WATER LEGISLATION AMENDMENT (COMPETITION POLICY) BILL 2005

Second Reading

Resumed from 1 June.

MR P.D. OMODEI (Warren-Blackwood - Deputy Leader of the Opposition) [11.18 am]: This bill will amend a number of existing pieces of legislation; namely, the Country Areas Water Supply Act 1947, the Country Towns Sewerage Act 1948, the Land Administration Act 1997, the Metropolitan Water Supply, Sewerage, and Drainage Act 1909, the Rights In Water and Irrigation Act 1914, the Water Agencies (Powers) Act 1984 and the Water Services Licensing Act 1995.

I thank the minister for the briefing his officers provided to the Liberal Party on the issue, which was of interest to me as I was Minister for Water Resources for two years. I have great admiration for many of the officers who are still in the Water Corporation or the Water and Rivers Commission. I understand that these changes were proposed under the previous government and were approved by cabinet and have now been approved by the current government. The main amendments remove the powers of the Water Corporation to compulsorily acquire land without ministerial consent. Currently, only the Water Corporation can acquire land compulsorily. The bill provides that the Water Corporation and other licensees can now acquire land under ministerial supervision. A further section removes the Water Corporation's powers of arrest and its ability to recover criminal penalties. Those penalties and powers are not available to other providers and really should be the province of the police. Another section establishes uniform penalties for similar offences under different acts. I will refer to those further when I complete these remarks. The bill also removes the powers of the Water Corporation to take control of and to sell land for debt recovery. In relation to this power, when an amount is due to a licensee in respect of any water service charges in arrears, the Water Corporation and other licensees are able to lodge a memorial on the title of the land to prohibit any dealing in the land until the debt is repaid. When the debt is repaid the licensee is to withdraw the memorial by delivering to the registrar a withdrawal of the memorial. That is certainly commonsense. In the past the Water Corporation could actually take people's land and sell it to recover debts. Establishing some kind of memorial over the land and giving people time to pay their debts, or alternatively for that debt to be recovered on the sale of that land, is a sensible thing to do. They are good initiatives in this legislation.

I want to address other sections to do with penalties. I have discussed this matter with the minister. In this amended legislation the penalties have increased significantly. By agreement with the minister, to save time by not going into committee, I have asked him to take note of these concerns. If he cannot respond directly during the second reading debate, he is prepared to come back after the luncheon adjournment with the responses. I will refer to some of the penalties so that the minister can respond. Clauses 12 and 13 of the bill relate to penalties in sections 112 and 113. Section 112 of the Country Areas Water Supply Act 1947 refers to obstructing the commission, the corporation or officers in the performance of their duty. The then penalty was $500. Section 113(1) of the original act states -

> Any person, who has charge of any water works, acquired, held or used by the Commission or the Corporation, and who refuses, on lawful demand to give up peaceable and quiet possession of them to any person entitled to possession under the provisions of this Act, shall be guilty of an offence.
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> Penalty - $4 000 or imprisonment for 12 months.

Under the current legislation there would still be a penalty of imprisonment for 12 months, but the penalty increases to $12 000.

I then refer to clauses 20 and 21 of the bill. Clause 21 amends the Country Towns Sewerage Act 1948. Section 33 refers to the penalty for not repairing fittings -

> If any owner or occupier of land connected with a sewer or property sewer causes or suffers any pipe, fixture, fitting, or other apparatus used in connection with such sewer or property sewer to be out of repair without repairing it within a reasonable time or to be so used or contrived that the sewage or water is, or is likely to be blocked, diverted, misused . . .

Section 34 refers to the penalty for destroying valves etc -

> If any person, not being authorised by the Corporation -
>
> (a) wilfully or carelessly breaks, injures or opens, or wilfully permits to be broken, injured or opened any sewer, property sewer, fixture or fittings, or any other work; . . .

The penalty in the first instance is $1 000 and $100 for every day during which such fault shall continue. Under section 34, the person shall forfeit or pay the corporation a sum not exceeding $2 000. Clause 19, section 32 amended, sets out that the penalty for an individual will be $10 000 or $20 000 for a body corporate. Clause 20,

section 33 amended - the section dealing with the $1 000 penalty and $100 per day - sets out that the penalty will rise to $10 000 for an individual and $20 000 for a body corporate. Clause 21, section 34 amended, sets out that the penalty for an individual will rise to $10 000 and $20 000 for a body corporate. When someone wilfully and unlawfully breaks something I can understand those penalties. However, I am concerned about when someone does so inadvertently or by accident. In that case these penalties seem extremely high. I assume these people will be covered by that penalty, which is very high indeed.

I have been concerned for some time about the integrity of the sewerage system. When it rains heavily in November, in summertime, the amount of water in the ocean outfall increases dramatically, sometimes by 100 per cent. The fact that it rains heavily does not mean that people go to the toilet more often or have more showers than when it is not raining. It means that a lot of people have connected their stormwater to the sewerage system. Not only that, a sewer may be broken and water could get into the sewerage system, which obviously increases the flow. In the early days, officers from the old Water Authority of Western Australia would open the sewer and place a smoke bomb in the pipe. The officers would then drive up the street to look at people's gutters and, if the smoke was coming out of the gutters, they could tell that someone had connected the stormwater to the sewer. I think that happened a great deal - it still happens today. If some of those penalties were applied uniformly they could place a huge burden on some people. Obviously the law is put in place for people who wilfully break it, but many people may not be aware of the extent of the law. I can understand a penalty of $1 000 or $2 000 and $100 a day concerning the destruction of valves and those kinds of things, but when the penalties are increased to $10 000-plus I wonder what we can do. I suggest there should be a public education program to tell people that they are not entitled to hook their stormwater to the sewer, and if they do they will be penalised. How will those penalties apply when somebody interferes with the sewerage system inadvertently or when someone has purchased a property and does not know that the stormwater is connected to the sewer? There may be times when people damage the system accidentally or inadvertently. Some people may not be aware that they are doing damage because they are not cognisant of the law. Clause 42 amends section 69 of the Metropolitan Water Supply, Sewerage, and Drainage Act 1909. Section 69 reads -

> **Penalty for destroying sewers and fittings**
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> Every person, who, not being authorized by the Corporation, wilfully or carelessly breaks, injures, or opens, or permits to be broken, injured, or opened any sewer, property sewer, or fitting, or any other work, shall for every such offence be liable to a penalty not exceeding $2 000, besides the amount of the expense to which the Corporation may be put in respect thereof in repairing such sewer, property sewer, fitting, or work, and the amount of such expense shall be ascertained, determined, and recovered in the same manner as such forfeited sum.

In the bill, the penalty is increased from $2 000 to "exceeding" $10 000 for an individual and $20 000 for a body corporate. I expect that a body corporate could probably afford to pay such a fine or a section thereof depending on how the judge finds and whether the damage was the result of wilful intent, an accident or a pre-existing factor. I want the minister to explain how those penalties will be applied. My concern is that these are not isolated cases. Members must bear in mind that many of our sewers are 40 or 50 years old and that people may have to solve problems of water logging or an overflowing septic tank. Nowadays, it costs between $400 and $500 to empty a septic drain. There are still a few septic tanks in the metropolitan area despite the fact that our infill sewerage system in the city is quite comprehensive. If somebody interferes with a sewer deliberately and in full knowledge of the law, the full extent of the law should be applied. If the interference is pre-existing, historical, inadvertent or an accident caused by people from a different ethnic origin who do not understand the law etc, what defence will they have under the law given that the penalties are quite stringent?

The opposition supports the legislation. However, we want the minister to provide some clarification on the penalties. I am sure that he can do that. Under this bill, the power to acquire land under the Land Administration Act 1997 will be delegated by the minister to a licensee. A number of different licensees are cropping up. I understand that the Bunbury and Busselton water boards are licensees in their own right. I think a small town north of Perth runs its own sewerage system. We are making great strides in the reuse of water in Western Australia. When I was the responsible minister, about 30 or 40 country towns were reusing their grey water. I am sure that that figure has doubled by now. Perhaps the member for Dawesville is aware of the latest figure. It is a step in the right direction. The reuse of grey and black water is absolutely fundamental to the future of conserving water in this state. That process should be applied to a greater extent in the metropolitan area than has been the case in the past. A number of golf courses and native gardens - this might sound strange - now have underground reticulation as a result of new technology. There are great opportunities to save water.

Dr K.D. Hames: It is subsoil.

Mr P.D. OMODEI: What did I call it? Can the member for Dawesville tell me the difference between "underground" and "subsoil"?

Dr K.D. Hames: "Subsoil" refers to that which is just under the soil; "underground" refers to what is deeper.

Mr P.D. OMODEI: I am always willing to learn and the member for Dawesville is always prepared to teach me.

The bill removes from the Country Towns Sewerage Act 1948 the provision that gives preference to local government suppliers to install sewerage works. That preference potential was deemed to be anti-competitive. I do not know how many local governments took over sewerage works. Many of them would like to be in the sewerage business because, as I understand it, it is the area of the water industry that is the most lucrative. There is a cross-subsidisation system within the water sector. When I was the minister, I understood - I am sure it is still the same - that the sewerage system pays the most and that the reticulated water system pays the least. Obviously, there is a cross-subsidy between those and between the country and the city.

On the issue of local governments and sewerage works, the expansion of the infill sewerage program put in place when we were in government - as a matter of fact I was the minister with that responsibility - was done in a secret way. I can recall being in the backroom of my office, which had maps on the wall. The launch of the program was huge. The then Premier, Richard Court, was criticised for his great exposé of the infill sewerage program. It was the biggest public work that the state had undertaken. The $800 million program sought to sewer 110 000 houses in metropolitan Perth that were still on septic tanks. That program provided great benefits to the state. There were benefits for the environment, the Swan River and all our different watercourses and wetlands. The program was expanded into the country areas of Western Australia. The program was launched in the city by the Premier - members will recall him using a helicopter - and it was my job to launch it in regional areas. Although the program in the metropolitan area has, in the main, been completed, the government has extended the program for an extra 10 years and has made an allocation of $34 million in this year's budget.

There are real problems in regional Western Australia. In many cases, the central business districts of a number of small towns have been sewered because of pollution. However, the government has not taken that program far enough. Central business district businesses - for example, a tyre company in downtown Bridgetown - pay a rate of 12c in the dollar on the gross rental value of their businesses. The Water Corporation forces those businesses to pay the full 12c in the dollar on the GRV. A comparative business in metropolitan Perth or a major regional centre with exactly the same gross rental value is, in many cases, paying only 3c in the dollar on the GRV, because the comprehensive sewerage system in those areas means that the rate in the dollar can be reduced. Those businesses are subsidising other people once they become connected. We must apply greater effort to those country towns. That issue does not have much to do with the bill. However, the preference given to local governments in the Country Towns Sewerage Act may have to be revisited. If the Water Corporation and the state government do not agree to expand the sewerage systems in many of those country towns, local governments may have to pick up that issue and to try to find the funds to expand the sewerage systems in country towns.

I do not need to remind members of the unique towns on waterways, such as Denmark on the Nornalup inlet, Walpole on the Walpole inlet, Augusta on the Blackwood River and Nannup on the Blackwood River. In those towns where only the main street has sewerage, the septic drains in the rest of the town overflow during wet winters, as this one is. In many cases sewage-affected water runs down the street, which is not a pretty sight. I recall that before the sewerage system was installed in Pemberton, people could be sitting in the chemist with sewage-affected water running down the street outside. People would look at each other to see where the smell was coming from. In fact, it was coming through the door from the verge. The children were doing slidies on the street verge in the part of the town where the septic tanks had overflowed. We can imagine what their mums said to them when they got home at night, having had great fun sliding through the richly affected water on the verge.

I think I have covered the issue well enough. We support the legislation. The legislation was obviously started under the previous government, so we would have to be pretty courageous to suggest that the government has got it wrong. I suspect that the minister will say that the penalties under this legislation are in line with those under other legislation. However, I wonder about their application in a case in which a situation is pre-existing or when people do not understand the law and how it will be applied. We support the legislation, and I thank the minister again for providing his very good officer to assist us with the briefing.

DR K.D. HAMES (Dawesville) [11.42 am]: I will not spend much time on the detail of the legislation, because that has been covered in the second reading speech by the minister and the contribution by the Deputy Leader of the Opposition. I will go more into the purpose of the bill. In this chamber are two former Ministers for Water Resources, one almost Minister for Water Resources and an absent Minister for Water Resources, who is not here to debate the legislation. However, we have been through that issue, so I will not go through it again.

I took this legislation to cabinet when I was minister. It is interesting that I was not in this place for four years and the legislation has now just arrived. I guess that is the way with these administration-type bills. They sometimes have trouble getting to the top of the list.

Mr J.C. Kobelke: I think it was introduced during the last government but it did not have priority and therefore did not progress.

Dr K.D. HAMES: As I said, those things tend to happen. As the minister knows, prior to this debate we were discussing the issue of penalties. I am fairly sure that these penalties reflect the penalties that we brought in under the Rights in Water and Irrigation Amendment Act, and that those penalties reflected penalties in some other act, but I cannot remember which now. The penalties seemed to be inadequate, and new penalties were enacted to provide a serious deterrent to people undertaking certain activities.

I was concerned at the degree of some of those penalties. Some went from $2 000 for an individual to $10 000 for an individual, which is a fairly large jump. There may be extenuating circumstances or it may be the first time that something had happened and people were not aware of the law. Although it is quite right that those people should be fined, $10 000 did not seem to be reasonable. However, the minister has pointed out that it is not $10 000 for a first offence but up to $10 000, and often a fine for a first offence is only 10 per cent of that. I have been reassured by that. Similar penalties are listed in the tobacco legislation that the house will debate at a later date. I had the same concern with them, but I have now been reassured on both those issues.

One of the major objectives of this legislation was to make the Bunbury and Busselton Water Boards more competitive and give them greater ability to undertake infill sewerage work in country areas. Under the current legislation, it is very difficult for those boards to compete in areas outside their towns. This is particularly important in the case of infill sewerage. Although we have been giving the minister a bit of a hard time about it, the reality is that we had talked about changing the tail end of the $8 million infill sewerage program, and we knew we would have to do that at some stage. There were many companies working on that program, and it would not have been good to finish the 10-year program and suddenly leave those companies with nothing. We were looking at ways in which we could tail off the program. I am a little concerned about the way in which the minister has done this. As the minister will know, I raised the issue of someone who lives close to the estuary in Dawesville. His property was due to be connected to infill sewerage in two years. He telephoned to check and was told by the Water Corporation that the connection would be delayed because the time for the program had been spread out. It is not good for the minister to delay the program in areas like that. By the way, the minister still has not answered the question I put to him about where the $16.9 million allocated for the infill sewerage program is being allocated. However, I know that is not the issue before us, so I will not say any more about it.

Mr J.C. Kobelke: Was it a supplementary answer for the estimates committee?

Dr K.D. HAMES: Yes.

Mr J.C. Kobelke: I signed off on all the answers some time ago. I will find out what has happened to it.

Dr K.D. HAMES: I have spoken to people about trying to get an answer, as I can show the minister later. However, that is not the issue before us. The reason I raise it is that, through the Country Towns Sewerage Act, the minister could look at alternative ways of putting that expertise to use. The many companies with expertise in installing infill sewerage could be used in country regions. Of course, people in the country have septic tanks in place and are not paying much sewerage levy. Suddenly they are told that the government is installing infill sewerage, and they are charged 12c per dollar. Some companies are paying a fortune. Many of those people might not want infill sewerage for that very reason. When we were in government, we worked out the number of major country towns that would get infill sewerage. The Water Corporation generally managed it, and it was easy, but for smaller country towns it was not so easy. We devised an alternative program. First, a council had to convince us that it had strong support from the community. I forget the exact percentage, but it was something like 70 or 80 per cent support. The percentage had to comprise people who responded; if people did not bother to write in, they were not counted. The councils had to show that 70 or 80 per cent of respondents wanted infill sewerage and that they had been given details of the cost of infill sewerage. What would happen otherwise is that the council would tell us that it wanted infill sewerage, the government would put it in and the residents would blame the government for the sudden increase in sewerage charges in the form of a connection fee and a levy of 12c per dollar, or whatever it was.

There was an alternative way of doing it. Whenever the Water Corporation, rather than another organisation, does anything, costs tend to be higher. On top of the charge for installing the sewerage, the Water Corporation has an administration fee for whatever is done. Every bit of capital works that goes on anywhere in Western Australia has a percentage for an administrative fee attached to it. People always talk about the city subsidising the country, but in that case the country was subsidising the city. Something like the installation of infill sewerage needed next to no administration; yet, the local community was paying most of the administration fee.

In reality, most of the administrative requirements come from major capital works in the metropolitan area. I made the Water Corporation remove the administration fee, particularly for country pipelines, so that farmers paying for a pipeline across their property did not face exorbitant fees. Perhaps that is something the minister needs to watch out for. The approach in smaller country towns was to put the program out to contract to get a smaller group, or even the Water Corporation, to put in the sewerage. As I understand it, this legislation will allow the Bunbury and Busselton Water Boards to tender to put in the infill sewerage themselves.

We then come to the issue of ongoing management. A country sewerage system could be managed by the local plumber. It is not hard work. Not a lot of expertise is required, provided that the guidelines and requirements set down by the Water Corporation are followed. The Water Corporation was happy for this to happen. However, the ongoing fee requirements for managing that infrastructure were far less, so the infill sewerage fee charged by local government to its residents had to be far less. Instead of paying a fee of 12c in the dollar, it got down to 7c or 8c. It would be worthwhile for the government to consider the situation in these country towns. Country towns need to be encouraged to provide infill sewerage, in many cases for environmental reasons, particularly in country areas that have rising watertables. The minister has come across the issue of rising watertables and salinity levels in other portfolio areas. The former Liberal government established a trial desalination plant in Merredin, which was designed to allow fresh water into the system and to lower the watertable under the town. The rising watertable in Merredin was having a devastating impact on the septic system and brickwork of the town. Merredin was the first trial. I think the Water Corporation was to extend that program to 20 or 30 other countries towns. I do not know what has happened to that program.

Mr M.W. Trenorden: It was scrapped. The Merredin trial was shut down as soon as the Labor Party won administration. It was an excellent program that should have been progressed. The technology was perhaps not quite up to what it should have been, but the Labor government did not tolerate it for a moment and it went out the window.

Dr K.D. HAMES: That is a surprise. I wondered why I had not heard anything about it. It was a great program from the Water Corporation and the Department of Agriculture. The aim was to increase the supply of fresh water to country towns. It was not a big volume of water, but nevertheless it would have been a good addition to fresh water supplies and would have lowered watertables. High watertables were causing salinity problems in the towns. As the Department of Agriculture was involved in the program, a series of dams were proposed into which the hypersaline water was to be pumped, and aquaculture programs were to be established in those dams. The combined effect seemed to be ingenious and a result of lateral thinking. It was not an expensive project; it involved only a small desalination unit. The price of the desalinated water was higher than for water from a dam, but it was certainly less than the price of water pumped to those towns from Mundaring Weir. In those days the water pumped from Mundaring Weir cost $3.80 a kilolitre. The cost of the desalinated water was $1.90 a kilolitre - it was half the price of the pumped water. It was well worthwhile.

Mr P.D. Omodei: You could use it to shandy other water as well.

Dr K.D. HAMES: Yes. There was the option to pump the water into local dams, for example. If there was a problem with the level of salinity of water or lack of supply to a dam, it was a great option. The minister has been in this job for only a short time, but I encourage him to look at some of those projects, because they were extremely -

Mr M.W. Trenorden: That project was heavily supported by the local water authority, but it was killed off by head office. It was a great disappointment, because that program, as you described it, provided a real win-win for a range of things.

Dr K.D. HAMES: We launched that program in Merredin with the former Leader of the National Party Hon Hendy Cowan. It certainly had strong support.

Mr A.J. Carpenter: It would have been just a coincidence that it was launched in Merredin!

Dr K.D. HAMES: Yes, it was. Of all the towns in the project, Merredin was the largest. It had significant problems with salinity, which was causing damage to the brickwork of local buildings. I can see the look that you are giving me, Mr Speaker; it means that I am drifting from the topic.

We support the legislation. I encourage the minister to look at the other issues we have raised for his own interest, because he will find that they were worthwhile projects. It is extremely enjoyable to be involved in such projects. The government has the opportunity to do a lot of good in regional Western Australia.

MR J.C. KOBELKE (Balcatta - Minister Assisting the Minister for Water Resources) [11.54 am]: I thank the opposition for its support of the legislation. As indicated, the legislation originated largely during the period of the last Liberal government, and fits in with national competition policy requirements to ensure fair competition between various providers of water services.

Members have asked me to address the question of penalties. There are two aspects to that question. The Deputy Leader of the Opposition went through a number of clauses of the bill and accurately drew the attention of the house to the new maximum penalties that it provides, which for an individual will be $10 000 and for a body corporate $20 000. My advice is that we are attempting to standardise the level of penalties in a number of acts. The Deputy Leader of the Opposition provided examples of penalties from three statutes. It is my understanding that the Rights in Water and Irrigation Act has been used as the basis for these changes, because its penalties were most recently updated. The same level of penalty will be applied across the other acts.

Mr P.D. Omodei: The penalties in the Rights in Water and Irrigation Act will be applied to the Water Supply, Sewerage, and Drainage Act. Can you explain how the penalties will be applied?

Mr J.C. KOBELKE: I am coming to that. The member pointed out that a number of changes are being made. I have indicated that we are trying to bring the penalties into line to provide some comparability. The second aspect raised by both opposition speakers was the concern that $10 000 for an individual or $20 000 for a body corporate was too great a penalty for a minor offence or a first offence. What is not stated in the bill, but is absolutely implicit, is that the $10 000 penalty for an individual is the maximum penalty. Courts infrequently determine that a maximum penalty will be applied. My experience in other areas is that the penalty for a first offence, unless it is very serious, is in the order of 10 per cent of the maximum penalty. With a maximum penalty of $10 000, it would be usual to expect a fine of $1 000 for a first offence at the least serious end of matters. The only time that I remember the maximum penalty being applied was in an extreme case. It related to industrial relations, and I think involved a federal law. To make the point, the judgment awarded the maximum penalty. However, the penalty was imposed after a series of court actions; it was not just the result of a one-off action. People need to be assured that when penalties appear in legislation, as they do in a number of places in the bill, they are the maximum penalties. The court must determine the actual penalty to be imposed. Experience suggests that it is very rare for a maximum penalty to be imposed. A much smaller penalty will be imposed if it is judged that it was not a severe transgression. I do not know whether I have adequately addressed the issue for the Deputy Leader of the Opposition.

Mr P.D. Omodei: Someone may buy a property and the sewer may already have been interfered with. There are probably thousands of such cases; there are many pre-existing problems. The full extent of the penalty will obviously not be applied in that situation. However, the penalties are being increased significantly.

Mr J.C. KOBELKE: The Deputy Leader of the Opposition quoted from one of the acts. There are many examples. I refer to section 69 of the Metropolitan Water Supply, Sewerage, and Drainage Act 1909, which sets out the penalty for destroying sewers or fittings. If someone inherited or bought a property that had some defect with its sewerage or water system that potentially contravened the law, that person could not be found guilty of an offence if he did not commit it. There is, therefore, a range of different offences. Someone who refuses to rectify a problem will be caught by that provision, but the penalty provision will not apply if the person did not do it. There is, therefore, a range of different potential offences.

Mr P.D. Omodei: But "I didn't do it" is always the defence, isn't it?

Mr J.C. KOBELKE: There must be some proof that the original owner had done it before the property was purchased. However, a charge may be made that the original owner is responsible for rectification if the buyer was unaware of it prior to purchasing the property. The cases of which I am more aware, and which have been reported in the media, are of people trying to get out of paying the correct amount for electricity by bypassing the meter and someone has bought the house not knowing about it. Cases like that arise but, clearly, for a conviction there must be adequate proof that a person was responsible for it. Again, I thank members for their contributions and for their support for the bill.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Mr J.C. Kobelke (Minister Assisting the Minister for Water Resources)**, and transmitted to the Council.