

**Extract from *Hansard***  
[ASSEMBLY — Wednesday, 25 June 2014]  
p4619b-4643a

Mr Chris Tallentire; Mr Albert Jacob; Mr Dave Kelly; Mr John Day; Acting Speaker; Ms Margaret Quirk; Mr David Templeman

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*Division*

Clause put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the noes, with the following result —

Ayes (27)

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

Noes (12)

Ms J. Farrer	Mr M.P. Murray	Ms R. Saffioti	Mr P.B. Watson
Ms J.M. Freeman	Mr J.R. Quigley	Mr C.J. Tallentire	Mr B.S. Wyatt
Mr D.J. Kelly	Ms M.M. Quirk	Mr P.C. Tinley	Mr D.A. Templeman ( <i>Teller</i> )

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Pairs

Mr A. Krsticevic	Ms L.L. Baker
Dr K.D. Hames	Mr F.M. Logan
Mrs L.M. Harvey	Mr R.H. Cook
Mr D.T. Redman	Mr M. McGowan
Ms W.M. Duncan	Mr P. Papalia
Mr N.W. Morton	Mr W.J. Johnston
Mr T.R. Buswell	Dr A.D. Buti
Mr R.F. Johnson	Ms S.F. McGurk

**Clause thus passed.**

**Clause 10: Section 24 amended —**

**Mr C.J. TALLENTIRE:** Clause 10 provides for an amendment that I do not think has anything to do with the government's plans to change or move the functions of the Swan River Trust. This clause is actually about what might be termed castrating the Swan River Trust. The Swan River Trust previously had the capacity to engage consultants, hire experts in a particular area and have environmental consultants undertake research using their expertise to look into the complexity of the river's ecology. Under this legislation those activities of the Swan River Trust can occur only when the minister approves the work. I direct the minister to proposed section 24(2) —

The Trust may, with the approval of the Minister, engage persons under contracts for services to provide any professional, technical or other assistance that the Trust considers necessary for the performance of its functions under this Act.

This situation is new and has nothing to do with what the minister claims is this legislation's intention; it is simply the minister wanting to have more control over this advisory board. The minister has reduced the trust to an advisory board, but that is not enough, he wants to have total control over it. He will not let the trust engage consultants without his say-so. The minister has to acknowledge that the trust worked perfectly well and could contract with whomever it saw fit so long as its actions were within the confines of the Swan and Canning Rivers Management Act 2006. It was acceptable for the trust to look for the supply of equipment or services, to act as an agent or to look for consultants for professional and technical services. All those things were possible, subject to the normal limits of budgetary constraints. I ask the minister to explain on what basis he has seen the need to so closely control the capacity of the Swan River Trust to engage people who we will generically call consultants?

**Mr A.P. JACOB:** As is broadly the intent of the bill, a range of powers under the Swan and Canning Rivers Management Act as it currently stands are endowed on the Swan River Trust. Some of those are being brought under the purview of the CEO. Should this bill be proclaimed, the trust will be henceforth a vesting and advisory body and have a range of functions, as I outlined in my second reading speech and in the previous clause.

Mr Chris Tallentire; Mr Albert Jacob; Mr Dave Kelly; Mr John Day; Acting Speaker; Ms Margaret Quirk; Mr David Templeman

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**Mr D.J. KELLY:** When I look at what is being taken away from the Swan River Trust by the deletion of subsections (2) and (3), the minister must understand the concerns that people have about the Swan River Trust being anything like its former self. I go back to the minister's second reading speech —

The Swan River Trust will remain as an advisory body to the Minister for Environment and will continue to provide high level, independent advice on the protection of the river and related developments, as well as reporting on the state of the development control area.

The words it “will continue to provide high level, independent advice on the protection of the river” lead people to believe it will continue to do work in the same way as, or in a similar way to, its current manner. Look at the last couple of things that are deleted from the powers of the Swan River Trust at section 24(2) —

- (d) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research; and
- (e) produce and publish information on matters related to its functions.

The Swan River Trust used to be able to do research, working with other agencies or community groups, on matters that it thought were important and then, importantly, publish the results it found. It could do research in its own right in the best interests of the Swan and Canning Rivers. The minister is taking that away completely. In his second reading speech, the minister leads people to believe that the Swan River Trust will remain as an advisory body to the minister and will continue to provide high level, independent advice. How can it provide high level, independent advice if its ability to work with other organisations, its ability to undertake research and its ability to publish that research is taken away from it? How can it be anything other than a shadow of its former self? It is fine to say that the Swan River Trust will continue to provide advice to the minister, but if it cannot do the work that is necessary to provide that advice without having to go to the CEO of the department to ask permission to do it, and if it cannot do that on an independent basis and then have the ability to publish its findings, how can the minister describe the advice it would give to any minister as “high level and independent”? If the Swan River Trust cannot do the work that it previously did to develop that body of knowledge that enabled it to form opinions about the health of the river system without going to the CEO to ask permission, how on earth can it be seen by the public in the way that it is now—that is, as an independent defender of the river? Paragraphs (c), (d) and (e) will be lost from section 24, “Powers of Trust”. That particularly worries me. I ask again: why has the minister taken that ability away from the trust?

**Mr A.P. JACOB:** Again and again, clause after clause, we are essentially debating the entire bill. I get that members opposite oppose it; that is absolutely fine. If the member goes to clause 11, which comes immediately afterwards, the first part there states, “Delete sections 26 and 27 and insert” proposed section 28A, which requires that —

The CEO must provide the Trust —

- (a) with any assistance it may reasonably require to perform its functions; and
- (b) ... with any staff and facilities of the Department as the Trust may reasonably require to perform its functions.

I am not for a second pretending that the trust will continue as it is now. Of course there will be changes; otherwise, we would not have the bill that we have before us.

*Question to be Put*

**Mr J.H.D. DAY:** I move —

That the question be now put.

*Division*

Question put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the noes, with the following result —

		Ayes (27)	
Mr P. Abetz	Mr J.H.D. Day	Dr G.G. Jacobs	Mr D.C. Nalder
Mr F.A. Alban	Ms E. Evangel	Mr S.K. L'Estrange	Mr J. Norberger
Mr C.J. Barnett	Mr J.M. Francis	Mr R.S. Love	Mr A.J. Simpson
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr M.H. Taylor
Mr I.M. Britza	Mr B.J. Grylls	Mr P.T. Miles	Mr T.K. Waldron
Mr M.J. Cowper	Mr C.D. Hatton	Ms A.R. Mitchell	Mr J.E. McGrath ( <i>Teller</i> )
Ms M.J. Davies	Mr A.P. Jacob	Dr M.D. Nahan	

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Mr Chris Tallentire; Mr Albert Jacob; Mr Dave Kelly; Mr John Day; Acting Speaker; Ms Margaret Quirk; Mr David Templeman

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Noes (11)

Ms J. Farrer  
Ms J.M. Freeman  
Mr D.J. Kelly

Mr M.P. Murray  
Mr J.R. Quigley  
Ms M.M. Quirk

Ms R. Saffioti  
Mr C.J. Tallentire  
Mr P.B. Watson

Mr B.S. Wyatt  
Mr D.A. Templeman (*Teller*)

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Pairs

Mr A. Krsticevic  
Dr K.D. Hames  
Mrs L.M. Harvey  
Mr D.T. Redman  
Ms W.M. Duncan  
Mr V.A. Catania  
Mr N.W. Morton  
Mr T.R. Buswell  
Mr R.F. Johnson  
Mr G.M. Castrilli

Ms L.L. Baker  
Mr R.H. Cook  
Mr F.M. Logan  
Mr M. McGowan  
Mr P. Papalia  
Mr W.J. Johnston  
Dr A.D. Buti  
Ms S.F. McGurk  
Mrs M.H. Roberts  
Mr P.C. Tinley

Question thus passed.

*Consideration in Detail Resumed*

**The ACTING SPEAKER (Ms J.M. Freeman):** The question is that clause 10 be agreed to.

*Division*

Clause put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the noes, with the following result —

Ayes (27)

Mr P. Abetz  
Mr F.A. Alban  
Mr C.J. Barnett  
Mr I.C. Blayney  
Mr I.M. Britza  
Mr M.J. Cowper  
Ms M.J. Davies

Mr J.H.D. Day  
Ms E. Evangel  
Mr J.M. Francis  
Mrs G.J. Godfrey  
Mr B.J. Grylls  
Mr C.D. Hatton  
Mr A.P. Jacob

Dr G.G. Jacobs  
Mr S.K. L'Estrange  
Mr R.S. Love  
Mr W.R. Marmion  
Mr P.T. Miles  
Ms A.R. Mitchell  
Dr M.D. Nahan

Mr D.C. Nalder  
Mr J. Norberger  
Mr A.J. Simpson  
Mr M.H. Taylor  
Mr T.K. Waldron  
Mr J.E. McGrath (*Teller*)

Noes (11)

Ms J. Farrer  
Ms J.M. Freeman  
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Mr C.J. Tallentire  
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Mr D.A. Templeman (*Teller*)

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Mr M. McGowan  
Mr P. Papalia  
Mr P.C. Tinley  
Mr W.J. Johnston  
Dr A.D. Buti  
Ms S.F. McGurk  
Mrs M.H. Roberts

Clause thus passed.

**Clause 11: Sections 26 and 27 replaced —**

**Mr C.J. TALLENTIRE:** Minister, clause 11 refers to the assistance, staff and facilities to be provided. It states that the chief executive officer must provide the trust with assistance —

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- (b) without limiting paragraph (a), with any staff and facilities of the Department as the Trust may reasonably require to perform its functions.

Proposed new section 28B reads —

*eligible person* means —

...

- (d) a member of staff provided under section 28A.

Can the minister clarify for me, please, that that is the case?

**Mr A.P. JACOB:** I am not really sure what the question is.

**Mr C.J. TALLENTIRE:** I am asking whether the assistance provided to the trust must come from somebody who is a member of staff, as mentioned in —

**Mr A.P. Jacob:** No. You are referring to the delegations there; they are two separate clauses. You have the first section, proposed new section 28A, which says that assistance is required to be provided, —and then proposed new section 28B refers to delegation by the trust.

**Mr C.J. TALLENTIRE:** Okay. Why is it, then, that proposed new section 28B(1)(d) reads —

*eligible person* means —

...

- (d) a member of staff provided under section 28A.

**Mr A.P. Jacob:** The trust can delegate to a staff member who has been provided to it as a resource under proposed new section 28A. That would be a person the trust can delegate to.

**Mr C.J. TALLENTIRE:** Further to that, if we look at the people whom the CEO must provide to the trust, those people will be reporting to both the CEO and the trust because they are providing assistance to the trust. Who really is their master?

**Mr A.P. JACOB:** Staff report to the CEO they are employed under, and the line of accountability goes up through the CEO to the minister and to this place and to the electorate.

**Mr C.J. TALLENTIRE:** Is the minister conceding that, yet again, we have an example here of the trust losing that direct control over staff that it previously had?

**Mr A.P. JACOB:** Fundamentally, what most of this current act is about is that those actions are directly allocated to the trust as a body. The nature of that body is changing, and those actions as outlined in the act will now be under the CEO of the dedicated conservation agency. So, yes, that is what is happening.

**Mr D.J. KELLY:** I take the minister to the part of clause 11 that reads —

The CEO must provide the Trust —

- (a) with any assistance it may reasonably require to perform its functions; and  
(b) without limiting paragraph (a), with any staff and facilities of the Department as the Trust may reasonably require to perform its functions.

The term “reasonable” has been litigated up hill and down dale. It is a very useful term legally, but it is also a term that can cause a whole range of trouble. If we have a scenario in which the trust seeks assistance to do its job or seeks staff to do its job, and it believes the request is reasonable but the CEO does not believe that the request for assistance is reasonable, how is that resolved between the CEO and the Swan River Trust? What mechanism is there in the bill for resolving that issue?

**Mr A.P. JACOB:** I suppose in that instance it would come to the minister.

**Mr D.J. KELLY:** I find that answer quite extraordinary. The minister has been telling us that the Swan River Trust will be provided with the assistance it needs and will be able to do its work; it will have the staff that it currently has and those staff will just shift over to be part of the department. The minister can say that that is all well and good when he says it out aloud, but when we look at the bill, all it says is that the only assistance and the only staff that will be provided to the Swan River Trust are those the CEO provides under this proposed amendment. It does not read that the Swan River Trust will be provided with the assistance or staff that it believes are reasonably required to perform its function. The minister has just said that it will be up to the minister to decide, effectively, the resources that are provided. The drafting of this clause —

Mr Chris Tallentire; Mr Albert Jacob; Mr Dave Kelly; Mr John Day; Acting Speaker; Ms Margaret Quirk; Mr David Templeman

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**Mr A.P. Jacob:** That's not what I said; you're verballing me. You said in the instance of a dispute.

**Mr D.J. KELLY:** That is what I am saying.

**Mr A.P. Jacob:** The clause reads, "with any assistance it may" —

**Mr D.J. KELLY:** Minister, maybe I did not explain myself. But the minister can see that the amendment in the bill states that the CEO should provide to the trust, basically, the assistance and the staff that are reasonable to provide its function. There can be a disagreement over what is reasonable every day. My question was: if the Swan River Trust wants these staff or resources and the CEO disagrees and says that those staff or that assistance is unreasonable, how is that matter resolved? The answer the minister gave is that the minister will decide. If the minister is saying there is no other way of resolving that issue in this bill and that the minister will simply say, "Well, I'm going to side with one or the other", that really concerns me. That provides no protection for the Swan River Trust. There must be a better answer to my question than the minister simply saying that he will decide if there is a dispute. How will that be resolved on a practical level?

**Mr A.P. JACOB:** We again go round and round in circles. I have answered this in clause after clause. The clause does not seek to break down operationally how these matters will be structured. The resources that will be required will be negotiated under a service level agreement, which is a tried and true method. Currently, there are a range of perfectly good examples within the Department of Parks and Wildlife—the Conservation Commission being one and the Marine Parks and Reserves Authority being another. Those two bodies function extraordinarily well under this method, and it will be replicated in this instance.

*Question to be Put*

**Mr J.H.D. DAY:** I move —

That the question be now put.

Bells rung and the house divided.

Several members interjected.

**The ACTING SPEAKER (Ms J.M. Freeman):** Member for Gosnells! Members, I am not going to have a debate across the floor; thank you very much. The bells are being rung; we need to get people on the floor. If I stand up, you will not get people on the floor.

Several members interjected.

**The ACTING SPEAKER:** Leader of the House, if you keep doing that, I will call you. If you make a comment, you will get a comment back, so please do not do that. Do it in your heads! Have a quiet conversation in your head.

*Division*

Question put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the noes, with the following result —

Ayes (27)

Mr P. Abetz	Mr J.H.D. Day	Dr G.G. Jacobs	Mr D.C. Nalder
Mr F.A. Alban	Ms E. Evangel	Mr S.K. L'Estrange	Mr J. Norberger
Mr C.J. Barnett	Mr J.M. Francis	Mr R.S. Love	Mr A.J. Simpson
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr M.H. Taylor
Mr I.M. Britza	Mr B.J. Grylls	Mr P.T. Miles	Mr T.K. Waldron
Mr M.J. Cowper	Mr C.D. Hatton	Ms A.R. Mitchell	Mr J.E. McGrath ( <i>Teller</i> )
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Noes (12)

Ms J. Farrer	Mr M.P. Murray	Ms R. Saffioti	Mr P.B. Watson
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Pairs

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Mr F.M. Logan  
Mr R.H. Cook  
Mr M. McGowan  
Mr P. Papalia  
Mr W.J. Johnston  
Dr A.D. Buti  
Ms S.F. McGurk  
Mrs M.H. Roberts

Question thus passed.

*Consideration in Detail Resumed*

**The ACTING SPEAKER:** The question is that clause 11 stand as printed.

*Division*

Clause put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the noes, with the following result —

Ayes (27)

Mr P. Abetz  
Mr F.A. Alban  
Mr C.J. Barnett  
Mr I.C. Blayney  
Mr I.M. Britza  
Mr M.J. Cowper  
Ms M.J. Davies

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Ms S.F. McGurk  
Mrs M.H. Roberts

**Clause thus passed.**

**Clause 12 put and passed.**

**Clause 13: Part 4B heading and Part 4B Division 1 heading inserted —**

**Mr C.J. TALLENTIRE:** Clause 13 seeks to insert a heading that refers to the functions and powers of the CEO. I note that we skipped over one of the most substantial clauses in this bill that gives to the minister powers to include any tape, disk or other device or medium on which information is recorded by the Swan River Trust. Why a minister would need to have that level of Big Brother oversight is beyond me.

**Mr A.P. Jacob:** You can't inform ministers. That would be a terrible thing to do.

Mr Chris Tallentire; Mr Albert Jacob; Mr Dave Kelly; Mr John Day; Acting Speaker; Ms Margaret Quirk; Mr David Templeman

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**Mr C.J. TALLENTIRE:** The minister could ask for information, but it strikes me as extraordinary that documentation kept by the trust would be automatically accessible by the minister. Why would the minister need to access USB sticks or the like that might be held by members of the Swan River Trust? If a member of the Swan River Trust turns up with an iPad on which they have recorded something or, to go back to a previous example that we used, filmed a speedboat going too fast on the Swan River, why would the minister want to have automatic access to that? It might be useful evidence to the minister, but surely he could approach members of the Swan River Trust in a correct manner, rather than having to prescribe in the legislation that the minister could automatically gain that information. The point of this clause is the amendment to the title and the functions and powers of the CEO. That is my point. Really, with much of this legislation the minister is seeking to not only control the functions and powers of the CEO, but also have ministerial control over a body that was originally intended to be an autonomous body. The Swan River Trust was set up to be a statutory body independent of government so that we would have a separate strand of thought coming into the decision-making process. Independent bodies that can provide research, ideas and views separate from those that are presented around the cabinet table are a very useful mechanism in our democratic process. Why would the minister want to limit himself in that manner? I wonder why the minister is calling this “Functions and powers of CEO” when in fact he is really talking about the controlling power of himself—the minister.

**Mr A.P. JACOB:** Members might wonder why we have been putting the last few motions. This is the perfect example. Here we are at clause 13 of the bill, which I will read out verbatim for the house. It states —

**13. Part 4B heading and Part 4B Division 1 heading inserted**

After section 32 insert:

**Part 4B — Administration**

**Division 1 — Functions and powers of CEO**

That is the clause we are debating. It has absolutely nothing to do with the comments the member has made. We have spent five hours on clauses that have essentially had nothing to do with members’ comments. I would really love to get back to specific areas of the bill and debate them. We have been doing this for five hours. None of those questions have anything to do with the clause before us.

**Clause put and passed.**

**Clause 14: Sections 33 to 36 replaced —**

**Mr C.J. TALLENTIRE:** I do not think the minister will be able to suggest in any way that this is a clause that should be skipped over. Can the minister reassure me from the outset that the minister will instruct the Leader of the House to not implement the guillotine on this clause? Throughout this debate the minister has referred extensively to this clause outlining the powers of the CEO who, for the most part, will be taking on all those functions that were previously administered by the Swan River Trust. I think it is very important that we give this clause a close examination. I begin with the minister’s previously expressed view that he is not changing any of the area defined as the river reserve. I flagged this matter in the second reading debate. We can look at the schedules. If the minister would like, we can delay this matter until we get to the schedules, but I fear that the minister will tell me that it is too late and we have already dealt with clause 14 and the amendments to section 33. The definition of the “river reserve” is mentioned here. I know that that is defined in the schedules, but how can we be sure that the minister has not reduced the size of the river reserve?

**Mr A.P. JACOB:** I will state for the record that this amendment does not amend the river reserve.

**Mr C.J. TALLENTIRE:** We have touched on the issue of the consultation with local governments and the Metropolitan Redevelopment Authority. I am looking at proposed section 35, which is to be inserted into the act, on page 14 of the bill. It refers to the powers of the CEO to undertake that consultation. Why would the minister want to further complicate the role of the CEO when liaising with local governments? I accept that the minister may do it via some delegated authority and that it may not be physically the person who is known as the CEO, but why would the minister create this tangled web of conflicts of interest whereby the person who would be advising a local government authority would also be adjudicating on a proposal that might be before the WA Planning Commission and might also be the person involved with the redevelopment authority? Why would the minister not preserve the current situation in which there is some degree of independence? The minister is burdening the CEO in this way not in just a workload sense; the CEO will also have a tangled web of responsibilities. That will lead only to extreme internal conflict and create an extreme risk that the CEO will fail in his or her responsibilities relative to the legislation that the Department of Parks and Wildlife administers, which principally is the Conservation and Land Management Act and the Wildlife Conservation Act. The CEO may fail in his or her responsibilities to the WA Planning Commission or in carrying out the responsibilities of this legislation—the future Swan and Canning Rivers Management Amendment Act. Why would the minister

Mr Chris Tallentire; Mr Albert Jacob; Mr Dave Kelly; Mr John Day; Acting Speaker; Ms Margaret Quirk; Mr David Templeman

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create that risk and burden one office with such a range of responsibilities? Plainly, those responsibilities will from time to time contradict one another. Why would the minister not enable the trust to be the body that undertakes the consultation? I suggest that the minister needs to explain why proposed section 35 does not specifically designate the consultation with local governments and the Metropolitan Redevelopment Authority as a task of the Swan River Trust.

**Mr A.P. JACOB:** Essentially, the member for Gosnells made that point earlier in his comments. It can be delegated and has been a delegated function under the existing trust, so it is really one of those things that probably will not change very much at all in an operational sense. It just means that under the act, ultimately, the CEO rather than the trust will be responsible for delegating that authority. I think it is a very simple and straightforward change.

**Mr C.J. TALLENTIRE:** The obligations and responsibilities that the person has to fulfil under the important Wildlife Conservation Act and Conservation and Land Management Act could be in conflict with the decision-making that they might be involved with under the WA Planning Commission's responsibilities. Does the minister not see the potential for a conflict of responsibility?

**Mr A.P. Jacob:** No.

**Mr C.J. TALLENTIRE:** I put to the minister: what happens if there is a conservation reserve, so some land that would come under the Conservation and Land Management Act—there are such areas that adjoin the Swan River—and there is a proposal for a subdivision immediately adjacent to that conservation reserve? The CEO would be responsible for the health and wellbeing of the conservation reserve, and that CEO would sit on the Western Australian Planning Commission —

**Mr A.P. Jacob:** Member, you do know that the CEO does not sit on the Planning Commission.

**Mr C.J. TALLENTIRE:** My understanding is that the CEO does.

**Mr A.P. Jacob:** No, the CEO does not sit on the Planning Commission.

**Mr C.J. TALLENTIRE:** Since when?

**Mr A.P. Jacob:** Since the departments de-merged. The CEO of the Department of Environment Regulation does, but the CEO of the Department of Parks and Wildlife does not.

**Mr C.J. TALLENTIRE:** So that advisory capacity has been removed.

**Mr A.P. Jacob:** No, that capacity was under the Environmental Protection Act, not under the Conservation and Land Management Act or the Wildlife Conservation Act.

**Mr C.J. TALLENTIRE:** The potential for conflict has been reduced there, but there will still be occasions when the CEO will be taking direction from the minister and that CEO will not be getting the independent advice that he or she was previously getting from the Swan River Trust.

**Mr A.P. JACOB:** From memory, I answered that question way back in the debate on the objects of the legislation. There will still be the capacity for the Swan River Trust to issue advice; indeed, advice that comes to the minister will include the trust's advice as well, and that will be independently collated.

**Mr D.J. KELLY:** I still cannot get my head around the resourcing issue. These amendments to the act give a whole bundle of functions and powers to the CEO that I understand were previously functions and powers of the Swan River Trust. Therefore, they have been taken from the Swan River Trust and given to the CEO, but the minister maintains that he wants the Swan River Trust to provide him with high-level independent advice on a whole range of issues. I cannot help but think that by effectively taking all the staff from the Swan River Trust and putting them in the department they will be there assisting the CEO to perform the functions and duties that that office has. The Swan River Trust will be left in a position in which, according to the minister's second reading speech, it will still be expected to provide high-level and independent advice, but in order to do the work to generate that advice, trust staff will have to go back to the CEO and ask for assistance. I will be happy if I am incorrect on this, but I understand that there will be no net increase in the resources in this area. I am not sure what the existing allocation of full-time equivalents to the Swan River Trust is, but that substantial body of staff will go over to the department and they will be doing work to assist the CEO in performing the functions and powers that he has. However, the minister is maintaining the facade that the Swan River Trust that is left behind will still be able and will be required to provide high-level and independent advice. I cannot see how, with the same basket of resources, the Swan River Trust will not be left high and dry, if you like, in a resourcing sense. Presumably, the CEO will still want those staff to assist him or her to do the work that that office is now required to do. Can the minister see the problem that I can see happening from a resourcing perspective? There is one body with resources and it is now being asked to do the work to assist the CEO to perform his functions.

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Presumably out of that same basket of money, of resources, the minister expects there to be enough staff and resources for the CEO to give some of them back to the trust to perform its independent work. Can the minister tell me how that will work and assure me that from a resourcing point of view two entities are not being created to try to perform two different functions with the same basket of resources?

**Mr A.P. JACOB:** We persist in debating different clauses from the clause we are actually on. I answered that question earlier.

**Ms M.M. Quirk** interjected.

**Mr A.P. JACOB:** I thank the member for Girrawheen!

I answered that question earlier —

**Ms M.M. Quirk** interjected.

**The ACTING SPEAKER:** Member for Girrawheen!

**Mr A.P. JACOB:** I answered that question earlier; it does not relate to this clause but to where the legislation requires that reasonable resources be provided. It is written in the legislation that there is a requirement for those resources to be provided. The Swan River Trust in performing its advisory functions will operate in much the same way as the Conservation Commission and the Marine Parks and Reserves Authority operate. There is a well-established method of operating in that way. Certainly in my time as minister, I have found the advice I have continued to receive from both the Marine Parks and Reserves Authority and the Conservation Commission to be of an extraordinarily high level, which to me is a reflection of, first, the calibre of people we have on those bodies, and, second, the fact that they are clearly well resourced under their resource agreement with the Department of Parks and Wildlife. I have absolutely no doubt that that will continue to be the case with the Swan River Trust.

**Mr D.J. KELLY:** The minister can tell me if I am wrong, but part of my assumption is that no additional resources will be provided to do this work when the amended act comes into effect. Whatever resources the Swan River Trust has now will at best be transferred to the Department of Parks and Wildlife. There is X amount of resources currently with the Swan River Trust for it to do the work it believes is necessary to generate advice and work to protect the Swan and Canning Rivers. All those resources are being taken and put into the department, and the CEO will use those resources to perform the important functions that will be given to the CEO under these amendments. Despite the provision that states the CEO has to give the Swan River Trust reasonable resources to do its job, if we are starting off with the same basket of resources, surely it will mean that either the CEO will have less resources to do his job than when the functions were those of the Swan River Trust or the Swan River Trust will be left with inadequate resources in order to provide the high level of advice that the minister says it will be able to provide. Could the minister confirm for me that the resources will stay the same; and, if that is the case, if they are split between two agencies doing two different types of work, how will the effectiveness of one or other of those bodies not ultimately be diminished?

**Mr A.P. JACOB:** I do not for the life of me know why we do not seem to be able to debate the clause that is in front of us at any point during this consideration in detail stage. This is the last time I will answer this question because it does not relate to the clause we are debating. If we have X amount of resources to deliver result Y, post this change there will continue to be the same amount of resources to deliver the result; we will still have X amount of resources to deliver result Y.

**Mr D.J. KELLY:** The question I am asking is about clause 14, which relates to the functions of the CEO.

**Mr A.P. Jacob:** The question is all about the functions of the trust.

**Mr D.J. KELLY:** Because the two are related. In the minister's second reading speech he stated that these will be functions that were previously performed by the trust, so it is a bit hard to talk about one without the other. It seems to me that it cannot possibly be argued that the Swan River Trust will be able to function and provide all that high-level advice if the basket of money and resources is the same. When we asked, "Well, how will the Swan River Trust do its work and generate the work to provide the advice?" the minister said, "Well, the CEO has to give it reasonable resources". But if the CEO is using those resources to perform the department's own functions under this clause, there has got to be a diminishing of the effectiveness of one or the other. When the Swan River Trust had those resources, it made the decision as to what its priorities were and what its work plans should be. Now we will have the CEO making a decision about what its priorities and its work plan will be, and the Swan River Trust still will be making similar decisions, but both organisations will be arguing over the same basket of resources. Surely, the minister can see that. He has got two bodies: one with operational responsibilities for certain functions, and the Swan River Trust that will be required to provide advice on many of the same issues. We will now have two organisations and the same basket of resources. Surely, that will

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create a situation in which it is either the CEO or the Swan River Trust, and we fear the Swan River Trust will be diminished in its ability to do its job.

**Mr A.P. JACOB:** Nothing in this act changes the resourcing. The resourcing as it currently stands for the river will continue. Those resources will go directly towards outcomes on the Swan River as they currently do. Even members opposite acknowledge that the resourcing level will remain. In fact, by bringing the two agencies operationally together, even with the absolute worst-case scenario outcome, it will still mean that we have the same amount of resources and the same people to do the existing job. I am very strongly confident that we will find a range of efficiencies. Bringing those two conservation agencies together will actually result in those resources, which are earmarked for the Swan and Canning Rivers system and Swan Canning Riverpark, going far, far further as we find opportunities for efficiencies.

**Mr C.J. TALLENTIRE:** I refer to proposed section 34 of the bill and note that it is about consultation and matters to be considered by the CEO. I refer particularly to proposed section 34(b)(ii), which refers to “the significance of the waters in the Riverpark to the Nyungah community”. This clause begins —

The CEO must, so far as is practicable and consistent with this Act —

...

(b) have regard, in the performance of his or her functions, to —

...

(ii) the significance of the waters in the Riverpark to the Nyungah community;

Can the minister tell me what circumstances could arise in which the CEO might be in a situation where “the significance of the waters in the Riverpark to the Nyungah community” would not be consistent with the provisions of this bill?

**Mr A.P. JACOB:** Essentially proposed section 34 under clause 14 of the bill before us is picking up on section 25 of the act, and inserting that wording, which is essentially the same; that is, matters are now under the CEO as opposed to the trust. So, it does not seek to change the body of that; it is just ensuring that the CEO has regard to the same requirements that the trust was required to have regard to under the act as it currently stands.

**Mr C.J. TALLENTIRE:** The minister says it is essentially the same wording, but I am still asking: what situations could arise where there is an inconsistency? If there is that potential for an inconsistency, what could it possibly be? Maybe we need to amend something further so that those sorts of inconsistencies cannot arise. The minister is allowing the CEO to have an opt-out clause in which he or she could disregard “the significance of the waters ... to the Nyungah community”. He is allowing for that. What kinds of conditions does he imagine could be necessary for the CEO to revoke that opt-out clause?

**Mr A.P. JACOB:** It is a pretty far-left-field hypothetical and it is not something I am seeking to amend in the act. I have stated it very clearly in my second reading speech, and time and again, what we seek to do with the act —

**Ms M.M. Quirk** interjected.

**Mr A.P. JACOB:** The member for Girrawheen does not generally make much in the way of a contribution, especially as it gets later. What we essentially seek to do —

**Ms M.M. Quirk** interjected.

**The ACTING SPEAKER:** Member for Girrawheen!

**Mr A.P. JACOB:** If she stopped interrupting me —

*Withdrawal of Remark*

**The ACTING SPEAKER (Mr P. Abetz):** Member for Girrawheen, that was unparliamentary.

**Ms M.M. QUIRK:** I withdraw that.

*Debate Resumed*

**Mr C.J. Barnett** interjected.

**Ms M.M. Quirk:** Sorry?

**The ACTING SPEAKER:** Member for Girrawheen!

**Ms M.M. Quirk:** He should withdraw it!

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**The ACTING SPEAKER:** Member for Girrawheen, the minister has got the floor.

**Ms M.M. Quirk:** The drinking problem is over on that side of the chamber, thank you very much —

**The ACTING SPEAKER:** Member for Girrawheen, I call you for whatever time it is—for the third time.

**Ms M.M. Quirk:** Withdraw that, Premier!

**Mr C.J. Barnett:** It is parliamentary.

*Withdrawal of Remark*

**Mr D.A. TEMPLEMAN:** Mr Acting Speaker, I have a point of order.

**Ms M.M. Quirk:** He accused me of drinking!

**Mr C.J. Barnett:** No, I didn't.

**Ms M.M. Quirk:** Yes, you did!

**The ACTING SPEAKER (Mr P. Abetz):** Member for Girrawheen and Premier, points of order are heard in silence.

**Mr D.A. TEMPLEMAN:** The member for Girrawheen has indicated that the Premier said a term that could be considered unparliamentary, and I ask you to ask him to withdraw it.

**The ACTING SPEAKER:** I did not hear the Premier say anything. I heard something very vague in the background, though I did not hear anything, but if somebody —

**Mr D.A. TEMPLEMAN:** Further to the point of order —

**The ACTING SPEAKER:** No, I do not want it repeated. If there was something unparliamentary, Premier, I would leave it to you to withdraw; otherwise, we will move on.

*Debate Resumed*

**Mr A.P. JACOB:** I will read out the wording of it as it flows in the sentence. This is under the heading, “Consultation and matters to be considered by CEO” —

The CEO must, so far as is practicable and consistent with this Act —

...

(b) have regard, in the performance of his or her functions, to —

...

(ii) the significance of the waters in the Riverpark to the Nyungah community;

This clause essentially requires that the CEO, in the performance of his functions, must have regard to the significance of the Swan and Canning River systems for the “Nyungah community”.

**Mr C.J. TALLENTIRE:** The minister will concede that he put in there an opt-out clause. He has said “so far as is practicable”. Why has he done that?

**Mr A.P. JACOB:** Because that is how it currently stands in the act.

**Ms M.M. QUIRK:** Does the minister concede that these amendments throughout the whole bill will create different arrangements? And if so, the member for Gosnells is asking an appropriate question and should be answered; namely, under these arrangements, in what circumstances will it not be practicable to comply with the section?

**Mr A.P. JACOB:** As I said, if members can come up with an example of where that has happened, I am happy to hear it. Legislation is a living document and may come back into this place, but that is simply the drafting as it currently stands in the Swan and Canning Rivers Management Act 2006. We are not seeking to make any change whatsoever through this bill. It is simply a function of the machinery of government change, which is moving that current wording as it stands under the Swan River Trust over to the CEO. The wording itself has actually been replicated as it was drafted.

**Mr D.J. KELLY:** It is easy to say, “Well, I’ve taken the wording from one section and plonked it over to another”, but the minister has taken that wording previously applied to a statutory authority—that is, the Swan River Trust—and now it will apply to a department of the Crown. When determining what is practicable or reasonably practicable, there may be different considerations when dealing with a statutory authority versus a department of the Crown. I think the question is a legitimate one. Although the wording might be the same, that

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will be applied in a legal sense to different entities. I think the question is: has the minister considered that implication, given that it will now apply not to a statutory authority, but in the future to a department of the Crown?

**Mr C.J. TALLENTIRE:** The minister needs to explain why this all-encompassing notion of “so far as is practicable and consistent with the act,” applies equally to a range of functions, such as “so far as is practicable and consistent with this act,” “have regard, in the performance of his or her functions, to protection and enhancement of the ecological and community benefits and amenity of the development control area,” to “the requirements of public recreation”. I can see how “so far as is practicable and consistent with this act” could relate to public recreation, because there are different kinds of recreation on the river and sometimes there is conflict between them. I can understand that it might not be practicable to allow a jet ski area right in the middle of an area where people go surf catting, but that sort of decision-making is being put into the same order of thought as the consideration of “the significance of the waters in the Riverpark to the Nyungah community”. Surely that is mixing things up; it is a much higher order issue and it should not just be bundled up into considerations of what is the appropriate use of a part of the river—jet skis or surf cats.

**Mr A.P. JACOB:** Again, Mr Acting Chairman —

**Ms M.M. Quirk** interjected.

**Mr A.P. JACOB:** Member for Girrawheen!

**The ACTING SPEAKER:** Member for Girrawheen, you do not have the call, so please desist.

**Mr A.P. JACOB:** Again we go over and over items like this. Every single clause does not seek to do everything under the bill, and this bill does not seek to do all things under the sun. All that the proposed subsection that members are currently debating deals with are matters to be considered or taken into consideration while the now CEO is performing functions under the act. That clause requires that the CEO—formerly the Swan River Trust—must consider that as a part of that list of matters. One of the things that must be considered is “the significance of the waters in the Riverpark to the Nyungah community”. It is eminently sensible that that should be considered. That is a very standard way of drafting it and I do not see any point in addressing the clause any further.

**Mr C.J. TALLENTIRE:** The minister is putting the very important consideration of the spiritual significance of the Swan and Canning Rivers to the “Nyungah” people on the same level as the consideration of fairly minor-order things, such as whether or not someone can use a jet ski. The minister is putting that on an equal footing; how can that be right?

**Mr A.P. JACOB:** It is just a list. At no point does it seek to elevate what is a higher order consideration. That is not what it seeks to do at all.

**Mr C.J. Tallentire:** It seeks to downplay it.

**Mr A.P. JACOB:** It is a list of matters that should be considered. The first thing that should be considered is the protection and enhancement of the ecological and community benefit. I would like to hear whether the member for Girrawheen thinks that that is a matter that should not be considered as equal to “the significance of the ... Swan Canning Riverpark to the Nyungah community”. It is a list of matters that should be considered.

**Mr C.J. TALLENTIRE:** I point out that clause 14 is a lengthy clause. It extends over six pages of the bill, so there are many elements to it. I assure you, Mr Acting Speaker, that I am not extending debate unnecessarily. The opposition simply wants to get to the detail and find out the minister’s reasoning on these matters.

I now turn to proposed section 37, “Collaborative arrangements”. I am keen to know from the minister the nature of those collaborative arrangements that he envisages the CEO will enter into with other persons. There is no real indication from the legislation what those collaborative arrangements might be. I understand that that would not be detailed in a piece of legislation, but I think the minister needs to explain why he has put that in this clause and what the intention of it is.

**Mr A.P. JACOB:** This will be the mechanism through which collaborative arrangements will see money flow into natural resource management community groups, such as local governments and other research bodies.

**Mr C.J. TALLENTIRE:** I thank the minister for that response. It is useful information, and it is something that merits pursuing a little further. This deals with the collaborative arrangements that the minister would have with groups that are essentially volunteer groups; but if the minister is talking about it as a collaborative arrangement, I note that the clause provides that it could not proceed for more than five years, but that on expiry, a further collaborative arrangement could be developed. Would there be an understanding that there would be a funding arrangement automatically associated with these collaborative arrangements?

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**Mr A.P. JACOB:** That is generally what they are used for. I do not know why it has to specify that it has to be a financial arrangement, but that would typically be the matter.

**Mr C.J. TALLENTIRE:** Minister, when you and I talk to community groups and we hear their anguish at the short-term nature of much of the funding that they receive, is the minister saying that in the future I will be able to say, “Look, there is now a commitment on the part of government to five-year funding arrangements”? Is that what we can now point to? If it is, I think that is commendable. I think that is where we should be heading—giving people some guarantee, rather than the current situation under this government, in which groups go from year to year unsure about whether or not they will have funding the next year and in which they are unable to plan their projects that are by their very nature projects that extend over several years, such as weeding and replanting programs where they have to go back over a number of years to develop a whole work action plan. That is something that the minister could really highlight, if it is clearly the government’s commitment to a five-year funding arrangement for those groups that enter into collaborative arrangements. Could the minister please let us know if that really is his intention?

**Mr A.P. JACOB:** Proposed section 37(2) will provide that the term of a collaborative arrangement must not exceed five years, so that puts a cap on the collaborative arrangement. However, it allows for further collaborative arrangements to be continued so that programs can extend beyond the five years, but they would be up for renewal at the five-year period. It does not install a minimum period; merely a maximum period.

**Clause put and passed.**

**Clause 15: Part 3 Division 3 deleted —**

**Mr D.J. KELLY:** If I understand the drafting properly, this clause deletes staff and facilities covered by division 3 of the current act. I have a question about the arrangements that will apply to staff who are currently employed by the trust and who as a consequence of this bill will transfer over to the department. Are those people who are currently employees of the trust employed under the same industrial instrument as they will be employed under the trust when they become employees of the department? If they are not, will there be any beneficial or detrimental changes to their employment arrangements and will entitlements such as long-service leave, annual leave and all those provisions transfer across?

**Mr A.P. JACOB:** Staff are not currently employed by the Swan River Trust. In fact, their current employing authority is already the Department of Parks and Wildlife, so there should not be any changes in that space.

**Mr C.J. TALLENTIRE:** How long has that been the situation? I recall that when the minister made the announcement regarding the demise of the Swan River Trust, he was not able to inform the staff in what I should have thought was the usual manner. Most of the staff who were out in the field received an email on the Thursday morning that the minister made the announcement in this chamber, but they were out in the field doing work so they ended up hearing about their new employer via ABC radio as they listened to the radio in the cabs of their utes. Since when have staff been employed by DPaW and no longer the Swan River Trust?

**Mr A.P. JACOB:** My understanding is that the Swan River Trust was never an employing authority. Obviously, they were only with the Department of Parks and Wildlife since the creation of that department on 1 July last year. Prior to that, their employing authority was the Department of Environment and Conservation.

**Clause put and passed.**

**Clause 16 put and passed.**

**Clause 17: Section 39 amended —**

**Mr C.J. TALLENTIRE:** A very important part of the powers of the Swan and Canning Rivers Management Act is the enabling powers for inspectors—the ability for people to act as inspectors on behalf of the trust. The bill changes the reporting regime for those inspectors. Previously, the trust could issue an instrument in writing designating an officer of the trust or other officer of a public authority as an inspector. The minister is changing that to reflect the new arrangements, which require that an inspector report to the CEO. I assume that the minister has a training arrangement for these people, acknowledging that inspectors have a complex job and have to do all sorts of things. Would there be some necessary training at a CEO level as to how these people would be guided in their work? Can the minister tell me how many people are employed as inspectors and how their training arrangements would work in both directions—for the inspectors themselves and for the employing authority—to ensure they are given the right direction with their work?

**Mr A.P. JACOB:** My understanding is that there are currently different levels of inspectors. If the member looks at the marked-up copy of proposed section 39, he will see a range of others included there, including “a police officer is ex officio an inspector”. My understanding is that at varying levels there are currently 20 or so who are empowered to be inspectors. This proposed section is a good example because that authority is already

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delegated within the Swan River Trust through the general manager. The operational head of that department has already been running that side of it, so I guess that is already a tried and true method.

**Mr C.J. TALLENTIRE:** How will the inspectors be located in the agency? Will they work alongside people with other capacities in terms of their ability to issue pollution prevention notices? Will a Swan and Canning River inspectorate work alongside people who work as inspectors in other areas of the Department of Parks and Wildlife?

**Mr A.P. JACOB:** Again, it is highly operational in how it would be structured in the new department. This bill does not intend to try to stipulate how that will take its form, should this bill be proclaimed in its proposed form. Certainly the bill continues to empower that ability for inspectors. That role will continue and it will continue to play an important role. They currently work very closely with other agencies such as water police, marine transport, and fisheries. There are already good working relationships between Swan River Trust inspectors and the Department of Parks and Wildlife.

**Mr C.J. TALLENTIRE:** That was a very interesting response. I think it highlights yet another serious error the minister has made with this legislation. When the minister spoke about the role of the inspectors and who they work alongside, he did not once mention that there was some compatibility with people who work in the Department of Environment Regulation. Surely an inspector's role is an environment regulation role. The minister failed to consider that these people should perhaps be located in the Department of Environment Regulation. Instead, the minister has put them into the Department of Parks and Wildlife. Why has the minister not considered, if he had to go through with this kind of merger, that the better location for these people would be in an environmental regulatory body and not in a parks and wildlife body?

**Mr A.P. JACOB:** I was providing random examples. I was not by any means intending to provide an exhaustive list in that response while I was on my feet.

**Mr C.J. TALLENTIRE:** Could the minister answer the question: why has the minister decided not to include these people, who are, as he has identified, working alongside police officers? They are in a policing or regulatory role. Why would those people not be put into the Department of Environment Regulation?

**Mr A.P. JACOB:** We are clearly seeking to merge the Department of Parks and Wildlife and the Swan River Trust to create a dedicated conservation agency. I have outlined that time and again. These inspector functions will be performed by a range of state government agencies. The Swan River Trust, with its wildlife officers and rangers, and some of its forestry functions, performs a range of these sorts of functions. Although there are clearly some synergies in and under the Environmental Protection Act with the Department of Environment Regulation, I think it is pretty clear that the strongest synergies would be with the Department of Parks and Wildlife in creating a dedicated conservation agency.

**Mr D.J. KELLY:** I am looking at the marked-up copy of the bill. In addition to an amendment to section 39(1), the marked-up copy of the bill also has an amendment to sections 39(3) and 40(1) and (4). I cannot actually identify those amendments in the bill itself. Have I misunderstood that or is that an error in the bill?

**Mr A.P. JACOB:** There is a general catch-all. We have a schedule of those towards the back of the bill. Essentially, "Trust" is replaced with "CEO".

**Mr D.J. KELLY:** And "General Manager" with the word "CEO" in section 40—is that also covered by the catch-all?

**Mr A.P. Jacob:** Yes.

**Clause put and passed.**

**Clause 18: Part 3 Divisions 5 and 6 deleted —**

**Mr C.J. TALLENTIRE:** I seek the Chair's indulgence. I am working between the blue marked-up copy and the amendment bill. I am concerned that we might be about to skip over the deletion of the Swan River Trust account. I am checking sections 41 and 42. I am looking to find in which clause that deletion comes up. As the minister will understand, the deletion of the account is a substantial issue and it is not one that I want to skip over. Can we have some guidance on that from the advisers, please?

**Mr A.P. Jacob:** Clearly, we are deleting that account, so if you want to address your question to that, I will get back to you on the initial question you wanted to ask.

**Mr C.J. TALLENTIRE:** Yes, the minister is deleting the account but I do want to be sure that I am referring to the right one.

**Mr A.P. Jacob:** It is.

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**Mr C.J. TALLENTIRE:** I am finding that the amendment bill is a bit confusing, because we are now in clause 18, which deletes part 3, divisions 5 and 6.

**Mr A.P. Jacob:** It is the trust account, yes.

**Mr C.J. TALLENTIRE:** So I am right?

**Mr A.P. Jacob:** The trust fund.

**Mr C.J. TALLENTIRE:** Divisions 5 and 6, financial provisions? We are on the right spot.

**Mr A.P. Jacob:** Yes.

**Mr C.J. TALLENTIRE:** Clearly this is a major thing. We have touched on this in previous discussions; I think it was when we were looking at the definitions and I raised the issue that the trust is a body that philanthropic organisations, people who are philanthropists and corporates identified with, and they felt that by donating to the trust fund they would have a degree of confidence in the placement of that money to activities they endorsed and could see would be beneficial to the Swan and Canning Rivers. The minister is deleting the trust and the Swan River account. I suppose that means that the account is just being closed down, and that in fact, if I am reading this correctly, there will no longer be a capacity on the part of government to receive donations to an account specific to the needs of the Swan and Canning Rivers. Would the minister like to comment on that?

**Mr A.P. JACOB:** As I said the other day, section 131 allows for the existence of the Swan and Canning Rivers foundation account, which will pick up on those sorts of philanthropic purposes if people wish to contribute in that way.

**Mr C.J. TALLENTIRE:** We can turn to section 131, because I think that is important. The minister is seeking to delete the very trust fund that people donate to and he wants to replace it. What clause number is the minister saying the financial account is created under?

**Mr A.P. Jacob:** Section 131.

**Mr C.J. TALLENTIRE:** So it is not in the amendment bill; it is already in the existing act?

**Mr A.P. Jacob:** That is correct, yes.

**Mr C.J. TALLENTIRE:** It is section 131, and the minister is saying that that Swan and Canning Rivers foundation account that is already in existence, presumably, is going to be the receiving body for that philanthropic money. Why then have we had this trust fund account? What has been the point of that? Which fund has money gone into to date?

*Question to be Put*

**Mr J.H.D. DAY:** I move —

That the question be now put.

*Division*

Question put and a division taken, the Acting Speaker (Mr P. Abetz) casting his vote with the ayes, with the following result —

Ayes (27)

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

Noes (12)

Ms J. Farrer	Mr M.P. Murray	Ms R. Saffioti	Mr P.B. Watson
Ms J.M. Freeman	Mr J.R. Quigley	Mr C.J. Tallentire	Mr B.S. Wyatt
Mr D.J. Kelly	Ms M.M. Quirk	Mr P.C. Tinley	Mr D.A. Templeman ( <i>Teller</i> )

Pairs

Mr A. Krsticevic  
Dr K.D. Hames  
Mrs L.M. Harvey  
Mr D.T. Redman  
Ms W.M. Duncan  
Mr V.A. Catania  
Mr N.W. Morton  
Mr T.R. Buswell  
Mr R.F. Johnson

Ms L.L. Baker  
Mr F.M. Logan  
Mr R.H. Cook  
Mr M. McGowan  
Mr P. Papalia  
Mr W.J. Johnston  
Dr A.D. Buti  
Ms S.F. McGurk  
Mrs M.H. Roberts

Question thus passed.

*Consideration in Detail Resumed*

**The ACTING SPEAKER (Mr P. Abetz):** The question is that clause 18 stand as printed.

**Clause put and passed.**

**Clause 19: Section 49 replaced —**

**Mr C.J. TALLENTIRE:** Clause 19 seeks to delete existing section 49 and add new provisions for draft section 47 regulations. It mentions the public notification of those draft regulations. I am keen to know from the minister the sorts of things he envisages using this public notification mechanism for. I see that it is apparently about certain monitoring protocols and sampling procedures, but could the minister clarify how this public notification will occur?

**Mr A.P. JACOB:** It will occur as and when draft regulations are required to be publicly made available.

**Mr C.J. TALLENTIRE:** Proposed section 49(2) reads —

The draft regulations must be publicly notified by the publication of a notice —

- (a) in the *Gazette*; and
- (b) in 2 issues of a daily newspaper circulating throughout the State.

We have only one daily newspaper.

**Mr A.P. Jacob:** It is two issues, not two newspapers.

**Mr C.J. TALLENTIRE:** I know, and it is clear to which newspaper the bill refers. I am surprised that public notification is reliant on old technology. In the past we have talked about the qualities of the Swan River Trust website and the minister has conceded that that website will be transferred over to the Department of Parks and Wildlife website. I am very concerned that this information will become as hard to find as some of the other aspects of DPaW's website. I wonder why we are so reliant on the old processes.

**Mr A.P. JACOB:** Not everybody is on the web. If at some point the government considers removing that aspect, it will be interesting to see whether members opposite support that. As it stands, the section that relates to public notifications is exactly as it currently stands. However, this bill includes a requirement that notification also be placed on the website, so rather than doing one or the other we are doing both.

**Clause put and passed.**

**Clause 20: Section 55 amended —**

**Mr C.J. TALLENTIRE:** Clause 20 seeks to amend section 55(2) by deleting a few terms and inserting new section 55(2)(d) —

the CEO has been consulted as to whether the document should be approved as a strategic document.

I can well understand how the CEO will want to be involved in documents of a strategic nature that presumably consider how the Swan River can be looked after, but as those strategic documents are not specified, it is open to interpretation what that means. I seek the minister's clarification on what he thinks a strategic document would be.

**Mr A.P. JACOB:** Two examples of strategic documents are the river protection strategy and the management program; in fact, they are picked up at division 3 in clause 26.

**Clause put and passed.**

**Clauses 21 to 27 put and passed.**

**Clause 28: Section 73 amended —**

**Mr C.J. TALLENTIRE:** The proposed amendments to section 73 relate to the powers of the CEO. Proposed subsection (1) reads —

The CEO must by notice in writing refer a development application and information and documents relating to the proposed development to the following —

- (a) each local government for which the development appears to the CEO to be a relevant matter;
- (b) the Metropolitan Redevelopment Authority if the development appears to the CEO to be a relevant matter.
- ...
- (d) if the development is proposed to be carried out on land in the Swan Valley, the Swan Valley Planning Committee.

In these areas of planning law, public authorities are constantly changing. In a previous discussion, the minister himself was unsure whether or not the Department of Environment Regulation was an agency that the inspectors would necessarily work alongside. In the planning domain, I am aware of legislation that has been brought to this chamber to protect the Swan valley, and I would have thought that body would be interested in this. I am concerned there is a lack of inclusivity in the wording here, which means that if the CEO overlooks a particular body that is involved in consideration of a development application, there is nothing in the legislation to act as a bit of a catchall. How can we amend this section of the act so that we do not overlook relevant government bodies, newly formed planning committees or pieces of legislation that have been designed to protect an area? How can we be sure that this amendment will catch those bodies?

The second part of my question relates to those bodies the minister previously referred to as entities with which the CEO would have a collaborative arrangement. I am curious to know why they have not been detailed here. I would have thought that a body that is receiving public money and doing excellent work, say of a river restoration nature, and is the subject of a collaborative arrangement—the minister indicated money would be put to these groups—would be a worthy recipient of information relating to a development application. If there is a development application to rip up a whole area of riverbank and right alongside it they are hard at work restoring some riverbank, they might have a view. Why would the minister not ask for their advice on that particular project? Why is the minister not using this opportunity to ensure it is clear in the act that the CEO must seek the view of a body that the minister is calling a collaborative body?

**Mr A.P. JACOB:** I have no intention of including a clause that the CEO must seek the view of a collaborative body. They are collaborating with us for a specific purpose and that is the space that we work with them in. This is an incredibly consultative and inclusive approach. I do not think anybody could make out this is not the case; and, indeed, the catchall is section 73(1)(c), which reads —

each other public authority that appears to the CEO to have functions that are relevant to the proposed development.

Clause 28 seeks to capture only public authorities in any case.

**Mr C.J. TALLENTIRE:** Let us be really clear about this: the minister is prepared to exclude those natural resource management groups, for example, the Perth NRM, a very professional body—it has some problems at times—that represent the community view on how the Swan and Canning Rivers should be looked after. The minister might be aware of a group in my area, the South East Regional Centre for Urban Landcare. There are several bodies across the Swan River that operate at either the main NRM level or the regional NRM level. These bodies are recipients of large amounts of public money. I am sure that the minister would agree with me on that. Sometimes that money comes from the state government, but more often from the federal government. Those groups receive that money and they apply that money to doing good work—environmental monitoring or, as I have said before, river restoration—type work. Why would the minister not seek their advice? They also develop strategies. They have NRM plans that are very well researched documents that set out the community aspiration for the region. They have a high degree of expertise. They employ staff. They have the knowledge of what is and is not a viable proposition in the way of a development proposal for the river. Why would the minister not include them in this? Why would the minister not seek the advice of a body like SERCUL on a proposal for a development application for the Canning River? Why is the minister depriving himself of the opportunity to seek their advice?

Mr Chris Tallentire; Mr Albert Jacob; Mr Dave Kelly; Mr John Day; Acting Speaker; Ms Margaret Quirk; Mr David Templeman

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**Mr A.P. JACOB:** I will pick the member up on that last comment. We are by no means depriving ourselves of the opportunity to seek their advice. In fact, all applications will be placed on the website and will be clearly available for anybody to access. In my experience, interested groups are often the first people who will indeed comment and their comments are certainly well heeded along the way. This clause deals with legislative requirements for consultation, specifically with other public authorities. I support the clause.

**Mr C.J. TALLENTIRE:** That is not treating these bodies as equals of the public authorities, when in fact they often have more knowledge, more passion and commitment and more understanding of the issues associated with a development application than those public authorities do. They are often blessed with a history and knowledge of a situation that the agency does not have, because, as the minister well knows—I have raised this point in this place on several occasions—agencies have a dramatic turnover. If we want to have good corporate knowledge on an issue, we go to the community sector. If the minister goes to a body such as the South East Regional Centre for Urban Landcare, he will get that knowledge. Why is the minister not making sure that it is prescribed in this legislation that consultation take place with a body such as SERCUL? He should make sure that it is in this legislation so that there can be no overlooking of those bodies, no forgetting and no oversight. It should be clearly in the legislation so that we do not make the mistake of missing out on their important advice.

*Question to be Put*

**MR J.H.D. DAY:** I move —

That the question be now put.

Question put and passed.

*Consideration in Detail Resumed*

**The ACTING SPEAKER (Mr P. Abetz):** The question is that clause 28 stand as printed.

**Clause put and passed.**

**Clauses 29 to 34 put and passed.**

**Clause 35: Section 86 replaced —**

**Mr C.J. TALLENTIRE:** This clause deletes the existing section 86 and inserts a new section 86. On the surface, it appears that the amendment is primarily around substituting for the word “trust” the abbreviation “CEO”. I say “on the surface” because I want to consider the implications of that. The wording in the bill is “CEO must give section 85 decision to Minister”, whereas previously the wording was —

**Trust must give s. 85 decisions etc. to Minister**

I am curious to know why we have moved from the plural and the broader term “etc.” down to the singular “section 85 decision” and no et ceteras. Could the minister please explain why things have been reduced?

**Mr A.P. JACOB:** This is something that the parliamentary counsel has included in the bill. It was considered a more robust way of drafting it to achieve the same outcome under the current act.

**Clause put and passed.**

**Clause 36 put and passed.**

**Clause 37: Section 90 amended —**

**Mr C.J. TALLENTIRE:** This clause seeks to delete section 90(1) of the Swan and Canning Rivers Management Act. It states —

Note: The heading to amended section 90 is to read:

**CEO may request advice from Trust on issue of river protection notice**

That contrasts, of course, with the current arrangement in the act that has the heading —

**Issue of notice, General Manager may recommend**

Here we go again with this downgrading of the role of the Swan River Trust. Currently, the general manager has the power to be the recommender or the instigator of a river protection notice. Now, it seems that we need somebody within the Department of Parks and Wildlife to observe a circumstance that requires the issue of a river protection notice and then maybe the CEO will request advice from the trust. Is that not actually missing out on the opportunity to gain the benefit of the trust’s knowledge of what might be the circumstances around the issue of a river protection notice? Why again would we downgrade that capacity of the trust to drive things through the general manager to make recommendations? It is yet another example of how the minister is looking to marginalise or sideline the role of the trust. Why would the minister do that in relation to river protection

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notices? We know that river protection notices are powerful instruments. To my knowledge, though, I do not think one has ever been issued, so the minister might be jumping at shadows anyway. It is unfortunate that we have not tested the powers of river protection notices, but the minister is seeking to downplay them. Why would he do that? If this legal instrument has not been tested, why would the minister want to reduce it in any way?

**Mr A.P. JACOB:** I do not see this as a reduction of the river protection notices; indeed, I see this in many ways as increasing the scope. As opposed to the issue of a notice the general manager may recommend, the CEO may request advice from the trust. He does not necessarily have to but he is empowered to. However, the member is correct in noting that river protection notices have not been issued up until this point. My reading of the clause is that it will effectively make it easier to issue a river protection notice.

**Clause put and passed.**

**Clause 38: Section 91 amended —**

**Mr C.J. TALLENTIRE:** This clause again relates to the river protection notices and the detail of how they might be issued. The minister believes that the issuing of a river protection notice might become more likely with the new arrangements. I think the minister should perhaps share with us some of the situations in which he imagines that a river protection notice would be issued. I note that this particular amendment states —

- (1) The CEO may issue a river protection notice if, after considering the advice of the Trust given under section 90 and giving each person to whom it is proposed to give the river protection notice a reasonable opportunity to show cause in writing why the river protection notice should not be issued, the CEO is satisfied that the notice should be issued.

Minister, I imagine that a river protection notice should be issued when somebody persists with some form of pollution event. This could apply to people who are perhaps engaged in horticultural activity on those very, very sandy soil types that have almost no nutrient retention potential and yet they insist on putting highly water-soluble fertilisers on that soil. Would that be the sort of case in which the CEO would go through this process of issuing a river protection notice and giving someone a reasonable opportunity to show cause in writing why the river protection notice should not be issued? Is that the sort of thing that the minister envisages river protection notices being applied to?

**Mr A.P. JACOB:** I do not see that I could hypothecate about what may or may not be the occurrence, given that I do not actually have the context of a protection notice that has been issued at this stage. It would certainly support issuing those at the absolute extreme end of the scale, such as if there were a chronic problem of significant magnitude. Along the way there are obviously provisos contained even within the legislation and we would have to be on very firm ground. A river protection notice would be issued for the most serious issues.

**Mr C.J. TALLENTIRE:** Therefore, river protection notices can eventually be our most powerful legal protective instrument for the Swan and Canning Rivers. The minister and I have observed that this legal mechanism has not been used in the past, but the minister said that he is not sure whether the circumstance of something as egregious as the heavy use of highly water-soluble fertilisers on sandy soils, which lead inevitably to nitrogen and phosphorus ending up in the Swan and Canning Rivers, would warrant a river protection notice being issued. What circumstance does the minister imagine would definitely require a river protection notice to be issued?

**Mr A.P. JACOB:** I do not seek to go down the road of debating water-soluble fertilisers at this point, although we will no doubt have opportunities to do that at another time. A river protection notice would be issued in circumstances in which it is the most appropriate control, and I imagine, goes beyond those that are currently provided under the Environmental Protection Act.

**Mr C.J. TALLENTIRE:** This is the minister's legislation. He is the minister with the ultimate responsibility for this legislation. Indeed, the minister's amendments mean that he will have even greater control over the use of this legislation because through the CEO he can make a directive on the issue of a river protection notice. Surely the minister can tell me whether or not it would apply to water-soluble fertiliser. Let us use another example of a car servicing company that pours used oil down the drain and that drain flows directly into the Swan or Canning Rivers. Is that a circumstance under which the minister would consider issuing a river protection notice?

**Mr A.P. JACOB:** These are all essentially hypotheticals and there is a range of other acts such as the Environmental Protection Act that pick up on unauthorised discharges into the environment. As this matter relates to this clause and what I am seeking with this legislation, it is really only a machinery-of-government change and, as is quite clearly articulated in this clause, it essentially just replaces the trust as the body responsible with the CEO as that body. We are not seeking to make any changes one way or another in this legislation to the existing provisions for river protection notices.

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**Mr C.J. TALLENTIRE:** The minister's argument does not stack up. The minister has made changes to the legislation that make the minister far more central to the issue of things such as river protection notices. The minister has made the decision to make these amendments; he is taking on extra direction, power and control of the legislation, especially in the issue of river protection notices; so, surely, the minister should have in his mind the circumstances under which he would issue river protection notices. The minister is right—it was easy before for a minister to remain separate from the potential consideration of a river protection notice because the trust was a separate body. But now, the minister has direct control through the CEO to determine whether a river protection notice will be issued. Why can the minister not tell me the kinds of situations that would cause a river protection notice to be contemplated?

*Question to be Put*

**MR J.H.D. DAY:** I move —

That the question be now put.

Question put and passed.

*Consideration in Detail Resumed*

**The ACTING SPEAKER (Mr P. Abetz):** The question is that clause 38 stand as printed.

**Clause put and passed.**

**Clause 39: Section 98 amended —**

**Mr C.J. TALLENTIRE:** Clause 39 deletes section 98(4)(b) of the act and again makes changes principally around the use of the term “trust” and replaces it with the term “CEO”. But in relation to this clause, because we are looking at financial assurance requirements and the inclusion of those financial assurance requirements on notices, I seek some guidance on how equivalent are the trust and a CEO. I would have thought that the capacity for a CEO to sign off on something like a financial assurance arrangement would already be determined by other delegations and other responsibilities that bind a CEO. I am surprised. I acknowledge that a trust would not necessarily have been bound by those same arrangements, but I am surprised that a CEO would even need this additional financial assurance requirement arrangement. I seek the minister's explanation on that point.

**Mr A.P. JACOB:** Again, this is just a transfer of the power, as are most clauses of the bill.

**Mr C.J. TALLENTIRE:** Is the minister suggesting that it is just an interchangeability equivalence thing?

**Mr A.P. Jacob:** Yes.

**Mr C.J. TALLENTIRE:** Does that mean a CEO operates under the same financial constraints as the trust?

**Mr A.P. JACOB:** As I said, the clause simply transfers over the existing power under the act through to the CEO from the trust.

**Clause put and passed.**

**Clauses 40 to 43 put and passed.**

**Clause 44: Section 129 replaced —**

**Mr C.J. TALLENTIRE:** Clause 44 deletes section 129 of the act. This clause relates to the functions of the foundation and relates to a previous clause on which, unfortunately, the Leader of the House saw fit to move a guillotine motion. I think that that is really worrying, because when members are talking about financial considerations, they should be able to get down to the absolute detail. I am curious to know how much money is currently in the Swan and Canning Rivers Foundation and how much money is expected to be transferred into it from the trust account that members looked at previously; although, as I said, because of the guillotine motion I was not able to find out how much is currently in there. I seek from the minister information about how much will be transferred into the foundation with the cessation of the trust.

**Mr A.P. JACOB:** The trust articles that we were speaking about earlier essentially relate to the operation side of the business, and that will now be part of the Department of Parks and Wildlife. I am continually asked questions about the ability of the Swan River Trust to work in this financial space. This is the clause that allows for a foundation. It is important to note that the foundation has not yet been established. The act allows for the establishment of a trust. The Swan River Trust has had that power until this point, and that ability will continue. Indeed, under its new role, that is something that the Swan River Trust board may wish to pursue. That would be a matter for the board and others as we continue. The foundation has not been set up yet.

Mr Chris Tallentire; Mr Albert Jacob; Mr Dave Kelly; Mr John Day; Acting Speaker; Ms Margaret Quirk; Mr David Templeman

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**Mr C.J. TALLENTIRE:** Can the minister clarify that some money is currently sitting in the body that we are moving to delete? I know that people have made donations to the Swan River Trust in the past. They just talked about it in generic terms, saying, “Oh, yes, I am making a donation to the Swan River Trust.”

**Mr A.P. Jacob:** I don’t think you’ll find that they have.

**Mr C.J. TALLENTIRE:** Has no-one ever made a donation to the Swan River Trust?

**Mr D.J. Kelly:** You can’t just nod your head; you have to actually say something.

**Mr A.P. JACOB:** I am confirming that, but I have checked this previously. The advice that I have—I am looking to my advisers because I want to make sure that I get it right—is that prior to today, and as of today, that is correct; we have not had donations up to this point. Offers have been made but it has not been set up and donations have not been received up to this point.

**Mr C.J. TALLENTIRE:** What about things like the Swan and Canning Alcoa arrangements? Do they not go through the trust?

**Mr A.P. JACOB:** That is a sponsorship arrangement; the member is talking about individual donations along the way. That sponsorship arrangement has existed.

**Mr C.J. TALLENTIRE:** Through which accounts did money from that sponsorship arrangement transit? Is the minister suggesting that they went into some sort of general government account or did they ever go into money that was specific to the Swan River Trust?

**Mr A.P. JACOB:** I understand that that money went directly to the Perth Region NRM.

**Mr C.J. TALLENTIRE:** This is an important issue—where money is going. The minister gave a somewhat unconvincing answer about the amount of money that has previously been donated to the Swan River Trust.

**Mr A.P. Jacob:** No.

**Mr C.J. TALLENTIRE:** Is the minister categorically saying that no money has ever been donated to the Swan River Trust?

**Mr A.P. Jacob:** As far as I have been advised, yes.

**Mr C.J. TALLENTIRE:** The minister is now talking about creating a foundation. I note that in the past few months we have talked about the government setting up a foundation to receive money for biodiversity offsets. The minister has not been able to set up that fund. What confidence could anyone have that he would be able to set up this fund?

**Mr A.P. JACOB:** I am not saying whether we will or will not. Under this part of the bill, I am simply ensuring that the bill provides that capacity.

**Clause put and passed.**

**Clause 45: Section 131 amended —**

**Mr C.J. TALLENTIRE:** It looks as though the minister is seeking extra flexibility through this clause. If money is in this account, which the minister might or might not create, that money —

... may be transferred to an operating account of the Department for the purposes of carrying this Act into effect or otherwise applied for the purposes of the Act or the Foundation.

On whose say-so would that transfer occur?

**Mr A.P. JACOB:** On the CEO’s. That question related to section 131(3)(b). As it pertains to subsection (a), it is now “subject to the direction and control of the CEO”. The wording has not really changed from how it currently exists, but it reflects that machinery-of-government change and continues the existing provisions.

**Mr C.J. TALLENTIRE:** The minister has said that this situation has never arisen. According to the minister, money has never been donated to either the trust fund or this foundation account. The minister also told me that this foundation account does not exist. The situation has never before arisen, but the minister wants to put into this amendment bill a provision that enables the CEO to decide when moneys are transferred out of a fund specific to the Swan and Canning Rivers. Is the minister telling me that he wants the CEO to decide whether to take money out of the Swan and Canning Rivers Foundation account and move it into the department’s account?

**Mr A.P. JACOB:** I am not really sure what the member is getting at. There are fairly strong requirements on CEOs as to how they would operate with money. I would expect a CEO to comply with the requirements on them. This clause allows the potential creation of a foundation account into the future.

Mr Chris Tallentire; Mr Albert Jacob; Mr Dave Kelly; Mr John Day; Acting Speaker; Ms Margaret Quirk; Mr David Templeman

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**Mr C.J. TALLENTIRE:** If the minister is giving the CEO the power to make these decisions, I hope the CEO would make them in consultation with the minister. The minister and the CEO could decide that funding was donated or given by people who had some sort of benevolent or philanthropic desire specific to the Swan and Canning Rivers. Is the minister saying that he would be prepared to allow that money to go into the department?

**Mr A.P. Jacob:** I am saying it is my expectation that ultimately the CEO would be financially accountable and I believe that is good governance.

**Mr C.J. TALLENTIRE:** People give money to the Swan and Canning Rivers account. Why would the minister ever allow that money to be used elsewhere? ‘

**Clause put and passed.**

**Clause 46: Section 132 amended —**

**Mr C.J. TALLENTIRE:** Section 132(1) relates to the rules. It states —

The Minister may, on the recommendation of the CEO, make rules that are necessary or convenient for giving effect to this Part.

Following the minister’s non-answer to my previous question about why or when the minister would ever allow money to be transferred from the Swan and Canning Rivers Foundation account into the department’s account, I am looking for some sort of guidance about rules around when that could occur. I do not see it. I see rules but they are only an outline of a set of rules. They are not, as the heading of proposed section 132 suggests, “Rules for this Part”. It just says the rules “may” include a series of things set out in subparagraphs (a) to (g). Why is the bill not specific? After all, we are talking about public money. Money will be donated by people for a range of reasons, yet we are being so lax with the arrangements about how that money would be administered. Why are we not being quite specific about the rules that surround the foundation account so that there could be no confusion and a CEO would have it clearly set out that money donated to the rivers foundation account would stay in that account and be applied to the intended purposes?

**Mr A.P. JACOB:** That specificity would lie in the rules. That is exactly the point. We are talking about a hypothetical account because it has not existed up to this point, although the act allows it to be created. Under this clause the creation of such an account requires consultation with the trust to make those hypothetical rules about the hypothetical account. That is when a concrete set of rules would be put in place.

**Mr C.J. TALLENTIRE:** Section 132(2)(a) provides —

(2) Without limiting subsection (1), the rules may —

(a) provide for the appointment, constitution, functions and proceedings of the council, including power to employ persons, appoint agents ...

I wonder why the government would not make the Swan River Trust the body. Maybe I am missing something. Given that we already have a Swan River Trust, it would be the logical overseer of what goes on with the foundation account.

**The ACTING SPEAKER:** The question is that clause 46 stand as printed.

**Mr C.J. TALLENTIRE:** I really seek an answer on that. I am saying very specifically —

**The ACTING SPEAKER:** Because the minister has chosen not to respond, I cannot allow you to get on your feet again for this clause.

**Mr D.A. TEMPLEMAN:** The clauses of the bill are before us and we are at the consideration in detail stage, which means that we are considering this bill in detail. Questions on clauses in the bill are asked of the minister and the minister has been asked to respond to a specific question by the member for Gosnells, but the minister is now using a stock-standard answer. During consideration in detail it is appropriate that the minister provide an answer to the questions that have been requested of him and not fall into the pattern into which he seems to have fallen.

**The ACTING SPEAKER:** Member for Mandurah, whether the minister answers is his prerogative.

**Mr D.A. TEMPLEMAN:** With all due respect, I am on my feet and I am relating to this clause.

**The ACTING SPEAKER:** I suggest that rather than lecture him about it, ask your question and he can give an answer if he wants to.

**Extract from Hansard**  
[ASSEMBLY — Wednesday, 25 June 2014]  
p4619b-4643a

Mr Chris Tallentire; Mr Albert Jacob; Mr Dave Kelly; Mr John Day; Acting Speaker; Ms Margaret Quirk; Mr David Templeman

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**Mr D.A. TEMPLEMAN:** I am getting to that, Mr Acting Speaker, with all due respect, but I am highlighting to you and those present in the chamber that the consideration in detail process is just that; it is an opportunity to analyse the bill in detail, clause by clause. The minister may not like the questions that are asked of him, but the opposition is putting to the minister questions that it believes are relevant to the bill and indeed to the clause being debated. The member for Gosnells asked a specific question on this clause and he has made a point about why it is important to get an answer from the minister. I think it is appropriate that the minister answer the question from the member for Gosnells. Perhaps when I sit down, the member for Gosnells may take the opportunity to reiterate the specific question that he would like the minister to answer.

**Mr A.P. JACOB:** The member for Mandurah is mistaken. I answered the question that related specifically to proposed section 132(2A). The follow-up question was on the existing act, which is not before the house.

*Question to be Put*

**Mr J.H.D. DAY:** I move —

That the question be now put.

*Division*

Question put and a division taken, the Acting Speaker (Mr P. Abetz) casting his vote with the ayes, with the following result —

Ayes (25)

Mr P. Abetz	Ms E. Evangel	Mr S.K. L'Estrange	Mr A.J. Simpson
Mr F.A. Alban	Mr J.M. Francis	Mr R.S. Love	Mr M.H. Taylor
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr T.K. Waldron
Mr I.M. Britza	Mr B.J. Grylls	Mr P.T. Miles	Mr J.E. McGrath ( <i>Teller</i> )
Mr M.J. Cowper	Mr C.D. Hatton	Dr M.D. Nahan	
Ms M.J. Davies	Mr A.P. Jacob	Mr D.C. Nalder	
Mr J.H.D. Day	Dr G.G. Jacobs	Mr J. Norberger	

Noes (12)

Ms J. Farrer	Mr M.P. Murray	Ms R. Saffioti	Mr P.B. Watson
Ms J.M. Freeman	Mr J.R. Quigley	Mr C.J. Tallentire	Mr B.S. Wyatt
Mr D.J. Kelly	Ms M.M. Quirk	Mr P.C. Tinley	Mr D.A. Templeman ( <i>Teller</i> )

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Pairs

Mr A. Krsticevic	Ms L.L. Baker
Dr K.D. Hames	Mr F.M. Logan
Mr L.M. Harvey	Mr R.H. Cook
Mr D.T. Redman	Mr M. McGowan
Ms W.M. Duncan	Mr P. Papalia
Mr V.A. Catania	Mr W.J. Johnston
Mr N.W. Morton	Dr A.D. Buti
Mr T.R. Buswell	Ms S.F. McGurk
Mr R.F. Johnson	Mrs M.H. Roberts

Question thus passed.

*Consideration in Detail Resumed*

**The ACTING SPEAKER (Mr P. Abetz):** The question is that clause 46 stand as printed.

**Clause put and passed.**

**Clause 47 put and passed.**

**Clause 48: Part 11 inserted —**

**Mr D.J. KELLY:** I understand that this clause contains the transitional arrangements that are necessary to give effect to the amendments that will be made to the way that the Swan River Trust will operate.

**The ACTING SPEAKER:** Can members hush the conversations so that Hansard and I can hear.

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Mr Chris Tallentire; Mr Albert Jacob; Mr Dave Kelly; Mr John Day; Acting Speaker; Ms Margaret Quirk; Mr David Templeman

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**Mr D.J. KELLY:** Proposed new section 143, “Swan River Trust Account”, contains the transitional arrangements that are required to deal with the Swan River Trust account, which in this case is called the former account. The proposed new section provides that on the commencement day, any moneys standing to the credit of the former account must be credited to an operating account of the department and the former account must then be closed. In previous answers, the minister has said that the Swan River foundation account will be established to take over, in effect, the role of the Swan River Trust account.

**Mr A.P. Jacob:** No.

**Mr D.J. KELLY:** The minister is not on his feet. What I previously understood him to say is that although people may have donated to the Swan River Trust account by way of donations, charitable donations or gifts, that function will now be performed by the Swan River Foundation account, if I have got the name right. Would it not have been appropriate in the transitional arrangements to require that any money in the former account—the Swan River Trust account—on the day of commencement be transferred to the Swan River Foundation account instead of simply “an operating account of the department”?

**Mr A.P. JACOB:** No, no and no. The member for Bassendean got that completely wrong. The Swan River Foundation account has not existed up until this point, and we debated that issue on a few clauses. As I have said, there are no donation moneys in the current account, so the member is well and truly mixing the two issues.

*Question to be Put*

**Mr J.H.D. DAY:** I move —

That the question be now put.

*Division*

Question put and a division taken, the Acting Speaker (Mr P. Abetz), casting his vote with the ayes, with the following result —

Ayes (24)

Mr P. Abetz	Ms E. Evangel	Dr G.G. Jacobs	Mr D.C. Nalder
Mr F.A. Alban	Mr J.M. Francis	Mr S.K. L’Estrange	Mr J. Norberger
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr R.S. Love	Mr A.J. Simpson
Mr I.M. Britza	Mr B.J. Grylls	Mr W.R. Marmion	Mr M.H. Taylor
Ms M.J. Davies	Mr C.D. Hatton	Mr P.T. Miles	Mr T.K. Waldron
Mr J.H.D. Day	Mr A.P. Jacob	Dr M.D. Nahan	Mr J.E. McGrath ( <i>Teller</i> )

Noes (12)

Ms J. Farrer	Mr M.P. Murray	Ms R. Saffioti	Mr P.B. Watson
Ms J.M. Freeman	Mr J.R. Quigley	Mr C.J. Tallentire	Mr B.S. Wyatt
Mr D.J. Kelly	Ms M.M. Quirk	Mr P.C. Tinley	Mr D.A. Templeman ( <i>Teller</i> )

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Pairs

Mr A. Krsticevic	Ms L.L. Baker
Dr K.D. Hames	Mr F.M. Logan
Mrs L.M. Harvey	Mr R.H. Cook
Mr D.T. Redman	Mr M. McGowan
Ms W.M. Duncan	Mr P. Papalia
Mr V.A. Catania	Mr W.J. Johnston
Mr N.W. Morton	Dr A.D. Buti
Mr T.R. Buswell	Ms S.F. McGurk
Mr R.F. Johnson	Mrs M.H. Roberts

Question thus passed.

*Consideration in Detail Resumed*

**The ACTING SPEAKER (Mr P. Abetz):** The question is that clause 48 stand as printed.

**Clause put and passed.**

**Clauses 49 to 52 put and passed.**

Mr Chris Tallentire; Mr Albert Jacob; Mr Dave Kelly; Mr John Day; Acting Speaker; Ms Margaret Quirk; Mr David Templeman

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**Clause 53: Other provisions amended —**

**Mr C.J. TALLENTIRE:** I foreshadowed to the Minister for Environment earlier, I think during the second reading debate, that I had questions about clause 53. I drew the minister's attention to the amendment to section 10 of the act. I asked the minister to explain what the difference was between "within" the catchment area and the new term, "a part of" the catchment area. Could the minister please explain the difference?

**Mr A.P. JACOB:** There is no difference in terms of the areas that they define; it is simply, on advice from the Parliamentary Counsel's Office, a better form of wording that seeks to encapsulate that area.

**Mr C.J. TALLENTIRE:** Surely the minister can understand that we all live within a catchment. Can the minister see the point that we live within a catchment? Our location here is within the Swan River catchment—can the minister understand that point?

**Mr A.P. Jacob:** Yes.

**Mr C.J. TALLENTIRE:** Why then would we seek to amend this definition to talk about "a part of" a catchment? One could be in a part of a catchment, and somewhere else might not be part of a catchment. Why make that difference?

**Mr A.P. JACOB:** This section deals specifically with the definition of the riverpark catchment area, and I am happy to categorically state, in *Hansard*, that the change in wording does not actually change the definition of the area. It is simply something that was picked up by the PCO as part of the drafting changes. I am no legislative drafter, but it was considered a better form of wording to achieve the same outcome that it has achieved up to this point.

**Mr C.J. TALLENTIRE:** One of our duties here is to bring forward our knowledge and understanding and, from time to time, to challenge the wisdom of the PCO. In this instance, I think the PCO might have got it wrong, and that is why I am putting it to the minister that we are leaving ourselves open, regardless of what the minister's current intentions might be. There could be a time in the future when we would want to perhaps issue a river protection notice and it would be absolutely critical that we could say where the offence was occurring. We would need to be able to present the case that the offence was occurring in the defined development control area. It would be too easy for someone to say something was not in the defined development control area. The minister has to be very specific about this. By changing the definition from "within the catchment area" to "part of the catchment area", the minister is creating a loophole that people would be able to abuse and avoid the prosecutions that the minister has created the potential for further on in the bill.

**Mr A.P. JACOB:** That is not the case, and that is not how I view the wording. I am happy to debate this so that if anybody ever tried to exercise that, thinking it was a loophole, they would know that is certainly not what we are seeking to do here. We are clarifying that the river reserve is a subset or, indeed, a "part of the catchment area". It is clearly defined as a part of the catchment area, and it is my understanding that the word "within" implies that it could almost be a separate subset within that catchment area. By making it "part of the catchment area", we ensure that all of that is encapsulated.

**Mr C.J. TALLENTIRE:** I will try one more time. When we refer to a catchment, the act states that something is occurring "within the catchment area", which is the all-encompassing term. If something occurs within a catchment, it allows for anything that occurs within a catchment. If the bill changes the definition to "part of the catchment", the minister is isolating specific parts out of the catchment. That is the danger. It may be that the difference is only marginal. The minister stated that he received advice that this is an essential difference. I do not think the minister has explained why it is so essential to change this. We are confident with the current definition, so why risk it by bringing in what is a vaguer term about something being a part of a catchment, not the whole of which is within the catchment?

**Mr A.P. JACOB:** I do not believe that it is more vague definition; I view it as being more clear. We can debate ad nauseam which usage of the wording does that better, but we both clearly agree on the outcome that is being sought here—there is no divergence from that. The riverpark as defined is not sought to be changed in any way, shape or form through this bill. I agree with Parliamentary Counsel's Office that this is a better form of wording, and this has been done with PCO's advice. It was not something I sought to do.

**Clause put and passed.**

**Clauses 54 and 55 put and passed.**

**Title put and passed.**