

PERTH MARKET AUTHORITY BOARD — MEMBERSHIP

Consideration of Ministerial Statement — Motion

Resumed from an earlier stage of the sitting.

HON KEN TRAVERS (North Metropolitan) [7.02 pm]: I move —

That we consider the statement made by the Minister for Agriculture and Food.

I thank the Leader of the House for allowing the house to have this debate tonight. This is a very important debate for us to have. Nothing is more important for ensuring the integrity of government than the way in which conflicts of interest, or potential conflicts of interest, are managed by all parties. We all at various times find ourselves in a conflict of interest. The key issue for integrity is the way in which those conflicts are managed. I have no doubt that over the coming months, as this government engages in a number of asset sales, a range of ministers will be put in a similar position to the position of the Minister for Agriculture and Food.

It struck me as very odd, initially, that the Minister for Agriculture and Food seemed to be completely silent and was playing no role in the debate about the Perth Market Authority. Therefore, last week, I asked a number of questions. I believe those questions would have given the minister the opportunity at that point to make it clear to the house that the reason he was not playing any role in that debate was because he had a conflict. However, sadly, that did not occur.

Earlier this week, I asked a more direct question about whether the minister had a conflict, and the minister confirmed that he had a conflict and that he had stood aside from all cabinet decisions on the sale of the Perth market. We all know that the sale of the Perth market is a highly contentious issue, and we are dealing with that issue in the house at the moment.

Today, the minister provided a statement to the house, which we are considering now. In that statement, the minister made a number of points to highlight the history of the matter, as he saw it, going back to 2 July. In the statement that the minister made today, he made the following comment, which was repeated in some of the answers that were given today —

Having made this declaration, I was then unable to comment or be present during discussions regarding the sale of the Perth Market Authority.

The minister went on to say that that was based on advice from the probity auditors.

It is worth reviewing the history of this matter. On 25 June, the Minister for Agriculture and Food and the Treasurer issued a joint press release. The press release is headed “WA asset sales program reaches milestone.” It commences with the words —

Treasurer Mike Nahan and Agriculture and Food Minister Ken Baston today announced the State Government would seek expressions of interest for Market City, Western Australia’s central wholesale trading and distribution hub for fruit and vegetables.

It goes on to state —

As part of this process, consideration was given to the impact on Market City tenants and Mr Baston said the State Government was committed to supporting tenants with a number of measures designed to limit the potential impact of the sale.

It states further —

“A number of conditions will be established as part of the sale process to ensure the continuation of the market for 20 years. This includes restrictions on the development of the land and protection of the central trading area,” Mr Baston said.

Anyone who reads that statement would have the view that the person who will be engaged in the process of selling this asset and getting the money from the sale of this asset is the Treasurer, and the person who will be seeking to ensure that the interests of the fruit and vegetable industry in Western Australia are protected is the Minister for Agriculture and Food. The only interpretation that we can take from this statement of 25 June is that the advocate for ensuring that the industry is protected to the best extent possible is the Minister for Agriculture and Food.

We then move on. On 2 July, the Minister for Agriculture and Food issued a directive to the Perth Market Authority. The minister has just tabled that directive, and unfortunately I have had not a chance to read the terms of that directive. The directive is headed “Perth Market Authority Assets (Pre-Divestment) Direction 2015. The minister clearly engaged in the process of the sale by issuing a directive to the

Perth Market Authority. I expect this directive is in fairly similar terms to a later directive that the minister issued. The directive instructs the Perth Market Authority about how it must act with regard to cooperation and engagement with respect to the sale of the asset. As I have said, that directive was issued on 2 July. Coincidentally, or otherwise—I am not sure—2 July was also the date on which the minister identified that he had a conflict of interest. As part of the minister’s statement today, he tabled a copy of the correspondence that he had sent to Peter Conran, the director general of the Department of the Premier and Cabinet, in which he outlined and explained his conflict of interest with respect to the sale of the Perth market. The minister then proceeded to advise the Premier and cabinet, on the advice of Mr Conran. It becomes fuzzy to me, from reading the advice that has been provided to us so far, why there was a need at that point to still keep this matter confidential.

A question was asked today about the tabling of advice from the probity auditors, but until we can see that advice, the house will be none the wiser as to exactly what was the advice on confidentiality. I am surprised that both the director general and/or probity auditors would have said to keep this matter completely confidential. Realistically, it would be logical that at some point someone would make the connection between the minister and his family connection with respect to involvement in one of the bids. I do not understand how anybody would have said, “Keep it confidential”, as we would find out in due course. I would have thought the best way of dealing with a conflict, and the path I have always taken, is that sunshine is the answer, not secrecy: put it out there and explain how it is being managed. That is what happened on 2 July.

On 17 July, the minister issued a new directive to the Perth Market Authority. This is after the Minister for Agriculture and Food identified that he had a conflict and after, I assume—as he has told the house—the point at which he was no longer present during any discussions on the sale of the Perth Market Authority. I do not know how issuing a directive about how the board should act with respect to that sale is not being a party to those discussions. In fact, the Minister for Mental Health, during debate yesterday, assisted the house in understanding what had happened between 2 July and 17 July. In the uncorrected *Hansard*, the minister advised the house —

Hon Sally Talbot asked about “Perth Market Authority Direction 2015 No.2.” —

That is the one that was issued on 17 July —

The answer is that the direction was intended to offer protection to the board during the sale process and to assist the government with the sale of the market.

Let me be very clear that it states “to assist the government with the sale of the market.” The minister continues —

The first direction was withdrawn to incorporate comments made by the board. The board was offered an indemnity to sit alongside the direction but the board declined that offer.

The Minister for Mental Health told us that yesterday in the house. I cannot see in any way, shape or form how the Minister for Agriculture and Food’s statement to the house today that he had not been involved in any discussions or the sale, after he had identified his conflict, can stand against the advice of the Minister for Mental Health and the fact that he issued that notice on 17 July, which was well after he had identified the conflict.

The minister has an obligation to not only the house but also the people of Western Australia. A number of questions were asked over the last day or so to the minister about these matters. I want to comment on some of them. Hon Sue Ellery asked a question of the Premier about the Ministerial Code of Conduct and whether the Minister for Agriculture and Food’s failure to disclose his conflict of interest to Parliament during the course of debate on the bill constituted a breach of the code. The Premier’s answer was that the minister had provided an explanation to the house of his actions in relation to a conflict of interest he had identified earlier this year. The Premier stated that the minister’s declaration under the Ministerial Code of Conduct affected his involvement in cabinet consideration of the matter and not his ability to speak on the matter in Parliament. But he stood and gave his speech to Parliament as the Minister for Agriculture and Food. He gave it during ministerial statements and he was speaking as the Minister for Agriculture and Food. He was speaking in Parliament and he was not acting as anything other than a minister. It was not during members’ statements; it was as the Minister for Agriculture and Food. The only way he could get the call was as the Minister for Agriculture and Food, and yet there have been a number of times that he has made statements to this house in which he has not made that conflict clear. One of the times that he made a statement to the house and, in my view, could have made clear to the house the conflict that he had and how he was managing that conflict was in a statement on 1 December on the appointment of an interim board. Again, as the Minister for Agriculture and Food, in a ministerial statement, he advised that he had appointed a new board and that as a result of discussions with his office there had been a change to the timing of resignations—this was clearly related to the sale—and that a new interim board had been appointed. It is interesting to note that in that

statement to the house the minister said that the new board—led by Brian Easton as chairman, who also chairs the Conservation Commission of Western Australia—had taken on the oversight of WA’s central fruit and vegetable trading hub for a one-year term until November 2016. The minister has continued to argue that his role under the Perth Market Act for the Perth Market Authority is as the minister responsible for ensuring the day-to-day operations of Market City, and that he has complied with the requirement. He has argued that that has nothing to do with the sale of the asset. That was the advice of the minister to Hon Kate Doust today in answer to a question that she had asked. That would be correct, except that in his statement on 1 December, the uncorrected *Hansard* shows that the minister went one step further and said —

In addition to the daily operations, the appointment of this interim board will assist in the smooth transition of Perth Market City to new ownership.

Again, clearly, the minister was appointing a board with the aim of working on the sale of Perth market. In that same presentation, Hon Ken Baston, as the Minister for Agriculture and Food, made a number of comments such as —

I believe that private sector ownership of the market will allow it to raise capital to expand its operations, such as further developing its cold storage facilities.

The minister concluded his statement, and said —

I believe that private ownership of the market will help open up new export opportunities that currently are not available and that will benefit our 500 fruit and vegetable growers.

When the minister made that statement, he had never told anybody in this house—that is not correct, as ministers clearly knew that he had a conflict. I do not know whether the backbench of the Liberal Party or the National Party were aware of the conflict, but I was not aware of it when the minister made that statement. It was after that that I asked the question and the minister confirmed his conflict. If Hon Ken Baston is going to make statements like that as minister, surely he would have declared that he had a conflict. I would have argued that if the minister had been following the advice he claimed he had, which was to stay out of the debate and not involve himself in the debate or the process of the sale, he would not have made those statements to the house. Sadly, for someone I have always considered a good bloke, that has damaged the reputation of the government and cast a shadow over the whole sale process and what has been going on within this government.

The other thing that is worth commenting about on the matter we are considering is that when the issue was first raised yesterday as a result of me asking a question without notice about whether the minister had a conflict, and he confirmed to the house that he did, the first defence was not that he had been advised by probity auditors and the director general of the Department of the Premier and Cabinet to keep it confidential; in fact, the first line of defence proffered to the community, which is contained in an online news article written by Jacob Kagi from ABC News, reads —

Just hours earlier, a spokeswoman for Mr Baston said the conflict issue was “widely known”.

I am sorry, minister, which is the answer? Is it that the minister has to keep it confidential or was it widely known? It was not known to me! Maybe it was widely known amongst others. In that case, the minister’s argument that he had to keep it confidential is completely blown away. If the minister’s first defence is that it was widely known, he cannot then rely on a defence that he had to keep it confidential because that was the advice.

There was one final thing in the ministerial statement this morning that I also found fascinating, and I will make only a brief comment about it. Despite the minister advising the house on 1 December that he had appointed a new board on Friday that would clearly assist in the sale, even though he had a conflict, he answered a question I asked yesterday about the different categories that board members are required to meet under the Perth Market Act. Under the act, at least four members are required to meet certain qualifications to be appointed to the board, and one of the categories relates to someone with knowledge about producers of general product. The minister advised in that answer that Mr Chris Wilkins was that person. Then today we were advised in the ministerial statement that Chris Wilkins has resigned. Again, it is not clear from the ministerial statement why Mr Wilkins has resigned. Based on what was said in the ministerial statement, clearly there is some issue to do with a conflict, but it does not clarify what the conflict is. I could not quite see the connection, and I had intended to ask further questions about Mr Wilkins’ qualifications to fulfil the role he did. I am sure that members on the other side of the house would know this, but some of my colleagues on this side may not be aware that he was the Liberal candidate for the seat of Moore at the last state election. There is a lot of murkiness now appearing around —

Hon Darren West interjected.

Hon KEN TRAVERS: Hon Darren West is right; he has nominated for preselection for the Agricultural Region.

It is a very sad day, because normally we do not have these types of debates in the upper house. We have generally been able to refrain from having these debates because the sorts of events that have occurred in the past couple of weeks happen in the other place. Sadly, this house is also about to rise at some point until February next year. However, it is important that we put on the record that it is clear that the minister has had a conflict of interest; in his own words, he has accepted that. He has not managed that conflict of interest. The advice that he has given to the house about how he intended to manage that conflict does not relate to how he has actually managed it. Clearly, after identifying the conflict, he has engaged in matters that go to the heart of involving himself with the sale process. There are other matters that I think still need to be clarified by this minister and the government, and until they do, a dark cloud will hang over this government and this minister on these issues.

HON ROBIN CHAPPLE (Mining and Pastoral) [7.22 pm]: I was not going to spend much time on the debate on the Perth Market (Disposal) Bill. I had left that to other people. However, I was very intrigued by the letter tabled by Hon Ken Baston yesterday that identifies that the conflict of interest he declared was that his son, Richie Baston, is a director at Azure Capital. It was the name Azure Capital that suddenly got my attention. I have had a fair bit of dealing on and off with the result of some of the operations of Azure Capital and an affiliate called Indigenous Investment Management Pty Ltd. These were the subject indirectly of an investigation by the Office of the Registrar of Indigenous Corporations into the affairs of the Martu. It became apparent that in a negotiation that was conducted by Indigenous Investment Management with undeclared participants in that process, Azure Capital and Indigenous Investment Management changed the minds of certain people and, as a result, received a \$10 million bonus payment. I have the ORIC documents in front of me and I have a number of articles from *The Sydney Morning Herald*, *The Australian Financial Review*, *The Canberra Times* and *The Age*.

The ACTING PRESIDENT (Hon Liz Behjat): Is the member seeking to table those documents?

Hon ROBIN CHAPPLE: I am more than happy to.

The ACTING PRESIDENT: I am waiting for you to bring this debate back to the subject of the ministerial statement, rather than a general comment about the actions of Azure Capital that may be outside the bounds of the ministerial statement. I am sure that you are going to do that very quickly.

Hon ROBIN CHAPPLE: I really wanted to touch on the letter that was part of the documents tabled by the minister. It identifies that Richie Baston is a director of Azure Capital. Richie Baston is a director of a department; he is not a director of Azure Capital because he does not appear on the Australian Securities and Investments Commission list. What really concerns me is what percentage Azure Capital is getting, because it is renowned for getting a significant proportion of funds out of the negotiated deal that it does.

The ACTING PRESIDENT: Order, member! I remind you that the question I have put to the house on two occasions now is about the consideration of the ministerial statement made by the Minister for Agriculture and Food about the disposal of the Perth Market City. I am yet to hear you actually refer to anything within the statement, apart from the name Richard Baston. I am asking you again to bring it back to the matter at hand.

Hon ROBIN CHAPPLE: I am more than happy to basically finish my comments. The issue for me is the involvement of Azure Capital, as stated in the letter that was tabled.

The ACTING PRESIDENT: Order, member! You are questioning the amount of equity that Azure Capital has as part of its bid in relation to the market. That is not the subject of the ministerial statement, so I am ruling you out of order on that point. The question before the Chair is that the ministerial statement be considered.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [7.27 pm]: This ministerial statement, motivated, I think, by a genuine desire to provide clarity to the house, has made the situation worse for the Minister for Agriculture and Food in that, in one respect, it is too little too late and, in another respect, it reveals further examples of where the minister has stepped outside the restrictions he has put on himself and those that were put on him by Peter Conran, who works for the Premier, and by the probity officer, and I want to set out how that is. Essentially, it comes down to this: the minister has said that the mechanisms put in place to manage this conflict of interest have meant that he has not been in any discussions about the sale—he has excluded himself from discussions about the sale—but answers he gave during question time today and yesterday have revealed that that is not the case. He has involved himself in discussions. He also said that the mechanisms put in place to manage the conflict of interest precluded him from acting on anything in relation to the sale, but we already know from the information he has provided to us that in fact he acted at least three times. He acted on 2 July when he issued the order, he acted on 17 July when he issued the order, and he acted last Friday when he announced the membership of the new board. On at least three occasions, if not more—frankly, with this minister there could be more, because each time we ask a question, we get a little more of the story, and

I do not think this matter has come to a conclusion yet—he has said that he has set himself limits, yet he has demonstrated to this house in the last two days that he has breached the limits that he has set for himself, and I want to set out how that has been demonstrated.

Conflicts of interest occur all the time. Perceptions of conflicts of interest occur all the time. It so happens that this is a really small town. At one point, about 30 years ago, Hon Ken Baston and I were related by marriage for about two years when his sister-in-law married my cousin. She is a lovely woman but the marriage did not last. This is a small town and those sorts of conflicts occur. Processes need to be put in place to manage those conflicts. In this case, the mechanisms put in place were limited. I say they were improperly limited by Peter Conran telling the Minister for Agriculture and Food that the only thing he had to do was effectively absent himself from cabinet decisions and not put in place a mechanism that removed the minister from anything to do with the sale of the market; and then even those limited mechanisms were thwarted by the minister himself. A series of poor decisions were made, starting with the decision not to disclose the conflict at all. I think it was poor advice from the probity adviser and poor action by the minister to say that he should not tell anyone. I reckon that the measures to avoid actual conflict to all the bidders could ultimately lead to a challenge in the courts by the unsuccessful bidder. The minister decided not to tell Parliament about a conflict at a time when Parliament was debating the bill. When the minister was specifically invited during the second reading debate in this place—the Treasurer in the other place was also specifically invited—to answer a question about his role and where he stood in this debate, he did not offer to this house that he had already declared a conflict of interest. I note that the minister handling the bill in this place did not respond to that question in her response to the second reading debate.

The Minister for Agriculture and Food decided to issue an order on 2 July—an order that we now know went directly to directing the board to participate in and cooperate with the sale—the same day that the minister told the Premier that he had a conflict. Let us give the minister the benefit of the doubt and say that he issued the order before he told the Premier. That is a questionable action but, at the very least, doing those two things on the same day leads to the perception that he has breached the reasonable conduct code for a minister.

“Perth Market Authority Direction 2015 No. 2” of 17 July issued by the minister also goes to the sale process. The minister has acted outside of the limits that he told this house he set for himself; he actively engaged in the sale process. In his statement today, he told us —

I was ... unable to comment or be present during discussions regarding the sale ...

However, we already know that at least three times, on 2 July, 17 July and last Friday, he acted in matters directly related—not tangentially but directly—to the sale of the market. The orders and the appointment of the board are matters relating directly to the sale. The minister cannot have half a process in place to manage a conflict. He cannot pick and choose which elements of the sale he involves himself in and which elements he does not. In answer to a question without notice today headed “C1541”, the minister said —

I ... excluded myself from cabinet ... and any other discussion about the sale ...

But he did not, because once this issue emerged—it did only after questioning by Hon Ken Travers—the minister’s office and indeed the Premier should have been all over it. Instead, in a question without notice today headed “C1538”, the minister was asked whether he would table a copy of the direction he gave Perth market to which he said yes, and tabled it, but said in answer to question without notice headed “C1541” —

Since then I have excluded myself from cabinet discussions and any other discussion about the sale of this asset, and referred all questions on this matter to the Treasury.

However, the minister said in answer to other questions that members of his office received communications to and from people involved in the sale. When asked whether he accepted that people contacting his office with concerns about the government policy related to his portfolio—in this case the question was about the sale—would expect that their concerns would be passed on to him, he said —

The views and ideas related to my portfolio are passed on to me as minister when they are of significance to government policy.

On one hand the minister says, “I’m not involved in any discussions and I absent myself completely from anything to do with the sale.” On the other hand he says, “When people came to my office and spoke to me about it, I was told about it because of course it’s got to do with government policy; that’s my role as a minister.” The minister is picking and choosing those bits that he responds to, and then he does not actually provide answers to all the questions. He has told members to put some questions on notice because it will take some time to get together the answers.

Once the sensitivity of this matter was revealed, the minister’s office and at least the Premier’s office should have been all over this, and all the material related to how the minister managed this conflict should have been in

one place and easily accessible. It is beyond me that the minister says that he is unable to provide the information.

The minister needs to do the honourable thing: under the Westminster tradition he needs to resign. If he does not, then the Premier needs to act and take his role as a minister off him, because he clearly cannot manage the roles and responsibilities that he has been given. However, this matter goes beyond the minister because, to be fair to him, the buck really has to stop with the Premier. The Premier needs to put in place a mechanism to manage this conflict of interest that the minister cannot step outside of; the minister cannot pick and choose which bits he deals with. The sensible way to do that would be to give responsibility for the management of the Perth market sale completely to another minister. It has been done before and it will be done again in the future. That is what should have happened. The critical issue here is that the minister has said to this house that he excluded himself from any matter related to the sale of the market, but on at least three occasions he has told this house that he actively engaged himself in matters directly related to the sale of the market.

The minister has failed in his responsibilities as a minister. It is shameful. It is a shame that it is happening to him because he is a nice guy, but he is completely out of his depth here if he cannot see that he has breached every mechanism he has set up for himself.

HON KEN BASTON (Mining and Pastoral — Minister for Agriculture and Food) [7.37 pm]: I have to say that ever since I have been a member of this place and took the oath to be here and took the oath to be a minister, I have taken my responsibility extremely seriously. I assure the house of that. I outlined in my statement to the house this morning that as soon as I recognised I had a possible conflict of interest, I declared to the director general all the decisions I made that were in regard to the actual running of the Perth Market Authority board. I sought advice and I have given answers to all the questions asked by members opposite. I am confident that I have perceived and managed the conflict appropriately. Since my decision to remove myself from the sale process, the market has continued to operate as such and I still maintain responsibility under the PM act for the day-to-day operations.

It is important in this process to note that the successful bidder will be responsible for running the Perth fresh produce market for many years to come. As the Minister for Agriculture and Food, I want to see productive and profitable producers and I will continue to work to that end. I always put the people out in the community first, and certainly the market first. It was not easy sitting back and having to be silent on this matter for security reasons et cetera. I thank members and I have listened to the debate.

Question put and passed.