

FREMANTLE PORT ASSETS (DISPOSAL) BILL 2016

Introduction

Bill introduced by **Dr M.D. Nahan (Treasurer)**.

First Reading

DR M.D. NAHAN (Riverton — Treasurer) [12.18 pm]: I move —

That the bill be now read a first time.

I present a copy of the bill and explanatory memorandum.

MR M. McGOWAN (Rockingham — Leader of the Opposition) [12.18 pm]: The opposition will be voting against the first reading of the Fremantle Port Assets (Disposal) Bill 2016. This is an opportunity for the house to express its view, and for the National Party to express its view. The government has expressed its point of view, and I remind members that, after the last state election and before the last state election, the Premier promised that Fremantle port would not be sold—for very good reason. It is a monopoly asset.

First Reading— Scope — Ruling by Speaker

THE SPEAKER (Mr M.W. Sutherland): I will just disturb the Leader of the Opposition for one minute; I have a short statement to read. If you wish to debate this matter, I have to draw something to your attention.

Members, I note the convention in this house is for the first reading of a bill to be agreed to without debate. It is a formality when a bill is introduced by the minister or member in charge that he move that the bill be now read a first time. At this point the practice is for the house to agree to the first reading without having seen a copy of the bill. As the motion for the first reading is a question before the house, it is in order for anyone to vote against the first reading. In terms of whether debate is allowed, I note that the only reference in the standing orders to debate at the first reading is in standing order 166, which states —

When any bill is brought from the Governor or Council, the first reading will be decided without debate.

This standing order is also specifically referred to in standing order 100 in the list of matters not open to debate. My view is that for bills initiated in the Assembly, the first reading is open to debate, but the scope of debate is limited as members have not yet had time to consider the bill. As there are no time limits specified in the standing orders for the first reading, usual motion times will apply.

First Reading Resumed

Mr M. McGOWAN: The bill allows for the sale of Fremantle port. The Premier ruled out the privatisation of Fremantle port on 13 June 2012, before the last election, and he ruled it out again on 19 September 2013. It is a monopoly asset. It produced \$68 million in dividends for the state last year. The sale of a monopoly asset without another container port within 3 000 kilometres of Perth would undoubtedly result in increased costs for both importers and exporters, and it would reduce the prospects of a new port being constructed in Kwinana. For those very good reasons the opposition does not support the privatisation of Fremantle port.

This is an opportunity for the National Party to indicate where it stands on this issue in this house, considering the fact that it has made its view plain publicly that it does not support the privatisation of Fremantle port. If the National Party wants to persist with that point of view and indicate where it stands on this issue, this is the ideal opportunity to express that view. I do not intend to continue this speech for any longer than two minutes. I am at the two-minute mark now and I have expressed the argument succinctly. This is an opportunity for the National Party, and indeed Liberal Party members who might be uncomfortable with this rushed, forced privatisation fire sale, to express their point of view. I expect the debate will now conclude and we can have a vote.

Division

Question put and a division taken with the following result —

Extract from *Hansard*
[ASSEMBLY — Wednesday, 18 May 2016]
p3188c-3193a
Dr Mike Nahan; Mr Mark McGowan; Speaker

Ayes (33)

Mr P. Abetz	Mr J.M. Francis	Mr R.S. Love	Mr J. Norberger
Mr F.A. Alban	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr D.T. Redman
Mr C.J. Barnett	Mr B.J. Grylls	Mr J.E. McGrath	Mr A.J. Simpson
Mr I.M. Britza	Dr K.D. Hames	Ms L. Mettam	Mr M.H. Taylor
Mr G.M. Castrilli	Mrs L.M. Harvey	Mr P.T. Miles	Mr T.K. Waldron
Mr V.A. Catania	Mr C.D. Hatton	Ms A.R. Mitchell	Mr A. Krsticevic (<i>Teller</i>)
Mr M.J. Cowper	Mr A.P. Jacob	Mr N.W. Morton	
Ms M.J. Davies	Dr G.G. Jacobs	Dr M.D. Nahan	
Mr J.H.D. Day	Mr S.K. L'Estrange	Mr D.C. Nalder	

Noes (19)

Ms L.L. Baker	Mr W.J. Johnston	Mr P. Papalia	Mr P.C. Tinley
Dr A.D. Buti	Mr D.J. Kelly	Mr J.R. Quigley	Mr P.B. Watson
Mr R.H. Cook	Mr F.M. Logan	Ms M.M. Quirk	Mr B.S. Wyatt
Ms J.M. Freeman	Mr M. McGowan	Mrs M.H. Roberts	Ms S.F. McGurk (<i>Teller</i>)
Mr R.F. Johnson	Mr M.P. Murray	Ms R. Saffioti	

Pairs

Ms W.M. Duncan	Mr C.J. Tallentire
Mr I.C. Blayney	Mr D.A. Templeman
Ms E. Evangel	Ms J. Farrer

Question thus passed.

Bill read a first time.

Several members interjected.

The SPEAKER: The division is finished.

Mrs M.H. Roberts interjected.

The SPEAKER: Member for Midland!

Mr D.T. Redman interjected.

The SPEAKER: Leader of the National Party, I call you to order for the first time. We have had our biffy; let us move on.

Dr A.D. Buti interjected.

The SPEAKER: Member for Armadale, I call you to order for the first time.

Second Reading

DR M.D. NAHAN (Riverton — Treasurer) [12.27 pm]: I move —

That the bill be now read a second time.

As part of its asset sales program, the government is proposing to divest the commercial assets and operations of the Fremantle Port Authority by way of a long-term lease. The divestment of Fremantle port is a key element of the government's fiscal management strategy, aimed at reducing government debt and unleashing the potential for private sector capital investment to develop economic infrastructure to support and grow the Western Australian economy.

The government remains committed to ensuring that a rigorous assessment process is a precursor to any divestment decision.

Several members interjected.

The SPEAKER: Sit down, please, Treasurer. Members for Cannington and Girrawheen, we have had our say. Let us just settle down and listen.

Dr M.D. NAHAN: Accordingly, the Department of Treasury, supported by the joint lead financial advisers Rothschild and Deloitte, has undertaken an extensive due diligence process to provide the detailed information and analysis required to inform decision-making on the proposed lease. The process has been managed in close consultation with the State Solicitor's Office and other relevant agencies including the Department of Transport, the Department of State Development and Fremantle Port Authority itself.

As the government has previously stated, the divestment of port facilities is a strategy that has been, and continues to be, pursued by a number of governments in other jurisdictions. Relevant examples include the divestment by way of long-term lease of the port of Darwin in the Northern Territory; Port Kembla, Port Botany and the port of Newcastle in New South Wales; the port of Brisbane in Queensland; the ports of Geelong and Portland in Victoria; and South Australia's entire port network. This strategy reflects a contemporary view that the role of government is best suited to overseeing the safe and continued operation of ports, as well as regulating, where necessary, to ensure fair access and pricing, rather than owning and operating the assets, which carries with it responsibilities for ongoing capital investment. With the Victorian Labor government now proceeding with the divestment of the Port of Melbourne, Fremantle port will be the last remaining mainland Australian capital city port in government hands.

The due diligence process has involved defining the package of assets to be considered for divestment as well as the appropriate functions and operations that should be retained by the residual Fremantle Port Authority. The recent experience of the private sector managing capital city ports elsewhere in Australia provides confidence that the private sector can successfully manage Fremantle port and its development into the future, with appropriate oversight from the state government.

The private sector lessee will be entitled to generate a commercial rate of return on the efficient use of its assets and the provision of services. It will implicitly be incentivised to optimise the utilisation and efficiency of the assets and invest in growing capacity where it is commercially and technically feasible to do so. Consequently, the divestment of Fremantle port has the potential to not only unlock capital and improve our state's budget position, but also improve and expand the export potential for our goods and commodities, and grow our import facilities to meet the demands of increasing business and community needs.

The government's overarching objectives must be balanced. They are to facilitate the continued efficient, safe and reliable operation of the port; maximise transaction proceeds and the financial return for the state, while minimising residual financial risks and liabilities; facilitate private sector provision of infrastructure for the future and contribute to the state's economic growth; and ensure that the operating model for the remaining functions of the Fremantle Port Authority is financially sustainable. These objectives have been key guiding principles and will remain important considerations for the government when making final decisions.

To provide members with a brief overview of the asset, Fremantle port is the principal general cargo and container port for Western Australia and operates from two primary locations. The inner harbour encompasses seven berths dedicated to container shipping, seven common-user berths for general cargo shipping and cargo handling, plus two berths for cruise shipping and two berths used for smaller ships and vessel lay-up. It currently handles almost all of Western Australia's container trade, as well as livestock exports, motor vehicle imports, general cargo and cruise ships. The outer harbour, located 26 kilometres south of the inner harbour, comprises the Kwinana Bulk Terminal and Kwinana Bulk Jetty, both of which are owned by Fremantle Ports, and three privately operated jetties, all servicing the trade of dry and liquid bulk products.

Total port trade in 2014–15 was 35.7 million tonnes, an increase of 6.7 per cent on the previous financial year. This increase was primarily due to a rise in bulk exports of iron ore from the Kwinana Bulk Terminal in the outer harbour and an increase in containerised trade in the inner harbour. Containerised trade increased by 5.7 per cent in 2014–15. The average annual growth in Fremantle's container trade over the past decade has been about 4.7 per cent. In 2014–15, trade to the value of some \$28.4 billion passed through the port, which equates to an average of more than \$3.2 million every hour of every day.

A number of commercial and policy issues have been considered during the detailed due diligence process. Key among these has been modelling of the inner harbour's capacity and its impact on the timing of the future outer harbour development for container and general cargo trade. The due diligence process has considered analysis which indicates that the capacity of the inner harbour of Fremantle port can cater for relevant trade growth for at least 15 years and probably much longer. The inner harbour container trade in 2014 was 743 000 twenty-foot equivalent units, TEUs, the standard measurement unit for shipping container trade. Historical estimates, going back more than a decade, indicated the inner harbour capacity to be in the order of 1.2 million to 1.4 million TEUs. However, due to infrastructure development, modern technology and logistical improvements since that time, the inner harbour now has a much greater capacity than previously thought. A study by an independent expert commissioned by the Fremantle Port Authority in 2014 identified an estimated capacity figure in excess of two million TEUs.

With significant inner harbour capacity available to cater for growth, the development of new facilities for containerised trade in the outer harbour is not likely to be required for 15 years or more, probably much longer, based on current forecast growth rates. These growth rates reflect more recent trade trends, and are lower than those that had underpinned earlier estimates of when additional capacity would be required.

Recognising the importance of maximising taxpayers' return on investment in this infrastructure, the government has confirmed its commitment to the continuation of the Fremantle inner harbour as a container and general cargo port into the longer term. Artificially capping the inner harbour capacity, or closing it down, would bring forward the need for the outer harbour development. This would result in greater and earlier capital investment in the outer harbour and related road and rail infrastructure—imposing an unnecessary and unaffordable financial burden on the government and the community. The detailed due diligence has also clearly demonstrated that the cost of developing container and general cargo facilities in the outer harbour significantly outweighs the value of redeveloping the inner harbour for alternative uses.

The most efficient and cost-effective outcome is achieved by maximising the natural capacity of the inner harbour to ensure port prices, which are ultimately reflected in the cost of goods for consumers, are lower for all concerned. However, that does not mean that the government will not consider the future trade and infrastructure needs of the state. The government has been developing preliminary options for the location and configuration of the outer harbour development. Given capacity will not be required for many years, there is more time to undertake the necessary detailed planning for the outer harbour, including managing the environmental concerns associated with any future development in Cockburn Sound. As the inner harbour capacity is reached, it will be a priority for the state to ensure adequate port facilities are in place to meet demand in overflow trade. It is important to note that even when the outer harbour is developed in the future, the inner harbour will continue to operate.

Given the importance of ensuring the state's trade capacity is not constrained and the clear linkages to the inner harbour operations, the government is considering mechanisms to transfer the responsibility to develop the outer harbour to the private sector lessee. The full details of these arrangements will be made public as the divestment process proceeds. However, in general terms this will involve two key elements, both of which are outlined in part 8 of the bill.

Firstly, the port lessee will be afforded the first opportunity to negotiate to undertake specified new port developments within the existing port area. The mechanics of how this negotiation process will operate will be subject to an agreement, which will be tabled in Parliament to provide full disclosure and transparency.

Secondly, the residual Fremantle Port Authority will be empowered to levy a dedicated port improvement rate for the purpose of accumulating funds to be applied to the costs of the outer harbour container terminal development. The payment of port improvement rates by port users is not a new concept. Indeed the existing Port Authorities Act 1999 provides the power for port authorities to do this, including the recent deepening of the inner harbour at Fremantle port and the associated development of Rous Head. What is contemplated in this bill is a dedicated levy tied specifically to the development of the outer harbour container terminal development to ensure this facility is available when required to meet demand and support the growth of trade. The parameters of this charge will be subject to approval by the Treasurer and Minister for Transport and will ultimately contribute towards the capital and associated costs in developing the outer harbour container terminal, whether that be by the port lessee after taking up the first opportunity to negotiate, or by another third party or the state if agreement is not reached with the port lessee in accordance with the abovementioned agreement. To mitigate the impact on port users, the state will also set aside seed funding from the divestment proceeds that will be dedicated to the outer harbour container terminal development. The government will retain oversight following any divestment through a number of means, including retaining a residual Fremantle Port Authority that will continue to provide key public interest functions. One is the harbourmaster function, allowing effective oversight of marine safety and control over the movement of vessels in port waters. The state, through the residual Fremantle Port Authority, will also be responsible for approving the port lessee's master plan for development and will have an ongoing oversight and periodic review responsibility for future development plans.

Furthermore, I have made a commitment that should the divestment proceed, the government will financially support the transfer of livestock trade to a new dedicated facility in the outer harbour. This is something that has been called for by many parties. This will not only support the vitality of this important and strategic trade of the state, but also address amenity concerns of local residents and businesses in the Fremantle area. The divestment process will facilitate this occurring by releasing capital for the government to spend on the new livestock export facility in the outer harbour.

Members can be assured that the government recognises the importance of ensuring that port users continue to be provided with fair access to port services on fair and reasonable commercial terms following the divestment. The government is mindful of the importance of a well-considered and effective access and pricing regime, particularly for assets having monopolistic characteristics. Recognising that the Fremantle Port Authority's services face limited competition for many of the trades it facilitates, the government will ensure that an effective access and pricing framework is in place. Moreover, the government acknowledges that an access and pricing regime is an important safeguard for the continued operation of the port to ensure that it continues to facilitate trade into the future.

The bill outlines the key elements of the proposed access and pricing regime, which includes a number of protections designed to ensure continued fair access to relevant port facilities and services and to mitigate the risk of potential abuse of market power and unfair pricing. Upon legal and commercial advice, a portion of the regime will be further set out in regulations in order to retain flexibility in key areas that contribute to the regime's effectiveness, including the credible threat of further regulation being implemented if anti-competitive or unfair behaviours occur. The key features of the access and pricing controls include: bidder restrictions on stevedoring companies, their affiliates and companies with strategic interest in upstream transport linkages, aimed at mitigating the risk of vertical integration and, in turn, the risk of unfair or anti-competitive outcomes; an obligation not to unfairly discriminate against any user or potential user or to hinder access; the requirement for the port lessee to have an access policy; and a price monitoring regime that triggers a review by the regulator whenever the prices increase above the consumer price index benchmark and the ability for the government to impose further "heavy-handed" regulation if required.

The Economic Regulation Authority will be the regulator of the regime that the port lessee will be required to comply with. The ERA will have the ability to monitor compliance with the regime and enforce it through powers granted under the bill and regulations. The regime itself will also be subject to periodic review by the ERA and may be amended by the government to require further or different regulation of port pricing and/or access to port services if required and appropriate in the circumstances. Furthermore, parties to state agreements can be assured that the standing of existing rights and obligations will not be affected by the divestment process. Likewise, the rights of the cruise ship, tourist vessel, livestock and grain industries active in the port, along with public interest events such as the Rottnest Channel Swim, will not be adversely affected by the divestment.

Members can also be assured that the government will be focused on ensuring that any transfer of employees will be handled fairly, in consultation with the affected parties. All dealings in this regard will be in accordance with relevant employment laws and applicable provisions under current enterprise agreements and other employment contracts.

Market soundings that were conducted as part of the due diligence process have indicated that the government can anticipate strong interest from a large number of potential investors, both international and domestic. In order to achieve the project's objectives, the government is mindful of not deterring foreign investment. However, members can also be assured that the divestment process will comply with the necessary approvals from the Foreign Investment Review Board and will account for broader national strategic considerations.

The transaction execution phase will follow a typical three-stage process, with expressions of interest to be sought to identify a short list of entities or consortia to proceed to an indicative bids phase. After a further short-listing process, a final, binding bids phase will follow. In total, it is expected that this process will take approximately six months and will be the subject of a number of evaluation gateways and decisions by the government on whether to proceed. Fundamentally, the government will be focused on meeting the project objectives and ensuring that taxpayers and the community derive value not just now but into the future as well.

Turning to the structure of the proposed legislation, the bill has been drafted with a degree of flexibility to allow for varying scenarios in the transaction structure and legal entities that may be employed, while ensuring sufficient certainty and protections if the transaction proceeds to market. The bill provides the legislative framework and authorising power for the divestment, and is designed to complement the contractual controls that will be implemented through the transaction documentation should a divestment proceed. This includes the flexibility to establish regulations to manage issues such as access to, and pricing of, port services. In addition to the legislation and use of regulation, key rights and obligations of the lessee will be set out in the legal documentation developed for the transaction.

The bill consists of 86 clauses that broadly provide for: the disposal of all or part of the assets and liabilities of the Fremantle Port Authority and any identified associated assets; controls and limitations on the parameters of the disposal; post-sale transitional arrangements and regulatory matters; and provisions relating to the post-divestment operations of the port, including access and pricing, future development of the port and the potential outer harbour container terminal development.

The bill is divided into nine parts. Part 1 deals with the usual preliminary matters and specifies when clauses 1 and 2, part 7 and the remainder of the bill will come into operation.

Part 2 deals with the authorising powers and related limitations for the disposal. It is noted that the bill prevents ownership of land from being transferred to a private entity, instead authorising only a licence or an interest no greater than a leasehold interest to be granted, for a period not exceeding 99 years.

Part 3 provides for the administrative mechanics of implementing the disposal, including, but not limited to, the making of transfer orders, access to records, registration of documents, disclosure of information and the payment of proceeds.

Part 4 relates to specific provisions for the use of corporate vehicles in a disposal, ensuring that relevant laws may, if prescribed by regulations, apply to the operation of the port assets while held in a corporate vehicle that is owned by the Fremantle Port Authority or the state, prior to disposal.

Part 5 contains provisions relating to leases and licences, including the designation of port asset leases and leaseholders; and provisions relating to the effect of port asset leases. This part also ensures that the Fremantle Port Authority is relieved of its duties to the extent that the private sector port asset lessee is carrying out those functions under a port lease or licence.

Part 6 contains provisions to facilitate the operation of Fremantle port by a private sector operator post-divestment, including clauses that reflect provisions of existing state legislation, in particular, the Port Authorities Act 1999. The provisions contained in this part ensure that the private sector operator is conferred with the same rights necessary to perform its functions as the Fremantle Port Authority under the Port Authorities Act 1999, and also ensures that the Fremantle Port Authority is relieved of its duties to the extent that the private sector operator is carrying out those functions under a designated agreement.

Part 7 relates to access and pricing and includes provisions relating to the objects of, and exclusions from, the access and pricing regime, the functions and powers of the regulator, provisions in relation to regulated services and regulated charges, obligations on service providers of regulated services, the pricing regime that may be specified through regulations, reviews and reports of the regulator, and enforcement.

Part 8 relates to the future development of Fremantle port and includes provisions ensuring that the Fremantle Port Authority has the power to agree to grant the port facility operator the first opportunity to undertake certain developments in the port and to levy a charge for the costs associated with the development of the outer harbour container terminal facilities.

Part 9 covers a range of miscellaneous matters including, but not limited to, the optional exemption of the disposal from state taxes; protection of government agreements and rights and obligations under certain acts; and regulations for the purposes of disposal of the assets.

I emphasise that the government has conscientiously worked through the detailed commercial and policy issues identified through the due diligence process in readiness to proceed to market. The enactment of this bill does not imply that the government has made a final decision to proceed with the divestment of the Fremantle port. Rather, what it does is institute a sound legal framework, which will empower the government to proceed with the process, and disclose the required confidential information with the comfort that the state has been afforded the necessary statutory protections. This will ultimately ensure that if a decision is made to proceed, the objectives of the divestment are satisfied and the interests of Western Australian taxpayers, port users and the broader state economy are protected and furthered.

I commend the bill to the house.

Debate adjourned, on motion by **Mr W.J. Johnston**.