FISH RESOURCES MANAGEMENT AMENDMENT (FEES) BILL 2010
FISH RESOURCES MANAGEMENT AMENDMENT (FEES) BILL (NO. 2) 2010

Cognate Debate — Motion

On motion by **Mr W.R. Marmion (Minister for Environment)**, resolved —

> That leave be granted for the Fish Resources Management Amendment (Fees) Bill 2010 and the Fish Resources Management Amendment (Fees) Bill (No. 2) 2010 to be dealt with cognately, and for the Fish Resources Management Amendment (Fees) Bill 2010 to be the principal bill.

Second Reading — Cognate Debate

Resumed from 24 November 2010.

MR M.P. MURRAY (Collie–Preston) [4.34 pm]: I rise to speak to the Fish Resources Management Amendment (Fees) Bill 2010 and the Fish Resources Management Amendment (Fees) Bill (No 2) 2010. The Fish Resources Management Act gives authority to the Department of Fisheries to raise money for commercial access to the state's fisheries for the purpose of managing the fishery. Significantly, the money can be used for almost any management strategy or activity within the fishery; it is not restricted to a particular fishery. For example, fees from rock lobster fishing can be used for shark fishery research. This arrangement was originally agreed to by industry and government through the Cole–House agreement. These fees contribute about half the Department of Fisheries' budget, or approximately $21 million—significant fees for any industry. Having said that, over the years various individuals and stakeholder bodies have queried whether the fees are allowable; that is, they may not have to pay these fees. The idea of these two bills is to make sure that any discrepancies are removed. Although the State Solicitor's Office has said that its view on the fee is quite different from industry's view, it has been seen fit to bring this bill into the house to make sure that all the discrepancies are removed and people have a clear view of the purpose of the bills and are aware that the fees are for more than just cost recovery. Some people are saying that the fees paid by, say, crayfishermen are going into other industries and, therefore, the fees collected are over and above cost recovery. Some parts of the industry are being supported to have research done at the cost of other parts of the industry. Some people see that as very unfair because the money is not targeted at what it was originally targeted at—that is, a fee to enter the industry. The stakeholder bodies have queried whether the fees are allowable as a licence fee, whether expenditure of the fees levied should be restricted to investment in individual fisheries and whether the fees are a tax and, therefore, beyond the scope of the act. Overall, the industry has now agreed to this bill, as has the opposition. The bills have been before Parliament for some time, and the shadow Minister for Fisheries in the upper house, who I am representing, and the Labor Party are of the view that the bills should be brought before the house and supported.

This is quite different from the fee management scheme that we have for the amateur fishers, which is seen as an outright tax on ordinary people. The difference here is quite significant and in this case the Labor Party certainly supports both bills. We do not intend to simply say, as in other areas, that it is just another tax. It is cost recovery and we are looking at how we can sustainably manage the fishing industry for all Western Australians, including within the new national park and marine park systems. There will be quite significant changes within the system and within the fisheries department. We need research and work done and we need the fees that come in to pay for that. As I said, $21 million is a quite significant amount. Only a couple of million dollars comes in from the WA families who pay their licensing fees, and a lot of that is used for enforcement and not so much for research and working out what areas should be made into marine parks. It is simply another tax on ordinary families. Something that really, really bothers me is when young kids do not have the ability, or their parents do not have the will, to pay a fee so that they can go fishing; they go fishing and are in breach of the law or they do not go fishing and they take up other pursuits that are not always healthy. We should be supporting young people to get into these outdoor pursuits. We should be supporting these young people to get off the streets and away from their computer games and to be out into the fresh air and participating in our great Australian pastimes of fishing, sports and those sorts of things. Why should we tax young people who want to fish? It is deplorable that we would have a system under which 16-year-olds will be taxed if they want to go fishing.

The opposition will support these bills. The money for research will be extremely valuable in enabling us to work out how we should run our fishing system in the future. The bills will also clarify the problem that we have had about whether these fees are legal.

MR D.A. TEMPLEMAN (Mandurah) [4.40 pm]: I too would like to make some comments on the two bills that are before us cognately, the Fish Resources Management Amendment (Fees) Bill 2010 and the Fish Resources Management Amendment (Fees) Bill (No. 2) 2010. I would also like to highlight a couple of issues that affect the fishing industry in my electorate. As the member for Collie–Preston has clearly outlined, the

opposition will support the passage of these two bills through this place. As is outlined in the second reading speech, there has been some debate about whether the fisheries fees that have been levied in this state over a period of time—some $21 million from the commercial fishing industry—are a tax or a fee. Obviously the State Solicitor has given advice about that matter. These bills will essentially clarify the capacity of the state to levy these fees. However, the fact that these bills have been described as clarifying bills may be seen as an acceptance by the government that there is a grey area that might be challengeable in a court. I would, therefore, be interested if the Minister for Environment could tell us in his response whether anyone in the fishing industry, or any other stakeholder, has ever challenged the status quo by taking, or threatening to take, legal action on this matter, and about whether the passage of these bills will avoid the potential for any such legal action to be taken in the future.

I am very pleased that the Minister for Environment is handling this bill. I say that because in the very near future a report from the Environmental Protection Authority on a proposed marina development at Point Grey will go across the minister's table. I have been following the debate on this proposed marina very closely. The proposed marina will require the dredging of a 2.5 kilometre-long channel, some 15 metres wide and three metres deep, from the Dawesville channel to Point Grey. As I have said publicly, and as I said in my submission to the EPA only a couple of weeks ago, it is my view, and the view of many in the community of Mandurah–Peel, that this will have a significant impact on the commercial and recreational fisheries in the Peel–Harvey system. That view is supported by not only scientific evidence, but also evidence from the holders of the 11 commercial fishing licences—not all of them active—in the Peel–Harvey estuary.

A recent report from the Department of Fisheries contains an interesting diagram that shows that the overwhelming number of pots that are dropped by the commercial fishers in the estuary, for crabs in particular, are put smack bang in the middle of where this proposed estuarine channel is to be created. Damien Bell, president of the Mandurah Licensed Professional Fishermen's Association, is a passionate opponent of the proposed marina at Point Grey. Scientific evidence shows that the Peel–Harvey estuary is now facing the greatest threat that it has ever faced. Urban development in the Peel–Harvey area is increasing the nutrient levels in the estuary and causing algal blooms, and this is having a detrimental effect on the water quality.

In the 24 years in which I have lived in the Peel–Mandurah area, I have never seen a report that has said that the condition of the Peel–Harvey estuary is improving. A report that was released recently by the Peel–Harvey Catchment Council, funded by Regional Development Australia, indicates clearly that on all the criteria, the water quality is deteriorating. This is against the background that two of the three rivers that feed into that system are already under great stress. In fact, a 2009 report describes the Serpentine River as being biologically dead. For anyone who lives in the Peel region, as I do, that is dynamite. That is absolutely appalling and concerning. Murray River has also been described as being under great strain and on all indicators as likely to deteriorate. The Harvey estuary further south, which feeds into the bottom part of the Peel–Harvey system, is also under stress. That has traditionally been a river that is affected very much by agriculture.

Another problem is the lack of longitudinal studies post the development of the Dawesville channel in 1993. It is clear from evidence that many of the studies into the health and wellbeing of the Peel–Harvey system, and into the health of the fishery, have been piecemeal. A major longitudinal study needs to be done. If this report on the Peel–Harvey system is coupled with the government's intention to see a significant proportion of the Perth metropolitan area's population housed in Peel, for me, and hopefully for the Minister for Environment; Water—this issue canvases both those portfolio areas—this is absolutely red flagging.

I am not opposed to sensible, sustainable development around the Peel–Harvey system, but when we have under great stress the major asset—the absolute jewel in the crown—that is our waterways system, which has historically been the major attractant for people to both live in and visit the region, it is simply madness that the

government would even consider at this time supporting a major change to the estuary; that is, a proposed channel from the Dawesville Channel to Point Grey. I do not have anything against the developer. To be honest with the house, the developer has some good examples of development in and around the Dawesville Cut. I do not have a gripe with the developer as such. My concern is essentially the major change that will be brought about by this proposed marina development.

Some people will say that we need to keep providing access for boats in the Peel–Harvey system. We know that people in the Peel region now have the highest percentage of boat ownership. However, this proposal is essentially aimed at accommodating those very large boats. That is why the draft of three metres is required, and that is why the proposed length of the channel is more than 2.5 kilometres, with a 50-metre width. It is not really to cater for the husband and wife pottering about in their tinnie; it is essentially to cater for the owners of those larger boats who will be attracted to moorings in a marina over at Point Grey, and perhaps some of the apartments might be attractive then also. I do not have a problem with the developer; I have a problem with the

development. I have a major problem with the development and, as a person who has now lived in my community for more than 23 years, I have to stand up when I think something is wrong. I hope the Minister for Environment will stand up when this proposal comes before him, because I know that his party will be lobbied very heavily by the proponent, as is its right. It will lobby the minister very heavily. But I hope he will look beyond that lobbying, and maybe even beyond any donations that might come to the Liberal Party in the lead-up to an election, or elections, and think about the views of the people who live in my electorate—the people who do not want to see that estuary go backwards, as major scientific reports now indicate it will. Not one criterion in the report that I read from the Peel–Harvey Catchment Council that was released earlier this year shows that there has been any improvement, whether it is algal blooms, nutrient levels, run-off or water quality. When we hear a damning statement that the Serpentine River is effectively biologically dead, we must also factor in the impact of such a proposal. It is not just the current government that is proposing it; Labor has also supported to varying degrees a proposal to build a development to cater for a population of 90 000 that will be plonked in the upper reaches of the Serpentine River at Keralup. That is still on the cards. The Minister for Environment is not the minister responsible for the decision, but he will have a responsibility because he is Minister for Water and Minister for Environment. If that proposal is progressed by the Minister for Housing and other relevant ministers, it will allow a development on the upper reaches of the Serpentine to cater for up to 90 000 people when we know that the Serpentine is a biologically dead river and that we have a major issue, and will have into the future, with mosquito-borne disease and mosquito-borne activity, and when we know that urban development is now the number one contributor to issues of water quality. Historically it has been agriculture, but we now know that it is in fact urban development that is having an impact.

I use this opportunity in debate on these bills to highlight that issue to the minister. If that channel and that marina are allowed to be built in the way that is proposed, the minister will not only have the community up in arms, but also have, and be responsible for, the ongoing deterioration of a system that will cost, if it collapses, governments now and into the future billions to fix. The minister was at the community cabinet meeting in Mandurah a month or two months ago when one member asked the Premier whether he was aware of some of the reports and the concerns. The Premier said, "We won't let the system collapse." The indicators are all there now that we face a major tipping point with the health and wellbeing of the system. That health and wellbeing of the Peel–Harvey system is linked directly to the sustainability of every household in Mandurah–Peel, because if we have a catastrophic collapse, all the families throughout Peel, no matter whether they live on a canal and their house is worth $1.5 million, $2.5 million or $3.5 million, or whether they live in the areas of my electorate such as Greenfields, Coodanup, Furnissdale, Barragup, Madora Bay, Riverside Gardens, central Mandurah, Dudley Park, Silver Sands, San Remo or Lakelands—no matter what suburbs they are—will be impacted. I am pleading with the minister. When that report comes before the minister—I know that the minister gets lots of reports, as I did when I was environment minister—I ask him to think about the things that I have said in this place this afternoon. I might need a slight extension.

[Member's time extended.]

The ACTING SPEAKER (Ms A.R. Mitchell): Member, I will grant that extension, but I suggest you stick closer to the bill.

Mr D.A. TEMPLEMAN: I am coming to that right now. Thank you, Madam Acting Speaker.

In regard to fisheries and the fees that the commercial fishers in Mandurah pay to the Department of Fisheries—they have been doing so under the current regime and will do so when this bill has been debated and is ultimately passed by Parliament—those fishers are telling the government very clearly that the change proposed by that development will impact on their livelihoods and will be detrimental. Therefore, when we debate bills such as this, and we recognise that we derive significant dollars from the commercial fishing industry, as the member for Collie–Preston well put it, the industry wants to be reassured that those dollars are spent in the right way. I think the member touched on a very important issue, and that is research. There is a major problem and a major issue with research into fisheries in Western Australia. Not enough longitudinal studies have been done. The crab fishery in Mandurah is a classic example. A major recreational catch study has been concluded only recently. By the way, I have seen a few leaked results. I will not tell the minister where I got them from, but I have seen them, and they support what I have just been saying about the marina. That report —

Mr W.R. Marmion interjected.

Mr D.A. TEMPLEMAN: My secret crabbing spot? I have a few of those, but I would not tell the minister about them. I do not want people from Perth coming down and catching more of our crabs!

The president of the Mandurah Licensed Professional Fisherman's Association and his members have always been accountable and said, "Let's get more research there so that we can ensure that the Peel–Harvey system

continues to provide sustainable commercial fishing." I want to see commercial fishing continue in the Peel–Harvey system. Traditionally, fantastic product has come out of the Peel–Harvey system. I want to see that continue as a sustainable commercial fishery. It is also, of course, a significant recreational fishery. The fees and charges or taxes—whatever we like to call them—that are derived, in this case from commercial fishers, need to be spent in ways that ensure that sustainability continues into the future so that my kids, grandkids and great-grandkids can enjoy it. I know it is a cliche, but it is real. I want to take my soon-to-be three boys and a girl fishing. My dad took me fishing. A lot of people want to continue to do that in their own family context. But we must make sure that our resource is sustainable based on good, factual science. The factual science I am telling the minister about now is that the indicators of water quality, the pressures on fishing stocks in Peel–Harvey et cetera ain't good. In the 23-odd years I have been living in Mandurah, I have not seen a report that shows improvement. All I have seen, unfortunately, is a decline and deterioration.

That is the wake-up call. I hope the red flag has been waved in front of the minister's eyes. I am looking forward to the minister's response to the proposed marina at Point Grey and to any development proposed in and around the estuary and the upper reaches of the three significant rivers that feed it. If we ignore these signs, the impact will be measured in not only dramatic environmental catastrophe but also literally billions of dollars worth of claims and in the impact on the economic prosperity of my region and my city.

MS J.M. FREEMAN (Nollamara) [5.02 pm]: I too rise to speak on the Fish Resources Management Amendment (Fees) Bill 2010 and the Fish Resources Management Amendment (Fees) Bill (No. 2) 2010, particularly as a member of the Joint Standing Committee on Delegated Legislation from which these two bills have emanated. It is important for us to state at the outset that these are taxing bills. They are about establishing the capacity to tax. The delegated legislation committee was concerned not about the fact that the Department of Fisheries was funding organisations to undertake research into fisheries but that it was using fees imposed on licence holders to pay for it. It is something of an indictment on our community when something as important as the member for Mandurah outlined—research to ensure this limited but self-replenishing resource, which is what we want to see continue—is in such a parlous state that we must utilise the licence holders' fees, when they are really meant to pay just for access to the sites. Those fees reflect cost recovery for that access. They should not reflect policy aspects such as determining future conservation and future management of the fisheries. That should come from either consolidated revenue or a taxing system, as this bill seeks to do, and say to industry, "Well, if you want to take this resource, we need to tax you for it because it is a public resource, and with that goes the responsibility to pay for the public good of that resource."

I think it is important that I go through the report because I was somewhat dismayed when one of my colleagues stood and said that this bill arose due to concern from industry. It made me realise that the role of the delegated legislation committee in this bill may not be appreciated. As the "Overview of the Bill" in the explanatory memorandum indicates, these amendments were prepared as a result of the thirty-fifth report of the delegated legislation committee. Please understand that the thirty-fifth report did not seek a disallowance. The delegated legislation committee understood the importance of the development and better interest fund, which was being investigated. That investigation was about the broader nature of the management of our fisheries in terms of conservation and other aspects. In doing so, the committee said that it would provide an information report that outlines the committee's concerns that the department was doing something outside its legislative capacity to collect fees and seek cost recovery. It is interesting to note that when the report was tabled in the other house, the minister and the government of the day did not accept it; nevertheless, they undertook to address the issue; thus, the bills are before us. What is more interesting is that the explanatory memorandum states —

> While this view was not supported by the State Solicitor's Office, the Minister gave an undertaking to the Committee to amend the Act to clarify the scope of its fee setting powers.

It is somewhat concerning that a delegated legislation committee exists to which legal advice has been given, but for some reason in-government advice seems to take some sort of primacy. It is therefore extremely important that we look in some detail at why the report was prepared and what it says.

The committee was concerned about the use of the development and better interest fund. The report states —

> 1.11 In Western Australia, the public's common law right to fish has been restricted by the Act, of which the overarching object is to:
>
> *conserve, develop and share the fish resources of the State for the benefit of present and future generations.*

There is therefore no doubt that the department has a very important role in the conservation and development of our fish resources, but the management of the fishery should not necessarily have to be paid by licence access

fees. If the department chooses to do that through taxing people who access those resources, it should, properly, put that before Parliament. The report continues further —

> 1.14 Generally, people wishing to fish commercially in managed fisheries and interim managed fisheries must hold an access licence, known in the Act as a 'managed fishery licence' and an 'interim managed fishery permit', respectively.

The report states further —

> 1.20 Since 1995/1996, access licence fees for managed fisheries have been calculated according to the *Future Directions for Fisheries Management in Western Australia*, known commonly as the *Cole/House Agreement* …

The Cole–House agreement is what the member for Collie–Preston raised.

It goes on to state —

> 1.21 Under that agreement, the access licence fees consist of two components:
>
> - a cost recovery component; and
> - a contribution towards the Development and Better Interest Fund

It seems to me that at that point, the Department of Fisheries needed to seek a mechanism to do that, not just rely on the fact that there was some sort of agreement between itself and the Western Australian Fishing Industry Council. It needed to bring it before this house to give it the power to do that. Paragraph 1.24 refers to the two components of the access licence fee. It states —

- the costs directly incurred by the managed fishery, such as compliance monitoring costs, research costs, management costs and other service delivery costs; and
- indirect costs which are allocated to the relevant managed fishery and referred to as "*agency support costs*" in the Department's costing guidelines.

The department was saying that that was how it would pay for this contribution. The development and better interest fund contribution was described by the Cole–House agreement as a return from commercial fishers to the government, as representatives of the community, for application by the Minister for Fisheries to those items that are in the better interests of fisheries and fish and fish habitat management. Please be assured that the committee had no difficulty with the fact that that was a key interest and a key goal of the department. The issue was: where would the department get the funds to do that? It could not get those funds simply by suggesting that it could do so by way of a fee. That would mean that the government could impose fees to, for example, develop independent schools and to determine how they will operate. In that way, parents would find themselves paying costs for a service that is a policy position of government, when that issue should come to this place.

Paragraph 1.35 of the committee report gives examples of how the DBIF is applied. The committee understood that the DBIF went to WAFIC, Recfishwest and other organisations, such as the Conservation Council of Western Australia. Certainly, our position now is that the taxation capacity of government will continue and, in particular, the conservation element will be looked at, not just the management and development element. I note that proposed section 58(3)(b) states —

> an amount in connection with any purpose referred to in section 238(5) that is relevant to an authorisation;

Section 238(5) of the act specifies the purpose for which the minister may spend funds credited to the fisheries research and development account that is established under section 238(1) of the act. The explanatory memorandum states —

> The intent is to make it clear a fee for a managed fishery licence may include an amount for fisheries policy development, research, compliance and activities that support delivery of those services—but not an amount for the development of aquaculture because the development of aquaculture is not relevant to a managed fishery licence.

I understand all that and I will ask the minister to make it clear that it will include organisations such as the Conservation Council, not just WAFIC and Recfishwest, which look more to the development of commercial fishing. I understand that the Conservation Council was no longer funded because it was seen to not fit within those provisions of the act. That is of great concern to me.

Mr W.R. Marmion: What was the question?

Ms J.M. FREEMAN: Will that include organisations such as the Conservation Council of Western Australia?

Mr W.R. Marmion: Are you asking whether anything from fisheries under this bill will go to the Conservation Council?

Ms J.M. FREEMAN: The taxation that will come from this bill will go into those areas. It states in the explanatory memorandum —

> The intent is to make it clear a fee —

It is a taxation amount or levy —

> for a managed fishery licence may include an amount for fisheries policy development, research, compliance and activities that support delivery of those services—but not an amount for the development of aquaculture because the development of aquaculture is not relevant to a managed fishery licence.

The DBIF used to go to Recfishwest and WAFIC, so I would like to know whether the DBIF will also go towards organisations such as the Conservation Council or other organisations that deal with the conservation and development of fishing areas, not just the exploitation of those areas. I understand that in the past couple of years—I hope the member for Gosnells will take this argument further—the department's advice to the minister was that it was determined that, under section 238(5) of the act, the DBIF could no longer fund organisations that deal with the conservation of a fishing resource; it could fund only organisations that deal with the exploitation of a fishing resource. In effect, the government may now be limiting itself to raising money only for the development of the resource. That may ensure that there are greater fish stocks, but it certainly will not provide for an aquatic park. It concerns me that the critical element of ensuring that there is flexibility is not being addressed in this legislation. I note that the government gives itself flexibility in administering the legislation, and I will come to that in a moment.

At paragraph 2.4 of the report, the committee notes five or six points about the access licence fee for managed fisheries, but I will refer to three of them. The first point states —

- At least for major managed fisheries, the fees exceed cost recovery due to the inclusion of the DBIF component.
- The DBIF component is raised for general public purposes; that is, purposes which do not necessarily relate specifically to any of the managed fisheries.
- It is significant that the Department has clearly identified two components in the fees: one to defray the costs of the services provided by the Department to the licensees; and another to pay for any activities which have the general objective of promoting the "*better interest of fisheries, and fish and fish habitat management.*"

The reason I highlight this issue is that there is some argument, which is clearly perpetuated in the explanatory memorandum, that the committee's concerns were negligible or were, for want of a better word, frivolous. The explanatory memorandum essentially states that the State Solicitor's Office does not support it; the minister will appease the committee and introduce this legislation, but it is not a serious concern. It was a serious concern. It was seriously considered. It was clearly detailed in the committee's report. The report outlines why the committee came to the conclusion that the government was charging a tax that it did not have the authority to charge. Paragraph 2.6 states —

> In the Committee's preliminary view, the DBIF component appears to be a tax on commercial fishers who operate in managed fisheries (that is, the licensees) because it exhibits the following characteristics of a tax, as endorsed by the High Court:

The report goes on to outline why that was and highlights the particular areas of law that the committee relied on, such as the case of Air Caledonie International v Commonwealth in the High Court and the case of Harper v Minister for Sea Fisheries and Others, and I could go on. It is important to note again that this clearly was not done with the intention of undermining what is seen as a good purpose of the department in ensuring that the industry is managed well. It was an administrative breach of the department's capacity to do something even though it had made an agreement. That should serve as a caution to other departments that do similar things.

If a department collects fees that are not for the purpose of cost recovery for how the agency operates, but are to put in place policies that would have normally been funded through departmental budgets, and through general revenue funding, it is not a fair way of dealing with the public.

[Member's time extended.]

Ms J.M. FREEMAN: The government is not being honest with the public. Members of the public are neither paying a licence fee that covers the costs of the administration of licence fees to have access, in this case to a

fishing resource, nor paying for the operation of a government agency; they are paying for non-government organisations to contribute to the debate about managing fisheries. I have to say, coming from a union background, that many times when I was an official at UnionsWA many departments would want policy contributions from unions. I would have to say, "Well, that's fine, but are you going to put me on a board so that we get board fees to do this? How are you going to pay because, frankly, we're paid by members?" The determination was always, "We can't do that because that would be open to question because you're a union." However, it seems that if the organisation is Recfishwest or the Western Australian Fishing Industry Council, for some reason that is okay; it is allowable. That seems to be of some concern. The Joint Standing Committee on Delegated Legislation's thirty-fifth report also stated —

> The Committee was of the view that the DBIF component of access licence fees prescribed in the *Fish Resources Management Regulations 1995* is not a fee at law …

The report went on to list the reasons for that. The crux of the issue is whether a relevant relationship could be established between the value of the licence and the fee. The point at the heart of the committee's thirty-fifth report is that that relationship has to be a discernible relationship with the value of the privilege acquired by a licensee on payment of the fee—that is, access to the fishery and the services related to that access.

In pointing out all of this, it is interesting to note that, in relying on State Solicitor's Office advice, the government was not relying on SSO advice on the basis that it was saying, "Well, actually this was a fee"; it was relying on SSO advice by saying, "In actual fact it's a royalty." That SSO advice is in the letter appended to the report. At paragraph 33, it states —

> That expenditure is authorised by s. 238(5) of the Act, and the characterisation of the fee as a charge in the nature of a royalty or *profit a prendre* —

I do not even know what that is —

> is not affected by that expenditure.

Suddenly the committee is sitting there saying, "Great! Departments have open slather. Come in, you can say it is a royalty now. It has moved from fees that some poor consumer keeps having to stand at a front counter to pay and get everything stamped for access, to another way of revenue-raising for departments as we drag money out. Now we can raise the revenue as royalties as long as we have something that we can claim is part of a resource." I am sorry, but my understanding is that royalties are determined by royalty agreements and royalties are, as far as I can see, pretty much in the mining area. The High Court determination, such as in the Air Caledonie case, establishes that the relationship must be determinable; it must exist for an impost to be considered a fiat law. The DBIF used for the policy activities in the external organisations did not do that. At paragraph 2.11 of its thirty-fifth report, the committee outlines why it was not persuaded by the legal advice from the State Solicitor's Office. Basically, the SSO was saying that it does not matter how the fee is distributed; it only matters how the fee is collected. As long as a department has the right to collect a fee, it can collect as much as it wants and when it distributes that fee, if it does not distribute it to cover costs, that is not the issue. I note that point.

I want to make Parliament aware that we had a public hearing with Mr Robert Mitchell, Deputy State Solicitor, during the inquiry into managed fishery access licence fees, which was the next fee that was introduced subject to the DBIF fee. The department made an undertaking to change the legislation and to stop charging the DBIF fee and then instituted a managed fishery access licence fee, of which 0.75 per cent did not actually go to the licensee's access. Some 0.25 per cent of it was for the industry body—I think that was WAFIC or it could have been Recfishwest; I am not sure and it does not come to mind. Certainly, it is available in the transcript if people want to look at it. The Deputy State Solicitor said —

> … whether an impost is a tax or a duty of excise often is a difficult question of constitutional law on which reasonable legal minds can differ.

He referred to a case in the Australian Capital Territory relating to water access fees. I have had the opportunity to look at that case, which seems to me to be very much about the whole of the water access fee, but in the case of this particular fee and the previous fee, it was actually separated, so there was the aspect of accessing the fishery and the aspect of the policy implications of developing the industry. That was not my reading of the particular case that the State Solicitor's Office referred to. The Deputy State Solicitor also said —

> The High Court, in Harper, said it was a royalty-like payment; so it was an analogy rather than precisely a royalty. But it was a payment for exclusive access to a limited public resource, with the amount charged reflecting or bearing some relationship to the benefit charged.

That may be the case, but it is still very clear, certainly in my mind, that that relationship needs to be discernible and it was not discernible. Subsequently, I do not think that the industry would derive any benefit from that

0.25 per cent that went, I think, to WAFIC, to an industry organisation, or from the 0.75 per cent industry contribution to the federal research development corporation, which is, again, an outside organisation. Therefore, it is my view that it is absolutely necessary that this piece of legislation has come before us. I take exception to the government stating in the explanatory memorandum that this was almost a concession that did not need to be made. That undermined the Joint Standing Committee on Delegated Legislation and its reports to this Parliament. Let me tell members: it needed to be made. The government was at risk and the delegated legislation committee showed that the government was at risk.

In closing, I simply want to say that I am concerned about one of the aspects of this change to the Fish Resources Management Act. The Fish Resources Management Amendment (Fees) Bill (No. 2) 2010 provides the right to tax—it is taxing legislation. The Fish Resources Management Amendment (Fees) Bill states what the government will do when it gets the money. I note that the explanatory memorandum for the Fish Resources Management Amendment (Fees) Bill 2010 states —

> Clause 4 inserts a new section 58(3) to make it clear that a fee prescribed under section 58(2)(m) may include one or more of the following:
>
> …
>
> (c) an amount in respect of the costs of administering the Act.

That opens the floodgates for the department to full cost recovery, and I am a bit worried. The minister needs to be very clear to this Parliament that the government will not use this fee like it uses the waste avoidance and resource recovery levy—that is, to fund the department and the department's operations. Let us be clear: this legislation is before us because the government wants to develop conservation and the fishing industry; that is what the government needs to be able to tax for. That is what the government should restrict itself to; it should not allow itself carte blanche as provided for in proposed section 58(3)(c). I thank the minister.

MR A.J. WADDELL (Forrestfield) [5.29 pm]: I rise to contribute to the debate on the Fish Resources Management Amendment (Fees) Bill 2010 and the Fish Resources Management Amendment (Fees) Bill (No. 2) 2010. As a member of the Joint Standing Committee on Delegated Legislation, fish resources is something that I have become quite familiar with over the past 12 months. If I was Tony Abbott, I would probably characterise these bills not as an attempt to save fisheries or an attempt to deal with some confusion, but as a big fat fish tax, because that is what it is. The government has taken on board a problem that has been identified by a committee, which has been well outlined by the member for Nollamara. The committee in its discussions came to the view that the development and better interest fund component of these fees went well above cost recovery; I do not think there can be any denying that. Likewise, I do not think we will get a debate on whether the objectives behind the development and better interest fund were honourable or admirable; they certainly were. I doubt there would be a person in this place who would oppose the idea of protecting fisheries for future generations.

It would have seemed quite reasonable for the government to come into the house with a bill and said, "We have a great idea. We would like to protect the futures of our fisheries and we would therefore like to institute a fund that allows us to have a DBIF component". That would have been entirely appropriate and lawful. Instead, the government has come in with a big fat fish tax. With this tax the government has opened the door to take whatever it likes. There are no limits on the catch with this particular deal. The government can tax the industry until it literally bleeds from the eyes.

I doubt the minister will stand and say that is the government's intention; I am certain the minister will stand and say that really this is just an attempt to clarify some confusion that existed. The minister will say that the objectives of these charges, the DBIF component, are admirable and something that should be supported. As I said, no-one is going to argue with that. What we will argue is that this opens the door for future governments to take an opportunity to fill a gap, and to increase their revenue take at the expense of the fishing industry with the argument stating, "We need to improve the fisheries. We need to look at a user-pays model". Perhaps, as was suggested with the waste management bill, it will just simply slap it on and deal with it.

Last year we were arguing in this place about fishing licences. An argument that was put forward noted that it was about protecting the fisheries of Western Australia when in fact the contrary argument was that it was really just a revenue-raising activity, which is how I would have characterised the licence fees for recreational fishing. I suspect it is how I will characterise future tax increases.

A distinction needs to be drawn between a tax and a fee. Most people do not appreciate the distinction. Most people assume that governments charge whatever governments do, and we attempt to keep our costs down. I do not think anyone accuses us of running efficient operations, but certainly the rhetoric that comes from government is that we try to run efficient operations. One of the ways that we run efficient operations is by

holding to account the bureaucracies that maintain the various government instrumentalities. We hold them to account by various processes. We have auditors look at the books to see what they are doing and write reports, which we find very useful. We have the opportunity, which we will have in a few weeks during the estimates process, to grill certain departments on how they are spending the community's money and whether that is justified and how it is going. Unfortunately, the nature of our estimates process is such that often we get only a few minutes to talk to a particular department. One of the ways by which this Parliament holds these departments to account is of course through defining what departments can collect. When departments are allowed to collect fees under a piece of legislation, those fees are very much restricted to the actual costs of doing the function they are required to do under the act. Therefore, the standing committee on delegated legislation, a joint committee of both houses, regularly conducts reviews into how those fees are put together. I would not say that we go through with a forensic, fine toothcomb, but we certainly try to look at whether departments have finally achieved the nirvana of government of complete cost recovery—whereby the fees match exactly what it costs departments to provide the service—or whether they are under or over-recovering. It is that process that often inspires departments maybe to look a little closer at their internal processes to see whether they are running efficiently and that they are not cross-subsidising one element of their operation with another element.

I think that is a good thing that we do. Unfortunately, whenever we are faced with the prospect of a regulation change under an act which is a taxing act, we simply say, "Whatever. Que sera, sera. What will be, will be." We have no opportunity to really review what those fees are, how they are set, how efficient that department's operations are, and whether one is cross-subsidising another. That is simply because they have the authorisation from this place to charge whatever they want. They can stand at the side of the road and tax anyone who comes past whatever fee they would like.

The question then becomes: how do we hold those departments that have that power to account? How do we ensure that they are in fact collecting only that which they need? It is probably very similar to the way we would like to manage our fisheries. We would like to take only what we need to take to maintain a sustainable society; we tax only to the extent that we need to tax. I believe that those opposite would often call themselves the party of small government, the party of efficient government. If so, I challenge them to consider this legislation in light of that and actually ask themselves: is this the way forward for efficient government, or would it be far more efficient to actually define to the department what it can take? Instead, we are saying, "Do not worry about being efficient in the future. You can just add another half a per cent here, and we will cover the loss and the fisheries industry will meet the gap"—or even worse.

I believe the member for Nollamara made reference to the powers that exist in the Fish Resources Management Act 1994. Section 238(5) is the relevant section of the act. These amending bills provide for the taxes against any expenditure according to what falls within that subsection. I draw to the house's attention a couple of things. Firstly, section 238(5)(i) of the act states "to conduct enforcement, operations and compliance programmes". That seems reasonable, does it not?

Last year I was visiting the north west town of Exmouth. I took my family with me. I met with Kailis up there, which is a big fisher in the area. We had a really lovely time in Exmouth. On the way back down to Perth I was greeted with flashing blue lights and I was waved into an alcove with about 30 other cars. I thought it was a random breath testing spot. It was not a random breath testing spot; it was a random fishery testing spot. In fact, it was fisheries officers who stopped me, and it was fisheries officers who then insisted that they search my car. To be honest, I was quite put out by the process as I am not a fisherperson. I clearly had no fishing equipment on my car. It seemed quite unusual that this group had the power to do that. From some casual inquiries I made I found that in fact they did have the power to make these random searches. Members should keep that fact in mind when they are passing a bill that provides taxing powers to a department that then enables it to spend money to conduct enforcement operations and compliance programs. Essentially we are saying it can take as much money as it likes to do that task. How many random fishery testing spots will we have? I note that fishery testing spots were carried out in conjunction with police. I suspect that again it was an attempt by two agencies to work together to achieve a mutual goal; maybe to exploit the powers that the other had to allow them to look inside my vehicle where they may not otherwise have cause to.

Mr W.R. Marmion: Can you explain what you mean by "pay as much money as you like"?

Mr A.J. WADDELL: They can set their fees at whatever they would like to set their fees at.

Mr W.R. Marmion: Who is "they"?

Mr A.J. WADDELL: The Department of Fisheries can set its fees at whatever it likes to set its fees at.

Ms J.M. Freeman: It is a tax.

Mr A.J. WADDELL: It is not a fee anymore, it is a tax. The purpose of the bill is to eliminate any doubt. The explanatory memorandum alludes to the fact there was some confusion but that that confusion really was not that great. This was really just an attempt to clear up that confusion. It says it is important to note that the State Solicitor's Office remains firmly of the view that those fees as they were then set were not taxes and were not authorised by the act. Then of course we ask ourselves: if there is such firm advice from the State Solicitor's Office that the bill before us today is entirely unnecessary, why are we wasting time in this place passing a bill to give these powers to the department to raise a tax in the future when the money will not be expended other than for what is authorised under the existing act? I am not a conspiracy theorist but I suggest that either the State Solicitor's advice is not quite as firm as suggested in this or there are expansionary plans to move way beyond what could be justified right now.

Section 238(5)(j) of the Fish Resources Management Act allows the department to spend money —

> to purchase capital assets required for the management or administration of fisheries, fish processing or aquaculture;

I really cannot think of a single thing I could not buy under that heading! I could literally buy any vessel. I could buy a helicopter if I wanted, or a fish processing plant. I could pretty much buy anything I wanted. Again, open slather. Paragraph (l) reads —

> to assist the fishing industry or any body (whether incorporated or not) whose objects include the provision of assistance to, or the promotion of, the fishing industry;

Tourism Council WA from time to time promotes fishing. It is often advertised that there is some great fishing in our north west. I suspect that a fishing tax can now pay for the tourism industry. I am sure that any organisation could start putting into its "objects" they wish to support the fishing industry and receive a handout. Please do not get me wrong, I am not suggesting that the minister is about to do that, I am suggesting we always need to have a mind to what we pass in this place. Although we may all be upstanding and admirable people today, we cannot say with certainty that whoever comes after us will necessarily share those same limitations we are bound by today. They will simply look at the letter of the law. The letter of the law will say, "This is a big fat fish tax and we can charge what we want." Again, if I was channelling the federal opposition leader, Mr Abbott, I would probably be pondering what impact this would have on family budgets. In fact I would possibly look at what impact a fish tax could have on a birthday cake, but the idea of a fish-flavoured birthday cake does not really impress me!

Mr D.A. Templeman: It depends whether it has icing.

Mr A.J. WADDELL: That is true, yes.

When we look at how everything is connected, the inference could be drawn at some point in time—much like a carbon tax and much like a development and better interest fund tax—that it is created for the betterment of our society and for the better management of our resources. Again they are admirable prospects but they have consequences. What are the consequences? What costings have we put into the big fat fish tax? What impact will it have on the bottom line of Western Australians? Will the good Catholics amongst us be worried about Lent?

Mr F.A. Alban: Good Friday.

Mr A.J. WADDELL: Sorry, I am an atheist; I do not know. Will they be worried about the big fat fish tax? Will they take to the streets panicking about it?

If we flip over to "Recreational Fishing Account" at section 239(4)(g), it states —

> to assist any body (whether incorporated or not) whose objects include the promotion of recreational fishing;

That takes us even further down the path. I should imagine my local fish and tackle shop—I believe there is someone here associated with one of them!—would take advantage of that. The government could potentially be providing assistance or subsidies to their operations. I draw a broad arrow on these things simply because I ask: is it this place's intention to give broad powers to departments? Departments will certainly take advantage of broader powers. They will only be as efficient as we force them to be. If we open the doors, departments will take advantage. This is a problem the delegated legislation committee has faced. We see ourselves as trying to keep fees and charges down to a reasonable level, to keep it to exactly what is necessary and try to stop lazy departments putting through unjustified increases. The consumer price index increase is 2.8 per cent this year. A department may go ahead with a CPI increase without looking at what efficiencies it has delivered, how it could be better run and what dividend it could be paying back to the citizens of WA. Departments will take the lazy path forward; namely, "It's easy. We'll just go with the CPI. We'll stay at 100 per cent cost recovery and that

saves us having to make the difficult decisions." We give them a taxing act and simply say, "Good luck, guys. You never have to make a difficult decision again", until such time as somebody marches in front of Parliament screaming "Save us from this oppressive tax". They can do what they like because they will have no scrutiny. I shall leave it on those remarks. I shall commend the big fat fish tax to the house.

MR B.S. WYATT (Victoria Park) [5.47 pm]: I too rise to make a brief contribution to the Fish Resources Management Amendment (Fees) Bill 2010 and the Fish Resources Management Amendment (Fees) Bill (No. 2) 2010. Obviously the members for Forrestfield and Nollamara have outlined in detail the opposition's position on this legislation. No doubt the member for Gosnells will also articulate the opposition's position very clearly. The Labor Party obviously supports the bill. We have some concerns, as the member for Forrestfield has outlined in the vocabulary of the federal Leader of the Opposition. The government certainly does not have a very good record on fees. As the member for Nollamara pointed out, the Department of Environment may now be facing the reality of a huge hole in its budget as the court considers the validity of some other potentially failed fees in respect of the waste levy. The government may indeed learn from what our judicial brethren down the road have to say about this government's performance when it comes to the administration of fees and charges. It is indeed becoming an area of obsession for the Barnett government as it struggles to find revenue to plug ever-increasing holes in its debt ceiling that seems to be a little bit like the public sector cap; that is, it is ever increasing off into the stratosphere.

As the member for Nollamara pointed out, when we talk about fishing we are always very concerned about conservation. I, like many, if not all members here, have been a keen fisherman for most of my life. I have fished all over Western Australia and Australia. The concern about depleted fish stocks is something we are all concerned about. One of those stocks is of course tuna, as is playing out on an international scale. One of the things that I do in my electorate every year is hold a tuna drive. I have made a commitment to Foodbank that in the lead-up to Christmas I will provide it with 1 000 tins of tuna. Those tins of tuna are put into hampers that are distributed by non-government organisations to needy families in the community. Although I started by providing Foodbank with tins of tuna, it soon become apparent to me, because members of my electorate were telling me, that tuna is perhaps not the best fish to encourage people to deliver to my house, so I had to change that to other kinds of tinned fish.

Mr D.A. Templeman: Tinned mullet!

Mr B.S. WYATT: A piece of mullet from the Swan, not far from my electorate! I am not sure whether anyone puts mullet in a tin!

Mr D.A. Templeman: So long as it has some brine on it, it will be all right.

Mr B.S. WYATT: I do not know whether Foodbank would appreciate brined mullet in a tin, member for Mandurah! I have not yet seen mullet in a tin, and I hope I do not. So I have since changed that, and now tinned everything comes in, and I provide that to Foodbank. I know that the member for Geraldton is a very keen fan of Foodbank, as I am. The headquarters of Foodbank are in Welshpool, in my electorate.

Mr I.C. Blayney: I went there this morning.

Mr B.S. WYATT: I am very pleased to hear that, and I will come back to that in just a minute. Foodbank of Western Australia was set up by Doug Paling. Doug has now retired from Foodbank, but he is an incredible person, and he has done an outstanding job. In Geraldton, Pat Hodges—the forceful Pat Hodges, as the member for Geraldton would know—is doing an incredible job distributing food far and wide. I think food from Geraldton might even be going out as far as the Kimberley.

Mr I.C. Blayney: She sends it out as far as Newman.

Mr B.S. WYATT: I think it might even get up into the Pilbara; I am not 100 per cent sure. I know that the Leader of the National Party likes Foodbank as well.

Foodbank has been going through an incredible process to receive funding that has been committed by this government over an extended period. I have a copy of a letter which the member for Geraldton sent to Pat Hodges, along with a letter which he forwarded from Hon Brendon Grylls, Minister for Regional Development. This government, through the Premier, Colin Barnett, and through royalties for regions, committed to provide Foodbank with $780 000 from the Department of Education, and $780 000 from royalties for regions, over a four-year period to extend the breakfast in schools program. I think every member of Parliament would agree that that is an outstanding program. That program is broken down into three different areas. Foodbank calls it "Healthy Food For All". There is a school breakfast, there is a nutritional program called Food Sensations, and there is a physical activity program. That is all packaged up into the school breakfast program that the government has committed to. Certainly, the letter from the Minister for Regional Development to the member

for Geraldton in June 2010 confirmed that an amount of $1.5 million would be going to Foodbank. We are now in the dying days of the 2010–11 financial year and Foodbank is yet to receive one cent of that money. A memorandum of understanding is floating between the offices of the Minister for Education and the Minister for Regional Development to frantically try to bring this money into Foodbank for the first six months of 2011. Foodbank has been delivering the program. The member for Geraldton knows that, because he was at Foodbank this morning, as he just said. In the last budget speech from the Premier, which was delivered less than one year ago, the Premier made great political capital out of the fact that this money has been committed to Foodbank. However, that money has not yet arrived.

The ACTING SPEAKER (Mr P.B. Watson): Member for Victoria Park!

Mr B.S. WYATT: The reason this is important, Mr Acting Speaker, is that this legislation is all about fish conservation. I am talking about fish conservation and the importance of fish in our diet. If I may take advantage of your generosity and go off the topic for just one more moment, Mr Acting Speaker—I am sure the Minister for Environment representing the Minister for Fisheries will not mind—the government then had the audacity in February this year to go to Peel for a community cabinet meeting and re-announce that it would be giving this money to Foodbank to enable it to give kids across Western Australia access to the school breakfast program. The media statement that the government put out at the time has three heads at the top, like a deck of cards—the Premier, the Minister for Education and the Minister for Regional Development—and three paragraphs about how the government is doing such a wonderful job in giving this money to Foodbank. The problem is that not one cent of that money has hit Foodbank. The reality is that if the money that was promised to Foodbank under that MOU for the first six months of this year does not hit Foodbank this month, the program will begin to shut down. The member for Geraldton needs to understand that and chase this up.

Mr I.C. Blayney: I spent an hour with them this morning, and they did not mention it once.

Mr B.S. WYATT: It is interesting that the member for Geraldton spent an hour with them and they did not raise it with him. That would suggest to me that his effectiveness as a local member leaves a lot to be desired.

The ACTING SPEAKER: Member for Victoria Park!

Mr B.S. WYATT: When I look at the letter that the member for Geraldton sent to Pat Hodges, it is no wonder they are not raising it with him!

The ACTING SPEAKER: Members! I call the member for Victoria Park and the member for Geraldton to order. The member for Victoria Park will get back to the bills before the house. I think I have given him enough leniency.

Mr B.S. WYATT: Thank you, Mr Acting Speaker; I will. I conclude by making the point that every member of this Parliament knows that this is an important program in regional Western Australia. The member for Geraldton needs to get onto the Minister for Regional Development and the Minister for Education. They are the ones who are refusing to accept responsibility. Chase it up, member for Geraldton, and get this program delivered! The final sentence in the letter from the member for Geraldton to Ms Hodges is, "Minister Grylls has informed me that this program is to be funded into regional areas for the next two years." That letter is dated 21 June 2010. Not one cent of that money has hit Foodbank. Chase this issue up, member for Geraldton, and get these ministers onto the job!

Mr Acting Speaker, I will come back to the legislation at hand.

The ACTING SPEAKER: That would be nice!

Several members interjected.

The ACTING SPEAKER: Members!

Mr B.S. WYATT: As opposition members have pointed out, we will of course be supporting this legislation. We always have concerns when this government wants to use a big new tax to fund its outrageous spending and to fund interest payments on its debt. I simply make the point that when the government commits to provide programs in schools for the kids of Western Australia, the people of Western Australia expect the government to deliver. I expect the member for Geraldton to get onto these ministers and make sure this program is delivered.

MR C.J. TALLENTIRE (Gosnells) [5.58 pm]: I rise to make some brief comments on the Fish Resources Management Amendment (Fees) Bill 2010 and the Fish Resources Management Amendment (Fees) Bill (No. 2) 2010. The opposition supports this legislation. However, we seek clarification from the minister on some aspects of this legislation. It is appropriate that I begin by complimenting the Joint Standing Committee on Delegated

Legislation for the work it has done in examining this matter and in determining that the fees imposed are in fact a tax. It is for that reason that this legislation is before us. My main interest in speaking on these bills tonight is how the funds raised from this tax will be applied. In essence, we are talking about the management of our fisheries. I understand that in Western Australia there are some 35 commercial fisheries.

Sitting suspended from 6.00 to 7.00 pm

Mr C.J. TALLENTIRE: Before the dinner break, I was outlining some of the things that make this legislation before Parliament today so important. The collective value of the 35-odd commercial fisheries in Western Australia is $435 million. It is my understanding that in an ideal world each of these fisheries has something known as a management advisory council, which is a body set up to ensure that that fishery is looked after in the best possible way, to ensure that it is sustainably managed, or, to use the terminology applied in the fishing sector, that it is managed according to an ecosystem-based fisheries management system. The Western Australian Department of Fisheries widely applies not only the theory and philosophy of EBFM, but also its practical aspects. I applaud the efforts of those who work in the Department of Fisheries for the application of an ecosystem-based fisheries management system. It is very important to ensure that management advisory councils are well resourced and that they include the diversity of people required to make meaningful contributions on how a particular fishery is managed. It is quite obvious that if we have people on a management advisory council who are only interested in the profit maximisation of a particular fishery, we could run into problems; we could find that we push beyond the sustainable management of fish stocks and damage the ecosystem that supports the fishery. Therefore, it is in everyone's interest to ensure that a management advisory council includes people who are experts in the area of fisheries, who are passionate about a particular fishery and who have knowledge of that fishery.

To give an example, there is a trawl fishery in the Exmouth Gulf area and the majority of people who work there have a vested pecuniary interest in the management of that fishery. They are on that management advisory council as part of their paid job. That is fair enough; they want to be involved in the management of that fishery. However, there also need to be people on that management advisory council who can bring other perspectives to it. They might represent the recreational fishing sector, recognising that there could be an interface between the activities of the trawl fishery and recreational fishers. We need people on management advisory councils who are there purely because they like diving in that area and are passionate about what they see when they go diving—they need to be on the council to represent their views. A trawl fishery is complex; it is a technical area and technical expertise is needed. People cannot just rock up to a meeting and expect to be able to breeze through it, make points and convince other members of the council who have vested interests. People need to be well informed. That is why we need to ensure that funds are available to enable people to participate in management advisory councils and to enable them to do the necessary background research and preparation, and make meaningful contributions.

To give another example, one of our most profitable Western Australian fisheries, the Western Australian rock lobster fishery, has a management advisory council. It had a problem with a bycatch species, namely sea lions. Sea lion pups were getting stuck in the craypots while trying to get the bait or the rock lobsters in the craypots. Therefore, there was a serious problem with the bycatch. The rock lobster industry said that not many sea lions drowned each year by getting stuck in pots, but nevertheless it was damaging the reputation of the industry, which wants to portray itself in the international market as very sustainable—it is a great marketing advantage for it to be able to do so. Solving the problem of the drowning sea lions was simple. A stick—somewhat grandly called a sea lion excluder device—was put in the middle of the craypots to stop the sea lion pups getting into them. It was very simple to do and does not cause a problem with the handling of the craypots when they are pulled up as the boats drift along. Interested players will push to bring about the implementation of those sorts of ideas; people will see that it is in their marketing interest to be able to implement them, but there also need to be people technically proficient in that particular industry looking at it from a conservationist's perspective. That is my point about how we apply the funds raised by this new 5.75 per cent tax through the system enabled by the legislation we are discussing today.

There are many other examples. As I said, there are at least 35 commercial fisheries in Western Australia and I think that all of them would claim to have the sustainability of their industry at heart and that they comply with ecosystem-based fisheries management. In some of those fisheries, however, we would really have to question how things occur. Being on a management advisory council and trying to put to fishers in financial difficulty a conservation position more concerned about the environmental impacts of the industry on the fishery than its profitability would be a very tough job. A person would need to be very competent in their knowledge of that sector; they would perhaps be an industry person. They would ideally be a person who has come out of the industry and approached their role on the management council with a strong conservation ethic. They would

probably have to trade off a paid job somewhere else with their time on the management advisory council. That is why it is so important that there are people in the sector who are paid to participate in such committees.

I am concerned about some of the areas the managed fishery licence fee may be applied to. The outline in the legislation says that it is for fisheries policy development—that is very good—for research in general, for compliance, and for activities that support those services. By that we can read administrative matters. Of course, any work of this sort requires an administrative effort to ensure that any management advisory council functions in an efficient way. Therefore, I am concerned, and I look to the minister for reassurance that he would enable the sort of contribution that would allow our Western Australian rock lobster fishery to be seen as a sustainably managed world-class fishery that welcomes contributions to its advisory council from non-government organisations with conservation interests. In order to have those sorts of people on board, the minister would need to say that some of the funds raised through this scheme or this tax, would be applied to helping those people from the conservation sector—knowledgeable people—make their contributions on a management advisory council. It is critical to the successful marketing of these fisheries that we have people with the necessary expertise. There may be an argument that this is an environmental matter so perhaps the environmental agencies should make the contribution and provide the necessary advice, but that is not really how a management advisory council works. The credibility of the management advisory council hangs on including people not just from the Department of Fisheries, but also industry. It needs to include people from the community sector, but people who are well informed in these matters and who have the time to put into preparing for meetings and to research and discuss points with other industry players. It requires people who have the competence and the time to put into making sure that their contributions are meaningful.

It is important that the minister outlines tonight that this money can be applied in a way that will encompass the valuable work previously funded through the development and better interest fund. I had direct experience with that when I was director of the Conservation Council of Western Australia. A succession of ministers realised the benefit of having a sustainable fisheries liaison officer, based at the Conservation Council, who was able to make contributions to these various MACs, who could put a solid argument together and who worked collaboratively with industry groups. In fact, one of the important outcomes from such a program was what could be called social capital, which was built up between conservation interests and commercial fishing interests. It was quite impressive to see how that built up over time. It is important that we make sure that that continues.

We do not want to fall into the situation that has occurred in some long-line fisheries around the world. There have been television reports of albatrosses being caught in these fisheries because long-line fishing is done in such a way that albatrosses can see the bit of bait on the hook, dive down to get it and get caught on the hook. That is very simple to avoid; the fishers just have to make sure that the hooks are a little deeper in the water, beyond the dive zone of the bird. It is simple to avoid, but if that is not done, that fishery has a serious impact on the populations of certain albatross species. The people who work with long-line fishers—the people who are involved in an informal policing role but also, and more importantly, in an educational role—invariably come from the NGO sector. That job requires certain social skills that a lot of people would struggle with. Those people have to have knowledge of the industry, a commitment to the conservation outcome and a way of communicating with the people who are operating the long-line fishery to make sure that they learn how they can improve the operation of their fishery.

From my time at the Conservation Council I know that many people in the Department of Fisheries became champions of the idea of having sustainable fisheries liaison officers. People like Colin Chalmers, who passed away a couple of years ago, made an excellent contribution to the sustainability of our fisheries in Western Australia. Colin could see the benefit in making sure that people from the conservation sector were involved in fisheries management. There are many others in the Department of Fisheries as well. As the member for Nollamara outlined in her speech, those people from the conservation sector were also in a position to make contributions to policy development because they were resourced to do so. That is where I come back to my point that we must make sure some of this money is available to other sectors, such as conservation and tourism, so that they can make valuable contributions to the management of these fisheries.

I think we also need to clarify the extent of the fee-setting power that will come through this act. It is outlined at the moment as 5.75 per cent of the gross value of the fishery, but there could be cases when that is not going to be enough. I would like to know what power there is for that fee to be raised.

I want to look a little further into this issue and to communicate the state of things to the house. It is easy for us to want to believe that Western Australian fisheries are brilliantly managed, that we do not have any problems and that everything is going perfectly, but there are some problems with some fisheries. I will home in on the west coast bioregion, which is near major population centres. This fishery suffers the most from recreational

fishing and also has very strong commercial fishing interests as well. It is one fishery that really does suffer. The "State of the Fisheries and Aquatic Resources Report 2009/10" put out by the Department of Fisheries outlined a number of areas that are cause for concern. Looking at some of the estuaries, for example, there is a significant risk to the ecosystem, structure and biodiversity of those fisheries. A table on pages 24, 25 and 26 of the report highlights that there are significant risks in the fin-fish industry and the inshore demersal industry, where people fish in depths of 20 to 250 metres. There is a high risk to the ecosystem, structure and biodiversity of the offshore demersal industry, where people fish in depths greater than 250 metres. There are some areas in which we really do have to apply ourselves. We need to use a good funding model that enables us to bring together community expertise. That expertise resides with not only commercial fishers, but also fishing enthusiasts—those who have perhaps retired from the commercial fishing industry and recreational fishers who have a passion for the conservation of the marine environment. A financial mechanism that brings all those players together is only going to enhance the quality of our Western Australian fisheries.

I note that some fisheries have bycatch problems. I have outlined the one associated with the western rock lobster fishery and the problem with sea lions, but other fisheries also have problems with bycatch. I refer again to the "State of the Fisheries and Aquatic Resources Report 2009/10".

[Member's time extended.]

Mr C.J. TALLENTIRE: The report quantifies the number of baldchin groper that are taken as bycatch as part of the western rock lobster fishery. It is quite alarming. Some 2 908 baldchin groper, 7 063 breaksea cod and 8 309 wobbegong shark were taken just as bycatch in 2009–10.

Mr P. Abetz: Does that mean they are wasted or are they still used for food?

Mr C.J. TALLENTIRE: I think that depends on the fishery. There are some fisheries in which it is possible to use the bycatch in a useful way, but there are others in which it is not possible. I am checking through my notes to give the member that information. The amount of bycatch is quite disturbing. This gets back to my original point: we need good management advisory councils so that we can make sure we are discussing these things. It would be very tempting, I suppose, to have a management advisory council that is focused purely on the profitability of the fishing sector and to not want to really get into these issues. The purse seine fishery on the south coast uses big scoop nets to capture sardines. It had big problems with capturing a bird species; I think it was the sooty tern or the fleshy-footed shearwater. These birds fly out from islands in the Archipelago of the Recherche off Esperance and fly thousands of kilometres down into the Southern Ocean. The birds would see a purse seine fishing operation and descend on it and end up getting caught up in that fishery. It was possible to do things to avoid the bycatch of those birds simply by working with people who have the ornithological expertise and bringing them into the whole management structure; benefits were brought about so that there could be a significant improvement in how that fishery was managed.

I welcome this legislation. It is a way of making sure that we have the range of expertise that we need and that we go beyond looking at fisheries as only an economic resource. After all, a very legitimate case is to be made for people who want to see different fish species swimming in the water; people might snorkel or dive to see those fish as a tourism feature. That is also an economic value if members want to look at it in those terms. It is fairly hard to quantify that economic value; we would have to look at it in broad tourism numbers. We must recognise that there are people in our community who are happy to enjoy benefits other than fish on dinner plates; they prefer to see fish in the water.

There are other aspects to this issue, but the broad message is this: management advisory councils are essential to the credibility of the sustainability of our fisheries. The $400 million that that industry brings to Western Australia is very much export oriented. We are increasingly selling our seafood produce to overseas markets that are very keen to know about the sustainability of the produce. Overseas markets will want to know how good the production standards are and they will look to us to provide information. I would suggest to the house that one of the best ways to provide that information is to say that we have in place a system of management advisory councils that are bringing together people from a range of sectors who debate the management of that particular fishery and argue about the best way to improve it, whether it is to reduce the amount of bycatch and ensure that it is not breaching sustainable stock levels; that is core to the way our fishery is conducted. If we had that sort of thing in place, it would be useful and an advantage for the marketing of our produce and essential to the long term survival of those fisheries.

MR W.R. MARMION (Nedlands — Minister for Environment) [7.23 pm] — in reply: I thank members opposite for their contributions and their support of the Fish Resources Management Amendment (Fees) Bill 2010 and the Fish Resources Management Amendment (Fees) Bill (No. 2) 2010. I will briefly respond to as many of the comments from members opposite as I can. I start with the member for Collie–Preston, who was supportive of the bill. He highlighted the fact that these bills are simply there to put in place a mechanism to

remove any shadow of doubt that the fees are a tax. Any doubt that these fees are a tax—even though we have the State Solicitor's advice that they are not a tax—will be removed by these bills. The member for Collie–Preston also supports recreational fishing and he made the comment that children under 16 should not pay a fee. I point out that children under 16 get a 50 per cent concession and all fees paid go to the same sustainable fisheries effort.

The member for Mandurah also supports the bill. He raised a legal issue. He understands that the new revised fees under this legislation will be covered in terms of anyone assuming it may be a tax—it will not be—but he raised the question of whether there had been any approaches of industry or suggestions of questioning the previous fees. My advice is that there is no legal action regarding these fees. Indeed, the view of the government is that any legal action would not be sustained given the ruling of the High Court in the Harper case, which determined that the access fees were not taxes but in the nature of a royalty for which the licensee gains a degree of exclusive access to a limited public resource. Also, all commercial fishers have paid the fees due.

The member for Mandurah then made a passionate address regarding the importance of the water in the Peel Inlet and Harvey Estuary. I agree with the member that that issue is important. He highlighted the fact that he has seen reports over many years that show that the water quality in the Peel Inlet and Harvey Estuary is going downhill. Obviously I have not read those reports from over many years, but I know it has been a priority area for all governments in the past. I think the Dawesville Cut was originally put in place to try to improve the water quality in that estuary and system.

The member for Mandurah made particular reference to the Point Grey marina development and the channel that is some 2.5 kilometres long by 50 metres wide by three metres deep, which is going through a process of assessment. I know the area well. When it comes to my table, I will give the matter and the advice that I receive from the department due consideration. The member mentioned that for the people who are moving to Mandurah the jewel in the crown is the estuarine system. Having driven past the Serpentine River on many occasions, I agree with the member that the river is not looking good. I believe that a lot of that is due to the run-off nutrients from the catchment area, which is in the Darling Range agricultural area. That is certainly an area we must look at. That issue deviates a little bit from this particular bill, but I take the member's point. When that particular advice comes from the department, I will give it due consideration.

The member for Nollamara was on the Joint Standing Committee on Delegated Legislation, which took the view that the fees under the Fish Resources Management Act are taxes. Hence we are running the two bills through today. As the member pointed out, the committee did not agree with the State Solicitor's advice. The member has probably seen it, but I am happy to table it in the Legislative Assembly.

Ms J.M. Freeman: It is attached to the report. It has been tabled in the house previously.

Mr W.R. MARMION: This house?

Ms J.M. Freeman: Yes.

Mr T.R. Buswell: Un-table that.

Mr W.R. MARMION: I will un-table it. I thank the member for her advice. The member for Nollamara went through the rationale of why the committee did not consider that the fee was not a tax. I will not go through and debate that, because I am not a lawyer and the State Solicitor's advice, which is 11 pages, highlights a number of similar cases that the member for Nollamara raised in support of the case that the fee is a tax. The State Solicitor's Office raised similar cases to argue that it is not a tax. We are here today because the Minister for Fisheries has decided to put these bills through to confirm that if it is deemed a tax, it is not a tax.

I am just making sure there are no other points that the member raised that I should cover. I am advised that 2.5 per cent of fees go to the Western Australian Fishing Industry Council and 0.5 per cent of fees go to the Fisheries Research and Development Corporation. It is up to the Minister for Fisheries to determine where the fees go. The member for Forrestfield advanced the view that the development and better interest fee component was a tax, which is a similar argument to that advanced by the member for Nollamara. He also raised some other interesting points about where money could be spent. He talked about particular sections of the act, but I do not think we are here to debate them. The act allows compliance programs et cetera to be funded, but the bills we are debating today simply remove any shadow of doubt that fees are legitimate.

The member also talked about the impact of anything the minister might do to cut down fishing on Good Friday. I once did an economics unit that reviewed a supply and demand analysis of factors on a particular fishing coast. The regression analysis of factors of supply and demand for fish became so refined that it actually took into account slight changes in currents and temperature. It was a very good predictor of the catch, but it failed to include the constant, which was the Pope's decree that Catholics need no longer eat fish on Good Friday, so the

whole precise model, which took many years to develop, fell in a hole, and the fishery in that particular town unfortunately collapsed—which probably was good for the fish! But I digress.

The member for Victoria Park is no longer here, but he related an interesting story about his tin of tuna, which was his entree into talking about the bill. I will not talk about Foodbank, because I think it is a separate issue, but it was an interesting contribution to the debate and kept it going a bit longer, perhaps, than I expected it would.

The member for Gosnells then made a contribution to the debate; he supports the bill, and I think everybody supports the intent of the bill in respect of where the fees will be spent, which is to the fishery stock and conservation research around fisheries. The member made a point about management advisory committees and who should be on them. He suggested that they should include a range of people, including people with conservation interests. One would assume that if we were to set up a management advisory committee, we would do that anyway. A responsible minister would do that. As Minister for Environment, I have a number of committees, and I have a range of people on those committees. Hopefully, they would all have a conservation bone in their bodies, and these days one would hope that even people in the fishing industry would be looking at the conservation of fish stocks as being important to their industry.

Mr C.J. Tallentire: Minister, would you be happy for funds raised through this tax to be applied to people from the conservation sector sitting on those committees?

Mr W.R. MARMION: I am not the Minister for Fisheries; the member would have to ask him. I would imagine that people on such committees would not necessarily have to come from the conservation sector; they might coincidentally be a member of the Conservation Council, but not designated as being representative of the Conservation Council. I could give an opinion, but it would not be a binding view. The member would have to take the matter up with the Minister for Fisheries.

I thank members opposite for their support of the bill and their in-principle support for the issues of research, conservation and the management of fish stock.

Question put and passed.

Bill (Fish Resources Management Amendment (Fees) Bill 2010) read a second time.