water resource management plan.

Mr W.R. MARMION: To answer the first part of the member's question, there is a problem putting a definition of water resource management plans without making reference to legislation, which will be the next bill we introduce. On the other point the member raised, from what I have just been advised it is my understanding that—if the member is listening; I cannot say it twice—we can regulate under this act for a water resource management plan to be prescribed for the purpose of this section. It could not just be included in this bill. I understand that once this bill is enacted, a water resource management plan can be prescribed in regulation.

Mr C.J. TALLENTIRE: I am not quite sure what the minister is saying there, but I would imagine there would be existing statute law that would contain a definition —

Mr W.R. Marmion: It might have a definition of this, yes.

Mr C.J. TALLENTIRE: — for "water resource management plan", or, if not, into which the definition could be inserted until the water resources management bill becomes law. That could avoid this ambiguity. I think it is a dangerous situation. We make reference to very powerful documents, water resource management plans, but we do not have them defined. This leaves all sorts of possibilities open.

Mr W.R. Marmion: There is no ambiguity because they are not defined. There is not a definition, which means that they cannot be confused with this bill because they are not covered in this bill. It is clear to me.

Mr C.J. TALLENTIRE: The fact that they are not defined means that somebody can present a document to the minister and say, "This is the water resource management plan that conforms with section 19 of the Water Services Act."

Mr W.R. Marmion: They would have to be prescribed under this bill.

Mr C.J. TALLENTIRE: But someone can claim that they are meeting the prescription of this bill.

Mr W.R. Marmion: But they would be wrong, wouldn't they?

Mr C.J. TALLENTIRE: If it is not defined under this bill, there will not be a test.

Mr W.R. Marmion: It is not a resource management plan under this bill.

Mr C.J. TALLENTIRE: There needs to be some linkage between this clause and the water resources management legislation. In passing, the minister could indicate when that will be presented to Parliament. I put to the minister that it will probably not be this year, and, therefore, not in this term of Parliament. Therefore, we are talking about potential delays of several years before we see the water resources management act come into being, and the water resource management plan will be undefined for that extended period.

Mr W.R. MARMION: I do not see the member's point. A water resource management plan actually allocates water. Let us use the example of the allocation plan down at Manjimup. It is a plan, but it is not a plan set up by statute, and we all know that there is a particular person in that area who argues that it should be, but it is not. However, it is a plan and it is something that the Department of Water manages. When we bring in the water resources management bill, and when water resource management plans can be statutory and in legislation, it will ensure that any Economic Regulation Authority licence is consistent with those plans. Therefore, rather than amending this bill whenever we bring the next bill through, we are putting it in this legislation so we do not have to come back and amend this bill. It is a convenience to put clause 19 in this bill now rather than at some other time. I guess one could argue that there would be the option not to have it there, but we think the best option is to leave it there for the future.

Clause put and passed.

Clause 20 put and passed.

Clause 21: Duty to provide services and do works —

Mr F.M. LOGAN: It is quite clear in clause 21(1) what a licensee must do in providing services and works. I refer to subclauses (2) and (3), and to some references in subclause (4). Subclause (2) states —

> A licensee may refuse to provide, or may suspend the provision of, a water service to a person entitled to the service under this Act …

It then goes into a series of conditions. Can the minister further explain these two subclauses and also give some examples of what we are talking about here. Who would have their water services legally cut off?

Mr W.R. MARMION: This is primarily about the extension of a service to an area that might be some distance away. By way of example, if someone has a house five kilometres down the track, extending the pipe five kilometres, from an engineering point of view, may cause the pressure to drop off. There may be some engineering reasons or there may be some other reasons. This clause is not about stopping a service, which I understand comes under another clause; it is about refusing to provide a service if it is unreasonable, I guess. That is the option.

Mr F.M. LOGAN: It does, minister; it is quite clear. Let us use subclause (2) as an example. It states —

> A licensee may refuse to provide, or … suspend the provision of, a water service to a person entitled to the service under this Act while the person —
>
> (a) … refuses to comply with a requirement of the licensee …; or
>
> (b) unreasonably refuses to enter into an agreement …
>
> (c) refuses to comply with a prescribed requirement relating to the provision of the service.

What would this apply to? Can the minister give us some examples of how this subclause and subclause (3) will apply, because (3) is quite —

Mr W.R. Marmion: I will just do one at a time, because it is a bit hard to read two at once.

Mr F.M. LOGAN: Okay. Can the minister just give us some examples of how it would work?

Mr W.R. MARMION: I address subclause (2) first. I will give the general thrust and then we can delve into a couple of examples. The advice I have states that it would be reasonable for a licensee to refuse to provide a service which would not be technically—I mentioned that last time—or financially viable to provide, or where the person would not agree to meet the requirements for the provision of the service. That is what we are saying now. Sewerage is another example. We used water last time, but I will use sewerage this time. It may be that to extend a sewerage line might require putting in a pump. It might have to be pumped because only one house will be picked up, but it is over the other side of the hill and to get it to join on, a substantial amount of money is needed to provide that service for that one household. Therefore, this clause makes it reasonable for the water

service provider not to provide that service. It gives them a reasonable situation in which they do not have to provide that service.

Mr F.M. LOGAN: Does this subclause also allow the licensee to refuse to provide water services, say, if someone has not paid their bill? For example, the subclause states "refuses to comply with a requirement" and "refuses to enter into an agreement".

Mr W.R. MARMION: Disconnection or restriction of service is provided for under proposed section 96. This is more related to actual provision of the service and, because of technical or financial reasons, a reasonable situation in which it is not practical or financially viable to provide it at that time.

Clause put and passed.

Clauses 22 and 23 put and passed.

Clause 24: Asset management system —

Mr F.M. LOGAN: Clause 24 provides for the asset management system. We will be coming back to the Transfield–Degrémont agreement on a regular basis, minister, because I still do not believe that the minister has told the house all that I know about that agreement, so it will be interesting to hear his response. In terms of this asset management system, obviously the assets of the Water Corporation are now being managed in many cases by the Transfield–Degrémont agreement. From what the minister has told the house so far, in this contracting for the Transfield–Degrémont–Water Corporation alliance, the holder of the licence for the services, whether they be sewerage or water provisions, is the Water Corporation. As part of the contract, the Transfield–Degrémont sewerage operators will manage the assets for the Water Corporation. Is it then bound by the provisions in clause 24 by way of the Water Corporation licence; and, if so, how?

Mr W.R. MARMION: An asset management system is a requirement of the licence—the ERA will ensure that the licence holder has one. In fact, all the audit reports I read from the ERA on any one of the 29 or 30 licence holders in WA usually contain a comment on this. If the member were to pick an area where a licence holder is likely to transgress in not having one up to speed, this is the provision that applies. This is a condition on every licence, as the bill says. In the member's example, the Water Corporation as the licensee must have an asset management system with which the ERA is happy, basically. Whoever puts that together, whether it is the workers within the Water Corporation, contractors or whomever, the actual asset management system, which is a condition of the Water Corporation having a licence, must meet the conditions that the ERA sets.

[Quorum formed.]

The DEPUTY SPEAKER: Member for Cockburn, are you finished with clause 24?

Mr F.M. LOGAN: No. It is the early part of the evening.

Mr W.R. Marmion: It is my favourite topic—asset management.

Mr F.M. LOGAN: Exactly. If anybody should know about asset management, the minister should.

Mr W.R. Marmion: I do know a lot.

Mr F.M. LOGAN: The minister has explained about the obligations of the licence holder under the act. In this case, the example that I gave the minister was the Transfield–Degrémont–Suez alliance. Clause 24 is worded in such a way that it is to deal with the licence holder only. The legislation is not written in such a way as the licence holder may then subcontract out that work to a contractor such as Transfield–Degrémont–Suez. Had that provision been in the bill somehow, the minister could then say, "Well, you can understand that it is not only the licence holder that has an obligation to comply with the conditions of the act; the licence holder and/or its contract partner or subcontractor is also required to comply." As it does not say that, let us just say that something goes wrong. As the minister knows, things go wrong in Water Corporation's assets all the time. It is just the nature of the industry and the type of material being dealt with, particularly in waste water. I refer to the alliance contracting arrangements, and this is a hypothetical: if something goes wrong, for example, at Woodman Point waste water treatment plant, when the valve in the bottom of the main tank goes again —

Mr W.R. Marmion: As part of the operations maintenance, there is a problem because something fails so —

Mr F.M. LOGAN: — part of the asset fails. That is exactly what happened at Woodman Point waste water treatment plant when the main valve on the main tank gave out. As a result, endless amounts of untreated sewage went into Cockburn Sound. If that was to occur again, but in this case the responsibility for the problem lay with the minister's contractor, how is the licence holder dealt with under this legislation? Clause 24 states that the authority—that is, the ERA—may then bring in an independent expert for the purposes of proposed subsection (1)(c), which is to examine the conditions of the asset itself and the licence obligations. As clause 24(4) states, it can recover reasonable costs and expenses as part of its investigation, but the responsibility ultimately lies with

the alliance contractor. Who does the authority deal with? Does it deal in the first instance in its investigation with the licence holder, the Water Corporation, or does it deal with the contractor?

Mr W.R. MARMION: Clause 24 is about an asset management system; it is not about a piece of apparatus that might fail. If a system is in place, there can be some assurance. This is what the ERA will be looking for when it audits a water service provider; it will ensure it has an asset management system in place. The most important thing is to have an asset management system in place. It is the responsibility of the Water Corporation to have a proper asset management system so that if something fails it has processes in place to fix it quickly. As the member is probably aware, some of the mining companies have in place complicated asset management systems. As soon as something is replaced, it is automatically ordered and it sits on the shelf. That is a very sophisticated asset management system. The Economic Regulation Authority will also look at whether a system is in place, and, in terms of the financial management and accounts of the service provider, it will take into account the age of the assets and the schedule to systematically replace ageing assets. I know that the member will understand this. Different types of assets have different life cycles. If I were the auditor for the ERA, I would expect the asset management system to know the life of some of the components within the infrastructure and the replacement plan to be based on the life cycle of the various components of the system. That is what this clause is about. It is not about who is responsible if something breaks down; it is about the system. The Water Corporation must have that system in place, as, indeed, must the Kalgoorlie council and any other council. As the member knows, people neglect asset management systems.

Mr F.M. Logan: That valve that I just referred to is a classic example in which the asset management system failed.

Mr W.R. MARMION: Yes. The life cycle of something might be 10 years, but sometimes it fails earlier because of a faulty component. Sometimes those things happen. This clause is about the system and ensuring that all licensees have an asset management system.

Mr F.M. LOGAN: We have to keep referring to the Transfield–Degrémont–Suez alliance contract because that is what is in place at the moment for the metropolitan water and sewerage services in Western Australia. The minister indicated earlier that the asset management system could be created by the Water Corporation or by the alliance. For example, if the alliance has developed as part of its operations an asset management regime for a whole plant or for part of a plant and the ERA finds fault with the asset management system—I am not talking about the bits; I am talking about the system—who will be held accountable? Will it be the licence holder, the Water Corporation?

Mr W.R. Marmion: Yes, the licensee. It is very clear.

Clause put and passed.

Clause 25 put and passed.

Clause 26: Compliance with codes of practice made by Minister —

Mr J.C. KOBELKE: I will be very brief. As we know, what the minister says in the second reading speech and places on the record in this place may be used for interpretation in the courts. I am still not convinced that there is not the potential for conflict between codes set by the authority under clause 12 and codes made by the minister under clause 26. Can the minister put to the chamber very clearly and unequivocally his belief that a code established by the minister under clause 26 would have legal precedence on any matter of conflict over a code established under clause 12? The operative subclause (8) states —

> The Minister's capacity to make a code of practice dealing with a matter does not, of itself, limit the Authority's capacity to —
>
> …
>
> (b) make a code of conduct relating to the matter.

I understand that the minister said earlier that the minister's code will have precedence. I think a very clear and unequivocal statement of that may help clear up any unlikely but possible ambiguity between the two.

Mr W.R. MARMION: I am quite happy to point out that clause 12(2) makes it clear that any codes set by the minister take precedence over any changes to the customer code that may be done by the ERA.

Mr F.M. LOGAN: Can the minister give me some examples of when a minister would make those codes of practice and what they might look like? I will give the minister an example of an area in which I think a code of practice may well be needed in the future issue of licences—that is, the Woodman Point waste water treatment plant in my electorate. There is continued injection of sometimes semi-treated sewage and at other times untreated sewage into Cockburn Sound. There are two outfalls into Cockburn Sound, as the minister knows. One is in the inner harbour area and the other is about 150 metres off the end of Woodman Point. The code of

practice for the Woodman Point waste water treatment plant that I would be seeking once this bill is passed would outlaw the dumping of sewage into Cockburn Sound and the holding of that sewage in contained facilities at the Woodman Point plant.

Mr W.R. MARMION: Some environmental conditions could be set so there could be an overlap. The ministerial codes could set conditions for how drainage might be done or how water and sewerage should be provided. They might go to a lower level than the licence conditions. I am trying to think of one that I could relate to Woodman Point. There may be some standards. There may be things in the regulations. Codes will probably be used only when it is not covered by regulation. Hypothetically, it could be in a regulation. There might need to be a standard for a certain sized pipe because there is certain pressure. A code could be set for that, although it could be in a regulation. That would give some safeguards that the pipe will not burst or fail.

Mr F.M. LOGAN: I thank the minister for that explanation. I understand where he is coming from about the regulations. Given that this new provision will give the minister different powers from those he had under the previous legislation, it is a question of how he would use those new powers. A golden opportunity to use those new powers may well be for the licence for the Woodman Point waste water treatment plant and its relationship with Cockburn Sound, which has been a very bad relationship until now. In my view, the Water Corporation should have been prosecuted, and ultimately probably will be prosecuted unless something is done.

Mr W.R. MARMION: I have thought of an example, member, that might relate to Woodman Point. We could put a code—it could be a general code; it actually would not be specifically for there—on water recycling. Down the track, someone might say, "We don't want all this waste water going out into the ocean," and we might want to phase in a code like that. We might say, "We are recognising that they are not putting it out in the ocean, so they're okay," but we might want to come up with a code that says that within the next five years they have to get down to only 50 per cent going out into the ocean, and then another five years. That sort of thing would be quite a useful thing —

Mr F.M. Logan: Guidelines.

Mr W.R. MARMION: Yes, guidelines that would clean up Cockburn Sound.

Clause put and passed.

Clauses 27 to 30 put and passed.

Clause 31: Failure to comply with licence —

Mr J.C. KOBELKE: Clause 31 comes under division 4, "Failure to comply with licence — enforcement". It is clearly an important matter to be able to enforce compliance with the conditions of the licence. I would like to go to subclause (4), which I think is an important part of operation and enforcement. It reads —

> If the Authority is satisfied that the licensee has failed to comply with the rectification notice the Authority may do one or more of the following —

So the authority has already given a rectification notice, assuming that that has not been complied with, or not complied with in full —

> (a) order the licensee to pay a monetary penalty determined by the Authority of up to —
>
> …
>
> (b) remedy the failure to comply that gave rise to the giving of the rectification notice;
>
> (c) subject to section 17(2) — amend the licence under section 17.

I have two separate questions that flow from that. First of all, under clause 31(4)(b), the authority can remedy the failure to comply that gave rise to the giving of the rectification notice. Is this a new power? The way I read it, the Economic Regulation Authority would actually contract the work; it would have to find a subcontractor or someone else to do it. Is that what is actually envisaged in this legislation; and, if so, is the ERA currently set up to be able to have such work undertaken?

Mr W.R. MARMION: In answer to the first part of your question, my advice is that the ERA could get a contractor to come in and remedy the failure under clause 31(4)(b).

Mr J.C. KOBELKE: The minister has confirmed my interpretation of it. The second part of the question is: is the ERA, as it is currently constituted, set up to be able to do that sort of work? It is a regulatory body and to my knowledge it does not go about fixing plumbing, but that may be required here. I am asking: does the ERA have the legislative power to do that, other than what appears in this particular subclause? Have there been discussions with the ERA about it being geared up to actually take such action, should it judge such action to be required?

Mr W.R. MARMION: Yes, it does currently have that power, and it has been consulted in the drafting of these clauses.

Mr J.C. KOBELKE: My second point is really clarification or confirmation of my understanding of paragraph (c), which provides that the authority can amend the licence under proposed section 17, subject to proposed section 17(2). This would be for a situation in which a licensee has failed to comply; there has possibly been some attempt at rectification, and now the authority says, "Well, this is a bit too hard, so instead of penalising them, or in addition to penalising them, the only way we can really fix it is to go back and change the licence". So then they go back to the licence modifications in clause 17 and set about that process. However, under clause 17(2), the authority cannot amend a term or condition of a licence that was not determined by the authority, so what is being provided there is a let out so the authority can actually go beyond the intended amendments under clause 17, and make amendments to fix the problem. Is that how the minister sees this operating, or can he correct me or add to it in respect of the intention here, as one of the options for remedying a problem or a failure by a licensee to meet the conditions?

Mr W.R. MARMION: This is a very good question. The wording in subclause (4) is that the authority "may do one or more of the following", so the way I would see it in normal practice is that the authority has had to fine them or fix something up and then, using clause 17(2), amend the licence to make it a bit tougher; maybe the licensee would have to report every two months or whatever. A tougher condition may be put in place in terms of the amendment of the licence to cover that particular circumstance. While it could be argued that there is a possibility of amending the licence to cover something that failed so the licensee does not have to comply with it, I would see that happening only if it were an absolutely frivolous condition that might be amended. So that it does not happen again, the authority would have the ability in the majority of situations to amend the licence to make it a bit tougher.

Mr J.C. KOBELKE: I thank the minister for that. My closing comment is that these licences can run for 25 years, and conditions may arise that were not foreseen in the licence, and therefore the non-compliance is not, on the face of it, a failure by the licensee, but rather a reflection of the fact that conditions have changed and compliance has become very difficult, in which case the option is there to go back and change the conditions of the licence. Hopefully that would be a rare occurrence, but obviously the statute has to make allowance for those rare and unforeseen circumstances.

Clause put and passed.

Clause 32 put and passed.

Clause 33: Exception — dangerous situations —

Mr F.M. LOGAN: Clause 33 deals with the exceptions to the previous provisions for failure to comply with the licence when faced with a dangerous situation, when the authority is satisfied that dangerous situations exist. Under subclause (2), the authority must consult with the department principally assisting in the administration of the Health Act. What if a situation occurs that falls under the Occupational Safety and Health Act? I can point to a real example that happened within the Water Corporation, where a contractor died on the job in Bunbury when scaffolding planks were not properly secured and he fell off the scaffolding to his death. Why are the Occupational Safety and Health Act and WorkSafe Australia not referred to in this clause also? I can understand why the Health Act is referred to, but why not WorkSafe?

Mr W.R. MARMION: WorkSafe was consulted in the drafting of the bill and it did not raise it as something to put in. In clause 33(2) "must" is the key word. The authority must consult with the department assisting in the administration of the Health Act 1911—the Department of Health—because water quality is paramount.

Because of the way things work, it is probably unlikely that someone from the Economic Regulation Authority would be on site for an operational thing such as occupational health and safety. One would hope that that would be covered by the Occupational Safety and Health Act; if an occupational health and safety issue was picked up by workers on the job, WorkSafe would come in. I am advised that WorkSafe was not sought out to see whether it wanted to be put in, but it is not included. Only the Department of Health is included because health and safety is of paramount importance in the delivery of water. The Department of Health must be consulted.

Dr K.D. Hames interjected.

Mr W.R. MARMION: The Minister for Health is very pleased that that clause is in the bill.

Mr F.M. LOGAN: I concur with what the minister has just said about the necessity to maintain health standards at all costs, but clause 33 reads —

> (1) If the Authority is satisfied that —
>
> ...

(c) urgent action is needed in order to assess, reduce, eliminate or avert a risk to persons, property or the environment,

If WorkSafe and the Occupational Safety and Health Act was referred to here—perhaps it should be—a dangerous situation that the authority is alerted to could result in penalties applying to the licence holder for creating a dangerous situation for employees of either contractors or the Water Corporation. As it stands, an employer or an organisation could face penalties under the Occupational Safety and Health Act, but no penalty relates to its licence and no condition is applied to its licence despite the fact it may have created an unsafe situation under the Occupational Safety and Health Act. No provision in this bill allows us to do anything about it.

Mr W.R. MARMION: If the member reads clause 33(1) carefully, he will see that the main point of the clause is that the authority can act without even notifying the licensee if it determines that there is a problem. For example, let us say that there is a WorkSafe issue and the authority just happens to be on hand and picks it up —

Mr F.M. Logan: Or it has been brought to the attention of the authority.

Mr W.R. MARMION: Yes, if it has been brought to the attention of the authority, the licensee would normally be notified. If the licensee says, "Get stuffed", the authority can get WorkSafe on site and make it happen. It can do that without consulting the licensee, although common courtesy means that that would be the first step to take. Clause 33(1)—which is a good clause—allows the authority to step in if it sees a dangerous situation and deal with it straightaway.

Mr J.C. KOBELKE: I would like to make a very brief comment on this. The member for Cockburn has shown that the act is deficient in this area. The whole focus of the drafting of this bill was to provide modern legislation for the provision of water services. In doing so, the people who deliver those services—the technicians, the people who dig the holes, the plumbers and all the rest—have really been overlooked. I realise that they are seen as minor in the context of the main thrust of this bill, but clause 33 does not pick that up. It picks it up only indirectly. As the minister said earlier in his contribution, under clause 33(2), the authority must consult, basically, the Department of Health. That does not help workplace safety. I seek from the minister an undertaking to use his best endeavours—if he happens to be the minister when this is put in place—to have licences require that under clause 12. Under clause 12 there is a general head of powers under which there could be a requirement that certain standards of health and safety are upheld in delivering the services under the licence. It could be picked up in that way.

I do not agree with the minister's attempt to say that clause 33 covers it. Clause 33(1)(a) would cover it if conditions to do with health and safety were put in the licence conditions. Under clause 33(1)(a), a failure to meet health and safety requirements and creating a dangerous situation would lead to urgent action, but under the bill the authority would then be required to run off and tell the Department of Health, which would know nothing about it. I want to put that on the record. The bill is deficient in that way. I will leave it at that.

The remedy is to ensure that health and safety are given priority on the licence conditions. I know that the Water Corporation and the other two smaller government-owned water authorities in the south west take this very seriously. When I was the minister responsible for WorkSafe, I was proud to present more than one award to the Water Corporation for the efforts it made in occupational safety and health. It has a good track record and we do not want to see it slip. The legislation is deficient in that area. I suggest it could be remedied by using the minister's good officers, if it is appropriate at the time, to draft a condition of the licence that relates to the provision of high quality health and safety for the employees involved in delivering services under a licence.

Mr W.R. MARMION: Clause 33(1) is exactly how it is at the moment. Clause 33(2) is a new subclause. We have embellished the current situation by making it read "must".

Mr J.C. Kobelke: It reads "must" consult the Department of Health, which underplays health and safety. It does not have anything to do with health and safety.

Mr W.R. MARMION: Clause 33(1) is as it is now. We could get rid of the Occupational Safety and Health Act and put all the rules of the Occupational Safety and Health Act in this bill, but the act surely covers this.

Mr J.C. Kobelke: That is nonsense. You could put in a clause 33(3) to say that a health and safety matter should be referred to WorkSafe rather than the Department of Health.

Mr W.R. MARMION: That is what would happen. That is what happens now. If someone is in an organisation and they have an occupational safety and health issue, it would come under WorkSafe.

Mr J.C. Kobelke: This statute will not overrule that Occupational Safety and Health Act, but the fact it makes no mention of it is a deficiency.

Mr W.R. MARMION: If the minister under the codes and the regulations or the ERA thought it was important—perhaps if there was a licensee about which we wanted to make a point—nothing would stop us putting some conditions around that.

Mr J.C. Kobelke: I am asking you to try to push for that under clause 12.

Clause put and passed.

Clause 34 put and passed.

Clause 35: Provision of a water service ceasing — regulations may deal with consequences —

Mr J.C. KOBELKE: This clause deals with the provision of water services ceasing and the regulations to deal with the consequences of that. There are two parts to the question. Firstly, does this change the provisions that currently exist under our water statutes? Secondly, can the minister say when the existing statutes have been used to step in when a water service ceased to operate or was seen to be of such a low standard that there was a need to follow through as a consequence and have the service handed over to another provider?

Mr W.R. MARMION: There is some ambiguity about this. This is a new clause and my advice is that it has never been used before because it is a new clause.

Mr J.C. KOBELKE: There have been instances when this has occurred in the past. What is the one just up the coast from Seabird?

Mr W.R. Marmion: Nilgin Service Company.

Mr J.C. KOBELKE: Yes. There was a failure there and another provider had to step in and take it over. I cannot remember under which statute that was done, but that is an example of a total water service that was being provided but the operator could not maintain it to the appropriate standard. It has happened. Perhaps with the help of the minister's staff he can explain how that happened. What was the legal basis for it and will the new provision here operate on a similar basis or quite differently?

Mr W.R. MARMION: That was before my time. My understanding is that it was done by agreement. The party agreed to let the Water Corporation take it over, basically.

Mr J.C. Kobelke: So the licence holder relinquished it and it was reissued?

Mr W.R. MARMION: Yes. It was done by agreement and the Water Corporation took it over.

Clause put and passed.

Clause 36 put and passed.

Clause 37: Licensee operating with works holding body —

Mr F.M. LOGAN: I presume that this provision deals with the work that is being undertaken by and on behalf of a licence holder. This is the Transfield–Degrémont–Suez clause. Clause 37(1) states —

> If water service works used by a licensee in the provision of a water service are held for the licensee by another person (the ***works holding body***) …

This clause relates to clauses 23(1) and 164 regarding the provisions about what an operator is expected or not expected to do on behalf of a licence holder. Is this the provision that deals with the work that may be undertaken on behalf of the Water Corporation—the licence holder—by another body?

Mr W.R. MARMION: This clause specifically deals with co-ops. Someone might hold the licence for all the people in the co-op. That is how clause 37(1) works.

Mr F.M. LOGAN: Would this be —

Mr W.R. Marmion: Carnarvon.

Mr F.M. LOGAN: Is it for the Gascoyne Water Co-operative Ltd?

Mr W.R. Marmion: Yes.

Mr F.M. LOGAN: How would that co-op be defined as a "works holding body" under this clause, if that is what the minister is using as an example?

Mr W.R. MARMION: It is a fairly common arrangement with co-ops. A co-op is the body that does the work and a holding company holds the licence.

Mr F.M. Logan: I see. Thank you.

Clause put and passed.

Clauses 38 to 40 put and passed.

Clause 41: General powers for inspection purposes —

Mr J.C. KOBELKE: I suspect that the particular matters contained within clause 41 are already available, but I would like the minister to confirm that. These powers can cause concern and therefore we need a better understanding of what is intended and how the minister thinks they will apply. Clause 41(1) states —

> Upon entry to a place for inspection purposes, an inspector may do one or more of the following —
>
> …
>
> (c) direct a person to produce any document that is or may be relevant to the inspection;
>
> (d) inspect any document produced, make copies of it or take extracts from it, and remove it for as long as is reasonably necessary to make copies or extracts;
>
> (e) direct a person to answer questions;

If a person refuses to answer questions or provide the documents, I think the penalty is $7 500, although clause 43(4) states —

> It is a defence to a charge under this section to prove that the person charged had a reasonable excuse.

That is most appropriate in the normal course of events when a professional inspector does his job. However, we have to take account of when things are not done as professionally as they should be or an individual gets a Hitler complex and decides to stand over people, in which case the failure to answer questions could lead to that person being charged with a penalty of up to $7 500. My specific questions are: firstly, are the provisions in clauses 41 and 42 any different from what we currently have; and, secondly, are the matters of prosecution—it is not clear to me—proceeded with in the State Administrative Tribunal or a court, and is the matter to be a criminal matter if a person is prosecuted for failing to meet those requirements under clause 41(1)?

Mr W.R. MARMION: When getting a double-barrelled question it is hard to remember it all. I will answer one of them and the member can ask me the other one. Subclauses 41(2) and (3) are new, which brings in the Criminal Investigation Act 2006. I have been advised that subclause 41(1) is the same. Subclause 41(1) is very similar to what is currently available; they can do all those things. However, subclauses (2) and (3) are new.

Mr J.C. KOBELKE: I thank the minister. Is the current penalty similar to the penalty of $7 500 in this bill? Following up on that, do the new subclauses, which mention the Criminal Investigation Act, have any consequences as to whether a criminal or civil penalty is involved for a contravention of those provisions?

Mr W.R. MARMION: The existing penalty for an individual is $5 000 and for a body corporate it is $20 000.

Mr J.C. KOBELKE: I still have the question about whether an action taken for failing to meet the matters covered in clause 41(1) is a criminal matter.

Mr W.R. MARMION: My advice is that it is an offence, and a criminal offence, and that it comes under clause 43.

Mr J.C. Kobelke: Would it go to SAT, the District Court or the Magistrates Court?

The ACTING SPEAKER (Mr J.M. Francis): I need someone apart from the minister to seek the call because the minister sat down.

Mr J.C. KOBELKE: If the minister could answer by way of interjection, I am happy to stay on my feet.

Mr W.R. Marmion: I have been advised that it would go to the criminal court and is therefore a criminal offence.

Mr J.C. KOBELKE: Thank you.

Mr F.M. LOGAN: I have a slightly different take on this. Clause 41(1) states —

> (c) direct a person to produce any document that is or may be relevant to the inspection;
>
> (d) inspect any document produce, …

Many other acts that contain these types of inspection powers are drafted slightly differently in that they contain the right to direct a person to produce documentation through electronic means. Obviously, a document is a document. The act does not define "document", whereas many other acts with these types of powers refer to the more modern methods of holding information, including any other electronic copy of a document or electronic record. Clause 41(1)(g) states —

> seize a thing that is relevant to an offence …

Is this sufficient to overcome that problem? Clause 41(1)(c) is slightly different. It is not about seizing but about directing a person to produce. They are slightly different provisions. I know that in many other acts the type of wording in subclause (1)(c) and (d) would be a little more modern and include electronic copies.

Mr W.R. MARMION: The definition of "document" is as per the Interpretation Act. I am trying to read it to work out whether it covers electronic means. In defining a document, the act states —

> ***document*** includes any publication and any matter written, expressed, or described upon any substance by means of letters, figures, or marks, or by more than one of those means, —

Therefore, I guess disks will be covered, and computers have disks.

> which is intended to be used or may be used for the purpose of recording that matter;

Mr F.M. LOGAN: I believe that it is worded slightly differently in plenty of other acts including, for example, the fisheries act, in order to keep up with the current means of recording information by certain technological means—be that compact disc, thumb drives, hard drives or any other electronic method of recording documentation, which are referred to in those other acts.

Mr W.R. MARMION: My advice is that it would be reasonable under the circumstances to expect that thumb drives and other electronic devices should be available to be seized by the inspector. That is the advice I am being given.

Mr F.M. Logan: I do not think that is the case and that is the reason it is referred to in the other act.

Mr J.C. KOBELKE: Further to the questions I asked that went to concerns about the abuse of power, this clause refers to entry by an inspector who demands certain things of the people on the premises. The inspector is established under clause 211. Instead of waiting until we get to that clause, I will mention it now. Clause 211 provides that an inspector can be appointed in one of two ways. The clause also refers to compliance officers. However, clause 211(1) states —

> The Authority may, in writing, designate an individual as an inspector for the purposes of one or more specified provisions of Part 2 to the extent to which the provisions relate to functions of the Authority.

My concern is that the inspector does not have to be an employee of the authority. I can see that there may be good reasons for the designated inspector to be someone from another government agency. It may be that we are operating in a remote part of the state. It may be that the case is part of a bigger investigation. It may be that a police officer is to be designated as inspector because it is a complex matter that goes beyond water services. I can see the need to go beyond and appoint an inspector from outside the authority's pool of employees. However, it seems to me that this clause allows for a private detective agency or a person from a job hire company to be contracted and appointed as inspector. I would like some guarantee about the conditions determining who may be appointed as an inspector and have the powers mentioned in clause 41.

Mr W.R. MARMION: It is limited. There are limits to the function of the authority. This gives the authority the option of appointing someone from outside the agency with the necessary expertise to check compliance. It may be a technical engineering area involving particular pumps and the authority does not have a person with the relevant expertise in-house. I refer to clause 211(1), but it has to relate specifically to the functions of the authority.

Mr J.C. Kobelke: Do they currently have that power?

Mr W.R. MARMION: Yes.

Clause put and passed.

Clause 42: Power to prohibit use etc. —

Mr J.C. KOBELKE: A very simple thing, minister. Clause 42(2) states —

> (a) by order in writing given to the licensee or exempt person …

Is there a definition of "exempt person" or is it simply taken to be a person to whom an exemption is given under the act and therefore is assumed to have that meaning rather than being more clearly defined?

Mr W.R. MARMION: A person is either a licensee or has been exempt from being a licensee. It is the person who is exempt from being the licensee.

Mr J.C. Kobelke: It is still a bit loose. I mean, the exemption may go to a corporate organisation.

Mr W.R. MARMION: Yes.

Mr J.C. Kobelke: Who then is the person? If they are an employee of an organisation, who is exempt?

The ACTING SPEAKER: Member for Balcatta.

Mr J.C. KOBELKE: Thank you. Perhaps the minister can answer by way of interjection.

Mr W.R. Marmion: The Interpretation Act 1984 defines a person to include —

> a public body, company, or association or body of persons, corporate or unincorporate;

Clause put and passed.

Clause 43: Offences —

Mr F.M. LOGAN: Under the offences clause, the obstruction of an inspector or the refusal to carry out a direction attracts a penalty of only $7 500. When we compare that with the promotion of the Dog Act by some of the more extreme members of our house, I think the same provision in the Dog Act—it may even be the same wording as in clause 43—attracts a massive penalty in comparison with this one, which, of course, is only dealing with the health of the general public en masse through the provision of water, sewerage and waste water services! Can the minister explain why there is such a difference between the penalties that apply under the Dog Act for breaching these provisions as opposed to breaching the provisions under this critically important health-related Water Services Bill? We know who we are talking about here, minister, do we not?

Mr W.R. MARMION: The general thrust of putting all the bills together was to keep them fairly similar to what they were. I am not going to go into the Dog Act. In the current act, it is a $5 000 fine for an individual and $20 000 for a corporation. I am advised that this penalty of $7 500 is greater than the current $5 000 for an individual, so the penalties have gone up from what they are now. However, the Dog Act is not an act for which I am the responsible minister, so I cannot provide an answer to why they are different.

Clause put and passed.

Clauses 44 and 45 put and passed.

Clause 46: Matters relevant to determination of public interest —

Mr C.J. TALLENTIRE: This clause refers to the Economic Regulation Authority and its capabilities in determining matters that may be of a public interest. The issues raised in clause 46 relate to environmental considerations, including the value of ecologically sustainable development, and public health considerations relating to the provision of reliable water services. The government has put into this legislation provisions that allow the Economic Regulation Authority to make those decisions about whether those matters are relevant to the public interest. If we look at the membership of the authority in the Economic Regulation Authority Act 2003, we realise that none of the members of the ERA are likely to have the capabilities to deal with clause 46(a) or (b). Therefore, I am concerned that we are putting ourselves in a position in which we might not be putting the legislation in an ultra vires situation, but we are certainly asking people who do not have the competency to make a call about the public interest relative to environmental matters or to public health matters. Just to guide the minister, if the minister looks at the ERA act, he will see that the members of the ERA are selected because they have experience relevant to the functions of the authority in industry, commerce, economics, law, public administration or consumer advocacy. I suppose it is only that last one that vaguely touches on the issue of public health considerations, but I think that those public advocates who are public health professionals would be appalled at the thought of someone whose background is in consumer advocacy being called upon to make judgements about the public interest relevant to public health considerations. Therefore, I would like to hear the minister's comments on how we can be confident that there could not be some challenge in the future as to the ERA's capability and its entitlement to make judgements about the public interest relative to clause 46(a) and (b).

Mr W.R. MARMION: This provision has been put in the bill so that if the ERA considers, in the public interest, that there are environmental considerations or public health considerations—that can be on advice from experts—it can make sure that they are considered and complied with. The Water Services Licensing Act 1995 already has the power to deal with environmental considerations, so there is really no change to what is there now. It goes on to refer to a whole lot of others as well, including social welfare, and economic and regional development. So there is no change.

Mr C.J. TALLENTIRE: Can the minister confirm that the ERA can call in people with expertise? I can understand the logic. With the issue of the licences through the ERA, we would not want to have delegations to other bodies such as the Environmental Protection Authority or some equivalent body that looks after public health. I can understand that the minister would not want to have that, but can he put on the record that the ERA would be somehow obliged to seek expert advice, qualified advice or professional advice in the field, whether it is of an environmental or public health nature?

Mr W.R. MARMION: The ERA can, and it currently does, seek advice from experts.

Clause put and passed.

Clauses 47 to 49 put and passed.

Clause 50: Terms used —

Mr J.C. KOBELKE: Clause 50 is the start of part 3, which is headed "Last resort supply arrangements". My question really applies to the part: does the statutory basis that covers this area already exist or is this a whole new clause?

Mr W.R. Marmion: No, it is a new clause.

Mr J.C. KOBELKE: It is a new clause. Thank you.

Clause put and passed.

Clauses 51 to 64 put and passed.

Clause 65: Authority may approve scheme —

Mr J.C. KOBELKE: Part 4, which starts at clause 63—but, obviously, we are at clause 65 now—is about the establishment of a water services ombudsman scheme. I think the minister has spoken very positively about this initiative, and I thank him for doing that. The proposal, which started at the time I was the Minister for Water Resources, was one that had very strong support from some sectors, but was not all that well supported by perhaps some of our main service providers. They sought an alternative method of trying to assist people who have disputes. So I thank the minister for bringing this forward. However, I am concerned that clause 65 says that the authority "may" approve a scheme, so it is a very half-hearted commitment. I would like to know why that cannot be "must". The minister is giving a public commitment that we are going to have a water services ombudsman, but, following the current minister, we may have a minister who is not as enlightened. If it is the member for Cockburn, I am sure he would be more enlightened and he would push it very hard. He may be the next minister, but we never know. There might be a minister in the near future who does not see this as being as important as the current minister does, and through the authority that has the power to do this, we may find that the whole thing lapses and we do not have a water services ombudsman scheme established, which is clearly the intent of this clause. Therefore, I want to know why we cannot make that word "must". In following clauses, there are areas in which the authority "may" do certain things. That is okay in terms of how the scheme is established, but in clause 65, which is really the instrument for the establishment of a water services ombudsman, we have a very half-hearted commitment that the authority may establish such a scheme. I would like to see a firmer wording or perhaps the minister can give an explanation of some other part of the bill that would give me assurances that we have to have the role of water service ombudsman established once this statute is enacted.

Mr W.R. MARMION: Schedule 1, division 1, clause 12, which is on page 188 of the bill, is headed "Initial water services ombudsman scheme", and states —

> (1) The Minister, instead of the Authority, must —
>
> (a) approve the initial water services ombudsman scheme under section 65; and
>
> (b) give the initial approval required for the purposes of section 66(2)(i).

I guess I can give my commitment that that would happen.

Mr J.C. KOBELKE: Minister, I honestly do not think that that answers the question. The minister can put a code in, but if there is not a scheme, the code would never have any effect. Under part 4, and in particular clause 65 now before the house, is the requirement of the authority to establish by instrument in writing a scheme to provide for a person who will be called the water services ombudsman. The role is to investigate and deal with —

> (a) disputes between a customer and a licensee; and
>
> (b) complaints about a licensee by a customer; and
>
> (c) complaints about a licensee by a person affected by the provision of a water service by the licensee or a failure by the licensee to provide a water service, other than complaints by a person who is a member of the licensee; and
>
> (d) any other kind of dispute or complaint that is prescribed by the regulations.

Very clearly, it is about establishing a scheme that will provide for a water service ombudsman. The minister has referred me to schedule 1, which relates to the initial code.

Mr W.R. Marmion: No; clause 12.

Mr J.C. KOBELKE: I thank the minister. I was looking at the wrong one.

Mr W.R. Marmion: Yes. I will create the first scheme, but clause 65 allows the authority to approve the scheme from then on. But I must approve the initial scheme. It states that the minister must approve the initial scheme. That is how it is.

Mr J.C. KOBELKE: I thank the minister. That gives a very high level of assurance. It is not absolute though, because as I said earlier, ministers can change. Therefore, there is a statutory requirement for the minister of the day, upon proclaiming this bill to become a statute, to do it. But once it was established, if it lapsed, there is no requirement that it must be maintained. I presume it is up to the minister of some future day to ensure that it is maintained. I know that if this minister, being a man of his word, still happened to be minister at the time, and he may, he would ensure it was enacted.

Mr W.R. Marmion: Correct.

Clause put and passed.

Clauses 66 and 67 put and passed.

Clause 68: Customers etc. may have decision or complaint reviewed —

Mr F.M. LOGAN: Can the minister give us some explanation about the role of the ombudsman? I know it is set out here in the bill, but could he explain it in practical terms, because the bill is quite general about the powers of the ombudsman and what he can deal with? For example, in clause 65, which we have just dealt with, it is disputes between the customer and the licensee, complaints about the licensee et cetera. Can the minister give some practical explanation about the role of the ombudsman? Clause 68, with which we are dealing, states —

> … the water services ombudsman may, in respect of the decision or complaint —
>
> (a) make any order or determination; or
>
> (b) give any direction; or
>
> (c) decline to deal with a matter …

Is the ombudsman to be there simply as a broker or more like a facilitator than a decision maker? There is no provision in the bill for the ombudsman to enforce decisions. The ombudsman may make an order or a determination, give a direction or decline to deal with a matter, but it does not then follow on that that order or direction may be enforced. Can the ombudsman, for example, issue a penalty should he or she find that a breach of an agreement or a complaint has been raised by a customer that is so great that it requires a penalty to apply to the licensee? What is the extent of the ombudsman's powers?

Mr W.R. MARMION: I refer to clause 70(2) that states that a licensee must comply with the direction or the decision of the ombudsman under the scheme set up. Therefore, they have to comply as part of their licence.

Mr F.M. Logan: The complaints can often be very, very serious.

Mr W.R. MARMION: Yes.

Mr F.M. LOGAN: For instance, the minister would have dealt with this sort of thing for sure, and I am sure everyone in this house has dealt with complaints about the Water Corporation or its contractors. In South Lake, for example—in fact it is actually in the jurisdiction of the Acting Speaker (Mr J.M. Francis), but it was also in my jurisdiction—a contractor burst a water main and the jet of water was so strong that it blew out the window of an adjoining property and literally flooded the entire house because of the pressure of the water. The Water Corporation and the contractor both contested the level of damage and the compensation that was to be paid. That happens all the time, minister. What powers will be ombudsman have in dealing with these matters?

Mr W.R. MARMION: I am trying to make this exciting as I can, members!

If it is a serious issue, it could go through the courts if it is a contractual thing. However, I would envisage that most ombudsman issues would be customers who are probably not happy with a Water Corporation bill or who have not been treated properly. In the member's example, if someone's window has been blown out, the customer will expect it to be fixed straight away. If people are messing around, the complainant would go to the ombudsman and the ombudsman would say to those people, "Just get on with it." That is the answer. The contractor must comply with the ombudsman. Hopefully, the ombudsman will deal with a lot of minor complaints and get them dealt with quickly.

Mr F.M. Logan: I hope so.

Mr W.R. MARMION: Yes. Therefore, a response will be received very quickly, and that person will not have to rely on the licensee—it may not be the Water Corporation—defending themselves and saying that it was not

their fault and some of the other typical responses we sometimes get. That is the ombudsman's role. In fact, the ombudsman scheme will be set up and funded by the licensees to an arrangement that they have to contribute to. As I said, when they get their licences, they will be signing up and having to comply with the ombudsman's decision.

Mr F.M. LOGAN: Another example was one we dealt with in this house with the minister's predecessor; it was the case in which the owner of an IGA store in—I cannot remember where it was now; it was further down south and involved a property at the beach —

Mr W.R. Marmion: The one in Myalup?

Mr F.M. LOGAN: In Myalup, yes. It was the Myalup water case in which a person got a water bill for $10 000 because the meter had been buried under a sand drift, and he was unlikely to have ever seen the leaking pipe and the water meter. Unfortunately, we had to deal with that matter by way of my raising it in this house and putting the then Minister for Water under such pressure that he made a decision off his own bat to put the hard word on the Water Corporation and told it to be a bit more sympathetic in this case and to deal with the matter. Is that the sort issue we are talking about? If so, what if we have a situation in which the Water Corporation—because its customer relation skills are sometimes found waning; I think that is the best way of explaining it—then says, "No, we are not going to give you any reduction in your water bill. Pay up!" What authority does the water ombudsman have if the Water Corporation refuses to comply with the order?

Mr W.R. MARMION: The Myalup example is a good one. I cannot give the member a specific answer, because when we set up the scheme —

Mr F.M. Logan: It is only theoretical.

Mr W.R. MARMION: Yes. There will have to be a monetary limit for the scheme—whatever that is, I do not know. The Myalup one was about $10 000 or something like that. I know from dealing with the ones that have regularly been across my desk that Water Corporation does have a system in place. If the customer rings up, a plumber cuts down supply. If they do not get all these things, unfortunately, as the member says, the bill can be rather large. It would not only be complaints about the bill; it could be smelly water, dirty water, a range of things about which someone could ring up Water Corporation—I should say the licensee—and it tells them it complies to the Australian water standards. The ombudsman can investigate and say, "We do not think it does. Fix it."

Mr F.M. Logan: So the Myalup bill would be an example of it?

Mr W.R. MARMION: I guess to start off with. That would be an example where the ombudsman obviously could get involved. If it goes over a certain monetary limit, whatever that could be, it would stay with him. Otherwise there is always the option of going to court. They would try to solve most problems in that respect.

The Myalup one is an interesting one, because I do not know that the meter was actually buried.

Mr F.M. Logan: The pipe was.

Mr W.R. MARMION: The pipe was buried with a massive amount of sand over the top of it. As the sand compacted, it snapped off one of the joints.

Mr F.M. LOGAN: I am using the Myalup example, but there are hundreds of examples, but that is a good one. I am pleased to say that might be an example of one that would go before the ombudsman. However, what if the situation was that a licensee of water—I will not pick out Water Corporation—then gets a direction or an order from the ombudsman, and it just refuses to comply. It says, "No, I do not agree with the ombudsman's direction; I do not agree with the order." What happens then?

Mr W.R. MARMION: It would be in breach of its licence. The first situation is it could be fined. If it continues to breach, there is a possibility of the government taking away the licence.

Mr F.M. LOGAN: Can the minister point out where in clause 68, which is the scheme operation—we are nudging another provision—that refusal to comply with an order will be a breach of the licence? It is all right; I have it. It is in subclause (2)(c).

Clause put and passed.

Clauses 69 to 77 put and passed.

Clause 78: Meters —

Mr C.J. TALLENTIRE: Clause 78 refers to meters. I would really like to hear why the minister would not have the situation in which licensees are installing meters? I see the word "may" there. When it comes to water,

there is no reason we should not be installing meters at every opportunity. I would just like the minister to put on record his views on metering and water supply but also waste water treatment as well.

Mr W.R. MARMION: Yes, there may be examples where meters are not necessary. In fact the member gave the example himself. We do not meter the sewage when the toilet is flushed; we do not meter the volume going down. This relates to all service providers—water, sewerage, drainage and irrigation. It covers the area where a meter may not be wanted. Basically, if the water is being charged by way of volume, a meter would be wanted on there. This means that the licensee can require a meter to be on the property.

Mr C.J. TALLENTIRE: Is there a reason that we are not metering waste water so we can more accurately charge? I know the government has a policy of cost-reflective pricing. It seems it would be impossible to achieve cost-reflective pricing without knowing volumes of material going through systems.

Mr W.R. MARMION: There is an expense there. That is the way it is charged. It is the same with drainage. One could argue that it is possible to go out there and measure how much water was actually rolling off someone's driveway and onto the road and what the percentage was. There would be a massive problem in terms of bureaucracy in measuring everything. Perhaps sewerage would not be as bad, but it is convenient the way we are charging people now, rather than having meters on all that.

Clause put and passed.

Clauses 79 to 82 put and passed.

Clause 83: Satisfying requirements for additional water services —

Leave granted for the following amendments to be considered together.

Mr W.R. MARMION: I move —

> Page 65, lines 15 and 16 — To delete "licence under the *Local Government (Miscellaneous Provisions) Act 1960*" and substitute —
>
> > permit under the *Building Act 2011*
>
> Page 65, line 17 — To delete "building licence" and substitute —
>
> > permit
>
> Page 65, lines 19 and 20 — To delete "licence under the *Local Government (Miscellaneous Provisions) Act 1960*" and substitute —
>
> > permit under the *Building Act 2011*

Mr F.M. LOGAN: Can the minister explain these amendments?

Mr W.R. MARMION: The reason we need to make the amendment is that the Building Act 2011 has come into effect. It replaces the Local Government (Miscellaneous Provisions) Act 1960. The reason for this amendment is purely that time has moved on since we dealt with this bill some eight months ago. There have been changes to the Local Government (Miscellaneous Provisions) Act, and those particular building provisions come under the Building Act 2011.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 84 to 87 put and passed.

Clause 88: Application of this Division to fire hydrants —

Mr W.R. MARMION: I seek to delete clause 88. This clause is no longer needed as hydrants will be regarded as the works of a licensee according to the recommendations of the Keelty report. We will implement those recommendations in other changes to the bill.

Mr J.C. Kobelke: I don't understand why you need to delete this clause. I understand the overall move in looking after hydrants, but why are you not supporting the retention of clause 88?

Mr W.R. MARMION: This clause treats hydrants as though they are works of the licensee, whereas in actual fact they will become the actual works of the licensee, so we do not need this clause. They are the licensee's works. This bill will actually make them the works of the licensee so that it can deal with them. This was an enabling clause for the Water Corporation to deal with assets of the Fire and Emergency Services Authority of Western Australia. Now this does not need to be done because we will make it such that the hydrants are the assets of —

Mr J.C. Kobelke: Yes, but by what means are you doing the transfer if you are not going to use clause 88?

Mr W.R. MARMION: Because hydrants are part of the assets, they become assets of the licensee anyway, so we do not need this clause. It is a bit complicated. Under clause 97, they are the works of FESA despite being attached to the licensee, which in this case is the Water Corporation. The clauses have to be read in conjunction. I do not know that I have explained myself very well, but clause 97 makes them the assets of the licensee.

Mr F.M. LOGAN: Unfortunately, the minister has not explained that clearly. It is a key issue for this side of the chamber. As the minister knows from questions that have been put by the member for Girrawheen in her role as shadow Minister for Emergency Services, she has discovered that a significant number of hydrants have not been maintained properly and are subject to an extensive waiting period for maintenance. The fact that they have not been maintained properly or are awaiting maintenance places parts of Perth at risk from fire. We on this side of the chamber are trying to find out exactly what the minister intends to do with the maintenance service provisions for hydrants in Western Australia under this legislation. First of all, I ask the minister to explain to the chamber who owns the hydrants, who has responsibility for maintenance and what the deletion of this clause will do by transferring ownership of the hydrants.

Mr W.R. MARMION: FESA owns the hydrants but it gives directions to the licensee to maintain them. This bill will get rid of that provision. FESA does not own the assets; the licensee owns the assets. So the hydrants will become the responsibility of the licensee, which is the Water Corporation in most cases. Local authorities in some other cases can also own the assets.

Mr F.M. LOGAN: Minister, that was not particularly clear either, unfortunately. We were going along quite smoothly. We understand that there will be a transfer of the assets from FESA to the licensee. I presume that in most cases that will be the Water Corporation.

Mr W.R. Marmion: Correct.

Mr F.M. LOGAN: The minister has also just indicated that it could be local councils. Is he talking about regional Western Australia? Where would local councils take responsibility for hydrants? Given that councils are not water licence holders, they cannot be included under the term that the minister just used —

Mr W.R. Marmion: Sorry; I should have said regional water licensees such as Busselton Water and Aqwest.

Mr F.M. LOGAN: Would there be any other examples?

Mr W.R. Marmion: Hamersley Iron.

Mr F.M. LOGAN: So, in all cases, the assets that currently belong to FESA will be transferred to a water licence holder.

Mr W.R. Marmion: Yes.

Mr F.M. LOGAN: And the water licence holder will be required to maintain those.

Mr W.R. Marmion: Yes.

Mr F.M. LOGAN: Who has —

Mr W.R. Marmion: There will be a service agreement between FESA and the licensee in terms of —

Mr F.M. LOGAN: The programmed maintenance of the asset.

Mr W.R. Marmion: Correct.

Mr J.C. KOBELKE: This may go across other clauses, but to expedite things I think we could deal with it while we are dealing with this clause on fire hydrants because it is picked up in other clauses. I think it is now clear what the minister is doing. I am still not clear why we need to delete clause 88. I understand it is because he is covering it through other means, but he has not been explicit about those other means that therefore do not require clause 88. The minister might like to have another attempt at trying to explain that to me. The second question is that now that the licensee, the Water Corporation or a regional water service provider, will become the owner of the fire hydrants —

Mr W.R. Marmion: Sorry; I was thinking about answering the first question. Maybe I should answer that one.

Mr J.C. KOBELKE: Yes; we will do one at a time.

Mr W.R. MARMION: Clause 88 was included to ensure that fire hydrants are protected from interference as though they are the works of a licensee. This was needed because, although hydrants are attached to the works of the licensee, they are not the works of the licensee and would therefore not be protected from interference

without this provision. This is no longer needed as hydrants will now be the works of the licensee. That is the explanation.

Mr J.C. Kobelke: Division 4 relates to the protection of the asset, not the provision of it.

Mr W.R. MARMION: Yes.

Mr J.C. KOBELKE: I am asking the other question under this clause so that we can hopefully deal with it expeditiously. Now that the licensee—the Water Corporation in a given area—will actually own the asset of fire hydrants, it is required under another clause to actually maintain and deal with the provision of fire hydrants, installing new ones and removing them and whatever, as required by the Fire and Emergency Services Authority. The licensee is then to bill FESA for that. What is the mechanism by which disputes will be resolved if FESA believes that the Water Corporation is charging too much for those services? How do we handle the issue of making sure that both parties can come to an agreement on the costs involved with the services that the licensee will provide to FESA?

Mr W.R. MARMION: We will amend clause 97 so that costs and expenses can be recovered by regulations. Under the regulations there will be rules set up for how that will work. In the interim, we will have a service level agreement set up as well. The short answer is that, by regulation, the licensee may recover reasonable costs and expenses of installing, removing, repairing or maintaining fire hydrants in accordance with the regulations. Without limiting that, there may be a limit on what may be recovered as costs and expenses, so there will be rules set up under the regulations for reasonable recovery of the costs and expenses for maintaining, installing and removing hydrants.

Clause put and negatived.

Clauses 89 to 95 put and passed.

Clause 96: Disconnection or reduction in rate of flow etc. —

Mr C.J. TALLENTIRE: I raised this matter earlier; it is the issue of disconnection, especially in relation to land that is unoccupied from a human dwelling point of view, but may be occupied if we take the term "occupied" in its more broad sense. Since we last discussed this, my thinking is that we should really be looking to amend clause 96(1)(a) to read "the land is unoccupied by humans, or animals needing water", so that we can avoid a situation in which a water service provider cuts off water to a property, resulting in the death of livestock. When I raised this matter before, the minister suggested that a code of practice might deal with this; on reflection, I think that that is a fairly unsatisfactory approach. I wonder whether the minister, upon reflection, has also realised that perhaps there is a better way of dealing with this and that a couple of additional words in the clause will provide clarity.

Mr W.R. MARMION: This clause simply replicates existing provisions, except that an occupied dwelling cannot be cut off unless the occupant agrees, so that is a bit of a safeguard.

Mr C.J. Tallentire: Sorry, was that occupied or unoccupied?

Mr W.R. MARMION: Occupied.

Mr C.J. Tallentire: I am interested in unoccupied dwellings.

Mr W.R. MARMION: The member is talking about animals and things like that. Restriction or disconnection for unoccupied dwellings could, as I said, be regulated through a code, and I think that that is probably the appropriate way to go, rather than coming up with something that could be hard to put into an act. I would favour the possibility of that being in a code.

Mr C.J. TALLENTIRE: There are two things there, minister. I just pointed out some very simple words that could be fitted in the legislation; it would not be complicated at all. I know that the minister has said a number of times during consideration in detail that this is what the act currently says; I assumed that we were putting together the Water Services Bill because we want to improve things. I am not really interested in what was there before; I am really only interested in what is in the bill before the chamber. Our role is to make sure that it is as comprehensive and as precise and clear as possible. The minister hopes that there will be some code of conduct that will require a water services provider to provide water to livestock, but that is not a certainty. We could easily amend this clause and provide the certainty that most Western Australians would expect.

Mr W.R. MARMION: There has been extensive consultation on this bill over many, many years and I am advised that no-one has raised that matter as an issue.

Mr C.J. Tallentire: That's why we do this process!

Mr W.R. MARMION: If it was a serious issue, there is a good chance that someone would have raised it.

Mr C.J. Tallentire: That's why I'm raising it!

Mr W.R. MARMION: I am happy to leave it as it is.

Mr F.M. LOGAN: This clause obviously gives a licensee the power to reduce the flow of water, particularly to people who owe money to the licensee. During the debate we had in this house over the interest charged on overdue amounts—which can go up to 14.3 per cent, as we know, because it is on the bill that everyone in the state receives —

Mr W.R. Marmion interjected.

Mr F.M. LOGAN: Well, it was 14.3 per cent on my last bill. It is the same on everybody's bill, as I understand it, in Western Australia. One of the things the minister committed to during that debate was to go back over those interest charges, because he tried to give the impression that there was a range of charges—anywhere from an average of five per cent up to possibly 14.3 per cent.

Mr W.R. Marmion: Or zero.

Mr F.M. LOGAN: Well, there may be some occasions when it is zero, but he did not give examples. One of the commitments he made was to go back and look at the way in which those interest charges are applied and whether there can be some consistency in the reduction of the interest charges, in the same way that applies to overdue electricity bills. My first question is: has that been undertaken?

The second question relates to the actual reduction in supply of water. That does not occur in other states. For example, the Victorian government and its water service licensees do not do that under an agreement it has with the Victorian equivalent of the Western Australian Council of Social Service. The Victorian government maintains the provision of water to those people who are struggling to pay their bills, but it ensures that there are terms of agreement with the householder, so that the family is not penalised by having its water supply reduced to a trickle. That is what the Water Corporation does here. The government indicated that it would go back and look at those ways of dealing with people who cannot pay their bills, and this is really the key point here. This clause gives the licensee the authority to do that, and I ask the minister whether he has gone back to look at different ways of encouraging people to pay their bills without needing to have this proposed section in an act of Parliament. Given the increases in water charges that the minister and his predecessor have foisted on the people of Western Australia—there is more to come on Thursday—the minister knows about the massive increase in the number of people who are struggling to pay their water bills and who have had their water supply reduced to a trickle, or have been taken to court or had legal proceedings instituted against them, or are on payment plans that attract a massive amount of interest from the Water Corporation.

Mr W.R. MARMION: Clause 96 sets up the ability for the licensee. Clause 96(1) reads —

> A licensee may cut off, reduce the rate of flow of or refuse to connect a supply ...

The key word is "may". As the member is aware, currently a licensee can reduce or restrict flow for two weeks and then put it back on again, except if it has not been able to contact the person. Usually, if a situation arises, the consumer goes down a scale. As the member knows, when people receive bills and do not pay them, an interest rate is charged to encourage people to pay their bills. If someone has trouble paying their bill, they can ring up and get the interest rate reduced. If someone is really in a lot of trouble, they can get the interest rate down to zero and get hardship utility grant scheme assistance. Some people go overseas and cannot be contacted. If they are unable to be contacted, they may get a restriction put on their water for two weeks. That sometimes does the trick. Someone realises, "Hey, I haven't got any water!" Then they work out an arrangement for paying their overdue bill. That seems to work well.

Under this new bill, the minister has the power under some codes to moderate and set the minimum flow. Water flow can be restricted to whatever litres per second for two weeks. Under the codes the minister can say, "I want it to be double that or triple that." The minister can moderate what a licensee may do. That is one of the benefits of this bill. Clause 96 provides the licensee with the ability to do those things when required. That is probably a very good thing to have in the bill.

Mr F.M. LOGAN: I want to comment on two things. I refer to the previous example that I gave the minister of the Myalup case. The irony is that the Water Corporation seems to be very quick to follow up people who have not paid their bills; it institutes payment plans and reduces their water to a trickle. However, for people such as the person in Myalup whose pipe broke—the water meter was ticking away and the bill went up to $26 000—it took the Water Corporation six months before it noticed that so much water had been lost. That is the irony of this. If someone does not pay their bill, the Water Corporation is on top of them. If someone has a broken water pipe, the Water Corporation just leaves it and keeps pouring water into the sand dunes. Nothing happens until —

Mr W.R. Marmion: They read the meter.

Mr F.M. LOGAN: The Water Corporation goes down and reads the meter and in the first instance gives the consumer a $26 000 bill, reduced to $10 000. That is the irony of the situation. A provision in the clause with which we are dealing would allow a licence holder to intervene and turn off the water in those cases. The Water Corporation is pretty quick to penalise people who are battling to keep their water on.

Could the minister talk about re-examining interest charges?

Mr W.R. MARMION: It is not related to this bill, but I have asked the board to look at the interest rate that we charge on overdue bills; that is, for everybody.

Mr F.M. Logan: They told you to get stuffed.

Mr W.R. MARMION: I actually agree with the board on this point. It is an incentive for consumers to pay their bills on time. The board is looking at the actual rate and whether it is reasonable. There needs to be some incentive for someone to pay their Water Corporation bill rather than pay another bill. As the minister, I am keen for them to do that.

Clause put and passed.

Clause 97: Fire hydrants —

Mr W.R. MARMION: I move —

> Page 82, line 21 to page 83, line 9 — To delete the lines and substitute —
>
> (6) An agreement between a licensee and FESA or a local government about the provision and maintenance of fire hydrants in an area may displace the application of subsection (5) in relation to that area.
>
> (7) A licensee may recover the reasonable costs and expenses of installing, removing, repairing or maintaining a fire hydrant in accordance with the regulations, which (without limiting that) may —
>
> (a) limit what may be recovered as costs and expenses;
>
> (b) provide for the costs and expenses to be recovered from FESA or a local government (according to whose district the fire hydrant is in);
>
> (c) provide for the recovery of the costs and expenses in a court of competent jurisdiction.
>
> (8) Subsection (7) does not prevent the costs and expenses from being recovered indirectly via statutory water service charges.

Mr J.C. KOBELKE: Minister, this answers the question I asked earlier about the resolution of disputes, because the minister will be able to set the costs by regulation. Under the amendment the minister has just moved to clause 97(7) —

> A licensee may recover the reasonable costs and expenses of installing, removing, repairing or maintaining a fire hydrant in accordance with the regulations, which (without limiting that) may —
>
> (a) limit what may be recovered as costs and expenses;
>
> (b) provide for the costs and expenses to be recovered from FESA or a local government (according to whose district the fire hydrant is in);
>
> (c) provide for the recovery of the costs and expenses in a court of competent jurisdiction.

Is seems to me that the minister's earlier answer does not fully cover what I said; that is, we could potentially have disputes and they need to be settled. The minister's answer was to the extent, "Well, they'll go to court." We really do not want the Fire and Emergency Services Authority or a local government authority in court with the Water Corporation or one of the other water authorities because we cannot get agreement. I am sure it is the minister's intention that, hopefully, the agencies would have a cooperative relationship and that the regulations will go to the purposes of clause 97(7)(a) and (b)—that is, limit what may be recovered as costs and expenses and provide for the costs and expenses to be recovered from FESA or a local government. That is the way we would all hope it would work. However, it seems to me that the fallback we then have is to let them settle in court. If that is not the intention, could the minister please explain it? Alternatively, is the minister really saying that if there is a standoff between FESA and the Water Corporation, for instance—that is just one possibility—the matter would have to be settled in court, with costs to the taxpayer because one government agency would be taking another government agency to court?

Mr W.R. MARMION: Clause 97(7) basically provides that reasonable costs and expenses will be set up with the regulations, as I said before. We have not worked out how they might be charged. There are lots of different ways in which we could recover those costs. It could even be from consumers or it could be from FESA. There are all sorts of different ways. However they are recovered through the regulations, and the regulations may limit the costs and expenses. This allows us to limit them if we want to when we do the regulations. They may provide for the costs and expenses to be recovered from FESA or a local government—some of them might be managed by local government—or, obviously, they could also have provisions to recover the costs and expenses in court if there were a dispute. This is basically setting up a mechanism through regulations to cover those costs. Currently, the fire and emergency services levy pays for the works done by the Water Corporation on what are currently FESA's assets. When the assets are transferred to the Water Corporation, obviously, as the Minister for Water, I would like FESA to continue to pay those costs. That has not been worked out. This is just saying that the regulations will define how those costs and expenses are recovered.

Mr J.C. KOBELKE: The minister's statement that "it has not been worked out" is an indictment. Out of the Keelty report, the government has a proposal to shift responsibility for the ownership of the fire hydrants. They are an incredibly important piece of public infrastructure. This transferral is being made without the costs between the government agencies having been worked out. That is a deficiency and should have been sorted out. The minister said that perhaps he will hit consumers for it! It is about time the minister realised that the people of Western Australia have had enough of being milked by the Barnett government. Every way they turn they are being milked. The government has put an extra levy on central city car parking. The public has been hit with a 57 per cent increase in electricity, a 45 per cent increase in water, huge increases in the emergency services levy so that the government can put in less public money and make the people pay for it, and now the minister is saying that he will hit ordinary mums and dads for fire hydrants. They simply will not stand for it.

Mr R.F. Johnson: He didn't say that at all.

Mr J.C. KOBELKE: He did. He said, "We could get the money from the consumers." It is there in black and white in proposed clause 97(8). Subclause (7) allows for the establishment of regulations, and subclause (8) states —

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

Currently, there is no mechanism to charge mums, dads and small businesses for the fire hydrant in their street. What the minister is doing by the amendment he has just moved is saying that this is another opportunity for the Barnett government to rip money out of people's pockets because the government cannot manage its budget. That is what this amendment that the minister has just moved does. It is no good saying, "It's not our intention; we're not going do it." The government's track record is that time after time it has hit ordinary mums, dads and pensioners to pay for the government's economic mismanagement.

Mr W.R. Marmion: You're missing the point.

Mr J.C. KOBELKE: Explain it by interjection.

Mr W.R. Marmion: I will explain when you sit down.

Mr J.C. KOBELKE: I am most concerned that the amendment the minister has just moved at subclause (8) gives the government a mechanism for placing another Barnett government tax on ordinary people to pay for fire hydrants, which they have never done in the past.

Mr W.R. Marmion: This leaves all options open. You are jumping to a conclusion. Mums and dads pay the emergency services levy already. One option could be to just transfer that across so that then there is no change. Another option would be to reduce the emergency services levy by the equivalent amount that mums and dads are currently paying and it could go through the Water Corporation bill. There would be no change. In terms of looking at the big dollar picture, there is no change to the dollar. You're making something up.

Mr J.C. KOBELKE: Other than signed-up members of the Liberal Party, and probably not even half of those, no-one would believe the minister. The government has a three-and-a-half-year track record of adding a tax on a tax on a tax on ordinary people.

Mr W.R. Marmion: You're getting off the point.

Mr J.C. KOBELKE: The minister is saying, "We are going to give ourselves more taxing power but, hand on our heart, we're not going to use it."

Mr W.R. Marmion: Get back to the point.

Mr J.C. KOBELKE: The point is that the minister is giving himself an extra taxing power by the amendment he has just moved. It is no good for the minister to say that he will not use it because of the government's track record. Let us go to the emergency services levy. When that levy was introduced by Labor, we gave a clear commitment about how the money that it raised would be spent. The levy was raised through a much more efficient and better system that was difficult to implement, and a lot of political capital was used to get it through. The then Liberal opposition said that it would be watching us to make sure that we did not use the levy as a way of shifting greater costs on to ordinary households through the emergency services levy and to use less of the public purse. We made sure that happened. However, as soon as the Liberal Party formed government, it upped the services levy by a huge amount—by 28 per cent in one year—and took less money from consolidated revenue because the Liberal government had found a new way of using taxes to pay for the emergency services levy. We do not want another provision in this bill by which the government can put an extra burden on mums, dads and pensioners to fund these fire hydrants. We do not need this.

Mr F.M. LOGAN: It is clear that the minister is giving himself an option in proposed clause 97(8) to ignore everything that is in proposed subclause (7) and provide for the recovery of the costs for the maintenance and servicing of fire hydrants across Western Australia via statutory water service charges. We know what those service charges are; that is what people pay every year in their water bill. That is what the minister is saying. Effectively, he is introducing another tax. It is another cost impost on the people of Western Australia by getting them to pay for the maintenance and services of fire hydrants, which has never been done before. I think the minister must be absolutely clear with the house tonight and explain how this provision will be implemented and who ultimately will pay. There are two options here. Under proposed subclause (7) the cost may be recovered from FESA or a local government, and under subclause (8), the money for the servicing and maintenance of those fire hydrants may be recovered from the people of Western Australia. The minister needs to be very clear on that because it is an important point.

Mr W.R. MARMION: Discussions are still ongoing, as I just told the member for Balcatta, about whether we transfer the fire and emergency services equivalent to the Water Corporation or we reduce the levy by the equivalent amount. At the end of the day it is a zero-dollar equation.

Mr F.M. LOGAN: That has not given the house, or I imagine most people in Western Australia who pay water bills, any solace at all. I asked the minister to be clear on exactly how this charge is to be recovered. There are two options, one of which gives the government the ability to increase the water service charge. I do not know whether that has been discussed with Treasury or has been included in this year's budget or whether it has been announced at all. This amendment to the bill has come out of the minister's office in the last few weeks, with no notification at all to the people of Western Australia that they are likely to now pay for not only the water service that is provided to their own home, but also the maintenance and service of the fire hydrants in their suburb. That is a major move away from the current practice. If that is the case, we will oppose it.

Mr W.R. MARMION: That is only an option. We have left clause 97(8) in as an option. As I said, it is a zero-dollar equation. Mums and dads will not pay any extra; they are already paying the fire and emergency services levy.

Mr F.M. Logan: How can it be zero if it goes on the water service charge?

Mr W.R. MARMION: Because if they are paying a fire and emergency —

Mr F.M. Logan: It is a statutory water service charge.

Mr W.R. MARMION: It is an option.

Mr F.M. Logan: Yes; I am going to that option.

Mr W.R. MARMION: We might be going to the option in subclause (7).

Mr J.C. KOBELKE: The minister has admitted both when he said that the money could be recovered from consumers and in his contribution of a moment ago that proposed subclause (8) gives the government a new means by which to charge people to pay for the installation, maintenance and servicing of fire hydrants. The minister made that absolutely clear. He has suggested that people take the Barnett government on trust. He suggests that if the government uses this mechanism to hit people with a new and extra charge, it will not do as it has always done and simply take the extra money, but it will offset that by reducing the money it takes from somewhere else. The minister said that to the house on more than one occasion this evening. The point that I make to the minister is that no-one believes him. This government has had a hand in every pocket, every purse and every wallet that it can get into. No-one will believe that this new taxing power, this new power to charge a statutory water service charge, will somehow be offset by a reduction. It is a power that no government has had in the past, specifically to charge for fire hydrants, and the minister has not made the case for why it should now have this power. On that basis, I totally reject proposed subclause (8). We do not need a new charge. I seek your guidance, Mr Speaker, because the motion before the house seeks to delete the lines from line 21 on page 82 to

line 9 on page 83 and substitute another three subclauses (6), (7) and (8). The opposition has no trouble agreeing to proposed subclauses (6) and (7), but it does not believe that a new taxing power should be imposed by way of this extra statutory water service charge. Therefore, the opposition seeks to move against that. I now seek your guidance, Mr Speaker, about whether we put the proposed subclauses (6), (7) and (8) as separate questions or whether I need to move to delete proposed subclause (8) before the question to insert is put.

The SPEAKER: Member for Balcatta, you can move an amendment to the amendment if that is what you choose to do.

Mr J.C. KOBELKE: Mr Speaker, I will move an amendment to the amendment moved by the minister; namely, that proposed subclause (8) be deleted.

The SPEAKER: Members, there is some complexity; however, the question I will put to the house is that the words to be deleted be deleted.

Mr R.F. JOHNSON: Mr Speaker, which words are we referring to?

The SPEAKER: We are I believe referring to clause 97, Leader of the House, and line 21 on page 82 through to line 7 on page 83.

Mr W.R. Marmion: I do not wish to confuse things, but would it be better if I just moved proposed subclauses (6) and (7) and then moved subclause (8) afterwards?

The SPEAKER: You have moved the amendment.

Mr W.R. Marmion: I know that I have moved subclauses (6), (7) and (8), but —

Mr J.C. Kobelke: You could withdraw.

Mr W.R. Marmion: I could withdraw subclause (8) and just put subclauses (6) and (7).

The SPEAKER: I think I need to put that to the house. Is the minister seeking leave to withdraw?

Mr W.R. Marmion: Yes.

Amendment, by leave, withdrawn.

Mr W.R. MARMION: I move —

> Page 82, line 21 to page 83, line 7 — To delete the lines and substitute —
>
> (6) An agreement between a licensee and FESA or a local government about the provision and maintenance of fire hydrants in an area may displace the application of subsection (5) in relation to that area.
>
> (7) A licensee may recover the reasonable costs and expenses of installing, removing, repairing or maintaining a fire hydrant in accordance with the regulations, which (without limiting that) may —
>
> (a) limit what may be recovered as costs and expenses;
>
> (b) provide for the costs and expenses to be recovered from FESA or a local government (according to whose district the fire hydrant is in);
>
> (c) provide for the recovery of the costs and expenses in a court of competent jurisdiction.

I foreshadow that I will move proposed subclause (8) after this question is put.

The SPEAKER: If members have their documents in front of them, the words to be deleted are from line 21 on page 82 to line 7 on page 83.

Mr J.C. KOBELKE: The motion moved by the minister, as on the notice paper, is to line 9.

The SPEAKER: Correct.

Mr J.C. KOBELKE: But that is not the question that you are now putting to the house.

The SPEAKER: The minister has in fact suggested that.

Mr J.C. KOBELKE: Okay; the next question will have to be to delete lines 8 and 9 on page 83 before, I assume, moving to the insertion.

The SPEAKER: I believe that to be the case, member for Balcatta.

Amendment put and passed.

Mr W.R. MARMION: I will move that proposed subclause (8) be inserted after subclause (7).

The SPEAKER: The minister will need to move a deletion.

Mr W.R. MARMION: I move —

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

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

Mr J.C. KOBELKE: Amended clause 97 consists of subclauses (1) through (7), with subclause (7) providing for the recovery of costs and expenses relating to fire hydrants by way of regulation. It is now proposed to delete subclause (8) that states —

The regulations may deal with what may be recovered as costs and expenses under subsection (7).

I repeat —

The regulations —

Which are in subclause (7) —

may deal with what may be recovered as costs and expenses under subsection (7).

These are regulations for governing the costs that will be paid by FESA or a local government authority to the Water Corporation or another licensed water entity that provides fire hydrant services. The minister is proposing to move away from regulations dealing with a contractual matter between two government or semi-government agencies and proposes a new subclause (8) that reads —

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

That is totally different from the bill that started its passage through this house last year. We are now looking at providing a new head of power to place a new charge on ordinary households. It is a new tax, to put the words that ordinary people out there will think of it as.

Mr D.A. Templeman: They realise what they're doing over there.

Mr J.C. KOBELKE: The minister has suggested tonight that the government is not sure how it will do this. It wants the power to be able to put in place this extra charge or tax, but it gives the guarantee that people will not be worse off. No-one is going to believe that when they have been hit with huge increases in electricity, water and parking fees, extra taxes on their rubbish, a fourfold increase in the landfill levy and a huge increase in the emergency services levy. This is just another opportunity for the government to get its hand into the purses and wallets of mums and dads and pensioners, and we will not stand for it. The public has had enough. It is about time that this government woke up to the pain it is inflicting. The public will not accept this. If the government supports this amendment and gets the numbers tonight, by the time this legislation gets to the other place, it will have a public uproar about this extra new charge, which will be labelled a tax. It is absolute nonsense that the government thinks it can keep hitting people with charge after charge. This new charge is not warranted, the government should not be proposing it, and we will not support it.

Mr D.A. TEMPLEMAN: Is it not interesting, Mr Speaker, that late in the evening we now discover that this minister and this government are attempting once again to open up an opportunity to place on the families and the householders of Western Australia a potential new tax—a new opportunity to make people pay? As the member for Balcatta has highlighted very, very clearly, members opposite—particularly the backbenchers, who follow like lambs their ministers and their Premier, without questioning them—need to understand the implications of what is being proposed in the clause, as has been outlined by the minister, and the major implications, as have been highlighted by the member for Balcatta. The member for Balcatta is absolutely right. I am afraid that the minister's word and, I am afraid, the Premier's word, and ultimately the government's word, mean nothing when they say that it is an option but they probably will not take it up. The people of Western Australia probably did not think that they would take the drastic step of increasing electricity charges by 57 per cent in the last two years. The people of Western Australia probably did not think that they would take the drastic step of allowing gas prices to increase by 30 per cent over the last couple of years. The people of Western Australia probably did not think that they would take the drastic step of imposing greater charges for the necessities of life, including water. They have done it, and they have done it because they think that when they come to the next election on 9 March, the people will forget all about it.

I do not know about the minister—he might live in a leafy suburb of Perth and go home tonight and sleep comfortably—but I will go home by train tonight to my community in Mandurah, and members of this place will go back to their communities, particularly members on this side who represent communities in which a great deal of pressure is placed on the families who live in their electorates, and they will know that once again the minister is creating an opportunity for his government to impose a cost-recovery tax for the provision and the

maintenance of fire hydrants in neighbourhoods—something, as the member for Balcatta quite clearly outlined, has never happened before.

Members opposite—I cannot hear the bleating from the member for Wanneroo tonight; I do not know where he is, but he is always —

Mr R.F. Johnson: Member for Mandurah —

Mr D.A. TEMPLEMAN: No, no. He is always keen to have a go, but where is he defending the people in his electorate to make sure that they understand what this minister is proposing? The reality is that if the government backbenchers vote for this amendment by the minister and allow this clause to be passed as the minister wishes it to be passed, the people on that side of the house will be sanctioning another method to attack the household budgets of Western Australians and people who live throughout Western Australia. That is the reality. But it seems that in this place, pleas to the backbenchers of the government fall on deaf ears because all they do is follow blindly the Premier and the various ministers of the government, and that is very, very sad.

Mr R.F. Johnson: Member for Mandurah —

Mr D.A. TEMPLEMAN: What is wrong with you?

Mr R.F. Johnson: If you sit down, I'll adjourn the debate and you can consider this overnight; okay?

Mr D.A. TEMPLEMAN: I am pleased to hear that.

Mr R.F. Johnson: Just sit down and I'll do it.

Mr D.A. TEMPLEMAN: I am pleased to hear that and I will sit down. That shows some sense, and I am glad the Leader of the House has stepped in over the top of the Minister for Water.

Mr R.F. Johnson: I haven't done that at all.

Mr D.A. TEMPLEMAN: I am glad he has stepped in over the top of the Minister for Water and overruled him on this, because he really does not have a good handle on this particular clause or this bill. I will sit down now and not talk any further. I will ask the Leader of the House to adjourn the house so that the minister can get some sense. Go home to Nedlands; sleep on it, buster!

Debate adjourned, on motion by **Mr R.F. Johnson (Leader of the House).**

House adjourned at 10.06 pm