

ECONOMIC REGULATION AUTHORITY BILL 2002

Committee

Resumed from 21 October. The Deputy Chairman of Committees (Hon Barry House) in the Chair; Hon Nick Griffiths (Minister for Housing and Works) in charge of the Bill.

Clause 64: Review of Act -

Progress was reported after Hon George Cash had moved the following amendment -

Page 34, line 28 - To insert after "section" -
and thereafter at 5 yearly intervals

Hon GEORGE CASH: It may assist the Chamber if I explain the reasons for this amendment. Members will be aware that clause 64 deals with the review of the Act, as it will be. In its original format, the Bill suggested that the minister must carry out a review of the operation and effectiveness of the Act as soon as is practicable after the expiry of five years from the commencement of section 64, as it will be. I moved an amendment to delete "5" and insert "2" so that the first review was held after two years. That was agreed to by the Committee. The minister had previously moved an amendment to delete the word "Minister" and insert instead "a Joint Standing Committee of both Houses of Parliament appointed for the purposes of this section". My amendment now requires that there be a review of the operation and effectiveness of the Act at five-yearly intervals; that is, after the first two-yearly review. I commend the amendment to the Chamber.

Hon JIM SCOTT: The Greens (WA) support the amendment. It is a very important measure, because one of our concerns with the Bill is that it will be used by Governments to remove their accountability to some degree. Rather than having a direct responsibility, the regulator will be between government and the people who have concerns about the various dealings that are carried out, particularly in this Parliament. I have not consulted with my colleagues on this, but I would have liked the review to not only look at the operation and effectiveness of the Act but also consider accountability measures.

Hon George Cash: I think "operation" might be extended to mean that.

Hon JIM SCOTT: I hope the minister can give us some indication whether a review of the operation of the Act means that accountability measures will be considered. That is a critical issue in this legislation. I look forward to hearing from the minister whether he believes that reviewing the operation and effectiveness of the Act includes the consideration of whether proper accountability measures exist to enable proper scrutiny by members of this Parliament and by the public of the operations of the Economic Regulation Authority, as well as the government performance behind it.

Hon DEE MARGETTS: I support the words of my colleague Hon Jim Scott. However, I also point out that, although the Greens (WA) obviously support the review, what happened in the Chamber yesterday, which enabled us to get at least some inkling of some review of the Economic Regulation Authority that will take place, indicates that a Bill that deals with an economic regulation authority should look quite different. If there is to be a review after two years, and every five years thereafter, what does that mean in terms of the number of recommendations of the independent review of the Water Services Coordination Act, which Hon Derrick Tomlinson helpfully said should have been available in 2001? What does that say about the many aspects of that Bill that are not incorporated in it? We will be reviewing something that does not include the many -

Hon Nick Griffiths: What do you mean by "that Bill"? I am trying to follow what you are asking me to respond to.

Hon DEE MARGETTS: The review of the Water Services Coordination Act looked in detail at many aspects of, at that stage, the proposed Economic Regulation Authority Bill. From my brief reading of that report, Treasury thought that the public interest provisions already in the Bill were in conflict with what it considered to be the main role of an economic regulation authority. We can see that, right from the beginning, the Western Australian Treasury officials involved in this process were trying to undermine the public interest provisions of the Bill as it was. What does it mean for the review when the recommendations of that statutory review were not available to be put in the Bill in the first place? We will be reviewing an Act that does not even contain the recommendations of a statutory review of this Government.

Hon NICK GRIFFITHS: I note the very narrow words of the amendment. In speaking to the amendment, the Government supports the amendment moved by Hon George Cash.

Hon DEE MARGETTS: Obviously that is a totally unsatisfactory response.

Hon Nick Griffiths: To the amendment?

Hon DEE MARGETTS: The minister's support of the amendment is not unsatisfactory. However, the minister knows what I am talking about.

Hon Nick Griffiths: I'm afraid I don't.

Hon DEE MARGETTS: Perhaps that is the problem: the Government does not seem to understand that it has failed in its own statutory obligations. It has failed to provide to this Parliament the information from its statutory review, which should have been available in 2001. The Economic Regulation Authority, which the Chamber has agreed to review in two years and every five years thereafter if this amendment is passed, will review legislation that does not contain many of the recommendations of the statutory review. Does the Government consider that this is the way in which fair and open government is supposed to operate?

Amendment put and passed.

Hon NICK GRIFFITHS: I move -

Page 34, line 29 - To delete "Minister" and insert instead "Joint Standing Committee".

This is consequential upon the Committee's earlier decision to have the review undertaken by a joint standing committee.

Hon DEE MARGETTS: A similar amendment is in my name, so the Greens (WA) will support that the review be undertaken by a joint standing committee rather than by the minister.

Amendment put and passed.

Hon DEE MARGETTS: As I indicated, there is no necessity for me to move my amendment now because similar wording has been agreed to.

Hon NICK GRIFFITHS: I move -

Page 35, line 3 - To delete "Minister" and insert instead "Joint Standing Committee".

Amendment put and passed.

Hon NICK GRIFFITHS: I move -

Page 35, line 5 - To delete "Minister" and insert instead "Joint Standing Committee"

Hon GEORGE CASH: I take this opportunity before the minister moves amendment 10/64 to invite the minister to delete the phrase "5 year", given that amended subclause (1) will require a first review after two years and further reviews at five-yearly intervals thereafter. It would be better to delete the phrase "5 year" otherwise no particular time will be imposed on the first review, which will commence after two years.

Hon NICK GRIFFITHS: I thank Hon George Cash for his observation. I was not going to move amendment 10/64 in light of the Committee's decision on this matter. It is not necessary.

Amendment put and passed.

Clause, as amended, put and passed.

Schedule 1 -

Hon NICK GRIFFITHS: Is it appropriate, subject to the wishes of the Committee, to move the three amendments?

The DEPUTY CHAIRMAN: If the Committee is agreeable to that proposition I certainly am.

Hon NICK GRIFFITHS: I move -

Page 36, line 19 - To delete "The" and insert instead "A".

Page 36, line 19 - To insert after "is" -

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(a)

Page 36, line 19 - To insert after "members" -

if the governing body consists of 2 members; or

(b) otherwise, at least one half of the number of members in office.

Hon NICK GRIFFITHS: The Committee may recall that when we were dealing with clause 7, a change was made to the number of members on the committee; that is, the limit was removed. The amendments in my name relating to schedule 1 are consequential upon that. Schedule 1 requires a quorum of two members. That is appropriate when the maximum number is three. It is proposed to amend the quorum so that if the governing

body consists of six members, the quorum will be three and a small minority of the membership will not provide the quorum.

Amendments put and passed.

Schedule 1, as amended, put and passed.

Schedule 2 -

Hon NICK GRIFFITHS: I move -

Page 38, line 20 - To delete “53(1)” and insert instead “53”.

The Bill currently provides a consequential amendment to section 53(1) of the Conservation and Land Management Act 1984. Since the introduction of the Bill, amendments have been made to that Act and there is no longer a section 53(1). The correct reference should be to section 53 of the CALM Act and I have moved the amendment in line with the amendment that the Parliament dealt with earlier.

Amendment put and passed.

Hon NICK GRIFFITHS: I move -

Page 53, lines 23 to 30 - To delete the lines and insert instead -

Section 12(1) is amended as follows:

- (a) by deleting paragraph (e);
- (b) in paragraph (g) by deleting “2” and inserting instead -
“ 3 ”.

This amendment deals with matters relating to the Swan River Trust. Section 12(1)(e) of the Swan River Trust Act provides for the Coordinator of Water Services to be a member of the Swan River Trust. As the Coordinator of Water Services is repealed under this Bill at schedule 2, clause 71 of the Bill provides for a representative of the Department of Environmental Protection to replace the Coordinator of Water Services as a member of the trust. Since the matter was first considered, the Government wants to change the membership composition of the trust to increase its community membership but not increase its size. This amendment will therefore remove one public sector officer, the Coordinator of Water Services, appointed as a member of the trust, and increase from two to three the persons appointed by the minister, neither of whom is an elected member of the council of a local government. The amendment will therefore allow for a community person to replace a member of the public service.

Amendment put and passed.

Hon DEE MARGETTS: I move -

Page 59, lines 23 and 24 - To delete the lines and insert instead -

public health considerations in relation to the provision of a safe drinking water supply

The lines I propose to delete are already included in the objects of the Economic Regulation Authority and are therefore unnecessary. The reason for replacing them with the words I have moved should be self-evident. I point out that the “Final Report of the Water Services Coordination Act Review Panel” produced on 31 March 2003 surfaced only yesterday, whereas the Bill was drafted in 2002. The Greens (WA) have not had access to that report until yesterday. The report noted the policies of the Government on sustainability. The report at page 20, on matters that we have dealt with to which the authority must have regard, stated -

These can be read as the objectives of the new regulator and are intended to apply across all regulated industries under the ERA, not just the water services industry.

The report continues -

While these matters indicate the need for the regulator to have regard to both the social and economic dimensions of sustainability, there is no explicit recognition of the need to consider environmental sustainability. Yet the recent focus on problems on managing limited water resources in an environment of increasing demand and population, declining sources, and the Government’s general position on sustainability leaves no doubt that the regulatory arrangements for the water services industry needs to also specifically address this aspect of sustainability.

Further on the page, the report states -

The Department of Treasury and Finance (DTF) submission to the Draft Report raised the potential for such an objective to conflict with the public interest provisions of the ERA Bill.

Whatever that is; there is no specific public interest provision in the Bill, only a schedule relating to water services coordination. The report continues -

The Review Panel considered that this issue should be considered in drafting the amendment to the WSC Act.

That is, the Water Services Coordination Act. The report continues -

The Review Panel recommends that:

1. A supplementary objective be inserted into the amended WSC Act, to the effect that, with regard to the water services industry, the ERA have regard to the long term consideration of environmental, social and economic sustainability of the water services industry.

Frankly, there is almost no issue of the social impact of the sustainability of water more serious than a health impact. If people lose faith in the quality and reliability of the water supply, it will be rendered worthless. Following the submission from the Department of Health to the Standing Committee on Public Administration and Finance, I submit that there would be, at least in the water sector, public health and safety implications, limited though the Bill is because the Government did not want these issues to be more prominent in the Economic Regulation Authority. There is no need for a further statement of the requirements of the ERA; they are already prominent and, in the view of the Greens (WA), over prominent. If the public interest test again states the objects of the Bill, the importance of competition in the water services industry market will become a circular argument. If a public interest test is required to balance the social, public health and safety aspects of the water services industry, I urge on members that those areas are already balanced in the requirements to which the Economic Regulation Authority must have regard. They are compulsory and therefore we do not need it stated again. From the point of view of the Greens (WA), it is a grave error of omission to leave out public health and safety implications when dealing with the quality of water. This is a very minor amendment in many ways, and unfortunately it is still optional, because subclause (1b) states -

... may take into account one or more of the following matters -

Basically, that is a fairly limited public interest test, but at the very least it should not leave out public health and safety implications.

Hon NICK GRIFFITHS: I note Hon Dee Margetts' observation that this is a very minor amendment, but it seeks to do two things. Firstly, it seeks to remove certain words - namely, "the importance of competition in water services industry markets", and then insert other words. Competition can be important; it can give rise to lower prices, it can enable greater innovation to take place and it can provide for improved service standards, and that occurs. It is the Government's preference to leave those words in the clause. Again it is a matter that may be taken into account. The second part of the honourable member's amendment seeks to insert other words; namely, "public health considerations in relation to the provision of a safe drinking water supply". These matters are not regulated anyway, but the Government has no objection to those words being inserted. I am trying to be cooperative. I suggest a way forward would be for the honourable member - if she agrees with what I propose - to keep the words that are contained in the clause but to add her words as paragraph (i). The honourable member could seek leave to withdraw her amendment and move a further amendment to insert a new paragraph (i) containing those words. I am trying to be cooperative and I invite Hon Dee Margetts to give consideration to what I have said.

Hon GEORGE CASH: The Opposition agrees with the general proposition put forward by the minister that there is a need to retain paragraph (f), which states -

the importance of competition in water services industry markets;

I was going to propose that Hon Dee Margetts add the word "and" and then include her amendment. We would not agree to the deletion of the words. However, there is a distinction between the two issues. It is quite proper that if those words are to be inserted they should be inserted as a new paragraph (i). We support that course of action, if Hon Dee Margetts is so minded.

Hon DEE MARGETTS: I am saddened, but I accept where the numbers lie on this matter. Before making those changes, I refer to page iii of the final report of the Water Services Coordination Act Review Panel. I recommend that honourable members get hold of this. It is a pity we did not have it prior to dealing with this Bill. It states -

The review panel considers that competition is only a means to achieving efficiency and effectiveness in the water service industry and should not be an end in itself.

As I have mentioned, it is not a matter of leaving out competition; it is already written there in neon lights under what the authority is required to take into consideration. These issues are supposed to be the balancing test. We

take competition, contestability and access to investors in our water and electricity as being requirements and then we balance them with a public interest test of competition. There seems to be a bit of a problem with the logic. We have basically said that competition is in the public interest and we are required to look at competition and balance it against the public interest of competition. It appears that public interest issues are issues other than those things that are already required, and within those other public interest tests are things that will perhaps negate it. If the minister considers that Treasury already thinks there is a conflict of interest with the Economic Regulation Authority's requirements plus a public interest test, he can see how that mindset might work in reality. I accept the tyranny of numbers in this case and -

Hon George Cash: We might have to reconsider our position.

Hon Nick Griffiths: I have reconsidered mine.

Hon DEE MARGETTS: I do not think any honourable members would like it spelt out in the public arena that they refused an amendment to look after public health and safety which was actually recommended by the Department of Health. This is not just a community group; it is from the Department of Health. Surely honourable members are not threatening to use the debate as a reason for not looking after public health considerations.

Hon George Cash: This is in fact a direction to the Government that requires the Government to take certain matters into account, and we say that public health considerations should be part of that. We cannot be more helpful than that. We have bent over backwards and the honourable member wants to hit us with a cricket bat.

Hon Nick Griffiths: Yes.

Hon DEE MARGETTS: No. I was just suggesting that the honourable member might take the same cricket bat and go home.

Hon Nick Griffiths: We are trying to encourage you to accept gracefully the fact that both the Government and the Opposition are cooperating with you so that you can get your words in the legislation, but you seem to be arguing against that.

Hon DEE MARGETTS: It is a little hard to be graceful considering the wealth of information that is only now beginning to come forward.

Hon Peter Foss: You have confused the two concepts.

Hon DEE MARGETTS: I certainly have not.

Hon Peter Foss: You are confusing them for the vote. The honourable members are trying to say that there are two set things - one we support and one we do not. If you separate them we can deal with them separately. That is all they are saying. So separate them and they will deal with them separately.

Hon Nick Griffiths: We have both provided the mechanism.

Hon DEE MARGETTS: Right. My response was in relation to an interjection that we may now not support the member's amendment.

Hon Peter Foss: The interjector was saying there is hardly a tyranny of numbers when we are trying to help you.

Hon DEE MARGETTS: I grovellingly thank my colleagues -

Hon Nick Griffiths: There is no need to grovel. We were given a spanking; now we are about to get a thanking.

Hon DEE MARGETTS: With the assistance of the Chair, could I perhaps separate those two issues so that the deletion of paragraph (f) can be voted on separately from a proposal to insert new paragraph (i) as appears on the Notice Paper at 38/S2, which states -

Public health considerations in relation to the provision of a safe drinking water supply.

The DEPUTY CHAIRMAN (Hon Barry House): There are two ways we can do this. We can put the question as the honourable member has already moved the amendment, or the honourable member could seek leave to amend her amendment to read -

Page 59, after line 24 - to insert the words 'public health considerations in relation to the provision of a safe drinking water supply.

I believe that Hon Dee Margetts has two options. If the member wants a vote to be taken on the first part of her amendment, we can take a vote, and it can be a Clerk's amendment from there.

Hon DEE MARGETTS: I thank the Chair. I was responding to what appeared to be an offer from the floor to separate the two parts of the amendment. I thought members were suggesting that we could vote on the removal of the words "the importance of competition in water services industry markets" as one vote, and could then vote

on the insertion of the words “public health considerations in relation to the provision of a safe drinking water supply” as a new proposed paragraph.

The DEPUTY CHAIRMAN: The question before the House is that the words proposed to be deleted be deleted. That is the first part of the member’s amendment.

Amendment (words to be deleted) put and negatived.

Amendment (words to be inserted) put and passed.

The DEPUTY CHAIRMAN: The lining up of the lines can be a Clerk’s amendment.

Schedule 2, as amended, put and passed.

Schedules 3 and 4 put and passed.

Title put and passed.

Bill reported, with amendments.