PILBARA PORT ASSETS (DISPOSAL) BILL 2015

Second Reading

Resumed from 15 September.

HON SALLY TALBOT (South West) [5.15 pm]: Last week, before my remarks on the Pilbara Port Assets (Disposal) Bill 2015 were cut off by the weekend, I had been expressing a certain degree of astonishment about the breathtaking arrogance of the National Party, which was summarised by Hon Jacqui Boydell when she stood in this place as the second reading debate recommenced and basically accused the junior miners of failing to consult with the government. It was so extraordinary that I had to go back and check *Hansard* to make sure that I had not misheard what she had said. To recap on this matter, the National Party has been flip-flopping on this matter. At least we know what the Liberal Party is doing. Is that not a nice thing to say? It wants to sell the ports. That has become very clear recently, because a couple of bills to sell ports have come into Parliament. Of course, three years ago that was not true, because the Liberal Party said then that it did not want to sell ports. However, now the Liberal Party has decided that it definitely wants to sell the ports. That is clear. The National Party says it might sell the ports; it will sell the ports; it will not sell the ports.

Hon Darren West: They're anti-mining.

Hon SALLY TALBOT: Anti-mining does not really capture it, Hon Darren West, does it? The National Party is anti-anything it thinks will not get them a vote. Pure self-interest and pure ambition drives the National Party. It is willing to sell out any idea and any stakeholder for what it thinks will get it a couple of votes. In this case it is very wrong. The really interesting thing the National Party has managed to do is to put all the miners offside—the majors and juniors are now offside. The majors are offside because of its leader's mining tax and the juniors are now thoroughly offside. I would go so far as to say that the juniors are offside because of what Hon Jacqui Boydell said last Thursday in this chamber. She claimed that the National Party had given the juniors the parliamentary inquiry that they said they wanted and the juniors should now jolly well be grateful and shut up because they have had their chance. That is essentially what Hon Jacqui Boydell said. Then in a breathtaking piece of arrogance, she said that she wanted to turn the tables on the juniors and say, in answer to their question that the government had not consulted with them, that the jurors should have consulted the government. That is so misguided. What can I say other than it shows breathtaking arrogance on that position.

That is not the position of the Labor Party. Our position was well summarised by a couple of speakers last week. I will not go over the ground that was covered very adequately by previous speakers; however, I will say that something that has characterised the debate on this piece of legislation in this chamber to this point has been the misinformation promulgated by members on the government benches. The misinformation is rife. It has been summarised very adequately and extensively by the Association of Mining and Exploration Companies. I know that speakers who will come after me in this debate will refer to some of that material, so I will leave that to them.

I will give one small example. Hon Peter Katsambanis spoke on this bill on 22 March, which is the last time this bill was debated before it was referred to the committee. It is a shame that Hon Peter Katsambanis is away from the chamber on urgent parliamentary business, because I am sure that he would have interjected to put his point of view again were he not away. On page 1469 of *Hansard* of 22 March 2016, Hon Peter Katsambanis said —

> The reality is that the junior miners will be perfectly well protected. All users and potential users of this facility will be perfectly well protected.

He continued —

> The other thing the junior miners have is a very loud voice and they make themselves heard very, very well.

Then he had a bit of a dig at us by saying —

> The Labor Party should know that because the junior miners used their voice very effectively, and to the benefit of this state, during the debate on the mining tax by letting people know how bad it would be for them. If they thought this was going to be a problem, my goodness, I think they would be knocking on our doors.

This is Hon Peter Katsambanis talking about junior miners in WA. He said that if they thought this bill to sell Pilbara port would be a problem, they would be knocking on our doors. He said —

> They would be yelling and screaming and making the point that they do not think what we are doing is a good idea. The very fact that they are not making any such point goes to show that they do not have any concerns with this bill or any concerns that cannot be dealt with.

It is like living in a parallel universe. Seriously, it is as though government members inhabit a different world. For Hon Peter Katsambanis to be saying on 22 March this year that the junior miners do not have any concerns because he has not heard about them is incredible. I do not know what universe Hon Peter Katsambanis is living in or indeed whether that universe is inhabited by anybody else in the Liberal Party. I am not sure whether they have much clue themselves. The report of the Standing Committee on Legislation refers to members of the Liberal Party—I think it was Hon Peter Katsambanis and that is why I am disappointed he is not here, because I know he would have helped me out at this point—saying that junior miners would be able to get compensation under the commonwealth asset recycling initiative. This is another example of the misinformation that has been floating around. They obviously do not mine in the North Metropolitan Region, so maybe Hon Peter Katsambanis was making it up as he went along, but I really thought that he would ensure that he is better informed before he puts this sort of stuff on the record. The report states at paragraph 2.43 —

> During debate on the Bill in the Legislative Council, Hon Peter Katsambanis MLC referred to the federal government's '*privatisation bonus*' relating to the disposal of major infrastructure projects where '*it* [Commonwealth Government] *says to the States, "You free up the cash tied up in your existing infrastructure and we'll give you a bonus*." '

Paragraph 2.44 states —

> The Asset Recycling Initiative was a program in which the Commonwealth Government offered financial incentives to the States and Territories to '*privatise mature government-owned assets and reinvest the returns into new, productivity-enhancing infrastructure*.' The Commonwealth's incentive payments of 15 per cent of the sale price of privatised assets to State and Territory governments were provided on the condition that the proceeds of the sales be reinvested in new assets, including public transport.

Paragraph 2.45 states —

> The program, which commenced in mid-2014, was due to close in mid-2019. The Committee notes that unallocated funds from the Asset Recycling Initiative have now been returned to the budget for use on other policy priorities, which has effectively ended the program from 30 June 2016.

Paragraph 2.46 states —

> The Committee notes that, even if the initiative were still in place, the disposal of Utah Point would have been unlikely to have been eligible for the incentive payment, as the Government has stated that the proceeds of the divestment were to be used to pay down debt rather than reinvest in new assets or infrastructure.

That is another piece of absolutely misleading information put on the record by Hon Katsambanis. He has not misinterpreted. He may have misunderstood, but he is clearly wrong. This kind of thing has absolutely shaken the confidence of the business community in this state. This community does not naturally vote for Labor. These people are not socialists. They do not naturally warm to our ideas. But their faith has been shaken so profoundly because of this kind of nonsense—this approach of making it up on the run that members of this government have adopted—that we now end up in the position whereby junior miners in this state are fundamentally opposed to what the government has done, and the government has not reached out to those stakeholders in any way. It has not made one effort to reach out.

I repeat that point, because anybody reading the comments that were made in this place by Hon Jacqui Boydell last Thursday without context would be justified in walking away from reading *Hansard* and thinking that this is the usual thing whereby the government has bent over backwards for a squeaky wheel stakeholder, but because it is not completely kowtowing to the stakeholder, the stakeholder will never be happy. That is clearly not the case. Yes, this chamber agreed that the bill should be referred. It probably should have been referred a lot earlier and we may well have been standing here months ago debating this legislation if that had been the case. But, yes, the chamber agreed to a referral to committee. The Association of Mining and Exploration Companies must have spent hundreds of hours and no doubt a commensurate number of dollars in putting together very, very extensive submissions to that committee. Those submissions were so thorough that a person such as me who does not have a background in the industry or a lot of experience in dealing with the junior miners up north was able to understand very clearly the points that it was making. Representatives of AMEC also went to a hearing and gave evidence. Again, that evidence was of the highest standard. These people know what they are doing. They know their industry. They know the history and the economics of their industry. AMEC could not have made the bottom line of its argument clearer, particularly about access and pricing. AMEC has done everything humanly possible to make sure that Parliament is as well informed as it can be about what those key issues are for it.

The important thing to remember is that the committee to a man and a woman was convinced by AMEC's arguments and that is why the committee made the unanimous recommendations that it made. I note that unlike some reports, some of which I have been quite closely involved with in recent years, the minority recommendations were really a strengthening or a more forceful expression of the recommendations that were moved by the majority. I should point out that most of the recommendations in the report were indeed unanimous, but even when there were majority and minority recommendations, the minority recommendations tended to be more forceful statements of the majority recommendations. AMEC succeeded in convincing every member of the Standing Committee on Legislation that its argument was sound and valid. The thought that that in and of itself ruled a line under the issue was clearly wrong.

I refer any followers of this debate or members of this chamber who have not got themselves involved so far, to the issue that has been pursued with enormous vigour by Hon Liz Behjat in connection with her Standing Committee on Public Administration report about the way that government responds to requests and receives reports from committees. Honestly, I think this is another example that has to be added to that growing list of complaints that every member in this chamber who is actually doing their job should put their name to. This is not a matter of two sides of the chamber being at loggerheads. An issue has been raised by Hon Liz Behjat that I know Hon Ken Travers, if he had not retired—because he substituted for me on the committee—would have also raised. The government is not responding adequately to these instruments of Parliament, which really should have proper attention paid to them. Unfortunately, it will not be the last time we encounter this kind of thing. When Labor gets back into government, there will be a whole different approach to the handling of committee reports. I look forward to the day very much when Labor is back driving the cart in Western Australia.

The speakers before me in this debate made it very clear what Labor's principal objection to this bill is. As previous speakers have noted, the Labor Party will oppose this bill. It is fundamentally about privatisation itself, although, as I have noted in other contexts, there are a range of opinions about privatisation, from those who are fundamentally opposed to any form of privatisation to those who adopt a more pragmatic approach. In a case like this, I would argue that the privatisation of this asset brings about such a significant economic disadvantage to the state that it should not proceed. Probably every member of the government benches—from the Liberal and National Parties in this place—has a fundamental commitment to exactly the other point of view, which is that everything should be privatised because they have a fundamental commitment to the small state. I can tell members that that will never work in a state like Western Australia, and that is why Labor will always maintain a principled opposition to privatisation. My view is that if the answer is privatisation, the wrong question has probably been asked. Nowhere is that more true than in the case of the Pilbara Port Assets (Disposal) Bill that we are considering today. The question that was clearly asked by the government was: how do we get ourselves out of this financial mess? The answer is to start selling things. It is the wrong question. The right question should have been: how can we enhance the economic wellbeing of Western Australians? If that question was asked, the answer most definitely would not be to start selling things off. It would not be privatisation.

Previous speakers have summarised the basis of Labor's opposition to this bill, including the timing of the bill, the access and pricing issues and what we are selling. I might condense that to the questions, "To sell or not to sell; what to sell; and how to sell it?" The answer from this side to, "To sell or not to sell?" is clearly no, do not sell it. What to sell? That is a difficult question, and it is not answered by the bill. That in itself is a profound problem. I do not think the government has any answer around explaining what to sell. In my view, and I know the view of other members on this side, the question to ask when looking at these kinds of propositions is whether profits can be weighed up against the public good. In the case of this particular measure, we clearly cannot put profit ahead of public good. Public good in itself is something that we ought to be valuing and promoting. A third question of course is, "How to sell it?" Again, I think the government has itself in a terrible mess about the mechanisms.

In finalising my remarks, I want to spend a few minutes talking about access and pricing. This is really the key to the argument advanced by the Association of Mining and Exploration Companies. The very fine submission made by AMEC did not spell this out in words of one syllable—I do not think that could be done—but it spelt it out very clearly. One does not have to be an economist or an industry insider to understand the arguments that AMEC put forward. If members want it in a more relaxed, anecdotal form, go to the transcript of the hearing to read the evidence given on behalf of AMEC. When I was looking at this legislation, I noticed something I want to bring to the attention of honourable members about this question of access and pricing. I can make this point in the most succinct way by drawing the attention of honourable members to the titles of the six parts of the bill before us today: part 1, "Preliminary matters"; part 2, "Enabling disposal"; part 3, "Implementing disposal"; part 4, "Provisions relating to corporate vehicles"; part 5, "Provisions relating to leases and licences"; and part 6, "Miscellaneous matters". There are six parts to this bill. The argument from the junior miners is that the proper measures have not been put in place for pricing and access.

I decided that I would do a little experiment. Lo and behold, look what the experiment turned up! I went to another bill that stands in the name of the government—the Fremantle Port Assets (Disposal) Bill 2016. When I flicked through the contents pages, this is what I found. Unlike the Pilbara port bill, which has six parts, the Fremantle port bill has nine parts. I thought that was interesting. I wondered what was in the Fremantle Port Assets (Disposal) Bill that was not in the Pilbara Port Assets (Disposal) Bill. This is what I found. I will read out the titles of the nine parts in the Fremantle Port Assets (Disposal) Bill: part 1, "Preliminary matters"; part 2, "Enabling disposal"; part 3, "Implementing disposal"; part 4, "Provisions relating to corporate vehicles"; part 5, "Provisions relating to leases and licences"; part 6, "Miscellaneous matters"; and part 7—are members ready?—"Access to and pricing of services". Well, well, well—there is a whole part of a bill devoted to access and pricing issues! It is in the Fremantle Port Assets (Disposal) Bill but it is entirely omitted from the Pilbara Port Assets (Disposal) Bill. For the record, part 8 of the Fremantle Port Assets (Disposal) Bill is "Provisions as to future development of port" and part 9 is "Miscellaneous matters". A whole part of that bill does not appear in the bill before us today.

The government might say, "You've completely missed the point, Sally. We listened to the juniors and we're now moving an amendment." Those members who have seen the supplementary notice paper will know that the proposed amendment is a matter of a couple of lines. It relates to pricing and access. New clause 46A is titled "Preservation of rights to future access" and has three subclauses. I would say it is probably 20 lines long. The government might say, "No, no, Sally, you've got it all wrong. Look at our amendment because we've actually fixed it. We realised that we had left a bit out of this bill so we're going to put it back in." Anticipating that argument from the government, I went to the clauses of the Fremantle Port Assets (Disposal) Bill to look at what part 7 might comprise. I found that the Fremantle Port Assets (Disposal) Bill includes 18 clauses to cover this pricing and access issue in relation to Fremantle port and there is nothing—or only an amendment of a couple of lines—in the Pilbara Port Assets (Disposal) Bill. I looked more closely at what those clauses were. I found that it is not just definitions and dry, legal stuff that does not have all that much effect in practice; it is actual substantive provisions about regulations on pricing and declarations of regulated charges. Clause 69 is "Review of access and pricing provisions".

If members drill down even further they will find that the Fremantle Port Assets (Disposal) Bill 2016 requires five-yearly reviews of the operation of the access and pricing provisions to ensure its objects are being achieved, and it requires the regulator to prepare a report based on the review and to give the report to the minister to be laid before each house of Parliament. All these transparency and accountability provisions are outlined in that bill, but are completely missing from the bill before the house today. The Fremantle port bill has a requirement to table the annual report in Parliament, an obligation not to prevent or hinder access and an obligation not to differentiate between users of services. This is what the Association of Mining and Exploration Companies wants in this bill; that is exactly the point it has been making. I say to members of the government that the drafters know how to draft these clauses, because they did it for Fremantle port, but they have not done the same for Pilbara port. The drafters could have cut and pasted from the Fremantle Port Assets (Disposal) Bill 2016. If they had forgotten to do it in the first draft of this bill, they could have read the Standing Committee on Legislation's report and thought, "Damn! We forgot to cut and paste those clauses; we will do it now." But that has not happened. Last Thursday, I thought that it had happened. I do not know quite where the information came from, but members will know about an article that was buried on page 45 of *The West Australian* last Thursday—so it was not given any great prominence. The article reads —

> The Barnett Government will go to the State election with a key plank of its debt-repayment plan missing after WA Treasurer Mike Nahan yesterday conceded the sale of Port Hedland's Utah Point facility would not happen before the March poll.
>
> The Government was last night —

This is Thursday of last week, so the journalist is referring to Wednesday night of last week, 14 September —

> preparing to re-introduce legislation to allow privatisation of the port, which is used by junior Pilbara miners Atlas Iron, Mineral Resources and Consolidated Minerals, into the Legislative Council. The laws passed the Lower House but Upper House Nationals WA and Labor MPs joined forces to send the bill to a parliamentary committee for review.
>
> The committee recommended changes to protect the juniors amid fears a private operator would "prioritise profit over the facilitation of trade".
>
> Dr Nahan yesterday pledged to amend the legislation to "further strengthen the access and pricing regime" for the sale.

I did not think that article was referring to a one-clause amendment, so I thought that maybe the government would cut and paste those several pages from the Fremantle port bill into this legislation. I was a bit surprised when we continued the debate, and the author had clearly got the wrong end of the stick when they wrote that article.

That very neatly summarises the problems we are dealing with here: this bill is not fixable. I know that the amendments on the notice paper came out of the committee's report, and that members on this side of the chamber have reached the conclusion that those amendments should be supported because they are better than nothing. But I do not think this bill is fixable in light of that massive omission from this bill to put in place substantive statutory measures on those crucial issues of pricing and access that will deliver on this fundamental question of what we need our ports to do to ensure that they remain focused on trade and an equitable trading relationship between all the players and providers of infrastructure.

I notice that in a previous stage of the second reading debate some particularly wise words were put on the record by Hon Ken Travers, who had been on the committee in my place. He said —

> I have always taken the view that our ports are first and foremost about trade facilitation. If a trading state such as Western Australia wants its ports to be simply about making a profit, that will be a problem. Until a review was undertaken by the former Treasurer and Minister for Transport Troy Buswell, we had the view that ports were about trade facilitation. He tried to change it so that they were all about profit. They should be about trade facilitation, because that is what will create jobs. A few bucks can be made out of the ports, but the state will be a lot better off if it promotes trade facilitation, whether that be in the mining industry, the agriculture industry or the tourism industry.

Hon Ken Travers absolutely summed up the problem that we have today. What we have in this bill and what we will have in the Fremantle Port Assets (Disposal) Bill, if it ever gets to this place, is a measure that fundamentally changes the basic objects, ideals and principles on which our ports are supposed to operate. That will be a very bad thing for the state. If we go down this road into privatising port assets, Western Australia will lose not only existing jobs but also the opportunity to create new jobs and to give young people in those regional areas where our ports are located around the state opportunities for training and for apprenticeships. These places have a long and proud tradition of delivering secure jobs and decent training opportunities for young people in the regions. This will all be lost because without any debate about those fundamental principles, we have allowed the Liberal Party and the National Party to change tack—to change the direction of the state when it provides these crucial pieces of infrastructure and maintains and upgrades them and ensures that they are able to respond to changing patterns of trade and the like. That is a very sad thing for the state. It is a very bad thing for the Western Australian economy. For that reason, I will join my colleagues in not supporting the bill.

HON ALANNA CLOHESY (East Metropolitan) [5.46 pm]: I rise to make a brief contribution to the Pilbara Port Assets (Disposal) Bill 2015. It is a very important bill in the sense that it raises many more questions than it provides answers, and it has a significant number of problems with it, such that members on this side of the chamber find it difficult to give it any support whatsoever.

This bill enables the disposal of assets—that is one of the problems, is it not?—around Pilbara port. Later I will outline the assets that this bill will enable to be sold. We know that the sale of part of Pilbara port is among a suite of asset sales announced by, I think, Treasurer number seven of this government, Treasurer Nahan, back in 2014 as a way of addressing some of the shocking financial and budget mismanagement of this government at a time when debt was projected to be $29 billion. I think debt is now projected to be around $40 billion. This sale was first announced two years ago, but is in front of us only now; in the meantime, debt projections have increased significantly. The cause of the blowout in debt projections is not the fault of the Pilbara Ports Authority or any of the companies operating out of Pilbara port; it is the fault of the Barnett government, which has over a number of years mismanaged the state's finances to such an extent that it fears it has no option other than to flog off assets of the state. As we will find out shortly, it is flogging off what is an asset of not only the state but also some companies that use the mine and have made significant investments in that port. Of course, flogging off the assets of the state has some dreadful implications, which I will look at.

This sale was first announced in 2014 as part of a suite of assets sales that included the Kwinana Bulk Terminal, Utah Point—as I said, we will come to understand whether we are talking about Utah Point or Pilbara ports—and certain Water Corporation assets. At the time, the TAB was included in that suite of asset sales. I am not sure where we are now with the sale of the TAB. There has been much chopping and changing on the part of the government about whether it will privatise the TAB. The package also included the sale of the Perth Market Authority, which we have debated in this place through enabling legislation. It is interesting that a number of the issues that we on this side of the chamber raised about the sale of that asset are again reflected in our concerns with this bill, which have not been addressed significantly by the government. Some of those concerns are the reason that this bill was referred to the Standing Committee on Legislation. It did a fine job of unpacking some of those concerns and getting some of the answers we needed. Congratulations to the committee for doing that.

One of the things the committee looked at was the benefits of the sale of the port to Western Australia and the industry. In summary, it came back with nothing—it seems that Western Australia and the industry will receive no benefit from the sale. I note also that Treasurer number seven, Dr Nahan, said that the sale will not proceed until after the election, which is interesting given the rush that we appear to be faced with to get this bill through. If the sale will not go ahead until after the election, why on earth is the government not taking this bill off the agenda and seriously looking at the concerns raised by the industry and members of the community?

The first thing that I drew from the committee's report, and also after generally thinking about the privatisation of government assets, was that privatisation in itself, including the privatisation of the Pilbara port, is not a panacea for fixing the government's budget woes. The projected net profit from the sale is about $500 million insofar as its value can be worked out. If it is $500 million—we do not know whether or not it will be—that amount will not make a dent in the state's spiralling debt, which is the result of the government's mismanagement of the state's finances. Similarly, as with the sale of the Perth Markets Authority, why is the sale proceeding and why with such haste?

I want to talk about the privatisation of state assets, which I have talked about as community owned assets. In doing research for this bill, I read with interest Atlas Iron Limited's submission to the committee; indeed, I read all the submissions. As we heard from other members, this submission raised some particular concerns about access and pricing for junior miners. In its submission to the committee, Atlas Iron stated —

> As part of the funding model for the development of Utah, Atlas made $23M of pre-payments, which the Port Hedland Port Authority used to part fund the Utah port construction.

Atlas already has an investment in the port, but the government has not listened to it. Its submission continues —

> This funding was ultimately returned to Atlas in the form of crediting as pre-paid port charges. Atlas also funded a further $14M of pre-payments on behalf of one of the other junior proponents, Aurox Resources Ltd, and took over its port allocation when its project did not prove viable, hence saving Pilbara Ports from having an under-utilised facility.

I did not know that. We were not aware of that, because it was not raised in discussions about the sale of the port. This was done in an environment in which the port was increasing its charges at a rate well beyond inflationary levels. The Atlas submission continues —

> As a result of significant delays and budget over runs toward the end of the project construction, Atlas also contributed staff, accommodation and engineering support as well as $9M in further Utah funding for no recourse. This funding was not returned to Atlas as a port charge discount or a pre-payment credit.

Again, none of those issues were brought to our attention by Treasurer number seven. The impact that that will have on the company's access to the port is in question as well.

I will raise two more issues. The first is pricing. This bill provides little or no protection in pricing, particularly for junior miners. The Treasurer indicated that there is capacity for price monitoring. The Treasurer can monitor the price and the minister can intervene when overpricing occurs. Of course, there is the assumption that overpricing will occur. What will tip the minister's intervention? How will the minister be informed of overpricing and at what point will overpricing be deemed unreasonable? There is no information in the bill, explanatory memorandum or second reading speech about how this mechanism will operate and what measures the government will take to bring pricing back to a level that is considered by the users of the port as reasonable if overpricing is identified. Certainly, that has not been explored and is a major fault of the bill. I will leave my comments there. We have fairly significant concerns about the bill. When we consider the amendments on the notice paper, I would like the opportunity to explore some of those questions about pricing and access in particular.

Sitting suspended from 6.00 to 7.30 pm

HON SAMANTHA ROWE (East Metropolitan) [7.30 pm]: I did not get the chance to start my contribution before dinner, but I want to put on the record my opposition to the Pilbara Port Assets (Disposal) Bill 2015 and make a few comments. My comments will focus mainly on the lack of protection for junior miners and the lack of value in the sale of the asset.

We started the second reading debate on this bill earlier this year, back in March. During the debate, a number of issues were raised by many members and the bill ended up being referred to the Standing Committee on Legislation. The committee analysed quite a number of issues and I want to point out some of them to the house. Probably one of the most important issues the committee canvassed is covered in the first dot point under paragraph 1.9 on page 2 of its report, "Pilbara Port Assets (Disposal) Bill 2015" —

- What are the benefits of the sale to Western Australians and how will this be measured?

That is probably the number one question for many members in this house. The committee looked at many other issues and asked what the benefits of the sale would be to industry—not only people, but also the industry—and what safeguards would be in place to ensure third party access to Utah Point after the sale, specifically for the junior miners, and how this would be guaranteed into the future. The committee also asked what regulatory arrangements were in place for the sale of Utah Point and whether they would be tabled in the Legislative Council, including draft versions; what consultation had occurred with users of Utah Point, if any; and what further consultation would take place during and after the disposal process. It would appear that there has not been a lot of consultation throughout this process, particularly with junior miners. The committee also asked whether the state would be liable for any repairs to or maintenance of Utah Road that may occur after the disposal, due to the historical link to Utah Point. A further question was: once the proceeds of the sale are used to pay down the $170 million owing on the price of the asset, what will happen to the revenue from the sale, and will it return to the state?

That was actually a really interesting point for the committee to look at, because we were told initially that one of the reasons we had to look at this bill and one of the reasons that the Liberal state government brought it in was that it was part of its asset fire sale, if you like. The government has blown the state's finances and made such a mess of it that it now finds itself in the position of looking to sell off different state government assets. It is really important when we look at this bill that we ask: if the sale is to go ahead, where is the revenue going to go? Will it go into more infrastructure projects? I doubt it. It is going to go towards the ever-increasing state debt. The committee also asked what the financial return to the state would be if the asset were not disposed of. This is quite a comprehensive committee report and quite a lot of good recommendations were made. It is a bit disappointing that not all of those recommendations have been taken up by the government, but I suppose there is still time.

During its inquiry process, the committee heard from the Department of Treasury that the time frame for the disposal of Utah Point had been adversely affected by the committee's scrutiny of the bill. I find it disappointing that the department made that comment, because this is the house of review and we need to have time to be able to go through legislation in a manner that allows us to properly scrutinise it. If that means we have to send legislation off to committees for further review or scrutiny, there should be time within the process for that to happen. I do not think it is the fault of the committee that this has been held up; it is the fact that the government was not able to bring the legislation to this place early enough for us to debate it and go through it in a timely manner.

The committee's first recommendation states —

> **… The Committee recommends that, in the future, the Government should allow sufficient time in its legislative schedule for comprehensive Parliamentary scrutiny of legislation.**

Paragraph 1.14 of the report states —

> The Committee notes that Parliamentary scrutiny is an essential part of the legislative process in this State and the Committee's inquiry will assist the Legislative Council in its consideration of the Bill. The Executive must allow sufficient time in its legislative schedule for comprehensive Parliamentary scrutiny of legislation. The Committee is of the view that the Parliamentary process must be taken into account and anticipated from the outset, rather than being treated as an after-thought when the Government sets its timetable for legislation.

I certainly agree with the recommendation that was made by, I believe, a majority of the committee.

As I stated at the beginning of my contribution, there are two issues I want to look at. The first issue is the lack of protection for junior miners that are currently using the port and those that will use it in the future. The second issue is the lack of value of the sale.

Finding 1 of the report states —

> **… The Committee finds that the Utah Point Bulk Handling Facility's primary role is to facilitate and develop the junior mining industry in Western Australia and this role should continue, notwithstanding the divestment of the facility as proposed by the Pilbara Port Assets (Disposal) Bill 2015.**

Finding 2 states —

> **… The Committee finds that there are currently insufficient protections for junior miners in the proposed access regime under the Pilbara Port Assets (Disposal) Bill 2015.**

We have seen some amendments put forward, but it is quite clear that the junior miners do not seem to have been consulted throughout this process, and I think it is very disappointing for the government not to have done that.

Through the course of the inquiry, a number of concerns were raised by the current users of the port—the junior miners, as they are more commonly known. The report states at page 25 that the committee notes the following key concerns from the current users of Utah Point —

- existing and future Utah Point users must be part of the Utah Point sales process and be able to provide input on the terms and conditions attaching to the sale of Utah Point
- the sale terms and conditions must protect the future of the junior mining industry in the northwest of Western Australia
- the following three key terms must be included in the sale terms and conditions:
    1. Utah Point must remain exclusively reserved for junior miners with no ability for the operator to grant access to non-junior miners
    2. the existing users of Utah Point must have input on the sale terms and conditions as well as the regulations that will apply to the operator post-privatisation to protect against unaffordable increases in (or introduction of new) port charges
    3. the 2.50 cost relief package (that was) due to expire on 30 June 2016 must become a permanent component of the Utah Point pricing structure for all users and form part of the sale terms and conditions to be adhered to by the operator post-privatisation of Utah Point

The junior miners obviously put forward submissions during the consideration of this bill by the Standing Committee on Legislation and made their feelings and concerns well known to the committee.

The viability of the junior miners is a real concern for Western Australians. It is a real concern for me in the East Metropolitan Region. There has been a downturn in this industry. A lot of people in the industry are struggling with the lack of job security and are very concerned about whether they will have employment in the coming months. A lot of people in our electorates are also concerned about whether the privatisation of the port will affect the junior miners and their ability to remain in operation after the sale occurs, and this is having a huge flow-on effect and is causing a lot of stress, as it does if people do not have job security. It also became apparent during the committee hearings that there will be no restrictions to prevent any one of the major mining companies from being a successful bidder for the lease of the port. That rang alarm bells for a lot the junior miners, and rightly so.

The committee also heard the views of the Australian Competition and Consumer Commission on market structure and the regulatory regimes for the facilitation of competition. The report states at page 28 —

> The ACCC notes that economic efficiency benefits will only be realised where there is '*strong potential for competition'* or where there is '*sufficient regulatory oversight'* in place as part of the privatisation process. The ACCC has expressed its concern to the Committee that:
>
> > *without the credible threat of regulatory intervention and/or independent binding arbitration, monitoring alone is unlikely to be an effective deterrent against monopoly pricing*.

That is also a concern that the junior miners have had, and continue to have, about the proposed privatisation of the port. That concern is quite legitimate because, as the ACCC also notes —

- Without sufficient regulatory arrangements being in place during the disposal, the ACCC warns that 'the privatised owner will have the incentive and ability to use its market power to raise prices above efficient levels and/or reduce service quality.'

There is also a concern about the lack of value to Western Australians from the sale of the port. Obviously at this time the iron ore price is relatively low; therefore, in basic economic terms, we would imagine that the sale price for this asset will be relatively low. Putting aside any ideological differences that we may have around privatisation, purely in a monetary sense this is not an ideal time to sell this state asset.

I turn now to page 11 of the committee report. It states that the Department of Treasury claims the following benefits around the disposal of Utah Point —

- *monetisation of past capital investment and future dividends*
- *retirement of debt and consequent reduction in interest expense*
- *removing State financial obligations and risks associated with the future …*
- *redeployment of proceeds to other income producing assets*
- *capital market development*

- *balancing private sector innovation with public sector regulatory oversight*
- *facilitation of trade and continued receipt of royalty payments*
- *assisting the State in delivering its infrastructure priorities*.

That is fine. The Department of Treasury is entitled to hold those views. The committee report goes on to state —

> The Committee notes that the benefits referred to above are more general in nature and do not necessarily contain specifics of the benefits of Utah Point being disposed of by the Bill.

We have not seen through the second reading speech, and we have not seen through the consideration of this bill by the Legislation Committee, the benefits of this sale to Western Australians. Therefore, a very important question that needs to be answered before this bill should be passed is: what will be the specific benefits of this sale to Western Australians? I am sure that the Attorney General, who is the minister responsible for this bill, will address that in his second reading reply. However, at this point it feels as though this bill is just another attempt by this government to find a short-term solution by selling off a state asset to pay down the debt that it has created. We are yet to know what will be the long-term benefits of privatising the port. The government is just looking at a quick fix. Frankly, that is not good enough. This state is in an economic downturn. No-one can deny that. No-one can deny that iron ore prices are lower than they have been for some time in this state. Therefore, this is clearly not the time to sell this asset. This is also not the time to put the junior miners in a position in which they are not sure whether they will be able to operate in the near future and of how many people will potentially lose their jobs if they are not able to operate. Therefore, until the government can explain what the benefits of this bill will be, we will have to oppose this bill.

HON ADELE FARINA (South West) [7.49 pm]: Members will be pleased to hear that I do not intend to speak on the Pilbara Port Assets (Disposal) Bill 2015 for very long. It is a very important bill. A lot of the points have already been made but I want to put my position on the record. Given the view that has been expressed by the Treasurer—that the government is not likely to proceed with the sale of the Pilbara port this side of the election—I really do not understand why so much time is now being spent focusing on this bill when so many other important and critical bills that are on the notice paper need to be dealt with and could be dealt with before the election. However, it makes no sense to me why the government is hell-bent on pushing ahead with this bill when the Treasurer said that the government does not have any use for it this side of the election.

I believe that critical infrastructure such as ports should be owned and operated by the state. In addition, it is the responsibility of government to make a case for why we should sell an asset of this nature or provide a long-term lease over it and how that is in the best interests of the state. Nothing we have heard to date addresses those issues. The government has not been able to make a case for why Utah Point should be sold and how the sale of Utah Point will deliver a better benefit to the state than will holding onto it. I understand from the Standing Committee on Legislation's report on the bill that the government actively sought to withhold critical information about the sale process and the financial situation of the Utah Point bulk handling facility. This is disgraceful. When Parliament or a parliamentary committee asks for information, that information should be provided. I do not buy the fact that this information is commercial-in-confidence or that it will somehow impact on the sale of the asset. If the government wants to come to this place and argue that a government asset should be sold, it needs to make the case, which includes providing information about the financial state of the asset and why the sale of that asset will benefit the state, yet it has refused to provide that information to the committee or to this place. That is something that Parliament should not tolerate.

In his contribution to this debate, Hon Ken Travers explained that he had made numerous efforts to obtain information about the profit and expenditure made by Utah Point in 2014–15, and the operating profit before tax. He also asked questions about the contracts with the current users, the rights of the users and how much iron ore was exported through the facility in 2013–14 and 2014–15. He was denied this information. I find that extraordinary. There should be nothing secretive about this information. This government went to the 2008 election saying that it would be more transparent than any government before it, yet the absolute opposite is true. We have seen nothing but hiding behind FOI processes, commercial-in-confidence and everything it possibly can not to release any information and not to be transparent at all. It is absolutely disgraceful. There is no reason why this information should have been denied to Hon Ken Travers when he requested it, when the legislation committee requested it or when this Parliament requested it. Parliament should not tolerate the fact that the government continues to refuse to provide information when it asks for it.

What I found even more disgraceful about this situation from listening to the contribution made by Hon Ken Travers is that although a lot of this information was denied by government when he made the request, some of that information was available on the Pilbara Ports Authority's website. The government cannot even talk to its bureaucrats and find out what information is publicly available before it denies access to a member of

Parliament or a parliamentary committee or this house. Really, it should get its act together. I find this whole thing a farce.

Hon Sue Ellery detailed eight questions that the standing committee sought to have answered through its inquiry, yet it was stonewalled by the government, which refused to release information that was critical to the consideration of the bill. Again, that is completely unacceptable. If Utah Point is generating profit and that money is being paid into consolidated revenue, it is delivering a benefit to the state. Parliament has a right to know that this is the case and it has a right to know the extent of that benefit. If Utah Point is providing a financial benefit to the state, why are we looking at selling it? If the government is making an argument that selling Utah Point will deliver a greater financial benefit to the state, it should tell us what that is. Again, Parliament has a right to know that. The government should make its argument, persuade us on the point and remain silent. It is not answering any of those questions, yet it expects the opposition to support the bill. I think that is absolutely disgraceful.

The government has refused to provide any financial details to enable members on the opposition benches to consider these matters and, therefore, the bill should not be supported. The government's stated policy on the bill is to facilitate the sale of only Utah Point. However, the words in the bill go much further than this. The bill provides for a head of power to provide for the disposal of the whole or part of certain businesses carried on by, or all or any of certain assets or liabilities owned or managed by, the Pilbara Ports Authority and for related purposes. Therefore, the bill provides the authority to sell any part of the Pilbara Ports Authority's assets. In fact, it could sell the whole of the Pilbara Ports Authority's assets without coming back to Parliament. If the government's stated intention is to sell only Utah Point, why do we have a head of power in the bill that goes far greater than that and why is it far more extensive than that? The government has not provided any explanation for that. At best we have this feeble explanation that it will give government flexibility. If it has got something wrong and it needs to sell Utah Point and another square centimetre of land or whatever, it will be able to do it without coming back to Parliament with an amendment. The government is telling us that it has not really developed its policy intention well enough to know exactly what it wants. It has not worked out the detail yet so it cannot tell us exactly what it wants, but we should trust it because it is telling us that it will sell only Utah Point. The reality is that if we approve the bill in its current form, it gives the government the authority to do much more than just sell Utah Point; it can sell the whole Pilbara port. Is that really what we want to do and do we really believe it is appropriate to give this government the head of power to do that when the government has not made a case for it? In fact, it has outright denied that that is its intent, yet the words in the bill provide for that to happen. It will be able to take place without the government ever coming back to this Parliament and enabling it to scrutinise that decision should the government make a decision to sell the whole of the port. That is unacceptable. The whole point of stating the government's policy of a bill in a second reading speech is to enable us to ensure that when we look at the bill in detail, we know that it does what the policy states it is supposed to do. This bill does not do that; it does a lot more than what the policy states it will do. On those grounds alone, we should not be supporting the bill. We need to be clear about the exact intent of the bill and we need to be clear that the intent is accurately reflected in the words that are used in the bill. In this case, that is not the situation and, on that basis, the bill should not be supported.

The government really needs to be saying that it has not worked out all the detail, but we should trust it because it is telling us that it will sell only Utah Point. It is treating us like fools. It is telling us that it will sell only Utah Point but the provision states that it can sell the whole port, and if we are silly enough to approve the bill in that form, we will have given the government licence to do whatever it likes! That is disgraceful and unacceptable. Surely members, even those on the government benches, do not think that that is reasonable or acceptable.

The other aspect of the bill that has been covered quite extensively by my colleagues is access and pricing. The lack of detail in the legislation on the pricing arrangements is beyond a joke. We have been told that there will be price monitoring and that the minister can intervene when the pricing is considered unreasonable, but we have no idea what "unreasonable" is or how the minister will come to a determination that the pricing has been set at an unreasonable level. There is no guideline in the bill about how that decision will be made and how it will be triggered, and there is absolutely nothing in the bill about the process to trigger the minister's intervention. A huge number of deficiencies are in the bill and the government really needs to provide that detail in the bill so it is clear, if this process is to work, how it is to work. There is clearly no transparency with this bill, and no indication about the pricing and access regime and how the whole process will be triggered. I heard a story on the radio last week—it might have been a couple of days ago—about the sale of the Melbourne port. Apparently, the sale of the port came in at a higher price than the Victorian government was expecting; I think it got an extra $2 billion from the sale of the port. The Victorian government was very pleased with that; it thought it was fantastic that it had an extra $2 billion in the piggy bank to spend. But the port users were really concerned about it because, from their point of view, the buyer was prepared to pay $2 billion more—not $2 million—than the

government was expecting for this asset, and somehow it was going to have to make that money back. The only way it is going to be able to make that money back is to charge the port users more to use the port, which in turn will make their businesses financially unviable. Of course, the Victorian government is very silent on how this is going to work, and I have not had a chance to look at its legislation to see whether there are clear parameters for price fixing in that legislation and contracts scheme, but we have a problem here. We need to ensure that, if an asset is to be sold, the port users will not be pushed to the point at which they face prices so high that it makes their businesses commercially unviable. I do not get any confidence in reading this bill that a regime is in place that protects and supports users, and I think that is unacceptable; that is the very least that should be done. I did not attend the briefing on this bill, but I have heard a number of other members say that they were told that the bill is modelled on the Perth market bill. If it is, there were tighter pricing regimes in the Perth market bill than there are in this bill, so, again, it highlights that there is a deficiency in this bill, and a hell of a lot more work needs to be done on it.

The other issue is the access. We have heard that the junior miners currently have full access to the Utah Point bulk handling facility and they expected to continue to have full access. But this bill provides the majors with an opportunity to have access to the facility and rather than the junior miners having full access to it, they are guaranteed only a maximum of 50 per cent access. The majors can have 50 per cent access and can request more than 50 per cent access. How can the junior miners be guaranteed 50 per cent when the majors can have more than 50 per cent access? I do not know, but when I went to school and learnt maths, that was not possible; it was not feasible—50 per cent minus 100 per cent leaves 50 per cent. The majors cannot have more than 50 per cent while the juniors are guaranteed 50 per cent; it just does not work. The government needs to explain how it will make the amendment work and how some of the concerns raised by the juniors can be dealt with.

In her contribution, Hon Sue Ellery talked about an email that we all received from Simon Bennison of the Association of Mining and Exploration Companies. I want to read through some of the things he raised in his email, because they are issues that members on the government benches need to really think about. The email states —

> … The Users feel totally let down by Government because Government has failed to consider any of the issues recommended by the Parliamentary Council Standing Committee—the amendments actually operate to the contrary of such recommendations concerning access.

Why do we go through a process of having a committee system and saying time and again that we value the committee system when ministers continue to ignore some key committee recommendations after their inquiries. First of all, this government has not bothered to consult with stakeholders yet again—something that happens with almost every piece of legislation brought on by this government. The stakeholders say that they are not happy. The bill gets referred to a parliamentary committee. First of all, the parliamentary committee is stonewalled and cannot get access to critical information it needs to make an informed decision but, based on what it is provided, says that there are serious problems and makes a whole lot of recommendations, yet the government does nothing to address them or the concerns of stakeholder groups. The government comes before this place expecting the bill to be passed. I know the government has the numbers so it can get the bill passed, but that really is not good government and it is a really silly thing to do six months out from an election. The email from AMEC goes on to state —

> … Government has totally ignored the recommendations handed down by ACCC regarding price protection.

That is a critical issue. The email goes on to state —

> … The points that urgently need to be addressed:
>
> a. A Pricing & Access Regime must be included in the Bill and it must limit charges to capital actually invested in the construction of Utah Point ($235M) plus a return of 6 to 12% on that invested capital.
>
> b. Access to the asset should be retained exclusively for the use of juniors. Instead the amendments —

In the proposed amendment —

> … guarantee a minimum 50% access for Majors and limits Junior access to a maximum of 50%.

The email goes on to describe the arrangements already in place in that respect. It states —

> … Any future changes to the charges for using Utah Point must only reflect actual increases and decreases in the cost of operating the facility—no more no less.

Despite the length of time we have been debating this bill, the number of briefings that have been provided and the committee's report, the government has still not dealt with any of these issues. The government has not provided a response to any of these issues and it certainly has not put forward amendments to the bill to address them. It is no surprise that the junior miners have no confidence in this government and no confidence in this bill. Quite frankly, I do not blame them. I think they are being more than reasonable in the circumstances. These are serious issues that need to be addressed by the government, and, if they are not addressed, the government cannot expect members on this side of the house, and, hopefully, at least some members on its side, to support the bill.

HON LYNN MacLAREN (South Metropolitan) [8.08 pm]: I rise to also oppose the Pilbara Port Assets (Disposal) Bill 2015. Hon Robin Chapple would love to have been in this place personally, but, unfortunately, he is away on urgent parliamentary business. He has provided me with most of the comments I will make in this second reading contribution. However, it is important to note that this contribution is my own contribution to the debate.

The DEPUTY PRESIDENT: I note that Hon Robin Chapple made his contribution on 17 March this year and on the referral motion on 22 March, so you are having a time-limited speech now.

Hon LYNN MacLAREN: Yes, he has given his contribution. I am not the lead speaker; that is correct.

Hon Robin Chapple was co-opted to the Standing Committee on Legislation for the inquiry on this bill because of his extensive experience in the region. I want to first acknowledge the work that Hon Robin Chapple and Hon Ken Travers put into the committee report. It informs us, as members, very well. As many members have laid out, it clearly articulates the shortcomings in the Pilbara Port Assets (Disposal) Bill. There was an opportunity for the government to correct these shortcomings, and members will note that a supplementary notice paper has been circulated with some amendments. It is unfortunate that those amendments are not the government's amendments; in fact, in the main, they are my amendments and a couple proposed by Hon Robin Chapple. They are intended to correct the shortcomings in the bill. We shall see how that goes.

The Pilbara Port Assets (Disposal) Bill 2015 was first introduced into Parliament late last year. I was shocked to learn that it was introduced and passed in one day in the other place, and it was to the complete surprise of the junior miners that will be most affected by this legislation and the sale of the Pilbara port. That is not good government. It is one of the reasons we find ourselves, during the week of 19 September the following year, still complaining that this bill is inadequate and that the government has continually ignored the very reasonable approaches of the junior miners. Along with the rest of the members who have spoken today, I am disappointed that we cannot do better. In fact, I do not believe it is true that we cannot do better. At this late stage of the debate, I would like to see that we improve the clauses I have proposed to amend and that we correct this unfair situation we find ourselves in, which will, potentially, dramatically affect people who are innovators, trying to add to the Western Australian economy. They are smaller miners trying to do good and have been using this port facility quite effectively for quite some time, to the point that it is a money earner for this government. Why we would sell off an asset that is actually improving the bottom line is also beyond me. I am also worried about the unintended consequences of the potential impact on the local community, which have been brought to our attention.

Utah Point, located in Port Hedland, is the world's largest iron ore export port and is a multi-user berth, currently owned by the Pilbara Ports Authority. It was constructed in 2010 and the facility comprises a berth that is 272 metres in length and has a harbour depth of 14.5 metres, a shiploader with a peak load rate of 7 500 tonnes per hour, two stockyard product storage facilities, reclaiming and conveying equipment, and other supporting infrastructure. In the financial year ending 30 June 2015, Utah Point facilitated the export of 19.5 million tonnes of ore compared with 18.8 million tonnes in the year ending 30 June 2014. In dollar terms, this equated to $146 million in revenue in 2014–15 and $141 million in 2013–14.

As members know, Port Hedland is located approximately 1 800 kilometres north of Perth and is home to around 18 000 people from diverse cultural backgrounds and covers 11 844 square kilometres of the Pilbara region. The original inhabitants of Port Hedland, the Kariyarra people, call the place Marapikurrinya—maybe the minister can correct my pronunciation. It reflects the hand-shaped formation of the tidal creeks coming off the natural harbour. The divestment of the Utah Point bulk handling facility at Port Hedland has reached a number of key milestones, with enabling legislation introduced to Parliament late last year and the state government providing approval to progress to the next phase of the process.

Where is it at now? The Pilbara Port Assets (Disposal) Bill provides the legislative framework for the state government to transition this facility to the private sector through a long-term lease. That is the definition of a sell-off of public assets—handing it over to the private sector. The Department of Treasury, supported by its lead financial adviser, Rothschild–Deloitte, progressed the detailed due diligence process for the divestment of the Utah Point facility. In fact, as I recall, it was one of the first things announced as an asset sale way back in 2014 when the state government was desperately trying to find a way out of its debt problems. The process is being run in close consultation with the Departments of Transport and State Development, the Pilbara Ports

Authority and the State Solicitor's Office, but, as we have heard, not in consultation with the users of the facility. The state government has also recently approved proceeding with expressions of interest for the lease of the asset. EOIs were expected to be sought during the first quarter of this year. The process of sending the bill to a committee and once the committee sought an extension of time —

Hon Robyn McSweeney: It's a good committee.

Hon LYNN MacLAREN: It is an excellent committee. I know from experience on the Standing Committee on Legislation under the leadership of Hon Robyn McSweeney that it does not shirk difficult tasks. It took on this task and, in fact, it wrote to about 22 interests seeking submissions. It held four days of hearings and travelled to Port Hedland, and received almost a dozen written submissions. The committee did the work that we charged it to do. It used its time wisely and produced this report, which makes many recommendations and a few minority recommendations, supported by Hon Ken Travers and Hon Robin Chapple. To date, none of these recommendations has been taken on board. I note that one government amendment is on the supplementary notice paper, which I do not think addresses one of the problems the committee raised, so I have put an amendment on the supplementary notice paper in the hope of addressing that particular problem. I wanted to say where we are up to.

As we have been told, the government's overarching objectives for the divestment of Utah Point are to facilitate the continued efficient and reliable operation of the facility and maximise transaction proceeds and the financial return for the state while minimising residual financial risks and liabilities. I think many members have raised questions on that because we just do not have enough information to judge whether this will achieve that. Another objective is to facilitate private sector provision for infrastructure for the future and contribute to the state's economic growth. As I have made the point, keeping it would also contribute to that growth. Comparing the cost of keeping it with the cost of selling it is information that, as members, we should have so that we can weigh up whether it is a good idea to sell it. At this point, we do not have that information. Its aim also is to drive efficiencies through the introduction of private sector disciplines and to ensure that the operating models for the remaining businesses of the Pilbara Ports Authority are financially sustainable. I met with people representing the junior miners and I am concerned about that. Anyone who has looked at the numbers would be concerned. We are in a difficult economic time, as Hon Samantha Rowe said not five or 10 minutes ago, and the economy is struggling. It is not a time when we want to put anyone under any increased uncertainty. All the workers associated with the junior miners that are using that port facility may well find themselves considering whether their employment is secure. That is a shame, because, as a government, we should not be enabling that. We should be increasing security, if we have the power to do that.

The Pilbara Port Assets (Disposal) Bill 2015 consists of 47 clauses that broadly provide for authorising the disposal of all or part of certain assets and liabilities of the ports authority and associated assets. It also provides for controls and limitations on the parameters of the disposal and post-sale transitional arrangements and regulatory matters. I will not go through the parts of the bill, because by now we know what bill is before us, but I want to yet again question the unintended consequences of this bill. If it passes in its current form, it will enable new owners to levy charges that will potentially be unaffordable for juniors, at both current and long-term projected commodity prices. That clearly risks the viability of those juniors. When we talk about a job provider in the Pilbara, we are talking about some of our most vulnerable Australians. We are talking about male and female subcontractors and Aboriginal people who hold jobs, working for either the port or a business associated with it. This industry has a multiplier effect of three, which means that for every job associated with the port, there are three associated ancillary jobs. We are concerned about that and about any increase in the costs to these companies that might put those jobs at risk. What consideration has been given to these unintended consequences for the workers and families of these junior miners? What will a private bidder want as a return on their investment? These are the details that we want to hear from the Attorney General in his speech in reply, just to give us some kind of certainty that these issues have been given due consideration. What protection do the junior miners have against increased charges by a private owner who will want a return on their investment? Are we in any way thinking about protecting these junior miners? How will the access and pricing regime be calculated? I found it particularly illuminating when Hon Sally Talbot pulled out the Fremantle Port Assets (Disposal) Bill 2016 and showed us that the detail about pricing and access can be included in that bill but not in this bill. There is very, very little in the detail of the bill of the kind of information that the Western Australian public has a right to know before we sell off this port.

I have mentioned jobs; we need to be very concerned about the impact of job losses in the Pilbara. We also need to be concerned about revenue loss for those companies that are presumably helping our bottom line and increasing state gross domestic product. It may well be that an unintended consequence of this bill is that the junior miners go out of business. That cannot be a good outcome. These are the unintended consequences that

the opposition is concerned about and the reasons that every single one of us—we have not yet heard from the Shooters, Fishers and Farmers Party—on this side of the chamber is very concerned about these issues.

What do we think is a major failing of government? Firstly, yet again the government has left important details down to the regulations, and, as we know, regulations are developed not inside this chamber with our wisdom and our perspectives, but outside this chamber. We get to see them when they are all cooked and ready to go and the only option we have is to disallow them in their entirety. This is not an appropriate function for an important bill such as this. The regulations need to have the details here. One of the things that the Standing Committee on Legislation called for is the tabling of those draft regulations so that we can see them in draft form. Secondly, the major failing of the government with the Pilbara Ports is the lack of consultation. We have all heard about that, and one of the main reasons that we sent the bill to the committee was so that consultation could take place. Now, having consulted with those junior miners and with everyone who felt that they needed to participate in that committee inquiry, we seem quite content to ignore them. This is not genuine consultation, members. I do not need to remind anyone here that when someone is asked and then what they say is ignored, that does not constitute genuine consultation. Finally, the major failing of the government is that it did not provide important information to the committee inquiry. The one paragraph that I want to read into the record at this time is in the executive summary at page i of the committee's report, which states —

> The Committee has not been able to obtain conclusive information relating to various aspects of the disposal, including the retention value to be ascribed to the asset (that is, the estimated value of retaining a State asset compared with the amount obtained from disposing of the asset) and the details of the future access and pricing regime at the port, including port charges. The Committee notes that these are important elements of the transaction and should be clarified prior to the disposal.

Further —

> The Committee recommends that the Bill be amended according to its recommendations in this report.

Currently, the Greens oppose the bill. However, I draw members' attention to the amendments and schedules on the supplementary notice paper. I will move those amendments during the committee stage, unless by some wonderful turn of fate, the Attorney General finds it in his heart and his information pack to respond to all the concerns we have raised over the past couple of days and to adequately address these very, very serious concerns about the sale of this asset. Unless that happens, I cannot imagine we would pass the bill. However, as you know, Madam Acting President (Hon Liz Behjat), I am committed to improving legislation in this place. That is my purpose for being elected, and I will continue to try to improve legislation until it reaches the third reading stage, because that is our job. We are responsible, as the President reminds us every morning, for acting with wisdom, taking on board advice and trying to review the legislation that comes from the other place and impart our wisdom into it with a goal of making better legislation. That is what we have to do to this bill at this point. We must make it better, otherwise it should not pass.

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [8.29 pm] — in reply: I thank members for their contributions to the debate on the Pilbara Port Assets (Disposal) Bill 2015. I doubt that anything I say will actually persuade Hon Lynn MacLaren away from her concerns, but I will give it a go. Of course, from what we heard from the opposition, it may well be that the Treasurer entertained some hopes—some dream—that the opposition would support this legislation. For my part, I had no expectation that the opposition could be persuaded to support the bill. It has always been and will continue to be its policy that governments should hoard any asset, no matter whether it can be more effectively operated by others—hang onto it they will. If there was any doubt about that, Hon Sally Talbot made that point entirely clear. I do not see why it ought to be put that the government cannot expect the opposition to support something like this. I do not expect the opposition to support anything like this! Opposition members are beyond persuasion; they have their particular mantra, their dogma, their philosophy, and they will follow that without any regard for the practicalities. Whether there is an advantage or a disadvantage, it is a matter of dogma to them. So be it.

Why sell off an asset that is doing so many good things for the state of Western Australia? One would think from the way that question was being framed that we were actually closing it down, but we are not. The objectives were set out in the second reading speech, which was delivered by Hon Helen Morton, and she explained the purposes of the exercise. It may be worth revisiting the second reading speech to put it in context. Again, we have been asked rhetorically, I suppose—although maybe the opposition really did not pay attention at the time—about the timing of it and why we are doing this now when it does not look like it might be sold before March next year and things of that nature. What was said in the second reading speech was —

> The long-term lease of the Utah Point bulk handling facility, which is currently vested in the Pilbara Ports Authority, is being prepared by the government, with a divestment to proceed only when it is demonstrated to be in the interests of Western Australian taxpayers.

That is not a "fire sale", whatever that might mean. A "fire sale" is the typical pejorative rhetoric that we hear from the other side, and it is meaningless. The more it is repeated, the more meaningless it becomes. As the second reading speech states, this will be done if it is in the interests of taxpayers, and not at the only price that can be obtained. In case anyone in the opposition bothers to look up the definition of "fire sale" rather than simply use the rhetoric that is given to them in the ALP manual of opposition speeches, which all of them seem to have had reference to because they used the same terms, it means a sale of goods at an extremely discounted price. It originated in the references to the disposal of goods at heavily discounted prices due to fire damage. That is not the objective of government at all and it has not been said to be the objective—quite the contrary.

Hon Darren West: It's a good metaphor.

Hon MICHAEL MISCHIN: I hear Hon Darren West saying that it is a good metaphor—only if a member constructs their own little fantasy world around it. That is not what was said in the second reading speech, if Hon Darren West had bothered to listen to or understand it.

It is said that now is not a good time to sell. When is a good time for the ALP to sell something?

Hon Darren West: In the boom.

Hon MICHAEL MISCHIN: In a boom! At an inflated price, so the asset is not sustainable in the long term. It is like the subprime mortgage theory—just keep selling at a high price until it all collapses.

Hon Darren West: You blew the boom.

Hon MICHAEL MISCHIN: Silly man!

The ACTING PRESIDENT (Hon Liz Behjat): Order! I note from my book here that Hon Darren West made his second reading contribution on 22 March this year. That is a long time ago, I know. He may not have realised that he had done that. At the moment the Attorney General is doing his second reading reply. He is going to keep his comments through the Chair and we will move along quite nicely in that regard.

Hon MICHAEL MISCHIN: Thank you, Madam Acting President; Hon Darren West's contribution is as memorable now as it was then!

As a reminder to members, the Utah Point bulk handling facility is one of four berths owned by the Pilbara Ports Authority in Port Hedland, and facilitates the export of bulk products—predominantly, but not exclusively, iron ore. There are 15 other berths at Port Hedland, which are owned by BHP Billiton Ltd, Fortescue Metals Group and Roy Hill iron ore. The divestment of the Utah Point facility formed part of the first tranche of asset divestments announced by the government in 2014. As I have pointed out, and as was mentioned in the second reading speech, it is a preparation for divestment—it is not the actual divestment itself, which will be done when it is in the interests of taxpayers to do so. It is a proposed lease package, because the land involved can only be leased for up to 99 years; it is not being sold and it certainly is not being closed down. Utah Point is a going concern that the government is concerned to keep going. The proposed lease package includes all land-side assets owned by the Pilbara Ports Authority at Utah Point, including the wharf and mooring system, shiploader, conveyer and two stockyards, which are leased to users. The transaction will also include a C-class port allocation of up to 23 million tonnes per annum, in line with the current theoretical capacity of the facility. As it stands, the bill has 47 clauses and one schedule, and broadly provides for the disposal of all or any part of certain assets and liabilities of the authority and any identified associated assets; controls and places limitations on the parameters of the disposal; and deals with and provides for the post-sale transitional arrangements and regulatory matters.

As members will recall, and has been mentioned from time to time, on 22 March this year the Council referred the bill to the Standing Committee on Legislation. During the course of its inquiry, the committee received eight submissions and held four hearings over three days. It tabled its report on the bill, the thirty-third report, on 25 August. I thank the committee for its diligence in considering the bill under the chairmanship of Hon Robyn McSweeney, and I thank those who put forward detailed submissions during the inquiry. In its report, the committee made 17 recommendations, 12 findings, one minority finding and three minority recommendations, and noted that the majority of the committee supports the bill subject to amendments as recommended. Seven of the recommendations propose specific changes to the bill. Some changes were described but not specified and some areas were identified on which the committee considered the Council would be assisted by the provision of clarification, commitment, assurance or further disclosure. The government will adopt the core recommendation of the committee that seeks to improve junior miner access to Utah Point bulk handling facility. As a result, there is a supplementary notice paper. I think it is into its third iteration now, but it still contains an amendment that the government proposes to move to the bill during the Committee of the Whole.

I take this opportunity to respond to each of the committee's recommendations, both to the extent the report proposes specific amendments and in relation to amendments that may have been proposed and where the government has accepted the recommendation in principle but proposes to address the amendment in another manner, either by way of clarification, commitment, assurance or the provision of further information. I will not read out at length each of the recommendations, but with respect to recommendation 1, that is noted by the government. That is the one that recommends the allowance of sufficient time for Parliament to consider the legislation. As to what is an adequate amount of time, that will depend on the circumstances, but the committee considered this bill at length, held a number of hearings, received submissions and came up with its recommendations, and we have had a lengthy debate on the subject. Each member has had an opportunity to speak on the bill and I think each member has done so, to a greater or lesser extent.

That was not only on the first occasion that the bill came before the house, before the referral motion to the committee, but also subsequently, and we have proposed amendments on the supplementary notice paper, so I do not know that it is legitimate to complain that there has not been enough time to consider and scrutinise legislation, but the government takes note of that recommendation.

Recommendation 2, regarding retention value and disclosure of documents, is supported by the government. A summary of the results of the retention value analysis will be made available after the completion of the divestment. That will be similar in principle to the public release of the value-for-money analysis under Treasury's public–private partnership disclosure policy. Various underlying assumptions will need to be kept confidential in order not to prejudice any other active or future asset divestment process, but that will be reviewed at the time of disclosure. It is the government's intention to follow that recommendation and accept it.

Recommendation 3 seeks some clarification from the Treasurer of the effect of section 30(2)(aa) of the Port Authorities Act 1999 and its implications. The government confirms that the future terminal operator will not be required to comply with section 30(2)(aa) of the Port Authorities Act 1999. The government notes that section 30, including that particular subsection and paragraph, currently specifies the statutory functions of, and applies to, the Pilbara Ports Authority in its role as the port authority for the port of Port Hedland and does not apply, and is not appropriate to be applied, to private operators of facilities and berths within the port of Port Hedland—for example, BHP Billiton, FMG and Roy Hill. It is intended that this position will continue following the disposal of the Utah Point facility under the bill, with section 30 of the Port Authorities Act 1999 continuing to apply to the Pilbara Ports Authority in relation to the port of Port Hedland and private operators, including the future terminal operator, not being required to comply with section 30(2)(aa) of the Port Authorities Act 1999. Although the functions in section 30(1) of the Port Authorities Act are not appropriate to be imposed on a private entity, the government intends that obligations that are analogous to those functions in section 30(1)(a) and section 30(1)(c) to (f) will be imposed on the terminal operator pursuant to the access and pricing regime and the transaction documents.

I turn to recommendation 4, which again seeks some clarification from the Treasurer. The government confirms that the intended outcome of clause 18 of the bill is that the Pilbara Ports Authority will not contravene the Port Authorities Act 1999 if it does, or omits to do, anything in good faith in compliance with a ministerial direction under clause 18(1) of the bill. It should be noted that clause 18 addresses potential inconsistencies between the Port Authorities Act and a ministerial direction issued under clause 18(1) for the purposes of a section 10 disposal under the bill. If the Pilbara Ports Authority does or omits to do anything in good faith in compliance with, or purported compliance with, a direction under clause 18(1) of the bill, the Pilbara Ports Authority will be protected under clause 18(3) from liability under, and contravention of, the Port Authorities Act. This may apply, for example, to a direction to the Pilbara Ports Authority to execute the transaction documents in a number of circumstances, one being that the transaction documents provide for the transfer of fixed assets at Utah Point from the Pilbara Ports Authority, with the proceeds of that transfer to be paid to the state and not to the Pilbara Ports Authority. In complying with the direction, the Pilbara Ports Authority may contravene section 30(2)(aa) of the Port Authorities Act 1999, which requires the Pilbara Ports Authority to exploit its fixed assets for profit, subject to compliance with its functions under section 30(1) of the Port Authorities Act 1999. That contravention would be cured by clause 18. A second circumstance would be if the transaction documents provide for the terminal operator and not the Pilbara Ports Authority to operate Utah Point. Under section 33 of the Port Authorities Act, the Pilbara Ports Authority is required to comply with a strategic development plan. The strategic development plan may not at the time of execution of the documents have been updated to reflect changes to managing the operation of Utah Point, which could result in the Pilbara Ports Authority contravening section 33 of the Port Authorities Act. That contravention would also be cured by clause 18.

Recommendation 5 recommends that the Treasurer give a commitment to the house that the sale of the Utah Point bulk handling facility will not prevent the planning and development of new port facilities. I can say that the

divestment of Utah Point will not prevent the planning and development of new port facilities by the Pilbara Ports Authority to facilitate the expansion of iron ore shipments or new resources being exported through the port.

Recommendation 6 proposes an amendment to improve access for junior miners at all times in the future. Here we get to the issue of the government's proposed amendment and a matter that has exercised the minds of many, including those of the junior miners, as to their security. The government accepts, and, indeed, said in the second reading speech introducing this bill, that the facility was developed by the Pilbara Ports Authority to provide a multi-user export terminal enabling, in part, an export pathway for junior miners in acknowledgement that junior miners did not have the financial capacity to develop a facility of their own. However, it is also acknowledged that there remains a balance between ensuring junior miners continue to have ready access to the facility and preventing a scenario whereby the terminal operator holds an asset that cannot be utilised by junior miners due to adverse commodity market conditions or events that lead to a consolidation of juniors, a disaggregation of majors, or future port developments providing alternative export facilities for juniors. The proposed access regime is designed to ensure a balance between the need for junior miners to have access to capacity by incorporating several protection measures to ensure priority for junior miners, without sterilising or stranding capacity in circumstances in which there is a legitimate demand from major miners. By major miners, I mean m-i-n-e-r-s, rather than m-i-n-o-r-s!

This also serves to ensure that the regime is consistent with the obligations of port authorities, as set out in section 30(1) of the Port Authorities Act, "to facilitate trade within and through the port", and the principles of efficient use of the facility. It should be acknowledged that the proposed regime already prohibits negotiations with major miners unless capacity has first been offered to junior miners, with negotiations conducted in good faith, and the Economic Regulation Authority is subsequently satisfied with the process as a precondition to approving any potential negotiation with major mining companies. The government notes the committee's concerns, including the comments and submissions from interested parties, and to this end the government proposes to add a further layer of protection for junior miners to address the hypothetical situation in which a junior miner is initially unable to use the capacity at Utah Point but subsequently seeks to recommence exports. In circumstances in which the ERA approves negotiations with major mining companies, the terminal operator will need to ensure that at least 50 per cent of the capacity is available to be accessed by junior miners within 180 days. The effect of this is that even in circumstances in which no junior miner is in a position to contract capacity, up to 50 per cent of capacity will always be available at short notice at Utah Point for the terminal operator to offer to junior miners in accordance with the capacity management policy. The capacity management policy would apply equally to major miners. If the major miners did not use the contracted capacity, it could be resumed by the terminal operator and then be subject to the junior miner preference provisions.

Regulations will allow for the definition of major miners—otherwise referred to as "prescribed users"—to evolve over time to accommodate the potential for junior miners to transition to become major mining companies and operators, and vice versa. The overall intent is to maintain a balance between the efficient use of the facility and ensuring that junior miners have the opportunity for continuing access. It has been pointed out to me that some of the misapprehension by those operators who have expressed criticism of the amendment is that they have not read the amendment in context with the rest of the bill but, rather, have read it in isolation, which could be misleading. The effect of the amendment, when read in context, is to achieve a protection for junior miners, and to provide flexibility to ensure that if there are no junior miners at a particular time, or none that are producing and exporting, the facility is not wasted and sitting idle to the detriment of the operator of the facility, and also to the detriment of the major operators that may need some further export capacity through the port but are not able to use it. However, if a junior miner were to then recommence operations, up to 50 per cent of the facility must be made available to that junior miner at short notice.

Recommendation 7 of the committee is about the negotiate–arbitrate model. The government recognises the committee's recommendation that instead of an access regime, which includes a negotiate–arbitrate approach and a pricing regime that consists of a price monitoring regime, it should consider combining the two regimes—that is, include pricing as a matter that may be subject to binding arbitration in the same way that other terms of access are subject to binding arbitration. Consequently, the government proposes to adopt a negotiate–arbitrate regime for both access and pricing elements governing the use of Utah Point. The reasons are as follows. Firstly, it provides for a simpler regime, in that all terms of access and pricing are dealt with under one process. Secondly, there are a limited number of access seekers; therefore, there will be limited potential arbitrations. Thirdly, it is more flexible than price monitoring; therefore, it can take into account specific issues unique to an access seeker. Fourthly, it avoids differing views on whether the existing 2016 prices are efficient. The merits of the existing prices will be an issue only insofar as they are a base for future pricing discussions. Lastly, it addresses the concerns of the committee and the Australian Competition and Consumer Commission about price.

The proposed price monitoring regime would therefore be removed and, instead, prices would be negotiated between the parties, with binding independent arbitration in case the parties could not agree. The prohibition on the terminal operator hindering access or discriminating against access seekers other than on cost-of-service grounds would remain, as would the junior miner preference and the obligation on the terminal operator to negotiate in good faith.

The Economic Regulation Authority would still regularly review the regime to ensure that it is effective. However, these reviews would be set reviews—that is, after the first three years, and then every five years—rather than set reviews with trigger events. Initiating the negotiate–arbitrate process would broadly involve commencing the facilitation of access through an advertising and notification period of up to three months to achieve the following steps. Firstly, the terminal operator provides an information package on the capacity and services available at Utah Point and the terms and conditions on which an access agreement will be executed. Secondly, the access seeker submits a formal access request by way of an application to the terminal operator outlining their requirements for access to the terminal operator's facility services, including satisfying any specified preconditions, such as proof of financial viability. Thirdly, the terminal operator provides the access seeker with an indicative proposal and the proposed terms and conditions on which the facility services required by the access seeker can be accommodated.

Following the initial process, the terminal operator and the access seeker would commence access negotiations in good faith, and aim to agree on the terms and conditions on which the terminal operator would provide facility services to the access seeker and the price of those services. The obligation not to discriminate would mean that the price would be the same as that for a comparable access seeker, and would differ only on the basis of legitimate cost-of-service grounds, taking into consideration additional negotiated terms such as take or pay or abandonment provisions. At any time during the negotiations, or if the parties are unable to reach an agreement, either party may invoke the dispute resolution process and request that any matter, including the terms and conditions of access and price, be determined by an independent arbitrator. If agreement is reached or an arbitration determination is made, it would govern the access seeker's terms and conditions of access to Utah Point.

Under a combined negotiate–arbitrate approach to both access and pricing, it is envisaged that a six-month maximum period of negotiations, followed by a six-month maximum period of binding arbitration, if required, would provide sufficient time to enable agreement on pricing terms, including a reasonable opportunity for dispute resolution. Taking into consideration the initial notification period of three months to access seekers, the whole post-access process should take no longer than 15 months to complete.

In the event of arbitration, the regulations would provide for principles that the arbitrator is to consider in making a decision. The principles include, first, the objects of the regime; second, the legitimate business interests of the terminal operator and the terminal operator's investment in the facility; third, the public interest, including the public interest in having competition in markets, whether or not in Australia; fourth, the interests of all persons who have rights to use the service; fifth, the direct costs of providing access to the service; sixth, the operational and technical requirements necessary for the safe and reliable operation of the facility; seventh, the economically efficient operation of the facility; and eighth, any specified pricing principles. The intent is to provide an overarching access and pricing regime to deliver equitable outcomes for the mutual benefit of both facility users and the terminal operator.

So far as assurance in that regard is concerned, I am informed, and accept, that the Treasurer will make an undertaking to that effect, and that will be implemented through the regulations. It is not considered practical for it to be incorporated into the bill. Given the time frame of the proposed lease and the potential for circumstances to evolve over that period, it is important to retain the ability to refine the regime to meet the changing needs of the lessee and users. In any event, there will be parliamentary scrutiny of the regulations, except, of course, that there may be only a disallowance of regulations. Nevertheless, there will be public scrutiny of the process because it will become available. Any arguments about the manner in which it is executed or the way in which the regulations are framed can also be the subject of political comment, which is the appropriate means of dealing with these sorts of things.

Recommendation 8 was that during the Committee of the Whole stage, the Treasurer amend clause 12 of the bill to limit the lease to 50 years, with no option to renew. What I say about recommendation 8 will also address recommendation 9, which deals with another proposed amendment to clause 12. The government does not support recommendation 8 as it would be contrary to the government's stated objectives for the asset sales program. Although the government envisages that a 50-year lease will be appropriate, bidders for the Utah Point bulk handling facility may offer terms for a lease of over 50 years that are beneficial to the state. In these circumstances, the government intends to retain the flexibility to assess the bid against the objectives of the asset sales program in order to determine whether a lease of up to 99 years, including all potential further interests,

renewals and options, is the best outcome for the state. In this regard, I refer to the Treasurer's statement in the other place on 24 February this year, in which he said —

> Someone could come to us and say that for tax purposes they would like a 51, 52 or 53-year lease—I do not know. We anticipate for this class of asset that a 50-year lease is appropriate, but it might be upwards of that. The government will disclose the length of the lease when it is tabled in Parliament. The intention now is around 50 years, but if it was slightly over that we would redo it and disclose it.

I understand that that statement appears on page 771 of *Hansard*. In any event, that deals with both recommendations 8 and 9.

Recommendation 10 seeks an explanation of how section 30(1)(a) of the Port Authorities Act 1999 will operate. The government notes the recommendation and advises that section 30(1)(a) of the Port Authorities Act will be protected and maintained in light of the potential for clause 18 of the bill to override obligations in that act in the following manner. First, the Pilbara Ports Authority will continue to have the function to facilitate trade through the port of Port Hedland in accordance with section 30(1)(a) of the Port Authorities Act. Second, similar to the current position with all other privately operated berths in the port of Port Hedland, the Pilbara Ports Authority will discharge its function under section 30(1)(a) of the Port Authorities Act for the whole of the port but will no longer have control of Utah Point. Third, the terminal operator will be subject to the requirements of the Pilbara Ports Authority in its role as the controller of the port, including through the Pilbara Ports Authority's control of vessel movements, and the terminal operator will also be subject to the access and pricing regime and the obligations outlined in the response to recommendation 3.

Recommendation 11 is, in essence, a recommendation to amend clause 20(3) of the bill. The government notes that the transfer order must be published in the *Government Gazette* and schedules to a transfer order must, under the bill, be made available for public inspection in accordance with clause 20(3). The Treasurer has already stated that all schedules to transfer orders will be published online via the Department of Treasury website. The government confirms that all schedules to transfer orders will be published online and at a location and within a time frame specified in the transfer order and thus will be available for review by members of the public and members of Parliament. Therefore, the government does not support recommendation 11 on the basis that the schedules will be published online.

Recommendation 12 concerns asking the Treasurer for an assurance regarding regulations. The government accepts recommendation 12 and notes that during the Committee of the Whole stage of the bill the Treasurer will provide an assurance that any regulations made pursuant to clause 34 of the bill will follow the usual processes for making regulations, including compliance with the requirements of section 42 of the Interpretation Act 1984 and the usual process for the making of regulations and be tabled in Parliament and subject to disallowance in the Council.

Recommendation 13 is a suggested amendment to clause 35 of the bill to remove the Henry VIII clause. The government accepts that clause 35 is a Henry VIII clause but it does not accept recommendation 13 to remove the clause from the bill for the following reasons. Firstly, the sale of Utah Point will be structured with the aggregation of the relevant assets in a subsidiary of the Pilbara Ports Authority. That subsidiary will then be sold to the private sector purchaser. This results in a transitional period during which assets that the Port Authorities Act envisages are held by the Pilbara Ports Authority will instead be held by a Pilbara Ports Authority subsidiary. The current laws do not address this situation as it was not envisaged at the time of drafting the relevant provisions. Clause 35 is necessary to allow those laws that apply to the Pilbara Ports Authority to apply to a Pilbara Ports Authority subsidiary during that transitional period. Clause 35 has no application after that transitional period as it is restricted in its application to entities within state or Pilbara Ports Authority control and, to that regard, I direct members' attention to the definitions of "disposer" and "acquirer" in clause 33 of the bill, which are limited to the state and the Pilbara Ports Authority entities. Secondly, it is unusual for transitional provisions such as clause 35 to be included when mergers or replacements of existing bodies are provided for by statute. Although these provisions are Henry VIII provisions, except on the basis that the impact of the provision is limited in time, they can be transitional in nature and in scope as it only applies to those written laws that apply to the original entity, in the case of this bill to the Pilbara Ports Authority. Also, they apply only to reorganisations within the state and not to private entities. Further, they resolve practical difficulties in structuring a reorganisation within the state when earlier written laws do not contemplate such reorganisations. Provisions similar to clause 35 have also been accepted on this basis in previous asset disposal legislation such as section 35 of the Perth Market (Disposal) Act 2015, section 36 of the Gas Corporation (Business Disposal) Act 1999 and section 52 and schedule 4 of the Dampier to Bunbury Pipeline Act 1997. The regulations made to implement clause 35 of the bill will also be subject to the process outlined in the response to recommendation 12. More generally, there is nothing offensive, in principle, to Henry VIII clauses if they are used in appropriate ways. Justice Gageler of the High Court has also recently recognised the utility and

acceptability of clauses such as clause 35. His Honour referred to the ability of Parliament to disallow regulations, the requirement for the tabling of regulations and the existence of parliamentary committees to consider regulations. During the case of ADCO Constructions Pty Ltd v Goudappel (2014) 254 CLR 1 at page 25, paragraph 61, Justice Gageler observed —

> That parliamentary oversight, together with the scope of judicial review of the exercise of the regulation-making power, diminishes the utility of the pejorative labelling of the empowering provisions as "Henry VIII clauses" ... The empowering provisions reflect not a return to the executive autocracy of a Tudor monarch but the striking of a legislated balance between flexibility and accountability in the working out of the detail of replacing one modern complex statutory scheme with another.

It is worth bearing that in mind. Quite properly, parliamentary committees, especially in this place, are leery of Henry VIII clauses and seek them out and quite properly identify and critique them. It is also quite apparent that there is a time and a place for their use and that they can be of utility in fulfilling Parliament's intention rather than simply be condemned as something that, as a matter of principle, is offensive on a four legs good, two legs bad basis. The government will maintain that clause for the reasons and objectives that have been mentioned.

Turning to recommendation 14, which concerns clause 38(2), seeking an amendment to the words "despite any law or rule to the contrary", the government does not accept that recommendation, as the words "despite any law or rule to the contrary" are an essential element of clause 38(2) of the bill in that it would have no substantive effect if those words were removed. Also, it is necessary to protect the interests of the state in key elements of the agreements that will be made with the terminal operator. The words apply only to a specific set of agreements and a specific set of clauses within those agreements, both as specified in clause 38. The clauses specified are those that the market has accepted in port sales and will apply to their terms regardless of contrary laws or rules. Clause 38 protects the interests of the state and the Pilbara Ports Authority, including rights of re-entry, which are essential given the nature of the asset, and rights to payment, which are required given the likely structure of the transaction payments—for example, a large up-front payment. The prior port sales around Australia have established a precedent that involves these up-front payments, essential rights of re-entry and tightly controlled termination rights. The market has accepted those provisions and accepted that although there may be rights under contrary laws or rules that would not have an impact on such provisions, the counterparties will forgo those rights. In this regard, provisions similar to clause 38 of the bill have been determined to be appropriate for recent New South Wales, Northern Territory and Victorian port asset transactions. For example, I draw members' attention to section 31 of the New South Wales Ports Assets (Authorised Transactions) Act 2012, section 23 of the Northern Territory Port of Darwin Act 2015 and section 59 of the Victorian Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016. The relevant agreements for the terminal operator will also include a reference to clause 38 of the bill to ensure that all parties to the agreement are aware of the impact of clause 38 before choosing to enter into the relevant agreement.

Recommendation 15 seeks an explanation from the Treasurer regarding why all the paragraphs in clause 43(1) are necessary and the intent behind each. I propose to do that during the Committee of the Whole stage of the bill.

Recommendation 16 is that clause 43 be amended to ensure that compensation is payable if an existing right under statute or contract is displaced or breached. The government does not accept that, because clause 43 is necessary to protect the state from compensation claims related to the disposal process. It builds on clause 42, which has the potential to displace existing rights and obligations under existing agreements and under statute in accordance with finding 9 of the committee report, but it is a standard and necessary provision for asset disposal legislation in Western Australia, other states and the Northern Territory. For example, I refer to section 38 of the Perth Market (Disposal) Act 2015, section 24 of the Dampier to Bunbury Pipeline Act 1997, section 30 of the Gas Corporation (Business Disposal) Act 1999, section 19 of the Rail Freight System Act 2000, section 29(2) of the Port Assets (Authorised Transactions) Act 2012 of New South Wales, section 32 of the Port of Darwin Act 2015 of the Northern Territory and section 57(2) of the Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016 of Victoria. Clause 43 ensures that the state will not be liable to pay compensation to any person in circumstances such as the displacement of the rights referred to in clause 42, including a person's contractual rights to consent to any assignment of a part of the business of the Pilbara Ports Authority. Pursuant to clause 42, the Pilbara Ports Authority may choose not to obtain that consent and in doing so will not be in breach of that contractual provision. Under clause 43, if that person then claims compensation in relation to the impact of the bill or the Pilbara Ports Authority's actions on its contractual right, no compensation is payable by or on behalf of the state, as both those acts were because of the enactment or operation of the bill in connection with the disposal under the bill. Otherwise, when a person has contractual rights in relation to confidential information disclosed in a data room in accordance with clause 42, clauses 43(1)(a), (b) and (c) could all apply to those circumstances to ensure that the state is not liable to pay compensation. A further circumstance in which the state will not be

liable will be where there are any artificial arrangements that a person attempts to implement in the interim period between the bill coming into force and the sale to circumvent the application of clause 42, for example, by entering into a variation agreement that provides that compensation is payable for any impact on contractual rights by clause 42 of the bill. Another circumstance is in any government statements in relation to the enactment of the bill if a third party relies on the statement and ultimately suffers losses as a result of such reliance. Provisions similar to clause 43 of the bill have been determined to be appropriate for the recent New South Wales, Northern Territory and Victorian port sale transactions, as well as the Perth market disposal, for example, section 39 of the Perth Market (Disposal) Act 2015, section 30 of the Port Assets (Authorised Transactions) Act 2012 of New South Wales, section 31 of the Port of Darwin Act 2015 of the Northern Territory and section 58 of the Delivering Victorian Infrastructure (Port of Melbourne Lease Transaction) Act 2016.

The last of the recommendations, recommendation 17, is that the Treasurer ensures that the draft regulations be tabled in Parliament. The government accepts recommendation 17 and confirms in accordance with the statement of the Treasurer noted at paragraph 3.103 of the committee's report that the draft regulations in relation to the access and pricing regime pursuant to clause 46 will be tabled in Parliament.

Mention has been made of the difference between the Utah Point disposal legislation and the access and pricing regime elements in the Fremantle Port Assets (Disposal) Bill. Those are very different assets with vastly different types of numbers of users; therefore, different access and pricing regimes need to be applied. Utah Point now has a simpler negotiate–arbitrate regime for both access and price. Fremantle has a price monitoring model that the committee recommended should not apply for Utah. Prescribing detail of access and pricing regime for Utah Point regulations enables a future government to have the flexibility to quickly make changes if necessary to protect the interests of users.

I turn to benefits to junior miners. The discount of $2.50 a tonne for Utah Point iron ore users to June 2016 has extended to June 2017 for all users. There is a deferral of road haulage fees, a freeze on the escalation of Utah Point charges to 30 June 2017 and 50 per cent royalty relief for eligible junior miners for up to 12 months while the iron ore price is less than $A90 a tonne to be repaid by December 2017.

I turn to the Association of Mining and Exploration Companies letter and will talk about the lack of consultation. Consultation with AMEC and juniors both prior to and during the committee proceedings took place. They made their positions very clear and they were taken into account in drafting the amendment that will be before the house. Every recommendation of the committee report has been addressed, the majority of it being accepted, as I have outlined in my response. AMEC is wrong about the Australian Competition and Consumer Commission recommendations. Price monitoring has been changed to the negotiate–arbitrate model, applying a similar regime for access. The majority of the Standing Committee on Legislation recommended that an access and pricing regime not be included in the Pilbara Port Assets (Disposal) Bill. Under the amended regime, price will be directly negotiated with binding arbitration if agreement cannot be reached. This addresses the Association of Mining and Exploration Companies' concern of price limitation. Bidders will be required to base their prices on the access and pricing regime and its constraints. The proposed 50 per cent limit on capacity is an appropriate balance between protecting access for juniors while allowing others to take up capacity if no juniors are able to but only in those circumstances. The other consultation with AMEC has been dealt with in detail in Treasury's submission to the committee. The Treasurer met with AMEC and the junior miners six times between December 2014 and July 2015. They have been consulted also by Treasury and its advisers and they have met with the Minister for Transport. The committee heard evidence from AMEC and the juniors and received submissions but the committee made no findings or recommendations about the consultation. It is not discussed in the report despite noting that it was an issue raised by the opposition. The Treasurer also met with the chief executive officer of AMEC on 10 August 2016.

I think that addresses the major points raised during the second reading debate. I am sure further questions will be asked concerning the individual clauses of the bill should it be read a second time and go into the Committee of the Whole House. Amendments need to be dealt with, including the government's proposed amendment. On that note, I commend the bill to the house.

Division

Question put and a division taken, the Acting President (Hon Liz Behjat) casting her vote with the ayes, with the following result —

Ayes (17)

Hon Martin Aldridge	Hon Peter Collier	Hon Mark Lewis	Hon Simon O'Brien
Hon Ken Baston	Hon Nick Goiran	Hon Rick Mazza	Hon Brian Ellis *(Teller)*
Hon Liz Behjat	Hon Dave Grills	Hon Robyn McSweeney	
Hon Jacqui Boydell	Hon Nigel Hallett	Hon Michael Mischin	
Hon Jim Chown	Hon Col Holt	Hon Helen Morton	

Noes (8)

Hon Alanna Clohesy	Hon Adele Farina	Hon Martin Pritchard	Hon Darren West
Hon Kate Doust	Hon Lynn MacLaren	Hon Sally Talbot	Hon Samantha Rowe *(Teller)*

Pairs

Hon Phil Edman	Hon Sue Ellery
Hon Alyssa Hayden	Hon Robin Chapple
Hon Peter Katsambanis	Hon Stephen Dawson
Hon Donna Faragher	Hon Amber-Jade Sanderson
Hon Paul Brown	Vacant seat

Question thus passed.

Bill read a second time.

Committee

The Chair of Committees (Hon Adele Farina) in the chair; Hon Michael Mischin (Attorney General) in charge of the bill.

Clause 1: Short title —

Hon SIMON O'BRIEN: Since I last addressed the house during the second reading debate on the Pilbara Port Assets (Disposal) Bill in March, I think it was, a great deal of water has gone under the bridge. The bill was discharged from the notice paper and referred to the Standing Committee on Legislation. We have the benefit of its thirty-third report, "Pilbara Port Assets (Disposal) Bill 2015", so, inevitably, I think members will find themselves relying on that report as we work our way through the detail of this bill. I thank the members who participated in that inquiry for providing this report. I have been reading it over some days now and it is tough going because some of the matters in it are complex. I say this by way of opening remarks at the clause 1 stage because there has been a great deal of interest in this bill and rightly so. I want to explain the sort of motivations that will drive me as I participate in the committee stage of this bill. In my brief contribution now, I will range over the various clauses that will be contemplated in the committee stage, perhaps with some reference to the legislation committee report and having regard for the very detailed second reading reply speech delivered just now by the minister in control of the bill.

One of the matters we might contemplate in the course of this examination is something I would like to share with members, perhaps not for the first time. I have concern about the future availability of this facility for those it was intended for. I have explained previously my involvement in that process going back to before the facility was built. I draw members' attention to chapter 4 of the committee report, which, having canvassed some very complicated matters in this useful report—mercifully, the effluxion of time will prevent us from having to deal with all that at this late hour, because it is very heavy going stuff—has the committee's conclusion. Even though there are sundry minority recommendations and so on in this report —

Hon Robyn McSweeney: A very good report.

Hon SIMON O'BRIEN: Let us not labour the point!

I understand from the way it is written that, despite disagreement on a number of matters, all the members of this inquiry agreed on these several findings. I think I am reading this correctly. Finding 1 on page 67 of the report states —

> **The Committee finds that the Utah Point Bulk Handling Facility's primary role is to facilitate and develop the junior mining industry in Western Australia and this role should continue, notwithstanding the divestment of the facility as proposed by the Pilbara Port Assets (Disposal) Bill 2015.**

Finding 2 states —

> **The Committee finds that there are currently insufficient protections for junior miners in the proposed access regime under the Pilbara Port Assets (Disposal) Bill 2015.**

With those two findings, the committee restated recommendation 6, which reads —

> **The Committee recommends that the Pilbara Port Assets (Disposal) Bill 2015 be amended to improve access to the Utah Point Bulk Handling Facility for junior miners at all times in the future.**

We have had the benefit of the government response just now about these recommendations in which the Attorney General drew appropriate attention and placed suitable emphasis on the fact that this was a matter of major interest, and he took some time to talk the chamber through that. At the outset, I want to say that I am glad that after all the complexities of this bill and this report, the bottom line is that the committee saw fit to draw those particular matters to our attention. I drew some satisfaction in that, because it took me right back to an earlier time. I think I am quoted. I have become a footnote in this report!

Hon Michael Mischin: It should be a head note.

Hon SIMON O'BRIEN: Thank you, Attorney General, but it is not a header; it is a footer. I am quoted in the report in some media statement that I had long forgotten from 2010, when I opened the Utah Point facility as the then Minister for Transport. I alluded to that in my earlier contribution back in March and because this committee's report highlighted those two findings and that recommendation, it behoves us to have particular regard to them as we work our way through the bill. The bill comprises over 40 clauses and each will need to receive greater or lesser scrutiny, having regard for the issues of the day that we want to deal with.

In addressing clause 1, I draw members' attention to a document that was received by most of us, and has been alluded to earlier. The document from the Association of Mining and Exploration Companies is headed "BRIEFING PAPER Pilbara Port Assets (Disposal) Bill 2015" and is dated 16 September 2016. I think there have been several references by members to all or part of this document in the course of the second reading debate. This document contemplates the future of this bill and raises some concerns by AMEC on behalf of its member junior miners. It is the view of the author of this document that three matters in the bill must be changed. Typically, people who have access to this port are members of AMEC, so there is a real reason that we should have regard for this document and make sure that in the course of our examination of the bill we stop and examine each of these matters. The first point contains assertions about charges and the recovery of capital invested. In the second point, and I am quoting here, the author states —

> The Bill plainly allows Majors to occupy 100% of the Port. When that occurs, the ***most*** Juniors could ever claw back (even in the unlikely event Juniors could match the terms and conditions (price, take or pay etc) accepted by the Majors) would be 50%.

It goes on to make some other comments. The third point states —

> Majors already have circa 500 million tonnes of capacity allocated each year in Port Hedland. A further 20Mtpa is insignificant to them but allowing access to UPBHF will spell the end of the junior mining industry in WA.

If we take all of that together, it means a couple of things. The first is that the author of this document, and the organisation and the membership that is represented through that, is concerned about this bill. I want to say at the outset, in considering the bill in detail, that the committee will have regard for each of those concerns and work through them to see if they can be assuaged.

The CHAIR: Members, the question is that clause 1 stand as printed.

Hon SIMON O'BRIEN: I thank members for their courtesy. I do not know what the time frame for consideration of this bill will be, but before we knock off tonight I want the people who have these very serious concerns to know that members here on all sides have received those concerns and are going to examine them. I first became aware of some of these matters last week and as a result of that I took some action on my own initiative to examine some of these things. I went to a friend of mine, whom I worked with before at Mineral Resource, Hon Gary Gray, and made some contact with the sector. I hosted Gary and Mr Simon Bennison, the CEO of AMEC, at my office in order to help drill down and try to work out their genuine concerns about this bill. Hopefully, I will be able to put the fruits of some of that contact and consultation to the benefit of the committee processes in due course. I will not go into any more of that now. I also sought, along with some of my colleagues on this side of the chamber, the assistance of the Attorney General in his representative capacity to examine the matters that have been raised by AMEC. As I said, we take those matters seriously. The Attorney General was great and organised a briefing at very short notice, which I and several other Liberal members attended this afternoon. That certainly assisted us in clarifying some of these issues, and we will get that on the record in due course as we work our way through the bill.

I think we can do something about those concerns. I notice several amendments have been placed on a supplementary notice paper—I think we are up to supplementary notice paper 3. Along with the addition of amendments standing in the name of Hon Lynn MacLaren, whether we adopt them all or not, they will assist as a checklist of the things that we need to examine. I thank Hon Lynn MacLaren for putting those matters on the supplementary notice paper. That just shows that some members know how to work behind the Chair and communicate to make sure that we are doing our job as a house of review so that bills achieve what they are meant to achieve and are not achieving things that are counterproductive.

I conclude my remarks on clause 1 by reminding members that bills can be disposed of in a number of ways as they go through the chamber. They can be disposed of at the second reading vote, but generally, in cases such as this current debate, it is normal for members such as me to agree to a second reading debate so that we can begin the committee stage, where we are now, to see if we have any real problems with the bill, and, if so, whether we can fix them, and if we cannot fix them, we will vote against the bill at the third reading stage. I want people who are observing this debate, including members in this house, to understand this: I identify very closely with those findings of the standing committee that relate to the actual purpose of Utah Point, and I want to make sure that those purposes are protected. That is very much to do with being to the advantage of the state or the benefit of the state, or whatever the expression is that was used in the second reading speech, and I want to make sure that that is protected. I have given some clear indications before that I am quite happy to oppose this bill if I think that those purposes that are meant to be enhanced, protected and encouraged are being poorly dealt with or poorly served by this bill. If I am not happy with how this bill emerges from the committee stage, I will be moving at the third reading to see it defeated. I reckon I could round up sufficient votes to make sure that it is. Hopefully that will not be necessary because there has been so much work done on this, and hopefully we can find a way forward. A bill can also be defeated by clause 1 not being agreed to in the Committee of the Whole. I am not suggesting that we do that. I think we do need to agree to clause 1 so that we can examine all the other bits as part of our normal processes. I wanted to get those, perhaps, reassurances out there for those who are following this debate—that members take their concerns seriously.

Hon LYNN MacLAREN: I just want to briefly touch on supplementary notice paper 3 in my contribution to the first clause and just draw members' attention to those aspects of the bill that I think do need to be specifically clarified. I noted that in the Attorney General's second reading reply, which I thank him for because he went specifically through the recommendations in the report, there were still some concerns about whether it was a 99-year lease or a 50-year lease. I do have amendments on the notice paper for that. I have not been entirely convinced thus far that the brief comments in the second reading reply addressed the concerns raised in the committee report, so I will ask for that to be addressed. I also have amendments that I intend to move regarding the percentage of usage that is reserved for the junior miners. A lot of information and a lot of detail was provided by the Attorney General. At some points it sounded like he was talking about at least 50 per cent and at other points it sounded, from here, like it was up to 50 per cent. I would like to reflect on the Attorney General's comments overnight and look at the *Hansard* to see exactly what it is that was agreed to by the Treasurer. Finally, I just want to say that even though the Attorney General said in that speech many things that addressed concerns, until that is in the legislation, it cannot be relied upon—it must be explicitly in the legislation. If the government agrees with it, it should be written in the legislation, which is why these amendments have been drafted in the way that they are. I really honour the second reading reply and the intent to try to address the concerns, but they are not addressed until it is in the legislation.

Progress reported and leave granted to sit again, on motion by Hon Michael Mischin (Attorney General).