

**TAB (DISPOSAL) BILL 2019**

*Committee*

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Robin Chapple) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

**Clause 1: Short title —**

Committee was interrupted after the clause had been partly considered.

**The DEPUTY CHAIR:** Members, there is a bit of discussion going on. Please keep it down. I give the call to Hon Rick Mazza.

**Hon RICK MAZZA:** As part of the sale of the TAB to another party, the bill provides a maximum term of 40 years for the licence that will be negotiated, plus a maximum two-year extension. Can the minister advise, first, where the 40-year figure came from—was it plucked out of the air or was it determined to be a period of time that might attract a buyer—and, second, why there is a maximum two-year extension?

**Hon STEPHEN DAWSON:** The bill provides a licence term of up to 40 years, with a possible two-year extension. As part of the initial phase of consultation, racing industry representatives expressed support for a term of 25 years or longer, if this can result in higher sales proceeds. A term of 25 to 30 years appears to be sufficient to align the interests of the operator to invest in and operate the TAB for the long-term growth and prosperity of the three racing codes in Western Australia. A significantly shorter term may disincentivise an operator from investing in the business, which may then limit returns generated for the racing industry, while a significantly longer term may not necessarily result in materially higher sales proceeds due to the time value of money—that is, the diminishing value of future returns due to discounting—and the uncertainty of the operating environment beyond 30 years. The government will assess the value of extending the term up to the full 40 years as part of the market process. A longer term may be considered if it increases the sales proceeds to the material benefit of the state and the racing industry.

**Hon RICK MAZZA:** I thank the minister for that response. What I got from that is that 25 to 30 years is really the target area the government is looking for, but a period of more than a decade longer could be agreed as part of the licence. What consideration will be given to the purchase price in terms of the term of this licence? What sort of negotiation method will be used?

**Hon Stephen Dawson:** I cannot tell you.

**Hon RICK MAZZA:** The minister cannot tell me?

**Hon STEPHEN DAWSON:** As part of the sale process, we can test whether a longer term would lead to higher proceeds. I cannot go into the detail of the negotiating that we will undertake. I dare say that potential buyers are probably watching this debate with interest. We will certainly test whether a longer term would provide a material financial benefit to the state and the industry. If not, the term will more than likely be around 25 to 30 years, but it could be up to 40 years, depending on the finances.

The member also asked about the two-year extension but I did not have the information to hand at that time. If he does not mind, I will provide that answer now. I am told that the extension period of up to two years gives flexibility at the end of the term to ensure a process is run to appoint a new licensee so that the racing industry and punters are not left without a TAB. If for some reason at the end of the first term the licensee wants to walk away, that two-year time frame will give us the opportunity to negotiate a new contract with somebody else.

**Hon RICK MAZZA:** I take it there will be a very sophisticated negotiation for the sale of the TAB. I hope it is a lot better than the 35 per cent take-it-or-leave-it method.

What default clauses are intended to be included in any agreement? a buyer may have the licence for 25 to 30 years, which is the target area the government is looking at. My understanding is that there will be a floor for three years in terms of how much the industry will get each year from this new arrangement. After, say, five years, we might find that the amount the industry is getting is less than the three-year floor and that maybe things are not performing to the state's expectations. Can the minister give us a sense of the sort of default clauses that might be included in the licence?

**Hon STEPHEN DAWSON:** The guarantee is for three years. I am told that the contract will be structured so that it will be no worse off over the life of the agreement. The bill provides that the licence will be subject to the racing agreement being in place. The minister can take disciplinary action if the racing agreement is breached.

**Hon RICK MAZZA:** The minister said that it will be “no worse off”; but there will be a three-year floor. Is the minister saying there is a clause that says that it will be no worse off in the outgoing years? Is that right, or am I missing something?

**Hon STEPHEN DAWSON:** I am advised that there is no clause in the bill that provides for that, but that the payment mechanism will be structured so that RWA is expected to be no worse off as a result of this bill. Obviously, it will be up to RWA to sign a contract at the end of the day; it will not sign something that will send it backwards.

**Hon NICK GOIRAN:** I rise to revisit matters that were being discussed before the house was interrupted to take questions without notice. The minister's last response to my question referred to the patent document, and he kindly reminded me that the bill before the house does not specifically deal with one product; it deals with simulated racing products—plural. Trackside is, of course, one of those products. Has the government been advised of, or is the minister in a position to list, the names of the other potential products that this bill will allow for?

**Hon STEPHEN DAWSON:** I am advised that Trackside is one of the products that will be available. Other products are available overseas, in other jurisdictions, but we do not have the names of those in front of us. I am also advised that the final product will be approved by the Gaming and Wagering Commission.

**Hon NICK GOIRAN:** Have there been any discussions in government about which products the gaming commission will approve?

**Hon STEPHEN DAWSON:** I am told that there have been no discussions about which simulated racing products will be approved by the Gaming and Wagering Commission.

**Hon NICK GOIRAN:** Might the overseas products that the minister referred to be the types of products that would be approved by the Gaming and Wagering Commission?

**Hon STEPHEN DAWSON:** I am advised that they could be considered by the Gaming and Wagering Commission. Provision of simulated racing through the TAB will be subject to strict licensing conditions. Simulated races would be restricted to representations of the three codes of racing. It would be restricted to retail outlets and not available online and through betting apps. There would be regulated time intervals between each race to ensure they are provided only as ancillary products, and the hours of operation would be aligned with standard trading hours for retail outlets, to a maximum of 14 hours a day. I am told that the Gaming and Wagering Commission has considered the introduction of simulated racing in TAB outlets and does not oppose it, subject to the regulatory measures proposed.

**Hon NICK GOIRAN:** Is the approval process by the Gaming and Wagering Commission that the minister referred to contained in one of the discrete clauses of the bill; and, if so, which clause is it?

**Hon STEPHEN DAWSON:** I am told that the product itself is not specifically included in the bill, but under the licence, the Gaming and Wagering Commission can approve the specific systems to be used.

**Hon NICK GOIRAN:** Then, bear with me, minister, as I ask a few more questions on this, given there is not another clause in the bill in which they can be asked. The minister has indicated that these overseas products, these simulated racing products, could be approved by the Gaming and Wagering Commission. Could it also approve the product known as Trackside?

**Hon STEPHEN DAWSON:** Yes, I am advised that potentially it could.

**Hon NICK GOIRAN:** That brings me back to my earlier question and whether the information from the patent application for Trackside means that the more a person plays, the less likely they are to win.

**Hon STEPHEN DAWSON:** My advisers tell me no, that is not correct. That is not the logic that is followed.

**Hon NICK GOIRAN:** That is fine, because that is the advice that the minister has been given, but I remind members that the minister earlier advised the chamber that the government was not familiar with the patent document to which I had referred. Obviously, that being the case, and advisers being part of government, advice is currently being provided in respect of a document that has not been read.

**Hon Stephen Dawson:** They're forming their advice on the basis of the information that you read out earlier in this debate.

**Hon NICK GOIRAN:** Further along in the patents document, it states —

The preferred embodiment provides a technique for manipulating the results of identifier selection game such as Keno where there are set of eighty numbers from which a subset of twenty numbers are selected to generate the result of the racing game. It is preferred that the racing game is run in conjunction with the Keno game so that when the result of the Keno game has been determined, simulation of the Trackside game occur in conjunction with display of the Keno result.

Is that the intended arrangement that the government will enter into with the prospective buyer of the TAB?

**Hon STEPHEN DAWSON:** I can advise the honourable member that we have specifically ruled out keno being able to be operated by the new provider.

**Hon NICK GOIRAN:** Which clause in the bill specifically rules out keno being part of this arrangement?

**Hon STEPHEN DAWSON:** I am told it is under clause 47, which includes proposed section 6(1), “Wagering licence and wagering licensee”, which states —

A licence (a *wagering licence*) may be granted under this Act to a person (a *wagering licensee*) to conduct totalisator betting and fixed odds betting on a race, event or simulated race.

The government has specifically ruled out keno being able to be operated as part of the sale.

**Hon NICK GOIRAN:** Obviously we can tease that out further when we get to clause 47, which the minister has helpfully referred to. Clause 47 will insert part 1A. Which proposed section within proposed part 1A is the minister referring to?

**Hon STEPHEN DAWSON:** Proposed section 6(1) of the Betting Control Act. Again, it states —

A licence (a *wagering licence*) may be granted under this Act to a person (a *wagering licensee*) to conduct totalisator betting and fixed odds betting on a race, event or simulated race.

**Hon NICK GOIRAN:** That will empower the possibility of a licence being granted for that specific purpose. Why is it then that there is no possibility of keno being run simultaneously, as is indicated to be the preferred methodology in the patent application?

**Hon STEPHEN DAWSON:** This legislation does not specifically allow keno. Keno is not a simulated race; it is a very different product. Under this legislation, we are not allowing keno. As part of our contract negotiations, we will be making it clear that keno cannot be added. The new licensee or licence holder in Western Australia will not be able to operate keno as part of their TAB licence.

**Hon NICK GOIRAN:** Noting that the patent application states, “It is preferred that the racing game is run in conjunction with the Keno game”, have there been any discussions between government and Tabcorp International Pty Ltd Victoria about the inconsistency between the government’s policy position and its expressed preferred position, as outlined in the patent document?

**Hon STEPHEN DAWSON:** I am advised that in our market soundings with potential operators, nobody has indicated that they cannot run Trackside without keno, and it is certainly our intention to allow for simulated racing in Western Australia, be that Trackside or some other project, but there is certainly no intention to allow keno to operate.

**Hon NICK GOIRAN:** If the government was later to change its mind and decide, as part of the negotiations, that it would like to allow keno, what mechanism would prohibit a government from unilaterally agreeing to that?

**Hon STEPHEN DAWSON:** I am advised that the legislation would have to be changed to specifically allow keno to operate in this new TAB operation. We would also have to negotiate with Crown, which is the sole operator of keno in Western Australia at this stage. Crown would need to agree with the government to allow keno to be inserted into the act, and, obviously, as per the bill that is before us, there would be a requirement to compensate Crown in that case.

**Hon NICK GOIRAN:** I am reminded that we are actually cognately dealing with these bills.

**Hon Stephen Dawson:** No, we are dealing with clause 1 of the main bill.

**Hon NICK GOIRAN:** Just the “TAB (Disposal and Breathtaking McGowan Government Hypocrisy) Bill 2019”?

**Hon Stephen Dawson:** No, that is not the bill before us, honourable member.

**Hon NICK GOIRAN:** Have we not agreed to that amendment? Incidentally, I would be curious —

**Hon Stephen Dawson:** We have agreed to the second reading.

**Hon NICK GOIRAN:** I am happy for the minister to take this rhetorically, but I would be fascinated to know what the government’s position would be if the short title were to be amended, as I have foreshadowed in my second reading contribution, and whether the government would consider that to be a substantive amendment that would undermine the agreement, and it would then have Mr Wyatt and Mr McGowan, who are in this stoush at the moment about this bill—one is obviously firmly in favour of it, and the other has deep reservations—veto the bill and its passage in the other place. As I said, I am happy for the minister to take that rhetorically.

On this issue of simulated racing the products, has the government obtained any advice on whether there is a more significant profit margin for operators if the game is a simulated racing product in contrast with a real race?

**Hon STEPHEN DAWSON:** I am advised that we have not received any particular advice on this issue, but I am further advised that the commission will regulate the return to players under the rules of betting.

**Hon NICK GOIRAN:** So no advice has been obtained on that issue. Is that because somebody in government already knows the answer to the question? In other words, is it the case that the profit margin on a simulated racing product is greater than the profit margin that would exist had the betting taken place on a real horserace?

**Hon STEPHEN DAWSON:** I am advised that it is not because somebody in government has the answer, but the government has the power to regulate the payout from simulated racing.

**Hon NICK GOIRAN:** I note that in the explanatory memorandum there is some reference to things that the bill is seeking to do. Is it the case that the bill will enable the disposal of any assets or liabilities owned or managed by Racing and Wagering Western Australia?

**Hon STEPHEN DAWSON:** I am advised that provided they are associated with the TAB, it can dispose of the assets.

**Hon NICK GOIRAN:** The second paragraph of the explanatory memorandum states —

The TAB (Disposal) Bill 2019 (the Bill) has been drafted to provide for the disposal of the whole or part of any business carried on by, or all or any of the assets or liabilities owned or managed by RWWA, to the extent that each is associated with the TAB ...

Can the minister indicate what assets are managed but not owned by RWWA that would fit that definition?

**Hon STEPHEN DAWSON:** I am advised that we are not aware of any that are managed but not owned by RWWA. However, we are conducting a due diligence process, and if any show up as a result, we will be aware of them. We do not really envisage that there are any. It is a just-in-case situation.

**Hon NICK GOIRAN:** Let us record that as nil, in which case, minister, what assets are owned by RWWA?

**Hon STEPHEN DAWSON:** I am advised that we do not have a list of the assets, but examples of assets include rights under operational contracts, IT systems, user licences and support for systems, agency contracts, consultancy contracts, contracts related to marketing advertising, rights under leases, equipment, goodwill, business records, intellectual property, receivables, approvals and permits, and the rights to use land.

**Hon NICK GOIRAN:** Noting that the minister does not have in his possession a list at the moment, I take it that a list of assets owned by RWWA exists somewhere within government. Can it be provided and tabled?

**Hon STEPHEN DAWSON:** There probably is an asset register but we do not have that level of detail before us. To be frank, I do not propose to hold up the bill to get that list for the chamber. I am advised that a detailed list of the assets and liabilities that will be disposed of pursuant to the sale will be set out in schedules to a transfer order. Those schedules will be available for public inspection. Clause 16(4) provides for those schedules to be available for inspection.

**Hon NICK GOIRAN:** What are the assets and liabilities that the government anticipates recording on the schedules?

**Hon STEPHEN DAWSON:** I am advised that it will be those that are related to the TAB business.

**Hon NICK GOIRAN:** How many assets and liabilities are there?

**Hon STEPHEN DAWSON:** I am advised that we are going through a detailed due diligence process at the moment. Following that, we will have a better understanding.

**Hon NICK GOIRAN:** When did the due diligence process begin, who is conducting it, and when is it expected to be finalised?

**Hon STEPHEN DAWSON:** I am advised that the due diligence process commenced midyear, around June. It is being conducted by PricewaterhouseCoopers and Corrs Chambers Westgarth. It is anticipated that they will report later in the year.

**Hon NICK GOIRAN:** Is there a contract between the government and PricewaterhouseCoopers and with Corrs Chambers Westgarth? If so, is the minister in a position to table it?

**Hon STEPHEN DAWSON:** I am advised that there is a contract, but I cannot table it.

**Hon NICK GOIRAN:** Can the minister not table it because he does not have it in his possession at the moment, or will he not table it even in the fullness of time? Is there a special provision that prevents the minister from tabling it? Is the minister going to proceed under section 82 of the Financial Management Act? Can we have a clarification of the reason that it cannot be tabled?

**Hon STEPHEN DAWSON:** I am advised that the engagement of Corrs Chambers Westgarth is a legal services engagement, so that is obviously subject to legal professional privilege. In relation to the PricewaterhouseCoopers contract, I am told that for commercial-in-confidence reasons, it is not customary to table such documents. I will take advice from the respective minister on what I need to do under the Financial Management Act.

**Hon NICK GOIRAN:** Can I ask the minister to revisit the advice that he has received? The contract between the state and Corrs Chambers Westgarth, which is a law firm, is not subject to legal professional privilege. It is quite

a different thing if Corrs Chambers Westgarth provides to the state a piece of legal advice that the state then wants to claim privilege on. A contract for services, which, I might add, the taxpayer of Western Australia is responsible for, is not the subject of legal professional privilege. I ask the minister to revisit that advice and correct the record if need be.

**Hon STEPHEN DAWSON:** I am still seeking further advice, but this issue is better dealt with at clause 7. I do not propose to answer the question now. I ask the honourable member whether he could bring us back to clause 1. It is a constrained debate. I seek to make progress now if other members have general issues about clause 1, noting the narrowness of the debate; otherwise, I ask honourable members to ask their questions at the appropriate clause during the debate.

**Hon NICK GOIRAN:** Under the heading “Overview”, not on any particular clause, in the government’s explanatory memorandum, it says —

... (the Bill) has been drafted to provide for the disposal of the whole or part of any business carried on by, or all or any of the assets or liabilities owned or managed by RWWA, to the extent that each is associated with the TAB, the establishment of a new wagering licence regime for a privately operated TAB, and related changes.

In respect of that part of the bill that has been drafted to provide for the disposal of assets and liabilities owned by the state, I note the information that the minister has endeavoured to provide us with today, including that a due diligence process is underway. Which clauses in the bill provide for the disposal of the assets and liabilities? Obviously, the minister indicated in his last response that clause 7 is one of those clauses. Do any of the other clauses in the bill also deal with that issue?

**Hon STEPHEN DAWSON:** I am told that is dealt with in parts 2 and 3 of the bill. Part 2 is about enabling disposal, and part 3 is about implementing disposal.

**Hon NICK GOIRAN:** When we get to parts 2 and 3 of the bill, will the minister be in a position to advise the chamber about the cost of the due diligence process that is underway to identify the assets and liabilities that will be part of the schedules?

**Hon STEPHEN DAWSON:** No, I will not be.

**Hon NICK GOIRAN:** Why will the minister not be in a position to deal with that under clause 7?

**Hon STEPHEN DAWSON:** The member did not ask whether I would be willing to deal with that under clause 7. I am absolutely happy to deal with that under clause 7. The information will be provided.

**Hon NICK GOIRAN:** The minister may say that. Let us deal with this in this way. I think this matter is better pursued under clause 7, and I am happy to pursue it at that time. I am just foreshadowing that when we get to clause 7, or parts 2 and 3, it clearly will not be acceptable for the minister to say that the government will not advise the cost of the due diligence process. It is not particularly strange that we would want to know the cost of this process. From the minuscule amount of information that we have been able to extract so far, two private companies have been subcontracted the work to find out, on behalf of the people of Western Australia and the government, the assets and liabilities of RWWA that might be subject to the disposal of the TAB as a result of this bill. The government does not know the answer to that question at the moment. That is why the government has had to subcontract out that work. We are being asked to authorise the disposal process, even though the government does not know what are the assets and liabilities of RWWA. I am simply asking what the cost of that process will be.

Earlier today, I asked when this process commenced, and the minister kindly advised that it commenced in June, in the middle of the year, and it is anticipated to be concluded later this year. I know the minister is keen to make progress, and so am I. I have asked that question, in advance of getting to clause 7 and parts 2 and 3, so that the minister will be well prepared and we do not have a Mexican stand-off. I note that in the not-too-distant future, this debate is likely to be adjourned. That will provide an opportunity for people to look at that contract and ascertain to what extent it can be provided to this chamber, even in a redacted form. It is not acceptable that the government will not provide this information. The government needs to explain the terms of engagement with these private contractors. I find it a bit peculiar that the government is seeking in this bill to provide the power for the disposal of a state asset, yet the government does not know exactly what it is authorising to sell. I will give a practical example. In my home, we collectively own three motor vehicles. I am able to identify the make, model and registration number of those vehicles, the approximate value of those assets, and any contingent liabilities associated with those assets. The government has had to seek the expert assistance of PricewaterhouseCoopers and Corrs Chambers Westgarth to identify the assets and liabilities of RWWA. The government has indicated that it is not aware of any assets that RWWA manages but does not own. Nevertheless, as a form of extra assurance and comfort, if the government at some time does identify an asset that RWWA manages but does not own, it would like this chamber also to authorise the sale of that asset.

We seem to be in one of those most unsatisfactory situations once again—this government has form in that respect—of us operating in a blindfolded fashion. I do not like it, and I flag to the minister that when we get to clause 7, responses of, “No, I’m not going to provide any information” are going to be counterproductive to the facilitation of this bill. I would need a very persuasive, cogent explanation as to why it is not possible for the government to provide information to this chamber on what assets and liabilities we are authorising the government to dispose of. I would need a very cogent explanation as to why I have to agree to it in nebulous terms rather than in specific terms. Clearly, as the minister has already indicated, there is an intention for those assets and liabilities to be recorded in a schedule. He has kindly provided that information to us, but we know that the government does not know what to write on the schedule and is busy working that out at the moment. That is fine; that is the current state of play. All I am asking is: what is the cost to the state of that identification process? I do not think that is unreasonable. I will need a very persuasive response when we get to clause 7.

**Clause put and passed.**

**Clause 2: Commencement —**

**Hon NICK GOIRAN:** Clause 2 is quite a substantial clause, as far as second clauses in bills go. The explanatory memorandum advises that the commencement dates will be in three stages. What will be the criteria for determining whether proclamation for the third stage will be on the same date as that for the second stage?

**Hon STEPHEN DAWSON:** I am told it will depend on whether Racing and Wagering Western Australia is ready at that time.

**Hon NICK GOIRAN:** What does RWWA need to do to be ready?

**Hon STEPHEN DAWSON:** I am told it will need to set up some new systems and processes.

**Hon NICK GOIRAN:** Does the minister have a list of those systems and processes that RWWA needs to have ready in order for a proclamation to occur, and is the minister in a position to indicate whether any work has already commenced on that?

**Hon STEPHEN DAWSON:** I am advised that we do not have a list, but it will be likely to include standard terms and conditions. We are not aware whether RWWA has commenced work on it yet. It has obviously been busy over the past few months with the consultation on the bill that is before us.

**Hon NICK GOIRAN:** The minister indicated earlier that RWWA needs to be ready, and the thing that they need to do is to have new systems and processes in place. The minister has indicated that there is no list of those systems and processes but that they will include standard terms and conditions. What is meant by “standard terms and conditions”?

**Hon STEPHEN DAWSON:** I have been advised to refer the member to proposed section 25C, “Publication and use approval”, of the Betting Control Act 1954, which states —

- (1) On an application under section 25B, RWA may grant a publication and use approval.
- (2) RWA must —
  - (a) determine the application by either granting or refusing a publication and use approval; and
  - (b) notify the applicant in writing of RWA’s decision to grant or refuse a publication and use approval.
- (3) A publication and use approval may be granted subject to any conditions RWA thinks fit, including a condition that the wagering service provider pay, in the manner specified in the approval, a fee or a series of fees of an amount or amounts —
  - (a) specified in the approval; or
  - (b) calculated in accordance with a formula or formulae specified in the approval.
- (4) Any fee that is payable as a condition of the approval is a debt due to RWA and may be recovered in a court of competent jurisdiction.
- (5) A publication and use approval —
  - (a) takes effect on the day specified by RWA in the approval; and
  - (b) remains in force for the period specified by RWA in the approval, unless revoked earlier under subsection (6).

*Sitting suspended from 6.00 to 7.30 pm*

**Hon STEPHEN DAWSON:** Before we broke for dinner, a number of questions were asked by Hon Nick Goiran. I want to try to address those now. There was a question earlier about money laundering.

**Hon Nick Goiran:** Hang on; we are dealing with clause 2.

**Hon STEPHEN DAWSON:** We are dealing with clause 2; I cannot give the member an answer now. I am happy to wait for clause 129. I was trying to be helpful. I shall give those answers when we get to those clauses.

**Hon NICK GOIRAN:** Before the adjournment for the dinner interval, we left off at clause 2. I was asking the minister whether he could clarify what he meant by “standard terms and conditions”. The context is that earlier I had asked what the criteria would be for determining whether proclamation for the third stage will be on the same date as it is for the second stage. Members will be aware that the explanatory memorandum indicates that the commencement process is intended to take three stages. When members read the description for stage 2, it is possible that stage 2 and stage 3 might be on the same date. I simply asked what criteria the government would use to determine whether that would happen on the same date. The minister indicated that it would depend on whether RWWA was ready, because it needs to be ready. When I asked what RWWA needed to be ready for and what did it need to do, the minister indicated that it needed to work on some new systems and processes. I asked whether there was a list of those systems and processes, and the minister indicated that there was no list yet, but that it would include standard terms and conditions. I then asked the minister to clarify what those standard terms and conditions would be, and, as I recall, the minister was midway through his response in taking us through proposed section 25C, which I believe is found in clause 67. Perhaps we can continue to make progress if the minister clarifies what is meant by the standard terms and conditions.

**Hon STEPHEN DAWSON:** Thank you for reminding us of where we were, honourable member. As the member correctly pointed out, I had referred to proposed section 25C(3), which reads —

A publication and use approval may be granted subject to any conditions RWA thinks fit, including a condition that the wagering service provider pay, in the manner specified in the approval, a fee or a series of fees of an amount or amounts —

- (a) specified in the approval; or
- (b) calculated in accordance with a formula or formulae specified in the approval.

**Hon NICK GOIRAN:** When we indicate that the criteria upon which the government will determine whether to proclaim the clauses intended for stage 3 are on the same day as stage 2, it will depend on whether RWA is ready with the new systems and processes that it is working on, including the standard terms and conditions. I take it from the minister’s response that when I read proposed section 25C(3), which is found in clause 67 of the bill, is the line “subject to any conditions RWA thinks fit” the terms and conditions to which the minister refers?

**Hon STEPHEN DAWSON:** My advisers tell me yes.

**Hon NICK GOIRAN:** Has any work commenced on the preparation of those conditions that RWA thinks likely to be needed for the approval process referred to in proposed section 25C, found in clause 67?

**Hon STEPHEN DAWSON:** Not that we are aware of, honourable member.

**Hon NICK GOIRAN:** No work has commenced on that. How long will it take RWA to prepare those standard terms and conditions?

**Hon STEPHEN DAWSON:** We do not have an exact timetable, but I am advised that it will be ready mid to late 2020.

**Hon NICK GOIRAN:** I note that earlier the minister indicated that RWA would need to be ready to work on new systems and processes. To the extent that we can identify what those new systems and processes are—no list is available—we know that it will need to prepare certain standard terms and conditions. It has not currently commenced the work for that, but we anticipate that that will be done mid to late next year. Is that indicative that stage 3 of the commencement process will happen no sooner than mid to late next year?

**Hon STEPHEN DAWSON:** I am advised probably not, and in any case it cannot happen before the TAB is sold. That process will take a period of time.

**Hon NICK GOIRAN:** The minister said “probably not”. I understand that it cannot happen until the TAB is sold, but why “probably not”? Is it just that we do not expect the TAB to be sold in that time?

**Hon Stephen Dawson:** That is correct.

**Hon NICK GOIRAN:** Okay; that is fair enough.

If this bill is to pass in its current form—as we know, the government is not enthusiastic about the bill being in any other form—will work commence immediately on the preparation of the standard terms and conditions?

**Hon STEPHEN DAWSON:** We are not sure. RWWA is obviously focused on the sale at the moment. That is the immediate priority. I cannot tell Hon Nick Goiran whether it will start on the stage 3 process at the moment.

While I can, I will take the opportunity to put on the record the variable commencement dates. The bill is structured to allow variable commencement dates, and it is envisaged that the commencement dates will be staged. Date 1 is the proclamation—the day after the bill receives assent—when parts 1 to 5 and 11 of the bill will be enacted. The sale is then permitted to be progressed and a wagering licence issued, but to be commenced at a later date. RWWA’s wagering functions and the regulation of these functions will be retained. Date 2 is likely to be mid-2020 as well. This is the day the wagering licence will commence. RWWA’s wagering functions will cease and Racing and Wagering Western Australia will become Racing Western Australia—it will lose “wagering” from the title. At that stage, the Gaming and Wagering Commission’s oversight of RWWA’s wagering function will also cease. Date 3, which is a date on or after date 2, is the stage at which the racing bets levy will be repealed and the new race fields fee regime will commence.

**Hon NICK GOIRAN:** The minister mentioned that date 2 is anticipated to be around the middle of 2020. Is date 2 not conditional upon the sale, whereas date 3 is conditional upon the sale?

**Hon STEPHEN DAWSON:** They are both conditional upon the sale. We anticipate the sale happening in the middle of next year. I used “mid-2020” just indicatively; it could be later than that.

**Hon NICK GOIRAN:** Clause 2(2) of the bill reads —

Different days may be fixed in a proclamation for different provisions.

Is it the intention of the government to have no more than two proclamation dates? The minister has indicated, and it is consistent with the explanatory memorandum, that it is intended that there be three stages. Obviously, the first one is the day after royal assent. That is consistent with clause 2(1)(b), in which there is a list of some 13 provisions that will commence on a day fixed by proclamation. I understand that to be stage 1, but I am more interested in stages 2 and 3, which can happen on different days. Is it the intention of the government to have no more than two days, or could there be multiple days?

**Hon STEPHEN DAWSON:** It is our intention that there not be more than two days.

**Hon NICK GOIRAN:** Can the minister indicate which clauses are earmarked for proclamation on date 1 and which are earmarked for proclamation on date 3?

**Hon STEPHEN DAWSON:** I do not have a list at hand. The officers could undertake that task, but it might take some time this evening.

**Hon NICK GOIRAN:** I am in two minds, minister. The reason I pause is to contemplate whether there could be any material benefit in deferring consideration of clause 2. I am mildly, with a small “m”, troubled. The explanatory memorandum goes to great lengths on this. I have to commend whomever put together the explanatory memorandum. I think that they have done us a service by going to the extent that they have to set out the context in which the commencement dates are intended to be staged over three different periods. I thank whomever had the good grace to put that together. I am, as I say, mildly troubled that somebody has gone to the extent of being that specific in the explanatory memorandum, yet we do not have a readily available list of which clauses are intended to be proclaimed on date 2 and which ones are intended for date 3. At the end of the day, whatever the answer to that is, I do not think it will result in any member opposing clause 2, so I am happy to support the passage of clause 2. Perhaps the minister can provide that list, if possible, at some stage prior to the third reading of the bill, should we get to that stage.

**Hon STEPHEN DAWSON:** We undertake to provide a list. Essentially, as I alluded to earlier, parts 1 to 5 and part 11 of the bill will be proclaimed on date 1; everything related to the racing bets levy and the race field regime will be proclaimed on date 3; and everything else will be proclaimed on date 2. I will ask the advisers whether they can provide information on the number of clauses that will be proclaimed on date 3; that is, the clauses that relate to the racing bets levy and the race field regime. That will be an easy task to undertake because we know what clauses date 1 refers to and what clauses date 3 refers to, so everything else in the bill will relate to date 2. I will undertake to provide that information at a later stage of this day’s sitting or later in the debate.

**Hon NICK GOIRAN:** I want to clarify something. I think the minister said that it is intended that those clauses that are to be proclaimed on date 1 are parts 1 to 5 —

**Hon Stephen Dawson:** And 11.

**Hon NICK GOIRAN:** I take the minister to clause 2(1)(a). He will see that under clause 2(1)(a), part 1 will come into effect on the day on which the act receives royal assent. Can I get the minister to compare that with what is written in the explanatory memorandum about date 1 under clause 2? It states —



***Date one**—this is the day after the day on which the Act receives Royal Assent.*

It just seems to me that part 1 of the bill is covered by the first date. I am using the terminology “first date”, not to be confused with “date 1”, which is the assent day. The next thing that happens chronologically is date 1, which quite possibly could be parts 2 to 5 and, I think the minister said, part 11. Then there will be date 2 and date 3. I just want to make sure that we are clear that it is not the case that part 1 will come into effect on date 1.

**Hon STEPHEN DAWSON:** I am advised that the member has got us on a technicality, so, yes, there are four dates, and obviously part 1 is the short title.

**Hon NICK GOIRAN:** Just to wrap this up, minister, part 1 is not just the short title, which is clause 1. Part 1 also includes “commencement” and “terms used”.

**Hon Stephen Dawson:** You are correct.

**Hon NICK GOIRAN:** Yes; clauses 4, 5 and 6 are also in part 1.

**Clause put and passed.**

**Clauses 3 and 4 put and passed.**

**Clause 5: Severance of things on land —**

**Hon NICK GOIRAN:** Clause 5 deals with the issue of a ministerial order to alter the law of Western Australia. Does any other law in our state empower a minister to alter the property law of our state?

**Hon STEPHEN DAWSON:** The question is kind of out of scope in the sense that the member is asking about other pieces of legislation that are not before us now, so I will not have a comprehensive answer because it would involve lots of work for departmental staff in going through other pieces of legislation. However, I can advise the member that the legislation to dispose of the Pilbara ports, which passed this place in the last term of the previous government, has similar provisions.

**Hon NICK GOIRAN:** I note that the explanatory memorandum for clause 5 states —

The purpose of this clause is to facilitate the disposal of things situated on land, such as buildings and other fixtures. The provision can be of assistance in a disposal in that, where at law a fixture to be disposed of would otherwise be considered to be part of the land on which it sits, this position can be altered by an order made by the Minister.

It therefore appears, minister, that the government’s intention is to retain a fixture or fixtures that might otherwise have been disposed of as part of this whole process. Which fixtures does the government have in mind that it wishes to retain?

**Hon STEPHEN DAWSON:** I am advised that the intention is not for the government to retain fixtures but for the fixtures to be disposed of, other than as part of the land. A motivator for severing things from land could be the private entity buyer’s preferences; dealing with things on land as chattels, separately from that land, can provide tax-deductibility advantages. It is not expected that the disposal of the TAB business will involve the disposal of, or dealing with, interests in land to the same extent as previous disposals have. At this stage, Treasury is not contemplating use of this clause; however, it is, for example, anticipated that land or interests in land on which TAB agencies are situated will form part of a disposal, and it is therefore appropriate to include this provision.

What kinds of things on land would this clause be used for? Ordinarily, it could be used for infrastructure that can be dealt with as equipment or chattels. Treasury currently has no examples of Racing and Wagering Western Australia assets to which this would apply, so this provision is included out of an abundance of caution.

**Hon NICK GOIRAN:** Given that explanation, if the chamber were to delete clause 5, would that then reach the test that we discussed earlier, when the government said that if it were to pass that threshold—that is, it would be considered a substantive amendment that would undermine the agreement with the racing industry—the government would veto the bill?

**Hon STEPHEN DAWSON:** I cannot comment on behalf of the Treasurer in relation to this amendment, because, obviously, I have not had an opportunity to raise it with him. I will, at various points in the debate, refer to the fact that this bill is in the form of template legislation. I would like to expand on that and outline why that will be beneficial. Most of the provisions of parts 1 to 5 of the bill are very closely based on the provisions of previous disposal legislation, particularly the disposal legislation made for the sale of the Perth Market Authority and the Pilbara port assets. In turn, the provisions of the previous disposal legislation were, in many parts, based on the disposal legislation used for the sale of Westrail freight, AlintaGas and the Dampier to Bunbury gas pipeline, around 20 years ago.

Government asset sales are large and complex transactions and can take a variety of forms. I am told that there is a variety of benefits in using a template form of legislation rather than bespoke legislation to authorise such sales. It allows the state to draw on experience gained from the past when implementing the legislation. It also provides greater assurance that any issues arising during the sale process can be dealt with appropriately, particularly given that at the time this bill was finalised and now, the finer details of the TAB business to be sold have not been established through completed due diligence, and commercial details of the sale are not yet clear. Using broad framework legislation minimises the risk that a particular power that is required will not be there when needed. It also provides the necessary flexibility to respond to issues in the most appropriate way during the sale process, and allows a consistent expectation by the market and the public of the framework for conducting government asset sales in Western Australia. However, use of a template form of disposal legislation to achieve coverage and flexibility means that some provisions of this bill may not ultimately be used. I may be unable to provide a practical example of when a particular provision could be used for the TAB sale, as no potential instance of its use has so far been identified. However, as it is not usually the case that, in drafting, a template disposal provision can be categorically dismissed as unnecessary, template provisions have been included out of an abundance of caution. I think it is important to place that on the record. I cannot give the honourable member an answer about whether it was amended, but it is in there for the reasons I have just outlined.

**Hon NICK GOIRAN:** That was very helpful, and I thank the minister for drawing to our attention that the approach taken by the government in this bill is to copy template legislation that has been used in other disposal processes. The minister has drawn to our attention at least two examples—the Perth Market Authority and the Pilbara port assets legislation. This clause allows what I would describe as extraordinary power for a minister to alter the property law of Western Australia. As the minister has already indicated, this is not the first time this has happened. He drew our attention to the Pilbara port legislation. Has this provision been used before? One of the justifications being used for its inclusion in this legislation is that it is template legislation, but does this particular extraordinary power actually get used in any other piece of legislation, or are we just following template legislation for the sake of it, in which case I would suggest we delete the clause?

**Hon STEPHEN DAWSON:** I am told that it did not get used for the Pilbara port legislation, because that sale never went ahead.

**Hon NICK GOIRAN:** I appreciate that, but the question is not limited to the Pilbara port legislation. The minister has indicated that this is template legislation that has been used on other occasions. My question still remains: has this type of ministerial order to alter the law of Western Australia been invoked in the past?

**Hon STEPHEN DAWSON:** Not to our knowledge.

**Hon NICK GOIRAN:** We know that this type of power has not previously been used, to the best knowledge of the government. The only reason it is in this legislation is that the government has decided to proceed with template legislation. The advice from Treasury, as the minister indicated earlier, is that this clause is not necessary, but has been included out of an abundance of caution—those are the words the minister used earlier. I go back to my original premise that this is, to me, a classic example of a clause that could quite reasonably be deleted by the chamber. It could not, in all good conscience on the part of the government, be considered to be a substantive amendment that would invoke the Treasurer's intention to veto the bill because, according to him, it would undermine the agreement with the racing industry. I cannot imagine that the racing industry, in the non-written agreement that it has with the government, has said that it is crucial that clause 5 be included. I cannot imagine that any consultation to that effect has taken place. I cannot imagine that that would be the case, particularly when Treasury is advising government that the clause is not necessary. Is the minister in a position to take instructions from the Treasurer and ascertain for us whether he will invoke his veto if we delete this clause? As we have interrogated clause 5, it is clear on the record—it will be recorded in *Hansard* for everyone to read from tomorrow onwards—that the advice from Treasury is that this clause is not necessary.

**Hon STEPHEN DAWSON:** My advice is that it is not currently identified as being necessary. Whether it ends up being necessary as a result of the sale depends on the outcome of that process. At this stage, it is not currently identified as being necessary.

**Hon NICK GOIRAN:** Up to today, how long has it been since cabinet gave the instructions to draft? What amount of time has expired?

**Hon STEPHEN DAWSON:** I am advised that the answer is just over a year.

**Hon NICK GOIRAN:** Let us say in approximately a year, there has been no expert advice from government other than to say that this clause is not necessary. It is not as though this is a rushed piece of legislation. In 12 months of considered professional work by this government and all the advisers who have been involved, the collective advice is that this clause is not necessary. It would therefore be quite reasonable for the 35 voting members of this chamber to delete the clause. There would be no defence provided by the government because we would be relying

on the government's advice. It is the government's advice, after 12 months of comprehensive work, that it is not necessary. Before we start moving to that level, I want to know whether the Treasurer will invoke his veto. As competent lawmakers, it strikes me that clause 5 can be struck from this bill without any harm whatsoever on the basis of the advice we have been provided. I do not want to do that when the government has previously issued an ultimatum to Hon Colin Holt that under no circumstances are he and his colleagues to move any amendments to this bill that are considered to be substantial amendments because that will undermine the agreement with the racing industry. I am asking whether the minister is in a position, potentially even, after further consideration of this clause, to contact the Treasurer and say, "Look, Hon Ben Wyatt, it is pretty clear from the advice we have that this clause is not necessary. This annoying guy in the upper house is giving me a hard time about an unnecessary clause. It will not cause any grief regarding the issues Hon Alison Xamon has on the supplementary notice paper or the amendment proposed by Hon Colin Tincknell. It is merely a clause that is not necessary, according to the advice of government. It cannot be substantiated as a substantive amendment. It will not undermine the agreement with the racing industry, so can we delete the clause and move on to clause 6?"

**Hon STEPHEN DAWSON:** The government is asking members to keep the clause in the bill, in the event it becomes necessary. We do not want to have to come back to Parliament in the future to seek amendments to the act, so we are asking that it remain. In relation to the Treasurer's view of any amendments, obviously, this chamber will pass whatever legislation it passes and it will go to the other place and a decision will be made at that time about what happens next. The government is asking members to keep this clause in the legislation.

**Hon NICK GOIRAN:** I accept that the ordinary process is that in the event this bill is third read and has amendments, it will be returned to the other place for its consideration. But the unique thing happening here is that the 35 members of this place, who might be inclined to move amendments, are being told not to move a substantive amendment because if they do, the government will simply not proceed with the bill. Members like me, who hold the view that there is no cogent reason for the state to own a betting agency, would be supportive of the sale. Let us get rid of the TAB and get it off the state books. There is no need for the Premier, Mr McGowan, to be the chief bookmaker in Western Australia or for the state to own this betting agency. I have no problem with the sale process taking place. The issue I have is that I am now in a situation in which normally, as a lawmaker, I would like to see this clause amended, and I say it should be deleted. No persuasive reason has been provided by the government for it to be included, but I am in a state of lawmaking paralysis because I have been told by the government that if I even dare to move to strike out this clause, which the government's own advisers are saying is not necessary —

**Hon Stephen Dawson:** At this stage.

**Hon NICK GOIRAN:** This is the stage of us passing the bill, minister. There is no other stage!

**Hon Stephen Dawson:** We've not disposed of the TAB, honourable member.

**Hon NICK GOIRAN:** Bring the bill back then.

**Hon Stephen Dawson:** No, we won't.

**Hon NICK GOIRAN:** No, we cannot do that, can we? We have to deal with it in a situation —

**The DEPUTY CHAIR:** Members, I would rather not have dialogue. I would rather the member addressed questions through me, and for the minister to respond to the questions, rather than getting into a dialogue.

**Hon NICK GOIRAN:** Of course. Thank you, Mr Deputy Chair.

The difficulty is that we have a Mexican stand-off, which I would have liked to have avoided. It has been caused by the government dictating to the members of this place not to move any amendments that are substantive, and when we proposed a non-substantive amendment, the government said that it could not respond to that at the moment because the minister with carriage of the bill is not in this place. That creates a lawmaking paralysis. It is not acceptable and it makes it very difficult for us to make a proper decision about clause 5. The government has said the clause is not necessary at this time and is being included only out of an abundance of caution. To the government's knowledge it has never been previously invoked under the limited amount of other legislation in which such a power exists.

I have gone to such lengths to underscore this clause to expose the inappropriateness of Hon Ben Wyatt dictating to the members of the Legislative Council whether we will or will not move amendments. It will be for this place to decide whether clause 5 is to be passed, amended or deleted. We are the chamber that has been given the duty, on behalf of Western Australia, to consider each clause in this bill before it becomes the law of Western Australia. It is not appropriate for the executive to dictate to the Parliament—as, I might add, is happening in another context at the moment—when it is unable to provide a cogent and persuasive reason why such an amendment cannot be moved. I conclude by expressing my disappointment. We find ourselves with, effectively, no choice, according to this government, but to pass a clause that it has said is not necessary. If we were to do anything but that, we would be blocking the potential sale of the TAB, which is something that I would not support. I think it would be good

if we moved it off the asset register. The outcome will be good, but this process of lawmaking is not. This business of a government dictating to the Legislative Council by saying, “Take it or leave it. Take all the clauses in this bill, even the ones that you don’t like. If Hon Alison Xamon does not like clauses, too bad; you have to pass them” is not on. We should be able to look at each clause on its merit. It is inappropriate for any government to tell us that we have to take either all 161 clauses of this bill or none at all. I would like to take all of them bar clause 5, but I am told by this minister that that cannot happen. The reason he has given me is not that it is a crucial clause that has to be passed—he has told me that it is not necessary at this time—but that it has been included only as an abundance of caution, the power has never been invoked in other legislation and it has been included just because it is template legislation.

When officers are entrusted with the responsibility to draft legislation for government, I would ask them to give serious consideration to this type of dilemma and, in future, not include clauses that the government cannot even make a case for. It is an embarrassment when a government comes into this place and says, “We would like you to pass this clause, even though it is not necessary at this time.” We need something more substantial than that. Following template legislation should not be a slavish process. Once upon a time, when I was a mere articulated clerk in my law firm, I was told —

**The DEPUTY CHAIR:** I remind members that we are dealing with clause 5. The discussion we are having at the moment is of little relevance to clause 5. I will allow you to continue.

**Hon NICK GOIRAN:** Thank you, Mr Deputy Chair. Speaking of not being relevant, clause 5 is not relevant to the bill. The government is saying that it is not necessary. The advice that has been provided is that it is not necessary at the moment; in other words, it is irrelevant to the bill. The only reason it has been included is that it is template legislation. The example and the analogy I was giving is that once upon a time in a former life, I was told to be careful about slavishly following precedents, and that is what is happening here. It disturbs me that we cannot be provided with a proper reason for why clause —

*Point of Order*

**Hon SUE ELLERY:** Mr Deputy Chair, I draw your attention to standing order 48 on repetition. The honourable member has made his point ad nauseam about his views on whether this clause should stay.

**The DEPUTY CHAIR (Hon Robin Chapple):** The Leader of the House has brought to my attention standing order 48, “Irrelevant or Repetitious Debate”. I draw the member’s attention to standing order 48 and ask him to proceed with matters that are relevant to the clause at hand.

*Committee Resumed*

**Hon NICK GOIRAN:** It is interesting that the Leader of the House would try to invoke such a standing order when I have not even had one full round of 10 minutes to make this particular point. It is rather trite for the Leader of the House to suggest that somehow this is tedious repetition. Nevertheless, the point is that we have been told by the government that clause 5 is not necessary. The government has said that it is following template legislation, it has used this in a few other instances, and it has never, to its knowledge, had a minister invoke this particular power. I might add that this is no small power that we are giving to a minister. The power that is being given to a minister under clause 5 is to make a ministerial order to alter the law of Western Australia. Ordinarily, the people who get to alter the law of Western Australia are parliamentarians. We do not normally allow a minister, with the stroke of a pen, to alter property law in Western Australia, yet that is exactly what is going on here. We have asked what fixtures the government intends to hold onto and does not want to sell. The government has said there are not any; it intends to sell them in a separate sale. The government has also said that there might be some equipment and chattels, but it is not sure about that either. Therefore, clause 5 is very significant. It is not immaterial. I am disappointed that the government has been unable to provide a cogent explanation for why clause 5 should be supported.

**Hon COLIN HOLT:** I do not want to extend the debate, but I point out that the minister might want to table some further evidence. The minister tabled a number of letters to support his argument that the racing industry supports the sale of the TAB and supports this bill. Most of those letters are dated between July and August this year, after the passage of the bill through the other place. I will give some examples. The letter from Albany Racing Club states that it supports the TAB (Disposal) Bill 2019 as drafted and unamended. Therefore, it obviously believes that clause 5 is important. The letter from Gloucester Park Harness Racing states —

The GPHR supports the *TAB (Disposal) Bill 2019* as drafted and unamended as we believe this provides the right legislative framework to best negotiate the sale of the TAB ...

All aspects of the *TAB (Disposal) Bill 2019* are important for the future prosperity of the racing industry ...

Obviously, it also believes that clause 5 is important.

The letter from the Albany Harness Racing Club, in similar language, states that it —

... supports, in principle, the *TAB (Disposal) Bill 2019* as drafted and unamended as we believe this provides the right legislative framework ...

The Western Australian Greyhound Racing Association also supports the TAB (Disposal) Bill 2019 as drafted and unamended. Toodyay Race Club; Bridgetown Harness Racing Club, which holds two race meetings a year; Busselton Harness Racing Club; Nor West Jockey Club; Collie Harness Racing Club; Narrogin Racing; and Collie Race Club also support the TAB (Disposal) Bill 2019 as drafted and unamended.

I make the point that the minister presented that evidence to show that the industry is on board. The industry is obviously fully across every clause in the bill, and supports clause 5. However, as Hon Nick Goiran has pointed out, what is being held over by the government is that if we amend the bill, it will be shifted. I have not gone through the whole list of race clubs that have said they support the bill as drafted and unamended. By the sound of it, they are as good as legislators as we are, and they are expressing their views. The people out there in industry land have heard the message loud and clear that if the bill is amended, it will not be passed.

**Clause put and passed.**

**Clause 6 put and passed.**

**Clause 7: Disposal of TAB assets authorised —**

**Hon COLIN HOLT:** I know we started on some aspects of this clause when we were debating clause 1, but I was a bit confused by some of the language that was used. We switched between “Racing and Wagering Western Australia assets” and “Western Australian TAB assets”. This is about WA TAB assets. I understand that the minister was unable to provide a list at the point of answering the questions in clause 1. Again, this was confusing. There were quotes from Hon Nick Goiran, who asked a question about RWWA assets. This is WA TAB assets. I am curious to know if there is a difference, and if the minister can explain that. If there is not a difference, is there any possibility of getting some sort of list of those assets, so that the industry, which owns the assets through RWWA, has some indication of what could be on the list for disposal?

**Hon STEPHEN DAWSON:** Clause 3 of the bill identifies TAB assets. It reads —

*TAB asset* means any of the following to the extent that it relates to or comprises the TAB or is owned by RWWA or a corporate vehicle and is, in the Minister’s opinion, associated with the TAB —

- (a) the whole or any part of a business carried on by, or any asset or liability owned by or managed by, RWWA; or
- (b) the whole or any part of a business carried on by, or any asset or liability owned by or managed on behalf of RWWA, a corporate vehicle or the State by, a corporate vehicle; or
- (c) the securities in a corporate vehicle;

With clause 7, as I mentioned earlier, the assets to be disposed of will be listed in a schedule to a transfer order, which, by virtue of clause 16(4) of the bill, is to be made available for public inspection. The precise assets disposed of will be a matter of detailed identification and will be determined by which assets a successful bidder wishes to take in connection with the wagering licence.

Key assets that we can identify now as a group are agency contracts—as has been previously identified, there are currently 327 TAB agencies—as well as leases in connection with TAB agency premises; wagering systems information and communications technology; business records; betting customer contracts; and goodwill and brands. A key asset which we can say will not transfer is the approximately \$80 million in cash reserves that is held by RWWA at this stage.

**Hon COLIN HOLT:** Thank you. That is very useful. Going back to clause 3 —

*TAB asset* means any of the following to the extent that it relates to or comprises the TAB or is owned by RWWA ...

There is a shady line there, and there will be a judgement call. I know the minister talks about the cash assets. What about things like the Byford Trotting Training Complex, the Mandurah dog track and the Lark Hill Thoroughbred Training Complex?

**Hon STEPHEN DAWSON:** They are racing assets, so they will not be transferred.

**Hon COLIN HOLT:** I just need to get clarification, minister, because there is not a list.

**Hon STEPHEN DAWSON:** No; I am happy to provide that answer, honourable member.

**Hon COLIN HOLT:** These assets will be sold through the sales process. Will the proceeds of those assets become part of the package that is delivered back to the industry for the government to decide the 35 per cent and 65 per cent split?

**Hon STEPHEN DAWSON:** Yes, that is correct.

**Hon COLIN HOLT:** Will this clause exist only during the sale process, stop and not be applied to any future Racing and Wagering Western Australia assets?

**Hon STEPHEN DAWSON:** Again, the honourable member is correct.

**Hon COLIN HOLT:** What about TABradio? Does the minister have any idea about whose asset racing radio will be?

**Hon STEPHEN DAWSON:** I am advised that it is likely to stay with RWWA.

**Hon COLIN HOLT:** I seek some clarification; this is a Treasury bill, yet throughout the bill it refers to the minister. I assume that is the Minister for Racing and Gaming, although I have been looking through the definitions and I cannot see where the minister is defined as the Minister for Racing and Gaming; the minister might want to point it out to me. I am really interested to know who makes the decisions about these things. Is it the Minister for Racing and Gaming; and, if so, where is that defined? Or is it the Treasurer?

**Hon STEPHEN DAWSON:** I am advised that the definition is in the Interpretation Act 1984. It is the minister who has carriage of this act. In this case, it is the Minister for Racing and Gaming. The Interpretation Act 1984 section 12, “Minister, references to”, states —

A reference in a written law to the Minister shall be construed —

- (a) in the case of a reference in an Act, as a reference to the Minister of the Crown to whom the administration of the Act, or the provision of the Act, in which or in respect of which the term is used, is for the time being committed by the Governor; and
- (b) in the case of a reference in subsidiary legislation, as a reference to the Minister of the Crown to whom the administration of the Act, or the provision of the Act, under which the subsidiary legislation is made, is for the time being committed by the Governor; and
- (c) so as to include a Minister of the Crown for the time being acting for or on behalf of the Minister referred to in paragraph (a) or (b), as the case may require.

Therefore, it is the Minister for Racing and Gaming.

**Hon COLIN HOLT:** When defining industry versus Western Australian TAB assets, will there be a consultation process for the industry on how that will be done and what it means or will it be the same consultation process we have had until this point in time—that is, the circular argument from government? Who will be making the decisions? Although the bill states that it is the minister, who will be making the decisions on what goes in and comes out of the list of what is offered up for sale or retained within Racing and Wagering WA?

**Hon STEPHEN DAWSON:** I am advised that the project team are working very closely with Racing and Wagering Western Australia on this, and obviously RWWA represents the racing industry, so there is consultation in that way.

**Hon COLIN HOLT:** Will RWWA have the opportunity to veto some of those decisions if some things are left in the TAB part of the asset list? It could say, “No, hang on” about, for example, racing radio, which is very close to every racing follower’s heart. That is the shady line; they would like to see that continue within the RWWA assets, I am sure. If it is flogged off with the TAB, I would be surprised if the racing industry does not veto that.

**Hon STEPHEN DAWSON:** We are working extremely closely with Racing and Wagering Western Australia on this. The whole deal falls over if RWWA does not execute the racing industry arrangements. Lots of consultation is happening at the moment. I am advised that the project team is working very closely with RWWA, as I said.

**Hon NICK GOIRAN:** What is the cost of the due diligence process being undertaken by government to determine the list of assets?

**Hon STEPHEN DAWSON:** I am advised that PricewaterhouseCoopers is engaged by Treasury under the common-use arrangement for audits and financial advisory services. The contract uses the Department of Finance’s standard terms and conditions with negotiated departures. Summary details of the engagement are published on the Tenders WA website, including an estimated contract value for this due diligence work of approximately \$1 828 801. That is the answer to that question.

**Hon NICK GOIRAN:** The minister indicated that it was not just PricewaterhouseCoopers that was involved in this due diligence process; he also referred to a law firm. Is there a separate cost associated with its involvement or does the \$1.8 million that the minister referred to cover both organisations?

**Hon STEPHEN DAWSON:** I am advised that Corrs Chambers Westgarth has been engaged on the State Solicitor's Office standard rates. It is being paid an hourly rate for the work that it undertakes.

**Hon NICK GOIRAN:** Has Corrs Chambers Westgarth provided an estimate of its fees?

**Hon STEPHEN DAWSON:** Honourable member, I am advised that no, it has not.

**Hon NICK GOIRAN:** Corrs Chambers Westgarth are currently engaged on an hourly rate basis with no estimate—that sounds a bit risky. Far be it for me to disparage any of my fellow learned friends —

**The DEPUTY CHAIR:** You are not entitled to, by the way!

**Hon NICK GOIRAN:** No! But can I at least give this advice to the government: having an arrangement with a solicitor on an hourly rate with no estimate sounds like risky business and it would be quite unusual and highly irregular, so I just wonder whether any further information can be provided to the chamber. It seems a little odd that PricewaterhouseCoopers has had to restrict its fees to a mere \$1.8 million for this due diligence process but Corrs Chambers Westgarth is entitled to charge whatever it likes so long as it provides a bill on an hourly rate basis. Can any further information be provided?

**Hon STEPHEN DAWSON:** All I have is that the partner rate is approximately \$525 an hour, ex-GST. The issue is being closely managed and constantly reviewed by the State Solicitor's Office. That is really the extent of the information I have. I do not have a full cost.

**Hon NICK GOIRAN:** Has Corrs Chambers Westgarth sent any invoices to date; and, if so, what is the total?

**Hon STEPHEN DAWSON:** It is not information that we can provide, honourable member. We would need to seek advice and clearance from the Attorney General before publishing any details about the engagement of Corrs Chambers Westgarth.

**Hon NICK GOIRAN:** PricewaterhouseCoopers and Corrs Chambers Westgarth have been asked to undertake this due diligence process. Why are two organisations involved and not just one?

**Hon STEPHEN DAWSON:** I am advised that one is legal and the other is financial.

**Hon NICK GOIRAN:** The purpose of getting an understanding of the due diligence process earlier was in response to a question on the assets and liabilities of the TAB that are relevant to this bill and might be disposed of. The indication from the government was that it was not sure, which is why this due diligence process is being undertaken. Is it the case that the two organisations are working in concert, or are they providing separate, discrete advice to government? That is my first question. My second question is: have any interim reports or has any advice been provided by either of those organisations outlining the assets and liabilities?

**Hon STEPHEN DAWSON:** I am advised that they are working in concert. They are on working groups together. However, they are providing their advice separately to government. In relation to interim reports, there have not been any issued at this stage.

**Hon NICK GOIRAN:** When we were earlier discussing this issue, I think the minister indicated that these organisations might have been commissioned in about the middle of the year. In fact, I have a note suggesting that they might have started their work in June. Obviously, there will have been some communication between these private organisations, which will be paid in excess of \$1.8 million of taxpayers' money, and the government over the past two months. In the course of any of those conversations, that dialogue or that written communication, have those organisations given any indication of some of the assets and liabilities? I appreciate that they may not have been able to provide the government with a comprehensive list as yet.

**Hon STEPHEN DAWSON:** I am seeking further information. The award date for the PwC work was 11 April, so RWWA would then have had to get its work ready. We would be correct in saying that the commencement date was on or around early June. In relation to the further information for which Hon Nick Goiran asked, we know what the likely assets are. I mean, I think I have read out what the likely assets are.

**Hon Nick Goiran:** Can't the minister table a list or something?

**Hon STEPHEN DAWSON:** We do not have a list. I have said generally what the types of assets are, but that due diligence work is being undertaken now.

**Hon Nick Goiran:** And the liabilities?

**Hon STEPHEN DAWSON:** Yes, and the liabilities—I hope to get some information for the member momentarily. As I advised previously when we were referring to the key assets identified, the purpose of due diligence, which is standard practice in transactions of this kind, is to drill down into the details of the assets; for example, with respect to agency contracts to be assigned: Who is each agent? What is the date of it? Are contracts on standard terms? In relation to liability, it is likely to be for bets in progress. They are the only liabilities that can

be identified at this stage. A liability will be obligations under operational contracts, contingencies under bets in progress, trade creditors outstanding at the transfer time, the obligation to supply services after the transfer time when RWWA has received payment or a benefit in advance, and the obligation to refund moneys to any person. They seem to be standard issue.

**Hon NICK GOIRAN:** Is it possible that the arrangement for the sale in due course will be for the purchase of the assets only and not the liabilities? I appreciate that there seems to be flexibility in this bill to allow the government to sell one or the other, but is it a likely prospect that the prospective buyer will be interested in only the assets and say, “Look, government, that’s your problem to deal with the transitional bets that need to be paid out”?

**Hon STEPHEN DAWSON:** I am told that that is not likely because the business has to be sold as a going concern, so all those assets and liabilities would be included in the same package.

**Clause put and passed.**

**Clause 8: Minister may order disposal of TAB assets —**

**Hon NICK GOIRAN:** Clause 8 deals with the role of the Treasurer. Clause 8(3) prohibits a proposed section 8(1) order to be made without the Treasurer’s approval. Was it ever considered to give that power to make the order solely to the Treasurer?

**Hon STEPHEN DAWSON:** No, I am advised it was not.

**Hon NICK GOIRAN:** What is the advantage to have the order made by the minister but authorised by the Treasurer?

**Hon STEPHEN DAWSON:** I am advised that it is an issue of good governance. The minister will undertake the process, but must then get the Treasurer’s tick off before signing on the dotted line.

**Hon NICK GOIRAN:** Could the minister about whom we are speaking here and the Treasurer be one and the same person?

**Hon STEPHEN DAWSON:** I am advised that, in theory, it could be.

**Hon NICK GOIRAN:** If that happened, would it be an example of bad governance?

**Hon STEPHEN DAWSON:** No, it would not. I think in cases like that, if the person is one and the same, it is likely that in government the Premier or another minister would be brought in to the decision-making process. It is not strictly under the legislation; either the Expenditure Review Committee and/or the Premier would be consulted before the action takes place.

**Hon NICK GOIRAN:** I hear from the minister that in the event that the minister and the Treasurer were one and the same person, it would be a matter of good governance for the individual to involve other ministers in the process, in particular the Premier; even though it is not mandated under the law, it would be good process.

**Hon STEPHEN DAWSON:** Although it is not mandated, it is what would likely happen in practice.

**Hon NICK GOIRAN:** Does clause 8 limit the scope of a section 8 disposal of TAB assets?

**Hon STEPHEN DAWSON:** Yes, I am advised that clause 8(1)(a) does just that.

**Hon NICK GOIRAN:** Does the definition of “TAB asset” in clause 3 include any freehold land owned by RWWA, a corporate vehicle or the state?

**Hon STEPHEN DAWSON:** I am advised it could do, although the current intention is that no freehold land would be transferred as part of the sale.

**Hon NICK GOIRAN:** This is very interesting. I draw the minister’s attention to clause 10. Given the answer the minister has just given, can he explain why clause 10 is necessary?

**Hon STEPHEN DAWSON:** It may be transferred, but we do not envisage it at this time.

**Hon NICK GOIRAN:** So can we delete clause 10 then?

**Hon STEPHEN DAWSON:** No, the government would prefer that this clause not be deleted. The preference is for this not to be deleted.

**Hon NICK GOIRAN:** What is the freehold land owned by RWWA?

**Hon STEPHEN DAWSON:** I am advised that in relation to TAB assets, RWWA owns a handful of shops in which TABs are located. I do not have the figure in front of me of how many. I am literally told it is a handful. It is not a huge number.

**Hon NICK GOIRAN:** I take it from the minister’s earlier answer that it is not the intention to dispose of that handful of shops.



**Hon STEPHEN DAWSON:** No. There is an agreement in principle that RWWA could continue to own these and to lease them to whomever. Should this bill pass and the sale proceed, RWWA could lease the buildings to the new licensee. Saying that, if a spectacular offer was provided to government that included this handful of shops, RWWA may well consider it at the time.

**Hon COLIN HOLT:** Just continuing this inquiry, if a spectacular offer was made and that went into the sale proceeds, the government would take 65 per cent and RWWA, which has this handful of shops, would take 35 per cent. That sounds like a good deal for the industry as it currently owns them. I also would ask about the facility or premises out at Osborne Park. I am guessing here, but probably 75 per cent of it is taken up by WA TAB operations. Is that going to be considered a TAB asset or a Racing and Wagering Western Australia asset? If it becomes part of the package deal—again, if a spectacular offer comes in for those premises—the industry will be giving away to the government 65 per cent of an asset that it has built and purchased, and taking 35 per cent of the proceeds. I am not sure why it would do that. Can I seek some clarification on whether that could be the case?

**Hon STEPHEN DAWSON:** There are a few different strains in that question, so let me try to answer them as I can. RWWA's head office will stay with RWWA. With regard to the handful of shops that I alluded to when answering a question from Hon Nick Goiran, there is in-principle agreement that they will be retained by RWWA. However, if it were a spectacular deal, RWWA could potentially agree to include them in the sale. I make the point again: the whole deal falls over if RWWA does not execute the racing industry arrangement. If RWWA is not happy with that, the likelihood at the end of the day is that it probably will not proceed. Someone might say that RWWA is getting a bad deal or otherwise, but RWWA is a key, integral player in this process and if it does not execute that racing industry arrangement, the thing will not go ahead.

**Hon COLIN HOLT:** The key to this whole legislation is the racing distribution agreement and the contract that goes around it. We have sat here and discussed how, really, the offer made by the government was 35 per cent, take it or leave it, and when we get down to the nuts and bolts it is, "Here's the package deal for the industry, but by the way, when this spectacular deal comes, you're going to offer up the shops and we'll take 65 per cent". The minister is saying that the safeguard is that, at that point in time, RWWA or whoever—the industry—can sign off and say, "Okay, on balance, we'll give you 65 per cent of our shop asset". Is it going to fall over at that point just because they cannot agree to it? No way; they are going to have to agree to it, just like this chamber has to agree to it, to move forward and give some certainty and an outcome to the industry.

**Hon STEPHEN DAWSON:** I am advised that we can say that we will not offer up the shops unless RWWA agrees. I can make that guarantee here. We do not expect to anyway, because of the in-principle agreement that I outlined previously—if RWWA does not agree with those shops going over, in the event of a spectacular deal.

**Hon NICK GOIRAN:** Which clause of the bill will mandate that the government must consult and get the consent of RWWA before it sells those shops?

**Hon STEPHEN DAWSON:** I am told that there is no clause with regard to the shops; certainly there is nothing in clause 8 in relation to the shops issue.

**Hon NICK GOIRAN:** Are either clause 8 or clause 10 part of the template legislation the minister referred to previously?

**Hon STEPHEN DAWSON:** I am advised that clause 8 is, and that clause 10 has been adjusted to remove the mention of crown land.

**Hon NICK GOIRAN:** What is interesting is that we have a government that chooses to use template legislation—there is nothing objectionable about that—and we have a government that decides that, depending on the clause, it will make adjustments; for example, a reference to crown land is going to be removed from clause 10, as has just been outlined by the minister. However, the government is not prepared to accept and tolerate any amendments from any members here, including a quite reasonable amendment proposed by Hon Colin Holt to insist that there be some consultation and consent by Racing and Wagering Western Australia to the sale of its shops, given that that commitment has been made by the government. We cannot move those amendments, because the government will pull the trigger and blow this bill into oblivion, and will not under any circumstances allow it to see the light of day in the other place. This is the trouble I have with a government that insists on slavishly following template legislation and, when reasonable points are being made by members, says "Not on your Nelly; we're not going to agree to any amendments. Don't even dream about putting something on the supplementary notice paper." I have no idea how Hon Colin Holt and Hon Alison Xamon are coping with this situation, because we have not even got to their amendments yet. Effectively, the government has berated them before we even got to their clauses.

The point being made by my good friend Hon Colin Holt is very reasonable—so reasonable that the minister has kindly and graciously confirmed for the record that the position of this government is that it will not sell the shops without the consent of RWWA. As a member of this place, I do not trust a word that comes from this government, because this government's leader said that he was against Trackside and all the rest of it, yet we still have the bill

that is before us at the moment. This government has repeatedly said one thing and then gone and done the exact opposite. I hasten to add that I hold the minister in this chamber in high regard for the professional way in which he deals with members and their queries, and the passage of bills. Nevertheless, he is a representative minister; he is representing the government. Even though I might trust this minister, I do not trust this government. When the government says to Hon Colin Holt, “Don’t worry about it, mate. We won’t sell RWWA’s shops without them agreeing to it” I would not believe it for a moment. I see no good reason why this clause or, if the government deems it necessary, clause 10, could not be amended to reflect the commitment made by the minister. I ask the minister to give that some consideration.

**Hon STEPHEN DAWSON:** I am not at liberty to make an amendment to include that in the bill, but my comments are on the record. The advice I have been given by the advisers I have with me is that we will not offer up the shops for sale unless RWWA agrees. As I have outlined previously, there is an in-principle agreement with RWWA that those shops will remain the property of RWWA and that they will be leased out by RWWA to any new operator. The advice that I have been given is that we would not offer up those shops for sale unless RWWA agreed.

**Hon RICK MAZZA:** As a matter of interest, minister, what is the estimated value of this handful of shops that we are talking about?

**Hon STEPHEN DAWSON:** I do not have that information at hand.

**Hon NICK GOIRAN:** Further to that question from Hon Rick Mazza, can the minister at least confirm for the honourable member that the value of those shops is at least part of the due diligence process that is currently being undertaken?

**Hon STEPHEN DAWSON:** They are not part of the due diligence process that is being undertaken because we do not anticipate selling them. An in-principle agreement has been made that RWWA would keep them. If, for some reason, an operator wanted to buy them as part of a deal, obviously due diligence would happen at that stage, and they would be valued at that stage, and then RWWA would have to agree to including them in any package, but at this stage, because they are not to be included in the package, they are not part of the due diligence process.

**Hon COLIN HOLT:** Does RWWA not maintain an asset register? Surely, it would have to be part of its annual reporting requirement?

**Hon STEPHEN DAWSON:** I am advised that it probably does. The likelihood is that it does. We do not have the detail before us about the shops. One of my advisers is at present making contact with the CEO of RWWA to see whether we could ascertain that information. I am happy to provide that at a later stage of the sitting. I am happy to table it at some stage as part of this debate.

**Hon NICK GOIRAN:** This has now become laughable because I remind members that we identified earlier that the government has decided to spend \$1.8 million of taxpayers’ money. Why is it paying PricewaterhouseCoopers \$1.8 million? When we asked the minister earlier about the list of assets, the government said it did not know but that it had commissioned these two organisations to find out what assets could be sold as part of this process. No sooner does the government say that it does not know and, therefore, commissioned someone at the cost of at least \$1.8 million to find it out, the minister has quickly told Hon Rick Mazza that it knows that those shops will not be included. Are they part of the assets or not? Why is the government spending \$1.8 million to find out about the list of assets if it is confident enough to tell Hon Rick Mazza that it definitely does not include the shops? That is why I asked the question earlier. Surely the due diligence process involves at least looking at that particular asset. I find it odd that depending on where we navigate through this bill and the clauses, sometimes we know what the assets are and sometimes we do not; sometimes we know the value and sometimes we are not sure. We will get expensive external professionals to find out this information for us. It just does not make any sense. These shops will be either included or not.

**Hon Stephen Dawson:** They are not.

**Hon NICK GOIRAN:** The minister has indicated they will not be, so it goes back to the original point made by Hon Colin Holt: why can an amendment not be made to this bill to ensure that the assets—which the minister is saying will not be included, “We don’t need to know their value; we are not even doing due diligence on them because we are very confident that we will not include them”—are not sold without the consent of RWWA?

**Hon STEPHEN DAWSON:** Because as I have said, honourable member, an in-principle agreement has been reached with RWWA that the shops remain with RWWA. I have made that clear numerous times now. An in-principle agreement has been reached with RWWA. Is it a written agreement? No; it is an in-principle verbal agreement with all the parties, so the government and RWWA are well aware of the intention of that.

On the other questions I have been asked, if a fantastic deal were offered that said, “We’ll give you X amount but you will need to include those shops”, RWWA would be consulted. “If you want to include these as part of the deal, it will get you X amount of dollars.” RWWA would have to say, “Yes, we want to include it because it is

a spectacular deal.” At that stage, obviously, due diligence would take place. The shops would be properly valued and that could be taken into consideration as part of any dialogue with a potential buyer.

In relation to the due diligence, PricewaterhouseCoopers is assisting the project team with taxation advice, financial advice, accounting advice, separation planning advice and advice around technology. That is the due diligence package it is undertaking. I stress again that at this stage it is not the intention to sell that handful of shops that RWWA has. However, we ask that the clauses be left in the bill on the chance that a potential purchaser comes back and says, “Your Powerball has come up tonight; we will give you X amount extra for this if you throw those in.”

**Hon Colin Holt** interjected.

**Hon STEPHEN DAWSON:** It would have to be significant because at this stage RWWA has an in-principle agreement that it keep those shops and gets the lease fee associated with them. It would have to be a substantial amount of money, but we ask that the clauses remain as they are to allow for that in case it should happen.

**Hon RICK MAZZA:** I would like to clarify some points. At the moment we are flying blind because we do not know, until the minister gets the information, whether they are worth \$500 000, \$5 million or \$50 million, but if the government happens to get the Powerball in a spectacular deal, and this handful of shops—the real property along with the business—is included, my understanding is that the industry will get 35 per cent of the value of that real property.

**Hon Stephen Dawson:** It’s 35 per cent of the value of the package.

**Hon RICK MAZZA:** If it includes the real property, it will be 35 per cent, as Hon Colin Holt was at pains to explain earlier. If that handful of shops is not included in the initial sale, the industry will get 35 per cent of the sale amount. If RWWA retains ownership of that handful of shops, but sells the real property sometime later, what percentage of that sale price will go to the industry?

**Hon STEPHEN DAWSON:** I am advised that if RWWA were to sell them in the future, it would get 100 per cent of the proceeds.

**Clause put and passed.**

**Clause 9: Effecting disposal —**

**Hon NICK GOIRAN:** Clause 9 refers to the use of a corporate vehicle and the possibility of a section 8 disposal occurring via a corporate vehicle. Has a decision been made on whether to use one?

**Hon STEPHEN DAWSON:** The answer is no.

**Hon NICK GOIRAN:** What criteria will be used to make that decision?

**Hon STEPHEN DAWSON:** An assessment will be made of the total costs and benefits to the state and RWWA in doing so, as well as process considerations such as time, for example.

**Hon NICK GOIRAN:** Who will make the decision and communicate it to the Under Treasurer?

**Hon STEPHEN DAWSON:** I am advised that the steering committee would make recommendations, but, ultimately, the minister would make the decision in conjunction with the Treasurer.

**Hon NICK GOIRAN:** Who is on this steering committee that the minister has referred to?

**Hon STEPHEN DAWSON:** I am advised that the chair of the steering group is the CEO of the Western Australian Treasury Corporation. The group also has representation from the Department of Local Government, Sport and Cultural Industries, which is obviously the agency that includes racing and wagering; the State Solicitor’s Office; Treasury; and Racing and Wagering Western Australia.

**Hon NICK GOIRAN:** Is the steering committee already in existence? Is the membership already known; and, if it is, is the minister in a position to provide us with a list of the names and positions of the people on the steering committee? He has indicated to us the representatives who make up the steering committee, and I have a list of five different representatives. The chair is the CEO of Treasury Corp, and the Department of Local Government, Sport and Cultural Industries has some representation, as does the State Solicitor’s Office, Treasury and RWWA. That may or may not include one or more people. Can we have a list of the names and titles of the people on the steering committee?

**Hon STEPHEN DAWSON:** Honourable member, we did not have a list at hand, but my advisers have been able to put one together, so excuse us for the short delay. As I have previously mentioned, the chair of the steering group is the CEO of the WA Treasury Corporation, Ms Kaylene Gulich. The group also includes Mr Richard Burt, the CEO of RWWA, and Mr Jeff Ovens, the chair of RWWA. Ms Angela Komminos, who is the Deputy State Solicitor, commercial, represents the State Solicitor’s Office. Mr Mick Connolly represents racing and gaming from the

DLGSCI. The steering group also includes Mr Alistair Jones, an executive director at Treasury; Mr Ryan Eldred, the project director from Treasury; and Ms Emily Jarnicki, director of commercial advisory at Treasury.

**Hon NICK GOIRAN:** By my count, that is eight people on the steering committee. How often do they meet? Has the use of a corporate vehicle been on the agenda of the steering committee?

**Hon STEPHEN DAWSON:** I am advised that the steering group is meeting monthly, and that although the issue of a corporate vehicle has been discussed, no decision has been made about that.

**Hon NICK GOIRAN:** Is the use of a corporate vehicle under active consideration by the steering committee or has it simply been considered and dispensed with for the time being?

**Hon STEPHEN DAWSON:** I am advised that it is still under consideration.

**Clause put and passed.**

**Clause 10 put and passed.**

**Clause 11: Functions and powers of Minister —**

**Hon NICK GOIRAN:** One of the powers that is proposed to be given to the minister under this clause is the power to acquire land. Given that the purpose of the bill and, indeed, both the short and long title of the bill are about the disposal of TAB assets, why is it necessary to give the minister special statutory power to acquire land?

**Hon STEPHEN DAWSON:** I am advised that this provision will empower the minister to do all things necessary or convenient for the purposes of the act, including to acquire land. Broad powers are given to the minister to support the implementation of a disposal, subject to the controls in clauses 7 and 8 of the bill, to the effect that disposal must be authorised by a disposal order made by the minister. The reference to “the power to acquire land” is a template disposal legislation provision. There is currently no contemplated action for the minister to acquire land in connection with the TAB sale. However, the possibility that the power to acquire land will be used cannot be excluded. For example, if due diligence on a site used for a TAB agency were to disclose that a building used for the agency encroached on a small portion of neighbouring land, it might be decided that it would be easiest if the minister acquired that small portion of land in order to facilitate the entire site being leased to a buyer of the TAB.

**Hon NICK GOIRAN:** Why is the same special power that is proposed also given to a corporate vehicle under clause 13 but not to RWWA under clause 12?

**Hon STEPHEN DAWSON:** I am advised that RWWA already has the power to acquire land.

**Clause put and passed.**

**Clause 12 put and passed.**

**Clause 13: Functions and powers of corporate vehicles —**

**Hon NICK GOIRAN:** This clause deals with the issue of whether a corporate vehicle will be used. The minister has indicated that that is currently under active consideration by the steering group, which consists of eight learned and knowledgeable individuals, and will provide a recommendation about whether a corporate vehicle will be used. Would the Corruption and Crime Commission have the power to investigate any corruption or serious misconduct within the corporate vehicle?

**Hon STEPHEN DAWSON:** Honourable member, we do not have that information at hand. We are happy to seek further advice. If it is a sticking point for the member, perhaps he might consider deferring clause 13. Otherwise, if it is not a sticking point, I am happy to continue, and will provide an answer later in the debate.

**Hon NICK GOIRAN:** I think it would be good if we could defer this clause because it is a significant issue. The context—I am sure all members would feel this way—is that we would not want to enable a process when a corporate vehicle could be used that would then be shielded from the Corruption and Crime Commission, whereas if the minister or Racing and Wagering Western Australia were involved, the CCC would have oversight. Of course, linked with that is the role of the Public Sector Commissioner, who looks at minor misconduct. I respect the fact that the minister is not in a position to deal with this matter at present. Given that there are 161 clauses, I feel it would be prudent to defer consideration of clause 13.

**Further consideration of the clause postponed until after consideration of clause 161, on motion by Hon Stephen Dawson (Minister for Environment).**

**Clause 14: Directions by Minister —**

**Hon COLIN HOLT:** This is where we get to directions by the minister. Often, when one talks about a minister giving direction to a statutory body such as Racing and Wagering Western Australia, it means telling it to go and

do something, and usually—I could be wrong here—that direction needs to be tabled in Parliament. Is that the case with this clause? Under this clause, can a minister direct RWWA to carry out a disposal for the purposes of a section 8 notice?

**Hon STEPHEN DAWSON:** I am advised that, no, that is not the case with this legislation. A direction would not have to be tabled.

**Hon COLIN HOLT:** What is the written direction then? Does it have to be followed by RWWA?

**Hon STEPHEN DAWSON:** I am advised that it does have to be followed. It is a direction for the purposes of a section 8 notice. For example, it could be a direction to maintain business as usual until the sale, so that RWWA does not undertake new arrangements or projects while we are in this sale process, so directing it to continue to maintain business as it is.

**Hon COLIN HOLT:** I was going to say that this is hypothetical but it is actually a legislative requirement. Can the minister tell RWWA to go and sell the shops that he has introduced into the debate?

**Hon STEPHEN DAWSON:** Yes. The short answer is that it could direct them to transfer ownership; however, I go back to that earlier point about the whole deal falling over if Racing and Wagering Western Australia does not execute the racing industry arrangements.

**Hon COLIN HOLT:** If RWWA has a written direction from the minister that it must follow, which might include a disposal asset that it does not want to include in the agreement, I find it kind of mystical that suddenly it would include it in the deal but not agree to the deal because of that inclusion. It is a bit mystical to me. I can see why the government would like to have this direction from the minister, because it could lump a whole heap of RWWA and TAB assets into the sale, bump up the price, take the 65 per cent cream and the industry would be left with what is left. The minister will have to give us some better assurances to say that although they can give a written direction to RWWA that it must follow, it is okay that it does not have to agree to the racing distribution agreement. Maybe the next question then is: can the minister—not hypothetically, legislatively—say to RWWA that it has to agree to the racing distribution agreement?

**Hon STEPHEN DAWSON:** The minister cannot direct RWWA to enter into the racing industry arrangement because that power is in the Betting Control Act 1954, which is separate legislation. The direction of power under clause 14 is only in relation to a section 8 disposal.

**Hon COLIN HOLT:** Thank you, that point of clarification is good, but it remains that the minister can direct RWWA to dispose of assets under section 8 or include it in the sale of the TAB?

**Hon STEPHEN DAWSON:** Yes, the minister could do that, but again I stress that the government is working very closely with RWWA on the sale process and RWWA could cause havoc, as I said previously. It certainly has the power of not entering into the racing industry arrangement if there is something in it that it does not like.

**Hon COLIN HOLT:** How would the industry outside RWWA, such as the broader community or even the Parliament that is passing this bill, know whether a minister has made a written direction?

**Hon STEPHEN DAWSON:** Industry can ask RWWA, and provided there is nothing commercial-in-confidence, for example, strategy issues in relation to the sale, I cannot see a reason that RWWA would not provide that information.

**Hon COLIN HOLT:** Is there no obligation by anyone to reveal a written direction?

**Hon Stephen Dawson:** No.

**Hon COLIN HOLT:** All of this could happen behind closed doors—just like the negotiation to get to 35 per cent—and no-one would know unless someone thought to check in with RWWA and ask, “Hey, have you had any written directions from the minister lately?” It just seems a little odd. What is the need for this clause if it is all about agreement and working closely? Perhaps the minister can expand on the example he gave before. It seems to be all behind closed doors with no obligation to reveal any written directions.

**Hon STEPHEN DAWSON:** I disagree with the honourable member in relation to the premise around the 35 per cent. It was not behind closed doors; there was no cloak and dagger agreement. The 35 per cent was agreed as part of the consultation process.

In relation to the section 8 notice, obviously RWWA represents the industry. The industry is on that board, so the members of that board, and therefore the industry representatives and the various industries, would know about that section 8 notice. It would not be a secret thing. As a previous minister for this industry, the honourable member knows that there are very few secrets in the industry and everybody is very willing and able to share their views

and to share what is going on. I understand what the member is getting at in that hypothetical situation, but in practice and in reality, I do not think that this would be a secret.

**Hon COLIN HOLT:** That was a nice comment there; thank you, minister. The minister would have an expectation that once a written direction was given to RWWA, the normal RWWA consultation process with the industry would mean that most people in the industry would understand that there has been a written direction from the minister. Is that the minister's expectation?

**Hon STEPHEN DAWSON:** What I said was the information could well be disseminated through the industry. But, again, it depends on whether that direction in the first place was confidential. That may be the only sticking point, and that confidentiality may well be around the sale process. It does not disclose the strategy around the sale process so it does not jeopardise the price that could be received as part of the sale.

**Hon COLIN HOLT:** Would a written direction to include the shops in the sale process be considered commercial-in-confidence or would it not be relayed to the industry because it cannot go beyond that consultation process? Would it be expected that the written direction would filter down through the RWWA structure to the racing industry representative groups?

**Hon STEPHEN DAWSON:** The point around the shops is that if RWWA does not want to sell those shops, the shops will not be sold. That is the in-principle agreement that has been reached between the state and the industry. If that were to change as a result of the substantial windfall to the sector, RWWA could consider changing it. But there is no intention to direct RWWA to sell those shops using that section 8 disposal.

**Hon Colin Holt:** Shops are just an example of an asset they have.

**Hon STEPHEN DAWSON:** There is no intention to direct it to sell those shops.

**Hon NICK GOIRAN:** Hon Colin Holt, do not believe a word from this government. One moment this government will tell us that we do not actually need the power to dispose of freehold land or acquire land, and that this is all part of template legislation. It says, "Don't worry about it. Trust us; we are the McGowan government, and when we say something you can hold us to our word. We will not sell those shops. Under no circumstances will we sell those shops without RWWA agreeing." When we fast forward a couple more clauses to clause 14, slipped into the back of this clause is a provision that allows the minister to direct RWWA to accept what the minister wants. The honourable member articulated the practical example of these famous shops. The government says that it has no intention to dispose of these shops, but just in case, it wants the power to dispose of freehold land. Remember, this is the discussion that we had at clause 10. The government said that we had to make sure that we include clause 10 in the bill, just in case a fantastic offer is made that is so good that we want to dispose of those shops. We then get to clause 14 and find that, actually, who cares what RWWA thinks, because at the end of the day the minister can do whatever he or she wants. The minister can even issue a written direction and say to RWWA, "Sorry, this offer that has been made by this private company is so good in the interests of Western Australia, plus we would really like our 65 per cent slice of the pie, that we insist that you agree to the disposal of the shops." Is clause 14 part of the template legislation that has been referred to previously? Whether it is or is not, has a minister previously utilised this written-direction power under other disposal legislation?

**Hon STEPHEN DAWSON:** I am advised that, yes, we are aware of at least one direction having been issued previously, under the Perth Market (Disposal) Act. It was around the business-as-usual holding pattern, so a direction was issued to the Perth Market Authority in relation to that. Yes, this is also related to template legislation.

**Hon NICK GOIRAN:** When was that direction to the Perth Market Authority given, and would the government be in a position to table it? In anticipation, perhaps, of the minister's response to my request for the tabling of that document in relation to the Perth Marketing Authority, not the TAB, I have asked for it because the minister indicated that this is part of template legislation. If this power has been used in other contexts, that would give us some comfort about why it is necessary in this particular instance.

**Hon STEPHEN DAWSON:** We do not have a copy of that. It would have been issued, I dare say, in 2015 or, most likely, 2016. We do not have a copy of it. It was issued by the previous government. The advice I have at hand is that, yes, it has been used at least once before, but I do not have a copy of it. I am not clear how we would access a copy and whether it might be captured by decisions made by a previous cabinet, in which case we might need to ask the Leader of the Opposition, for example, for the document to be released. I do not have the answer to that. All I can tell the honourable member is that it has been used at least once before.

**Clause put and passed.**

**Progress reported and leave granted to sit again, pursuant to standing orders.**