

PILBARA PORT ASSETS (DISPOSAL) BILL 2015

Second Reading

Resumed from 22 March.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [12.55 pm]: I am excited to be standing ready to speak. I have been ready to speak for three days!

Hon Michael Mischin: You ought to go out more!

Hon SUE ELLERY: I so do!

The opposition identified three issues with the Pilbara Port Assets (Disposal) Bill 2015. Having read the committee's report, I know that during its inquiry, the committee sought answers to eight questions. There is an overlap between the three that the opposition had identified and the eight in the committee report. I will go to each of those in due course. I note that there is now a second supplementary notice paper. The amendments in the name of Hon Robin Chapple reflect the minority-recommended amendments in the committee's report and there is an amendment in the government's name, which I think is the government's attempt to address the issues around access for junior miners. That is also referred to substantially throughout the committee report. I do not yet have a final position on the government's amendment because I got the second supplementary notice paper only this morning. I will endeavour to get advice from the relevant shadow ministers on that. However, I want to make some comments about access issues.

The context of this debate changed this morning when I read the article on the front page of "WestBusiness" in *The West Australian*. It indicated that, from the government's point of view, the sale could not now go ahead before March 2017. We are kind of having this debate in a bit of an artificial environment because the timing now is such, according to the Treasurer's comments this morning, that even if this bill were to pass, the actual sale is not in a position to go ahead.

Of the three issues that the opposition identified, the first related to the timing of the sale. That goes to the state of the market. Is the state putting something out for sale as part of what is effectively a fire sale of assets at a time when the state will get the worst kind of return in the market? The second issue was arrangements around access and pricing. I have referred to the fact that the government has made an attempt to address the access issues for junior operators through the amendment on today's supplementary notice paper. It really had no choice other than to do that because the committee report makes it abundantly clear that access issues in the bill, as it was second read into this place, do not address the issues of major concern to the junior miners, including access and pricing arrangements. That is still the case, and the committee report refers to the committee's view that pricing arrangements need to be reflected in the body of the bill. I note that there is no amendment on the supplementary notice paper in the name of the government to address that issue at all. The third issue that the opposition identified was the extent to which we are we giving a head of power to sell far more than just Utah Point, and the definition around Utah Point.

The committee identified eight questions that it wanted to address during the course of its inquiry. I want to thank the Standing Committee on Legislation for its work. I will find the list of questions that the committee set itself. On page 2 of the report, they are listed as follows —

- What are the benefits of the sale to Western Australians and how will this be measured?
- What are the benefits of the sale to industry in Western Australia and how will this be measured?
- What are the safeguards in place to ensure third party access to Utah Point (specifically, junior miners) after the sale and how will this be guaranteed into the future?
- What are the regulatory arrangements in place for the sale of Utah Point? Will these be tabled in the Legislative Council (including draft versions)?
- What consultation has occurred with users of Utah Point (if any) and what further consultation will take place during and after the disposal process?
- Will the State be liable for any repairs or maintenance of Utah Road that may occur after the disposal due to the historical link to Utah Point?

Sitting suspended from 1.00 to 2.00 pm

Hon SUE ELLERY: Before the break, I indicated that the opposition had identified three issues with the Pilbara Port Assets (Disposal) Bill 2015, the Standing Committee on Legislation had identified eight and there was some overlap with them, and I had got to the sixth issue. The seventh issue that the committee identified it would explore during its inquiry was: once the proceeds of the sale are used to pay down the \$170 million owing

Extract from Hansard

[COUNCIL — Thursday, 15 September 2016]

p6066b-6088a

Hon Sue Ellery; Hon Stephen Dawson; Hon Jacqui Boydell; Hon Dr Sally Talbot

on the price of the asset, what will happen to the revenue from the sale and will it be returned to the state, and what will be the financial return to the state if the asset is not disposed of?

I will turn to the first issue identified by the opposition, which is the timing of the sale. In the other place, my colleague who had carriage of this bill, Ben Wyatt, the shadow Treasurer, identified that the issue of the timing of the sale of Utah Point has been the subject of public debate amongst a range of people, not just finance people, but also obviously the users of the port, including David Flanagan from Atlas Iron, which is the most significant user of Utah Point. He quoted David Flanagan's comments in an article in the *Business News* in October 2015 as follows —

“If someone pays a \$1 billion for it and they want to make a 5 per cent rate of return, they've got to double the charges to the juniors.

“That will drive us out of business. We would close tomorrow. So if you can only pay \$150 million for it to then make a rate of return, it's not worth selling (and) the Government should keep it.”

The other point that Mr Flanagan made was about the support that had been given to the junior miners for port charges. The same *Business News* article that the member for Victoria Park referred to suggested that a significant component of the \$165 million in dividends paid to the government last year came from Utah Point. I think there is a point to be made that if this sale had been made, say, four or five years ago, which was the point that was made by the shadow Treasurer, and Utah Point was sold for a healthy premium on the \$225 million it cost to build, we would be in a different situation, but we are not. It is important to note—I say this in the context of the article in the business pages of today's *The West Australian* in which the Treasurer indicates that he does not think the sale will go ahead before the election in any event—that the Treasurer has said that if the government is not going to get value, it will not proceed to sell. One of the drivers of that has to be that it is up for sale at the same time as we have a depressed market, and the users of the port are operating in the same depressed market. Have we got the timing right around the sale of this asset of the state? I think any analysis would say that we have not.

The second issue that the opposition raised was access and pricing. I will come back to talk about access a little later, but I will start by talking about pricing. The point that the shadow Treasurer made was that the lack of detail in the legislative regime before us for pricing arrangements has raised a number of concerns for users. We have been told that there will be price monitoring and that the minister can intervene when the pricing is considered unreasonable. We will not see that in Parliament because that is not set out in the legislation before us. The only way we would see it would be if the pricing were made public, but there is no compulsory component in the legislation to make that happen. Let us say that the only way it could happen would be if a complaint were made by a party that felt that the pricing regime was unreasonable. We have been told that the rate of return on the asset would be determined by appropriate benchmarking, which again is a process of the pricing regime. We would not be able to make judgements and we would not necessarily be able to do anything about addressing the pricing regime until after the disadvantage had happened, potentially after people had lost jobs, because the margins those miners are operating on now are such that any significant shift would result in further job cuts—it would have to because of the state of the market. We would not find out about it until after the effect, if the minister of the day were in a position to do something about it.

Nothing in the amendments that the government has put before the house addresses the pricing regime. The committee had a bit to say about that, and I will talk about that in a moment. The committee's recommendations are about transparency, which is an argument that we have had in this place on many occasions. We are talking about selling a state asset, so we need to do it in a way that is as transparent as possible. Western Australian voters need to see that they are getting value for money from the sale of the asset. I do not think they can see that now in the timing of the sale. This is just a fire sale, because the government has so badly managed its finances that it is desperately looking to off-load what I think it thinks is low-hanging fruit to desperately try to address the debt and deficit problem it has created.

The third issue that the opposition raised was the definition of Utah Point. This is an interesting bit of drafting, because the definition of what is not Utah Point tells us what is Utah Point. Let me start the argument in this way. In the first instance, the legislation does not mention Utah Point at all. It creates a head of power that gives the Pilbara Ports Authority the right to sell any of its assets. We know that Utah Point is included in the Pilbara Ports Authority's assets; Utah Point, itself, is not mentioned in the Pilbara Port Assets (Disposal) Bill 2015. We are giving the Pilbara Ports Authority the power to sell anything it owns, and it does not have to come back to Parliament to say, “Well, actually, we've made the decision and it is going to be Utah Point”—we are just told. We know that because it is a policy decision that has been announced by the government, but this legislation does not touch on that at all. The government tells us that the legislation needs to be flexible and non-specific to capture anything that might not be apparent right now that constitutes Utah Point. People have a notion in their head of what Utah Point is, but there might be a particular little bit of the land footprint that nobody really

thought about before that needs to be included for particular logistical purposes as a requirement of the sale. There might be things we do not know about just yet, so we need to create a piece of legislation, we are told, that is flexible enough to allow, basically, anything to be deemed part of whatever it is that the government of the day wants to sell. We are told that the government is doing that for the purpose of enough flexibility not to have to come back to Parliament to amend the bill to take account of, perhaps, the little piece of the land footprint that we might not otherwise know about. The downside of that, of course, is that it could include anything and everything, but that matter does not have come back before Parliament for a decision. Effectively, the legislation says, “You can sell anything that falls within the regime that is the Pilbara Ports Authority.” It so happens that the government has said that its policy intention is only the sale of Utah Point, but, in fact, it could be anything. We are told that we should accept the definition and that the major players are not the users of Utah Point right now, and that we should just accept that Utah Point is described in the negative, if you like—what is not Utah Point is, effectively, the definition.

I move to the point made about what state governments need to do when they sell assets. The Australian Competition and Consumer Commission chairman, Rod Sims, has had something to say about this because he is able to observe the way the states have conducted themselves. He warned, in a 23 June 2014 article in *The Australian Financial Review* —

... the new wave of state government privatisations, including electricity distributors and ports, could hurt competition and push up prices.

In an apparent hint that he may be prepared to block asset sales at the centre of Treasurer Joe Hockey’s plan to drive economic growth, Mr Sims says competition has taken a back seat in the recent wave of state-owned asset sales.

Australia has lost “a lot of its pro-competition culture” gained from Fred Hilmer’s landmark review of competition policy 20 years ago, he says.

“Privatising in ways that limit competition in order to maximise the sale proceeds is the wrong way ...

Mr Sims was directly quoted in that article. The article continued —

Some ports are being sold without appropriate open access or price controls and Mr Sims says he is concerned about the sale of the Newcastle, Botany, Kembla and Brisbane ports.

“They’re the ones that have been sold where there are no price controls, so they have price flexibility on monopoly assets,” he told *The Australian Financial Review* on Sunday.

“We’ve also run into issues where we’ve had to scramble in relation to issues of vertical integration and try to see whether we can come up with mechanisms to deal with vertical integration problems, because there is no access arrangement.”

He plans to write to the federal government and each of the states and argue that the push to maximise profits from assets sales by selling monopolies or near-monopolies will effectively impose a tax on future generations.

I would be interested to hear from the Attorney General, who is handling this bill, whether in fact the Western Australian state government received a letter in such terms from Mr Sims, and whether it responded to that letter. If we are able to get a copy of the response to Mr Sim’s letter, I think that would assist the debate significantly.

The Standing Committee on Legislation found that we are being asked to grant a power to the government to sell off far more than Utah Point, although we are told the purpose is the sale of Utah Point only. We do not have all relevant information in front of us—for example, the retention value. What would be the value of the asset to the government going forward if we did not sell it? How are we to make a judgement—the committee examined this and I will touch on it in a minute—about whether this is the right decision to make if we do not have the information that says, “Well, if you didn’t do it, this is the value to the state it would form.”

The committee made a number of findings of absence of information and conflicting, I guess, technical issues between the provisions of the existing act and the bill before us, and requested that the minister responsible for the bill provide certain information to the house and make certain recommendations. Other than the comment from the Treasurer in *The West Australian* today that the timing is such now that he does not think the sale will go ahead in any event, and the second issue of the supplementary notice paper, in which an amendment in the name of the government purports to address the issues raised in the committee about the junior miners—although I have been today advised that the junior miners do not necessarily share the government’s assessment of that—we do not know the government’s view on the other elements canvassed in the report. That is a bit unfortunate, because a whole range of issues are canvassed in the report that are beyond just the issue that that amendment canvasses and are beyond the issues related to junior miners, important though that issue is.

A fair bit of information still needs to be provided in the Attorney General's second reading reply and a fair bit of work needs to be done during the Committee of the Whole stage if the government is not going to act on any of the other recommendations of the committee in areas other than the junior miners. We would want significant information from the Attorney General during his second reading reply and that when we go into committee, committee members will want very convincing arguments as to why each of the recommendations and findings set out in the report have not been acted on.

I have yet to receive advice from my colleagues on the position WA Labor will take on the amendment in the name of the government on the supplementary notice paper, so it will be interesting to hear what the Attorney General says during his second reading reply. In particular, the final element of the amendment creates an access regime around granting 50 per cent of access capacity to protected users rather than prescribed users, while effectively allowing a kind of a get-out clause, whereby prescribed users, who are the non-junior miners, can get up to 50 per cent access. I assume the logic of that is that the juniors will not be using it at that time. The wording of the amendment is that if the juniors stick up their hands and say they want access, they will be guaranteed 50 per cent access. On the face of it, it looks superficial, and certainly on the information that has been provided to me—in fact to all members, I think, to date from the Association of Mining and Exploration Companies and others today—the junior miners do not think it fixes the problem and are saying so publicly. Members on this side of the house will need a lot of persuasion to convince them that the amendment now on the supplementary notice paper goes anywhere near addressing not just the committee's recommendations, but the views of the junior miners as to access and pricing in particular.

I just want to touch on where this came from. In the 2014 budget, the Treasurer announced a way to manage debt through asset sales. It would have been helpful if the government had figured that out about five years ago, before it got us into now having to manage this huge level of debt. The Treasurer said in the 2014 budget speech —

Combined with modest general government operating surpluses, planned investment in infrastructure to support our rapidly growing State, totalling \$23.7 billion over the next four years, will maintain the need for increased borrowings across the forward estimates period. Net debt is forecast to reach \$24.9 billion by 30 June 2015 —

Where are we now with net debt? It is around \$40 billion, so we did not meet that financial target—we have not met any in respect to debt and deficit. The Treasurer said back in 2014 —

Net debt is forecast to reach \$24.9 billion by 30 June 2015, which is manageable and affordable.

What does that make the \$40 billion we are at now? Is it manageable and affordable? I think not. He continued —

The Government will keep a close eye on the State's debt levels —

That is good, but it would be good if it did more than just look at it; it would be good if it actually did something about it. The Treasurer said —

The Government will keep a close eye on the State's debt levels, and in conjunction with sound budget management —

We have not seen any of that —

will pursue an orderly program of asset sales. This program will be overseen by the Premier.

While no decisions have been made concerning individual assets, surplus Government land, including Department of Health sites at Princess Margaret Hospital, Royal Perth Hospital, Shenton Park Rehabilitation Centre and Swan Districts Hospital are currently being assessed.

With respect to Port Authorities, the Government will consider the sale of the Kwinana Bulk Terminal and the Utah Point facility at Port Hedland Port.

He stated later in the speech —

It is considered that these assets do not need to be in State government ownership; however, they will only be sold where it is in the interests of the Western Australian taxpayer. The revenue generated from asset sales will be used to reduce debt levels and contribute to the cost of new infrastructure.

There is an interesting point to be made about the difference between the Nats and the Libs. The Leader of the National Party in Western Australia has been saying that any revenue generated from asset sales should go completely to the cost of new infrastructure, whereas the Liberals have been saying, on behalf of the government, which the Nats are a member of—I still do not quite understand that—that the revenue generated from asset sales should be used to reduce debt levels and to contribute to the cost of new infrastructure. It is the sentence above that, though, that we need to pay attention to. It states —

It is considered that these assets do not need to be in State government ownership; however, they will only be sold where it is in the interests of the Western Australian taxpayer.

This committee report demonstrates that it is not in the interests of the Western Australian taxpayer that this asset be sold at this time. The point the Association of Mining and Exploration Companies and others will be making publicly today and in the days ahead is that it is not in the interests of the junior miners and it is arguable whether it can be considered to be in the interests of the state at all. They are significant employers. The unemployment figures came out again today. At a time when this state has a worse unemployment level than, I think, Tasmania, should we be contemplating asset sales? I say that the answer is no when the sole purpose is to fix the problem that the government created by not handling the financial affairs of the state properly. The government is selling this asset in a fire sale, so it will not get the right price. It has not put in place the right transparency measures. It has not put in place the right access measures to allow junior miners to get on and do the work they need to do and to create new jobs. The government has met none of those criteria; it is just desperately scrambling to meet what at the time it projected would be a \$29 billion debt but is in fact now a \$40 billion debt. I get that the government is more desperate than ever, because debt has continued to grow in the two years since the Treasurer made that budget speech, but the timing is all wrong. I am interested to hear from the minister how, if this bill is passed today, he could determine whether it would be in the interests of the Western Australian taxpayer. I am interested in hearing the minister's response in his second reading reply to this question: can the government satisfy the test that, today, it is in the interests of the Western Australian taxpayer to sell Utah Point?

At the time of the 2014 budget, the Treasurer issued a media release headed "Securing Our Economic Future—State Budget 2014–15: Responding to changing economic circumstances". I think the headline of that media release should have been "We messed it all up and now we have to sell the family farm", because that was essentially what that media release was about. The Treasurer said in that media release —

"We are considering selling Kwinana Bulk Terminal and the Utah Point facility at Port Hedland Port, and some Water Corporation assets such as wastewater plants. We are also reviewing the State's continued ownership of the Perth Market Authority and the TAB," Dr Nahan said.

That was back in May 2014. I am pretty sure that this legislation came into the Legislative Council of the Western Australian Parliament in March 2016. If the government were trying to address a serious problem, with debt levels predicted back in 2014 to go to \$29 billion, it has taken it a long time to get this legislation here. In the process of doing that, the government managed to offend all the junior miners, and the problem that was brought to the attention of the people who eventually supported this bill going off to a committee inquiry has still not been fixed. The junior miners are not happy; they made that clear in the statement released by AMEC and in other communication we have had from them today. What has the government been doing? We are told that this is template legislation. We are told it is the same legislation that was used for the sale of assets when the Liberals were last in government, and that it was the template for the legislation that did eventually go through this place on the Perth Market Authority. How on earth did it take the government until March 2016 to bring this legislation to the house? I do not understand why it took so long for the government to do that. It was not out there making sure that all the players and stakeholders were engaged and that it was getting it right, because they all think the government got it fundamentally wrong, so what was it doing? The government told us it is a template. How did it get it so badly wrong? I am interested in the minister's response, because that is an important point that was raised in the general tone of some of the comments in the committee report. We will talk about that in detail when we go into committee.

It seems to me, from just a superficial look at the amendment the government has put on the supplementary notice paper, that, firstly, it is all about regulations that are at arm's length. The definitions around securing access for junior miners are around prescribed users, which are the majors, and protected users, which are the juniors, but those matters are specified in regulations. So, yes, they will ultimately be a disallowable instrument, but we cannot see the detail before us. I am interested in the minister advising us in his second reading reply whether those regulations have been drafted and whether he can let us see those draft regulations before we go into committee, so that we can consider the detail of them. I hope that happens. As I indicated, subclause (3) of the government's amendment states —

Despite subsection (2) —

Subclause (2) states —

It is a condition of the operation of a port facility that, subject to subsection (3), 50% of the access capacity must be reserved for protected users.

We understand the protected users to be the juniors. That is the guts of the amendment. As I said, subclause (2) of the amendment states that it is a condition of the operation that 50 per cent of the access capacity has to be put aside for junior miners. Subclause (3) states —

Despite subsection (2) if a request for access made by a prescribed user —

That is, a major —

would, if granted, result in the proportion of the access capacity taken up by prescribed users exceeding 50%, the request may be granted —

So they can ask for more than 50 per cent and they can get more than 50 per cent —

as long as it is granted on terms that would not prevent a protected user —

That is, a junior miner —

who subsequently makes an eligible request for access from being provided with access within the prescribed period or at a later time agreed to by the protected user.

The nature of ports is such that they are not literally physically flexible things, so how will the government accommodate the needs of both the protected user and the prescribed user? Even though that protected user had been granted 75 per cent access, they could put up their hand and say, “We were not using it before. We want to get access. We need it for these operational reasons.” The prescribed user could say, “I can’t instantly stop production and instantly stop being able to get it out through that particular part of the port.” How will the government manage the logistics? We cannot grow and shrink Utah Point. How will that be managed? That is a pretty critical issue. Operationally, how will the government manage the fact that under this provision one of the majors might legitimately be granted 75 per cent because it has been able to demonstrate that it needs access? The minors—that is, the juniors—do not need it right now. For the purposes of *Hansard*, when I say “minors”, I mean m-i-n-o-r-s.

Hon Simon O’Brien: It might be better if you call them juniors.

Hon SUE ELLERY: I am trying to but I keep correcting myself.

Hon Simon O’Brien: I am here to help.

Hon SUE ELLERY: I thank the member, and he understands every word I am saying!

My point is that there are serious logistical issues about how this would work. I think the government needs to make a significant effort to describe to us how it thinks it will work. I am interested to know who the government has spoken to about how it thinks this will work because I have been advised that it has not spoken to the juniors. It has not discussed with them how this will work. Has the government discussed it with the majors? I am interested to hear the answer to that. How does it think the logistics will work? If production capacity for everybody picks up at some point, I just do not see how proposed section 46A(3) of that amendment will be a practical solution for anybody. I think we will end up with everybody being frustrated. The majors will be frustrated and the juniors will as well. That is a pretty serious question, and I will be interested to hear the answer.

I received an email today, which I think was sent to all politicians; it is addressed “To all WA politicians”. It is from Simon Bennison from the Association of Mining and Exploration Companies, and states —

1. It is understood that Amendments to the Pilbara Ports Assets (Disposal) Bill are to be debated in the Legislative Council this afternoon, 15 September 2016. There was absolutely no consultation with Juniors before these were tabled.

I find that extraordinary. It continues —

2. The Users feel totally let down by Government because Government has failed to consider any of the issues recommended by the Parliamentary Council Standing Committee—the amendments actually operate to the contrary of such recommendations concerning access.
3. Government has totally ignored the recommendations handed down by ACCC regarding price protection.
4. The points that urgently need to be addressed:
 - a. A Pricing & Access Regime must be included in the Bill and it must limit charges to capital actually invested in the construction of Utah Point (\$235M) plus a return of 6 to 12% on that invested capital.

- b. Access to the asset should be retained exclusively for the use of juniors. Instead the amendments (by proposed s46A) guarantee a minimum 50% access for Majors and limits Junior access to a maximum of 50%.

It goes on to describe the arrangements that are already in place in that respect. It continues —

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

As has been explained to me, the impact of the amendment on the industry will be threefold. It will reduce the volumes and it will lead to cost escalation. Per tonne of iron ore, the juniors employ more people than the others. If we are going to start playing around with their capacity to run their businesses, employ people and create jobs, it will result in the unemployment figures, which came out today, only getting worse. That is AMEC's point of view, and it is entitled to that point of view. We will have to hear some detail from the government for this house to make a decision and form a judgement about whether AMEC or the government has got it right. It will be interesting to know why the government did not consult with the juniors and say to them, "Here is the committee report. We think we can do something around this issue. What do you think it should look like?" It is interesting that it did not do that. I want the minister to tell us in detail how the government thinks this will work operationally and what he can say about each of the issues that has been raised in the email we received from AMEC today. I look forward to the minister's response.

I turn to the report of the Standing Committee on Legislation. The executive summary—the second reading speech explained this—states —

The stated policy of the Bill includes the minimisation of financial risks and liabilities for the State through maximising the proceeds of the disposal of Utah Point ...

That is where the issue of the timing of the sale comes in. How will the proceeds be maximised if the port is sold at the wrong time? That is how the issue of proposed subsection (3) of the government's amendment comes into play as well. If the users of Utah Point are telling the government that that is not a way to minimise the financial risks and liabilities for the state, that is an important issue. The following interesting point was spelt out in the committee summary —

The Committee has not been able to obtain conclusive information relating to various aspects of the disposal, including the retention value to be ascribed to the asset (that is, the estimated value of retaining a State asset compared with the amount obtained from disposing of the asset) and the details of the future access —

Let us put that to one side because the government thinks it has dealt with the access problem. The people it is trying to help do not think that but the government thinks it has helped. It continues —

and pricing regime ...

There is no amendment before us from the government that goes to the issue of the pricing regime. I would be interested to know why the government thinks it does not need to do something about that. It continues —

including port charges. The Committee notes that these are important elements of the transaction and should be clarified prior to the disposal.

It is our contention that they should be clarified prior to the passage of this legislation. Then the report sets out the recommendations and findings. They are available for everybody to see. One of the interesting points that the committee noted on page 3 was that the Department of Treasury told the committee —

that the timeframe for the disposal of Utah Point has been adversely affected by the Committee's scrutiny of the Bill:

I am not sure why Treasury did not go to the committee and say that although this proposal was announced back in May 2014, the legislation was introduced only in March 2016 but it is the committee's fault for wanting to look at it. I do not think that is a satisfactory response from the department at all, but that is the point that it makes.

I turn to whether we are getting value for money and the timing of the sale. The committee examined the issue of the benefits of the disposal. Paragraph 2.25 on page 11 of the committee report states —

Despite the '*current uncertainty in relation to iron ore*', Treasury claimed the following benefits of disposing of Utah Point '*as part of a longer-term strategic supply chain integration strategy*':

What is that TV show? *Utopia* would love that expression: "longer-term strategic supply chain integration strategy". The report continues —

- *monetisation of past capital investment and future dividends*
- *retirement of debt and consequent reduction in interest expense*
- *removing State financial obligations and risks associated with the future —*

That is amusing of itself —

- *redeployment of proceeds to other income producing assets*
- *capital market development*
- *balancing private sector innovation with public sector regulatory oversight*
- *facilitation of trade and continued receipt of royalty payments*
- *assisting the State in delivering its infrastructure priorities.*

2.26 The Committee notes that the benefits referred to above are more general in nature and do not necessarily contain specifics of the benefits of Utah Point being disposed of by the Bill. The Committee has heard conflicting evidence regarding the benefits of the disposal, including the valuation of Utah Point and which value is the most appropriate.

2.27 The Committee notes that ‘retention value’ is not defined in the Bill and important details relating to the asset’s valuation have not yet been finalised by Treasury.

Further, the Committee notes the Treasurer’s statement that the divestment of Utah Point will proceed ‘*only when it is demonstrated to be in the interests of Western Australian taxpayers.*’ The Committee has so far not received evidence to conclude that the disposal of Utah Point will necessarily benefit Western Australian taxpayers.

We sent this bill to the committee to establish these sorts of things. The committee said that it has not received any evidence to satisfy it of that conclusion. I anticipate a big second reading reply speech from the Attorney General. We know he likes a big second reading reply speech.

Hon Peter Collier: I would not bet on it. He is usually so succinct.

Hon SUE ELLERY: He usually is; he was last night too.

The committee did not receive any evidence to conclude that the sale would necessarily benefit Western Australian taxpayers. If the committee did not get it, the house will have to get it off the Attorney General somehow. I look forward to another classic Mischin second reading reply speech.

Hon Michael Mischin: Are you keeping a collection?

Hon SUE ELLERY: No. I would probably have to say something unparliamentary, which I will not do.

Several members interjected.

Hon SUE ELLERY: I turn to the retention value, which is the next bit that the committee report deals with. The report states —

... one of the reasons given for the disposal of Utah Point is that ‘*the Government believes that potential bidders are likely to offer an amount to secure a long term lease of the facility which exceeds the value of Utah Point ... if the State continues to hold the asset.*’ The retention value of the asset is therefore the value to the State if it were to retain the asset ...

2.29 With regard to the value of retaining the facility, the Committee notes that there are a range of assumptions that need to be made by the Government regarding the value of Utah Point and the short and long term benefits of the disposal. The Committee acknowledges the Government’s desire to maximise the short term return to the State —

That is the fire sale bit —

but notes that the disposal of Utah Point may not necessarily be the best long term financial outcome for Western Australia

That is the second time on one page that the committee has pointed out that it may not be in the best financial interests of WA. The committee also refers to the views of the Australian Competition and Consumer Commission, some of which I have already referred to, so I will not repeat that. The committee canvassed the issue of the retention value. The report continues —

2.36 In light of the evidence above —

Which is basically where the committee could not get any evidence —

the Committee is concerned that the Government does not intend to publicly release any information relating to the retention value of Utah Point, nor will it be tabled in the Parliament. Treasury has advised that:

Disclosing the base discount rate is not market standard practice as any disclosure has the potential to impact on proceeds received by the State.

The committee report continues —

- 2.37 The Committee is concerned that the Parliament is essentially being asked to endorse the divestment of the facility (by passing the Bill) without having all relevant information disclosed to it. The decision to dispose of Utah Point will therefore ultimately be made by the Executive at a future date, possibly based on different information.

That is really disappointing because the purpose of sending the bill to the committee was to try to establish some of that information. Two recommendations came out of that committee inquiry. The first from the whole committee states —

Recommendation 2: The Committee recommends that the Treasurer make relevant documents relating to the retention value of Utah Point Bulk Handling Facility public after the completion of the divestment and that these documents be tabled in both Houses of Parliament at that time.

I do not see how the government can refuse to do that, because it will not take the risk that Treasury said there was if it did it before the divestment. I do not see how the government would not agree to that. The first minority recommendation from Hon Ken Travers and Hon Robin Chapple states —

the Bill be amended to ensure that all documents relating to the retention value of Utah Point Bulk Handling Facility be made public after the completion of the divestment and that these documents be tabled in both Houses of Parliament ...

The recommendation of the whole committee was that the Treasurer make those documents available. The minority view was we should build it into the bill that we will make those documents available. That is the difference between the two. Hon Robin Chapple's amendments on the notice paper give effect to the minority recommendations, and that is the first of those.

The committee report then deals with the timeline for the disposal. I kind of talked about that a bit already. It is important to note and put on the record that the committee refers to the Pilbara Ports Authority, and the port of Port Hedland is Australia's largest export port by annual throughput and the largest bulk minerals port in the world. The main export commodity is iron ore, making up 98 per cent of exports, with other minerals making up the rest of the port's export operations, including manganese at 0.43 per cent, salt at 0.62 per cent and others at 0.15 per cent. We are talking about selling an asset of not only the state of Western Australia, but also a significant asset for this country, and we want to make sure that we get it right. It is the largest bulk minerals port in the world and certainly the largest export port in Australia. It should not be sold without due consideration being given to all the information needed to ensure that we are making the right decision.

The committee examined issues around the significance of that port, and expressed this view on page 19 —

In light of the evidence above —

Which went to how the port is used and the size of the trade that goes through that port —

the Committee is concerned that the future owner of Utah Point may prioritise profit over the facilitation of trade. This seems to be in contravention of the requirement under the PA Act.

My colleagues will examine that in greater detail. That goes to why this port is so important and why the original parent act, the Port Authorities Act, provides that the purpose of the port is the facilitation of trade. How will we resolve that conflict between profit and ensuring the appropriate facilitation of trade through such an important port?

I will touch briefly on the concerns raised by the current port users. I note, on the basis of information given to us today by the Association of Mining and Exploration Companies, that the government's amendment before us does not address those concerns. The committee sets out those concerns at page 25. Essentially, the current users of Utah Point said that three key issues need to be included in the sale. They are —

1. Utah Point must remain exclusively reserved for junior miners with no ability for the operator to grant access to non-junior miners —

That is exactly what the amendment does —

2. the existing users of Utah Point must have input on the sale terms and conditions as well as the regulations that will apply to the operator post-privatisation to protect against unaffordable increases in (or introduction of new) port charges
3. the \$2.50 cost relief package (that was) due to expire on 30 June 2016 must become a permanent component of the Utah Point pricing structure for all users and form part of the sale terms and conditions to be adhered to by the operator post-privatisation of Utah Point.

Some of my colleagues will examine that in more detail.

I come now to the first and second findings of the committee report on page 27, which is that Utah Point's prime purpose is to facilitate and develop the junior mining industry and that that role should continue, notwithstanding the divestment of the facility as proposed by the Pilbara Port Assets (Disposal) Bill. The committee finds —

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

The government thinks it has fixed that with its amendment, but the junior miners told us today that it does not fix it. The committee went on a little to discuss the pricing regime issue. On page 29 it states —

- Without sufficient regulatory arrangements being in place during the disposal, the ACCC warns that *'the privatised owner will have the incentive and ability to use its market power to raise prices above efficient levels and/or reduce service quality.'*
- Obligations for the new owner to negotiate in good faith, to not unreasonably discriminate and to not hinder access to Utah Point are noted by the ACCC as *'a good starting point.'* The ACCC also notes that, *'to be more effective, the proposed negotiate–arbitrate model should include recourse to binding independent dispute resolution for both price and non-price terms.'* The price monitoring proposed at Utah Point is described as a *'useful starting point.'*
- The ACCC is of the view that access and pricing arrangements should be included upfront, either in legislation or in regulations, for reasons of transparency and that *'private contractual arrangements between the lessor and lessee of an asset are not an effective way of regulating price or access.'*

The notion that the market will sort it all out and the nature of the sale itself and of the way the successful buyer runs the place, of itself, is not an effective way of regulating price or access. That led to the committee's following recommendation —

... that the 'negotiate–arbitrate' model proposed by the Pilbara Port Asset (Disposal) Bill 2015 be extended to apply to prices to access the facility.

A minority recommendation was made that the bill be amended to include the access and pricing arrangements within the legislation. I am interested in why the government has not come back with anything about the pricing regime.

Other colleagues of mine will go to some of the technical issues in clause 42, for example, around existing rights and obligations that will arise under the statute and contract and the issue of finding 9, which is as follows —

... that clause 42 of the ... Bill ... could have an adverse effect on existing rights that arise under statute and contract.

I think my other colleagues will touch on that, so I will not visit it.

Finding 12 reads —

The Committee finds that the proposed access regime ... does not sufficiently subject the delegated legislation to Parliamentary scrutiny.

I am not sure that we can still argue the nature of the amendment given it refers to regulations. Maybe if we get to see the draft regulations before we vote, we will change our mind about that, but I remain to be convinced. The key findings, set out at the very end of the report, are as follows —

Finding 1: *The Committee finds that the Utah Point Bulk Handling Facility's primary role is to facilitate and develop the junior mining industry in Western Australia and this role should continue, ...*

Finding 2: *The Committee finds that there are currently insufficient protections for junior miners in the proposed access regime under the Pilbara Port Assets (Disposal) Bill 2015.*

Recommendation 6: *The Committee recommends that the Pilbara Port Assets (Disposal) Bill 2015 be amended to improve access to the Utah Point Bulk Handling Facility for junior miners at all times in the future.*

I know the government thinks it has done that by way of the amendment on the supplementary notice paper but, as I said, the Association of Mining and Exploration Companies told us today that it does not do that at all; in fact, it makes it worse. A minority of members of the committee took the view, and I quote —

The Government has failed to provide sufficient evidence that the sale of Utah Point facility will meet the objectives outlined in paragraph 2.7, or the proposed benefit from the disposal outlined in paragraph 2.25.

We note that a number of the previous privatisations using similar template legislation (see paragraph 2.18) have had negative impacts for the Western Australian economy.

Further, the sale as currently proposed, will have significant negative consequences for junior miners and the jobs they create in Western Australia.

We therefore do not support the passage of the Bill.

I thank the committee for its work on this bill. It is a very useful report. It is disappointing that we do not have a formal position from the government on a range of the committee's findings and recommendations. The government has made an attempt, I think, to address the issue raised by members concerned about the impact on the junior miners but the junior miners are saying that it would have been nice if the government had spoken to them about it. In fact, they think the government will make the situation worse. I look forward to hearing the minister with responsibility for this bill address the full range of issues that are in the committee's report. I look forward also to him revealing to us the nature of any draft regulations regarding the access regime. I look forward also to him addressing the issues raised by AMEC today and I am sure AMEC and others will have more to say in the days ahead.

HON STEPHEN DAWSON (Mining and Pastoral) [2.56 pm]: It is my pleasure to rise to make a contribution to the Pilbara Port Assets (Disposal) Bill this afternoon. The Utah Point bulk handling facility is in my electorate, in Port Hedland, so I know it very well. In her contribution this afternoon, the Leader of the Opposition succinctly laid out the case for why the opposition has concerns with this bill. In fact, members will be aware that this bill was initially debated in this place in March this year, before it was referred to the Standing Committee on Legislation for consideration.

We know that this bill is before us today because the government has massive debt; in fact, the state has massive debt. Under this government, the state now owes almost \$40 billion and it certainly looks like it will owe that amount at the time of the next election. So one of the ways the government is seeking to deal with this massive debt is to undertake a fire sale of government assets. It would be one thing to sell government assets when things are going extremely well, perhaps at the height of the boom, but that is not the case at the moment. It is selling it now and selling it cheaply. In fact, a line in the minister's second reading speech states —

The government acknowledges that current market conditions may impact on potential bidders' assessments of Utah Point.

The government knows that this is not the right time to sell if, indeed, it was ever the right time to sell this facility; however, it is going ahead with it. As I said, this place referred the bill to a parliamentary committee in March this year. That committee was due to report in May and subsequently we gave it an extension and it reported in August this year. It is a very comprehensive report; it made 17 recommendations. The committee took an opportunity to visit Utah Point and see the facility firsthand. It is an impressive facility in the sense that it has allowed the junior miners in the state to prosper when the majors—the BHPs, the Rios and the FMGs—were putting massive amounts of iron ore through Port Hedland port. This facility has meant that the juniors were not affected; the juniors were not bought out or overrun by the majors and this facility allowed them to continue to operate. I am on public record, particularly in my own electorate, condemning the Barnett government's proposed privatisation of Pilbara port. I have said, and I continue to say, that I hold grave fears for the junior miners that currently use the port. My fear is that they will be squeezed out.

The bill was referred to the Standing Committee on Legislation. I was hopeful that the committee would come back with some recommendations that would make this government seriously consider, and consider properly, the consequences of the sale of this port. I was not disappointed. The committee's report contains 17 recommendations. I will touch on those briefly before I move on to another issue.

Recommendation 1 states —

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

I will leave that point alone, other than to say it is important that members from all sides in this place have time to properly consider pieces of legislation. We should not be rushed. We should not have a gun held to our heads.

Recommendation 2 states —

The Committee recommends that the Treasurer make relevant documents relating to the retention value of Utah Point Bulk Handling Facility public after the completion of the divestment and that these documents be tabled in both Houses of Parliament at that time.

Should this legislation pass and the government eventually sells Pilbara port, I am hopeful that the documentation will be made public and will be put before both houses of Parliament. Because this government has form, I fear that we will not get that information before us; that we will not get that level of transparency and scrutiny that the committee has recommended.

Recommendation 3 states —

The Committee recommends that, during the Committee of the Whole stage of the Pilbara Port Assets (Disposal) Bill 2015, the Treasurer clarify if it is the intended outcome that the future owner of Utah Point Bulk Handling Facility not be required to comply with section 30(2)(aa) of the *Port Authorities Act 1999*, or if this is an unintended consequence.

Obviously we have not moved into the Committee of the Whole stage, but I place on record that I am hopeful that the Attorney General, who has responsibility for the bill in this house, will deal with that point when he responds to contributions made during the debate.

Recommendation 4 states —

The Committee recommends that, during the Committee of the Whole stage of the Pilbara Port Assets (Disposal) Bill 2015, the Treasurer clarify if it is the intended outcome that clause 18 of the Pilbara Port Assets (Disposal) Bill 2015 provides that the Pilbara Ports Authority will not contravene the *Port Authorities Act 1999* if it does or omits to do anything in good faith in compliance with a direction given by the Minister in clause 18(1) of the Bill, or if this an unintended consequence.

Again, I hope the Attorney General will address this in his reply.

Recommendation 5 states —

The Committee recommends that the Treasurer give a commitment to the House that the sale of the Utah Point Bulk Handling Facility will not prevent the planning and development of new port facilities to facilitate expansion of iron ore shipments or new resources being exported through the port.

I saw no mention of that in the second reading speech. I am hopeful, too, that we will get that commitment when the bill progresses.

Recommendation 6 states —

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

As the Leader of the Opposition pointed out, there is an amendment on supplementary notice paper 161 standing in the Attorney General's name that I believe seeks to address that issue. I look forward to that amendment being moved and hearing an explanation about how that deals with the concerns that have been raised by the junior miners.

Recommendation 7 states —

The Committee recommends that the 'negotiate-arbitrate' model proposed by the Pilbara Port Asset (Disposal) Bill 2015 be extended to apply to prices to access the facility.

Recommendation 8 states —

The Committee recommends that, during the Committee of the Whole stage of the Pilbara Port Assets (Disposal) Bill 2015, the Treasurer amend clause 12 of the Pilbara Port Asset (Disposal)

Bill 2015 to reflect the Government's intention to limit the lease of Utah Point Bulk Handling Facility to 50 years with no option to renew.

There is no proposed amendment to clause 12 on the supplementary notice paper; therefore I am guessing that the government will not act and agree to the committee's recommendation.

Recommendation 10 states —

The Committee recommends that, during the Committee of the Whole stage ... the Treasurer explain how section 30(1)(a) of the *Port Authorities Act 1999*, which provides for the facilitation of trade through a port, will be protected and maintained in light of the potential for clause 18 of the *Pilbara Port Asset (Disposal) Bill 2015* to override the obligations in the *Port Authorities Act 1999*.

Again, I am hopeful that that recommendation will be dealt with by the Attorney General when we get to that stage.

Recommendation 11 states —

The Committee recommends that, during the Committee of the Whole stage ... the Treasurer amend clause 20(3) of the bill to require that any schedules drafted pursuant to clause 20(3) be tabled in both Houses of Parliament.

As that amendment is also not on the supplementary notice paper, I am guessing that the government will not acquiesce to that recommendation. Perhaps the Attorney General will outline why the government has refused to do that.

Recommendation 12 states —

The Committee recommends that, during the Committee of the Whole stage ... the Treasurer provide an assurance that any regulations made pursuant to clause 34 of the *Pilbara Port Asset (Disposal) Bill 2015* will be tabled in Parliament and will be subject to disallowance in the Legislative Council.

I am hopeful that that will be addressed when we get to it.

Recommendation 13 states —

The Committee recommends ... the Treasurer amend clause 35 of the bill to remove the *Henry VIII* clause.

There is a proposed amendment on the supplementary notice paper in the Attorney General's name, but there is not at this stage a proposed amendment to clause 35. It would be helpful for us to hear from the Attorney General why the government has not moved on this recommendation or whether it intends to move on it and issue a new supplementary notice paper.

Recommendation 14 states —

The Committee recommends that clause 38(2) of the *Pilbara Port Asset (Disposal) Bill 2015* be amended to remove the words '*despite any law or rule to the contrary.*'

There is no corresponding amendment on the supplementary notice paper—again I ask why.

Recommendation 15 states —

The Committee recommends that, during the Committee of the Whole stage ... the Treasurer explain why all of the subclauses in clause 43(1) of the ... Bill ... are necessary and the intent behind each subclause.

The Attorney General will have an opportunity at some stage to do that. I hope he takes that opportunity.

Recommendation 16 states —

The Committee recommends that clause 43 of the ... Bill ... be amended to ensure that compensation is payable if an existing right under statute or contract is displaced or breached.

There is nothing on the supplementary notice paper to indicate a proposed amendment to clause 43. I ask the Attorney General to address that in his reply.

Finally, recommendation 17 states —

The Committee recommends that the Treasurer ensures that draft regulations be tabled in the Parliament in accordance with the previous commitments given by the Government.

I am hopeful that the Attorney General, who is dealing with this bill on behalf of the Treasurer, can address that recommendation in his reply to the debate.

As the Leader of the Opposition mentioned, there are minority recommendations. She has touched on those so I will not touch on them as well.

In doing its work and consultation, the committee wrote to a range of stakeholders and invited them to make submissions to its inquiry about the bill. Peak organisations, companies, government authorities, local government authorities, big miners and small miners were invited to make submissions. A number of submissions were received, including one each from the Association of Mining and Exploration Companies, Consolidated Minerals Ltd, Brockman Mining Ltd, Treasury, Atlas Iron Ltd, Dampier Salt Ltd, the Pilbara Ports Authority and Mineral Resources Ltd. I am aware that at a later stage the committee invited some of these stakeholders to appear before it to raise their concerns directly. I am aware that the committee held a public hearing on 13 May this year at which a range of these organisations were represented. Those who attended on that day included Mr Graham Short, the national policy manager of AMEC; Mr Paul Muller from Consolidated Minerals; Mr David Flanagan, Mr Jeremy Sinclair and Mr Mark Hancock from Atlas Iron; Mr Chris Ellison, the managing director of Mineral Resources Ltd; and Mr Simon Rushton and Mr Nigel Land, also from Mineral Resources Ltd. I will quote from the transcript of evidence from the hearing. Mr Graham Short indicated that he was representing Mr Simon Bennison, the CEO of AMEC, who was overseas at the time. Mr Short said —

As the committee would be aware, the Association of Mining and Exploration Companies is the peak national industry body for hundreds of mining and exploration companies, many of which have projects based in Western Australia. We are appearing today, as you are aware, with three members who are current users of the Utah Point bulk handling facility—namely, Atlas Iron, Mineral Resources and Consolidated Minerals. Chair, I do not intend to repeat the content of the AMEC submission to the committee but wish to highlight a couple of key points, if I may. Clarity, certainty and predictability in respect of key supply chain issues are the cornerstones to facilitating responsible long-term investment and business decisions, particularly those within the mining and mineral exploration industry, given the many hundreds of millions of dollars required to establish and maintain mines. There has been a complete absence of any meaningful consultation or the provision of any real detail regarding the proposed privatisation of Utah Point, which has effectively destroyed these cornerstones that are crucial to the junior mining industry. Treasury only provided industry with a briefing the day after—I stress “the day after”—the bill had been passed by the Legislative Assembly and referred to the Legislative Council on 25 February 2016. The briefing was not offered by Treasury; rather, it was given at the insistence of AMEC and the existing users of Utah Point who had raised their urgent concerns with government and political parties over the dire consequences the legislation could have. The Treasury briefing entailed a six-slide PowerPoint presentation on the proposed access and pricing regime with a statement from a Treasury representative at the time that it had been difficult to engage because they did not have much to discuss or have the mandate to do so until now.

Mr Graham Short expressed concern. He told the committee that AMEC and, indeed, the users of Utah Point had not been consulted on the bill at that stage. I, too, received the same email as the Leader of the Opposition received from Simon Bennison, the CEO of AMEC. It states “To all WA politicians”, so I presume we all got it. It states —

- ... The Users feel totally let down by Government because Government has failed to consider any of the issues recommended by the Parliamentary Council Standing Committee—the amendments actually operate to the contrary of such recommendations concerning access.
- ... Government has totally ignored the recommendations handed down by ACCC regarding price protection.

He then lists a range of points that urgently need to be addressed. He goes on to say that if we wish to discuss these issues, we should feel free to contact representatives of Mineral Resources, Atlas Iron or Mr Graham Short of AMEC. Upon receiving this email, I took the liberty of phoning Mr Graham Short to ask him about the email and he confirmed that industry still feels that it has not been listened to and has not had its concerns addressed by the government. He advised me that industry had tried to meet with the Treasurer since the committee report was tabled in August, but to no avail. He also told me that the industry is concerned that it has had no time to digest the content or to understand the implications of the amendments on the supplementary notice paper. He is also concerned that access and pricing concerns have not been picked up in the amendments. We are all being forced to wait for the regulations. We have been told that those issues will be addressed in the regulations. I have not been in this place for very long, but I have certainly heard members on this side of the chamber express their frustration time and again over the past few years that the level of detail in legislation before us seems to recede with each bill. We get less and less information in each bill and more and more often we are told that the regulations will contain all the detail. That concerns me and obviously it concerns the industry. It is being told not to worry and that its concerns will be addressed in the regulations. It is being forced to believe that.

However, it has not had the opportunity to raise its concerns about the bill with the Treasurer and to ensure that those concerns are addressed.

There is a good quote in the transcript of evidence from Mr Ellison from Mineral Resources. He said —

The value in selling Utah Point right now for a short-term gain and banking that will be a debt that this state is left with for eternity—for the next 50 or 100 years or plus. I notice they are not selling any of the majors' assets, and the reason they are not selling them, quite simply, is that they do not have title to them. They got title to this because we do not have a state agreement. If we had a state agreement, we would put this thing into a cooperative of some sort, as it should have been done upfront; the capital would have been completely paid off about now.

That refers to the fact that it is not just government money that has gone into this port; junior mining companies contributed to the construction and opening of Utah Point in the first place, so they should have been treated like partners. They should have been consulted all the way along. They should have been consulted about the bill initially and again after the committee report was released. It is a concern to me that they have not been consulted. As the Leader of the Opposition quite rightly pointed out, these companies are substantial contributors to the Western Australian economy. They employ hundreds, if not thousands, of workers in this state. They also employ people who live in my electorate and they buy produce or products from businesses and other companies in my electorate. I am happy to take on board the fears and concerns that they have raised about this legislation and I am happy to act on them. If they feel that they are under attack, this could well put at risk the livelihoods of businesses and, indeed, workers in my electorate.

I want to comment on some of the clauses in the bill. We know from the minister's second reading speech that the bill consists of 47 clauses that broadly provide for the disposal of all or part of certain assets and liabilities of the Pilbara Ports Authority and any identified associated assets; controls and limitations on the parameters of disposal; and post-sale transitional arrangements and regulatory matters. As the Leader of the Opposition in this place quite rightly pointed out, as the Pilbara Port Assets (Disposal) Bill 2015 currently stands it allows for the sale of all or any assets and liabilities of the Pilbara Ports Authority; it does not specify Utah Point. Clause 9 of the bill allows for that and relates to the disposal of port assets and associated assets. The explanatory memorandum, helpfully, states —

This Clause provides legislative authority to the Pilbara Ports Authority, a corporate vehicle or the State to dispose of port assets in accordance with the Act and a section 10 disposal order. It also authorises an associated agency or the State to dispose of assets associated with a port asset in accordance with the Act and a section 10 disposal order.

Any or all of the Pilbara Ports Authority's assets and liabilities can be sold or divested because of this clause. That, too, is a major concern because we are being told today that this is about Utah Point and Utah Point only. But if we pass this bill in its current form, this or a future government could well sell off any part of the Pilbara Ports Authority's assets or liabilities. The government is asking us to trust it and saying, "It's only about Utah Point", but the reality is that we cannot trust this government because it has let us down many times over the past eight years. It is concerning that clause 10 will allow any part of the port to be sold in the future.

Clause 10 of the bill also gives the government the ability to order the port authority to sell or dispose of port assets. On clause 10, the explanatory memorandum reads —

This clause provides for the authorisation under the Act to dispose of all or specified port assets and associated assets.

Clause 10(1) cites that the Minister responsible for administering the Bill (the Minister) may direct the disposal of a port asset or associated asset by publishing an order in the *Government Gazette* (Gazette). Sub-clause (b) permits the Minister to amend or withdraw the order at any time before it is carried out.

As this clause is written, it allows the minister—now or in the future—to force the sale of a Pilbara Ports Authority asset. It is conceivable that in the future there may well be a time when the ports authority says, "Actually, we have sold off Utah Point. We can sell off other assets into the future, but we don't think we should sell a particular asset to make us money—we will hang onto it." Under clause 10 a minister can decide to sell an asset, totally against what the ports authority board has decided. The minister can go over the heads of the board and say, "No; we're selling off this asset." I think that is a very, very strong and concerning power to give any minister. I am concerned, first, that the bill allows for any of the Pilbara port assets to be sold; and, second, that the minister has the power, through this bill, to order the sale of any part of the Pilbara port or its assets.

The Leader of the Opposition in this place also referred to an article on page 45 of *The West Australian* today, in the West Business section. As the Leader of the Opposition quite rightly pointed out, the article states —

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

The Treasurer is out there saying it will not happen before the March election. He has been very clear about it, so I presume it will not happen. It will not happen because we are having this debate today, and that will not allow the government enough time to get out and sell it. However, given that the Treasurer is now on the record as having said it will not happen before the March poll, why would the government not say, “Okay, it’s not going to happen before then. Let’s stop the process for a while and let’s go back. We know the junior miners and Association of Mining and Exploration Companies”, the industry body, “are concerned about the bill”? Why would the Treasurer not say, “Okay, I’ve got an opportunity to address those concerns; I’ll meet with them. They’ve been asking to meet with me for weeks, if not months. I’ll meet with them, I’ll listen to their concerns, I’ll hear them out and I’ll read the transcripts of the evidence they gave before the parliamentary committee. I’ll take all that into consideration, I’ll seek to address the concerns, and I’ll ask the minister with responsibility for the legislation in the Legislative Council to put some more clauses and amendments on the supplementary notice paper”? That way, the sector—the industry affected by the bill—can have its concerns addressed and the problems can be fixed. But, no, of course we are not hearing that; we are hearing nothing like it. In fact, the government continues to plough on with this, although it knows those junior miners are still concerned—although it knows it has not sought or tried to consult with miners. I read on the record today that in relation to the initial bill, the Treasury officers said they could not consult with the sector or the miners until the bill came before the house. The bill is before the house now. There is absolutely no excuse for consultation not happening now. The bill is before us: Why could they not consult? Why could they not take those concerns raised by the industry, consider them and make sure the changes requested are included in this bill?

I share an electorate with Hon Jacqui Boydell, and I know she, at least initially, was outspoken on this bill. It was thanks to the National Party and Labor Party’s concern that the bill went off to a committee in the first place. But I presume that because there is an amendment standing in the Attorney General’s name on the supplementary notice paper related to new clause 46A, the National Party will now support the government and allow this bill to pass with that amendment. I have to say that I am disappointed. I appreciate and thank Hon Jackie Boydell for letting me make my contribution before her; I am sure she may well address this stuff in her contribution when she gets to make it. But I am concerned to think that the National Party has capitulated to the government. I am concerned that the National Party has not—perhaps it has; I am probably putting words in that should not be there—gone back to the junior miners in the last few days to say, “Look, there is an amendment going on the supplementary notice paper that will address your concerns. What’s your view? Does it address your concerns?” I do not think that has happened. Hon Jacqui Boydell was a champion of those junior miners earlier this year; I hope she continues to be a champion, and that she, too, takes on board the concerns raised by AMEC and the junior miners today. I presume the honourable member has received this email from Simon Bennison addressed to all WA politicians?

Hon Jacqui Boydell: Yes.

Hon STEPHEN DAWSON: Good. I look forward to the contribution of Hon Jacqui Boydell when I finish addressing those concerns.

Hon Nick Goiran interjected.

Hon STEPHEN DAWSON: I beg your pardon?

Hon Nick Goiran: Nothing.

Hon STEPHEN DAWSON: I look forward to the contribution of Hon Nick Goiran.

It is a concern that the sector has not been properly consulted—it was a concern initially, and it is now. It is a concern that the government would continue on this course of the privatisation—this fire sale—of this important asset, without consulting those who will be affected: the project partners—that is, the junior miners—and the industry.

Hon Sue Ellery, Leader of the Opposition, briefly mentioned the Australian Competition and Consumer Commission in her contribution. Rod Sims, the chairman of the ACCC, did provide a submission to the committee, as I mentioned. Obviously, although the ACCC is not against privatisation per se—in fact, it has publicly advocated for governments to privatise at various times—it has said that governments should be open and up-front during the process of privatisation. We know that that is not the case in relation to this bill. We know that the government has not always done that. Some recommendations have been made by the ACCC in relation to price protection. Again, we do not see any amendments before us specifically in relation to those matters. That, too, is disappointing. In fact, as far as I know, the government has at this stage completely ignored the recommendations handed down by the ACCC regarding price protection. I am hopeful that when the Attorney General responds to this debate, he will outline why the government has not taken on board those recommendations that were provided by the ACCC.

I am getting to the end of my contribution, but I just want to check my notes to see that I have missed nothing. While I do, it is probably an opportune time for me to again remind members why this legislation is before us—that is, because of the profligate spending of this government. The government has been spending like a drunken sailor for the last eight years and now we are in a financial mess in this state—there is no doubt about that—which all of us will have to help pay for over the next few years.

Hon Helen Morton: Sometimes it is a good idea to create jobs, you know.

Hon STEPHEN DAWSON: I have absolutely no issue with job creation.

Hon Helen Morton: It is a really, really good idea to make sure that people are employed, to make sure that people have got jobs, to make sure that there are enough hospitals, enough schools, enough roads —

The ACTING PRESIDENT (Hon Liz Behjat): Order! Members' blood sugar levels must be getting a little low. One person has the call. Hon Stephen Dawson is that person.

Hon STEPHEN DAWSON: Thank you, Madam Acting President. I will make sure that I make my contribution towards you and through you so that I do not invite unruly interjections this afternoon.

The point I was making is that we have no issue with job creation in this state. In fact, Mark McGowan and WA Labor have published a jobs plan. We know that jobs are on everybody's mind in this state at the moment. We have no issue with job creation. What we have an issue with is profligate spending during a boom and not saving money for a rainy day. We have concerns with the government being out in the market at the same time as the big miners—the BHP Billitons, the Rios and everybody else. We are concerned that we have been paying through the nose for projects over the past few years. We should not have been spending at the same time. Any economist would tell us that. We should have saved some money for a rainy day. We should have been ready for the downturn to start or the boom to subside, and then we should have been out in the market.

Hon Helen Morton: So shouldn't we have built Fiona Stanley Hospital? You wouldn't have done any of those things.

Hon STEPHEN DAWSON: Fiona Stanley Hospital was funded by us! Absolutely! The honourable member has a selective memory.

The ACTING PRESIDENT: Order! There is ample opportunity for all members to make a contribution to the second reading debate on any bill that comes before the house. The only rule is that it is done one at a time. At the moment, Hon Stephen Dawson has the call.

Hon STEPHEN DAWSON: Thank you, Madam Acting President. I have forgotten where I was.

Hon Helen Morton: What a shame.

Hon STEPHEN DAWSON: Hon Helen Morton knocked me off track. I may well need an extension of time. No, I do not!

Hon Michael Mischin interjected.

Hon STEPHEN DAWSON: Look, it is Thursday afternoon. It has been a long week. Let us try to continue to be civil. The Attorney General was in a fine mood yesterday and was very helpful, so I hope his helpfulness continues with this debate this afternoon.

I was saying that the government should have saved for a rainy day. We should have been ready for the boom to finish and we should have been out in the market building our projects then. We could have helped to create jobs. What happened, though, is that we contributed to the bubble over the past few years.

Hon Michael Mischin: How?

Hon STEPHEN DAWSON: Because we were out in the market at the same time building projects.

Hon Michael Mischin: What market?

Hon STEPHEN DAWSON: We were out building projects. We were out looking for workers. The Minister for Education knows; he has been all around the world looking for workers.

Hon Peter Collier: You didn't do very well with your teachers. You had all these classrooms without any teachers. They were the lowest paid in the nation. Why didn't you spend a bit of money? That would have solved the problem.

Hon STEPHEN DAWSON: I look forward to the Minister for Education's contribution later on as well. What I was saying was that —

Hon Michael Mischin: Are you suggesting that all those construction workers who worked on government construction projects over the last eight years were a waste of government funds?

Hon STEPHEN DAWSON: That is not what I said.

Hon Michael Mischin: We were out in the market doing that.

Hon STEPHEN DAWSON: That is not what I said at all. What I was saying was that we should have been ready for the boom to subside and we should have been building projects then.

Hon Michael Mischin: Who anticipated this much of a collapse in the market?

The ACTING PRESIDENT: Order! I am getting a bit confused. I am looking at the notice paper and I think we are at order of the day 15, the Pilbara Port Assets (Disposal) Bill 2015. I did not think it was going to be a general discussion on jobs creation in other portfolios. Hon Stephen Dawson has the call.

Hon STEPHEN DAWSON: Thank you, Madam Acting President. Of course, you are right: this is not about job creation; this is about Pilbara Port and Utah Point.

I will say that the ratings agencies knew that the market was going to change. They are the ones that have dropped our AAA credit rating. The government should have heeded their advice, but it did not.

Anyway, back to the bill before us. To sum up my concerns, I refer to consultation—or the lack of it. The Standing Committee on Legislation did a great job. It got out there. We tasked the committee with looking at and considering the detail of the bill, and it did it well. Committee members went to Port Hedland and met with the junior miners and the Association of Mining and Exploration Companies. They sought advice from a range of people and they got it. The committee then brought back a fantastic report with 17 recommendations. So far, most of those recommendations have been discounted by the government. I do not know why they have been discounted by the government. I hope the Attorney General will tell us why in his contribution. They are valuable recommendations. The committee pointed out issues in the legislation that need to be addressed—issues that in the committee’s view need to be taken on board and changed. It said that amendments need to be brought forward to this place for consideration. Of course, there is still time for more amendments to come forward, and perhaps that is what will happen. However, I am thinking that because the supplementary notice paper says that there is only one amendment standing in the government’s name, the other amendments outlined in the recommendations will not be forthcoming. That is a big concern to me and I want the government to address those issues. I am hopeful that the government will address those matters. I can want all I want, but the reality is that if the government does not agree, it does not agree. I am hopeful that the Attorney General will address those recommendations when he makes his contribution.

As I said earlier, the breadth of the bill is a concern, too. This is not only about Utah Point. This bill will allow the current minister or, indeed, a future minister to sell off not only Utah Point but also any asset belonging to the Pilbara Port Authority. That power is there. We will not have to have any other legislation before us in the future for anything that belongs to the port at the moment outside of Utah Point to be sold off. That is a concern. The Leader of the Opposition addressed in her contribution the reasons the government has used the words “Pilbara Port” and not “Utah Point”. Notwithstanding the contribution that the Leader of the Opposition made, I am still very concerned about how broad this bill is and the fact that other parts of the port could be privatised. Just to sum up, the point I want to make is about the power of the minister to order the disposal of any port assets or associated assets under clause 10. I, too, think that clause as it stands is a concern. It gives the minister an inordinate amount of power to overrule the port when the port may have strong views on an issue.

I am grateful to have had the opportunity to speak on this bill this afternoon. I look forward to the government answering the questions that I have asked. I look forward to the debate ahead of us. I look forward to hearing from Hon Jacqui Boydell as to why the National Party no longer supports the junior miners. I look forward to that being placed on the record. There is no doubt that I will continue to campaign against this bill and the privatisation of Utah Point.

This issue concerns me. It also concerns residents in my electorate—my constituents. This issue has been raised with me a number of times by my constituents. They are concerned that the government is engaging in a fire sale and that we will not realise the full value of this port because it is being sold at a time when the market is depressed. They are concerned also that the state will not get a dividend from this asset into the future. The concerns that my constituents have shared with me, I also share. With these comments, I conclude my remarks on this bill.

HON JACQUI BOYDELL (Mining and Pastoral) [3.41 pm]: The Pilbara Port Assets (Disposal) Bill 2015 is an important bill for this house to debate. Before I address the recommendations of the Standing Committee on Legislation and how I see the sale of Pilbara Ports as an opportunity for the state—and for the junior miners,

Extract from Hansard

[COUNCIL — Thursday, 15 September 2016]

p6066b-6088a

Hon Sue Ellery; Hon Stephen Dawson; Hon Jacqui Boydell; Hon Dr Sally Talbot

actually—I want to touch briefly on how we got to this point. As all members are aware, Utah Point was built in 2010 with the specific purpose of enabling junior miners to access port facilities in the Pilbara. It was considered in 2010 that in order to facilitate the development of the junior miners, that was absolutely the right thing to do, because access to port facilities is integral to their business. The junior miners who operate out of that port will continue to be given priority. I think we all know that gaining access to port space in the Pilbara is highly competitive and dominated largely by the major miners. That is no secret. The Utah Point facility has played an essential role in supporting the junior mining industry and it continues to do so today.

The bill for the sale of Utah Point was introduced into the Legislative Assembly in November last year. It was further debated in that chamber in February this year, and it came to the Legislative Council chamber in March this year. When the government first raised the idea of the sale of Utah Point, my National Party colleagues and I had some concerns about what that would mean for the pricing and access regime for the junior miners, and about whether the priority of the junior mining industry would remain sacrosanct in the operation of that port. We subsequently had discussions with the three main users of the port, Consolidated Minerals, Atlas Iron and Mineral Resources, and with the Association of Mining and Exploration Companies. We drew the conclusion that the junior miners play an important role in the economy of the Pilbara and the state, and it is not in the state's interests to engage in a process by way of this sale that will jeopardise the future sustainability of these companies.

We therefore sought to meet with the Treasurer, along with those companies, and on their behalf, to get some clarity around the intent of the government and to raise their concerns. The concerns that were raised by AMEC and the junior miners at that point still remain. All members would have received the email from AMEC that has been referred to today. I will comment on that email later in my contribution. The major concern at that time—I am talking back in March—was what they perceived to be a lack of consultation. I think they probably had a point. There is absolutely no doubt that it is our job as a government to make sure that we consult with industry. I questioned at the time whether that had been done. The second concern was the ongoing capacity for Utah Point to be a facility for junior miners, as it is currently. The third concern was the pricing and access regime. The concern was that if the port was sold, the junior miners would be at the hands of the private market and the major miners, and competition for the market share could lead to a drop in the price of iron ore and cause them to lose capacity to operate at the facility. I understand that concern. The junior miners are definitely concerned about that.

At that point, we had numerous briefings and conversations with the Treasurer and his advisers about our concerns. As I have said, at one of those meetings, the Treasurer met personally with AMEC and the three junior miners to hear their concerns, and we continued our negotiations with the Treasurer from there. We still believed that there was potential for the junior players to be prevented from accessing the port because of the power of the dominant players, or by being outpriced. Therefore, in some capacity, that concern had to be addressed in this legislation. Our job at that point was to work out how that could be addressed in this legislation, and what was the best way of making sure that the concerns of the junior miners and industry were taken into account by this Legislative Council when we made our decision about whether to approve the sale of Utah Point.

That has been a fairly frantic and hectic process, I have to say, because it happened at the eleventh hour when the bill was already in our house. After those negotiations with the Treasurer and the junior miners, it became clear to the members of the National Party that we needed to ensure through a committee process of this house that there was a consultation period for the junior miners. Therefore, on 22 March, I moved a motion that this bill be referred to the Standing Committee on Legislation for consideration and report by 17 May. Subsequently, the committee sought an extension of time until 25 August this year. The referral also gave the committee the power to inquire into and report on the policy aspects of the bill.

The committee report has been out for almost one month. The document is publicly available. The junior miners and AMEC have been in discussions with the committee over that period of time. I suggest that was a consultation period with government, because it enabled industry to bring to the table of government—the members of the standing committee—their concerns. At that point in time, the government had a responsibility to respond to the report of that committee. Therefore, this Legislative Council understood that there were concerns that had not been addressed, and as a house we referred the bill to the Standing Committee on Legislation. At that point, AMEC raised concerns about safeguards to protect the junior mining industry; the potential for higher pricing under private ownership; the fear that future access to the facility by junior miners might be compromised; the apparent lack of transparency about the terms and conditions; and the current \$2.50 a tonne rate relief that is provided to the junior miners and the potential for any future rate relief.

Similarly, when we went back to our colleagues within the Parliamentary National Party, we became increasingly concerned about the government's lack of consultation with industry and other relevant stakeholders in the development of the bill. The criteria and the framework for decision-making adopted by the Treasurer on the disposal arrangements were a concern, along with the clarification of the length and renewal of the lease of the asset, the lack of clarity or certainty about the proposed access regime and regulatory arrangements, the

Extract from *Hansard*

[COUNCIL — Thursday, 15 September 2016]

p6066b-6088a

Hon Sue Ellery; Hon Stephen Dawson; Hon Jacqui Boydell; Hon Dr Sally Talbot

process for contract renegotiations for current users with imminent contract expiry, with some of the contracts expiring in 2020, I think—I will clarify that for *Hansard*—and management of the “use it or lose it” regime with current miners. What I mean by “use it or lose it” is that if juniors do not utilise the facility for a period of six months, the new owner of the facility will have the opportunity to negotiate with a major to come into the port. That is a major concern, and we felt that needed some strengthening to ensure that the fundamental underlying principle of Utah port is to support the junior mining industry.

One last concern that we had was the fair means by which a junior miner can regain access to the facility. If at some point a major miner did come in, and it was under care and maintenance or was not utilising the facility and the new owner arranged a short-term lease with a major miner and it had capacity for customers and market share, how could the junior miner come back in when it would have potentially lost customers, the market price would have fallen as the capacity to compete would then be impacted greatly? They were the concerns that saw the National Party seek to refer this bill to the committee in March. I think the committee provided the appropriate space to explore these issues in-depth and report its findings back to the house, which it did last month.

Before I get to the committee referral, I want to talk about the consultation issues that have been raised in the debate today. In the first instance, I felt that the industry did not have the opportunity to consult properly with government. We went part way to rectifying that when the Treasurer himself sat down with the junior miners and the Association of Mining and Exploration Companies so they could put forward their concerns and see whether they could negotiate to further enhance the legislation to address those concerns. The industry had an opportunity to put its point of view on the table throughout the whole committee process, which went from March to August. The first time industry approached me was when the bill was in the house. That is okay. We worked with that. The bill was referred to the committee. It reported on 25 August. I received a text message at 10 o'clock last night and further text messages today from junior miners, which I have good relationships with, as I do with AMEC. Then I received an email from AMEC at 1.48 pm, after the debate had already commenced in this house. I say to the industry that it needs to consult. This is the most important piece of legislation that will affect the industry and it cannot tell me that it has naively sat and not understood the process of Parliament and also does not understand that continuing to engage with members of Parliament is the way to engage with government. We all know that in this house. If I were a small business owner and something affected my business, I would be in there to make sure I was aware of what was going on. It is very difficult to understand industry's ongoing concerns when I am contacted at the eleventh hour while sitting in the chamber, receiving text messages from stakeholders within the industry. They have had three weeks to outline their concerns. They may have been trying to get a meeting with the Treasurer and other ministers. I am sure that they probably have. At the eleventh hour in March, I was approached as a local member because this facility is in my electorate. The same processes occurred when the bill came back to the house. I find that disappointing because I want to consider the concerns of those junior miners and the people of my electorate. That is why I referred the bill to the committee in the first place. I thought that was the right process for industry. On that day it asked me to please refer the bill to the committee because at least its concerns would be heard. This house has done that.

At this point I can say that I had briefings on the amendments during the week. Our party room also considered those amendments. I think that the majority of our concerns have been addressed through that committee report. I know that in his response the Attorney General will further address some of those concerns and put some clarity around the negotiate-arbitrate and pricing regime in particular.

I also wish to comment on Hon Stephen Dawson's reference to the Treasurer's statement that the bill will not pass through this Parliament. That is speculation by the Treasurer on the process of Parliament. When the bill is amended in this house, we all know that it has to go back to the Legislative Assembly. I guess he is speculating, as am I, on the time line that we all know we have left for government and the processes of the Parliament that we all must follow. That is a reality. That could potentially still happen. That could potentially still be an outcome.

Hon Stephen Dawson: Member, I think he actually said that the sale wouldn't go through before the election, not that the legislation wouldn't pass.

Hon JACQUI BOYDELL: I thank the member for that clarification.

We find ourselves in a tight time frame. That is unfortunate. Members of this house have to make a pragmatic decision around the recommendations of the committee, the amendments put forward and what is in the best interests of the industry.

I am very pleased with the committee's inquiry and the subsequent findings and recommendations. The committee found seven recommendations that seek to amend the bill or associated regulations and 10 recommendations that seek a clarification, commitment, assurance or further disclosure. I also note that the committee supported the bill, subject to some of those changes occurring. I believe that the most important finding and affiliated recommendation is that, in its current manner, the bill fails to provide sufficient protections

Extract from Hansard

[COUNCIL — Thursday, 15 September 2016]

p6066b-6088a

Hon Sue Ellery; Hon Stephen Dawson; Hon Jacqui Boydell; Hon Dr Sally Talbot

for junior miners in the proposed access regime and that it should be changed to provide suitable protections. I think we have achieved protections for the junior mining industry. I will go into further detail around that. If we passed this bill in March, none of the protections that are now being proposed would be there.

In our discussions with Treasury advisers—as I have said, I was briefed over the last week—I was extremely pleased to hear that 50 per cent of the capacity of the port would be quarantined for the operations of junior mining operations. I want to clarify why I think that is good. If the junior mining industry has 100 per cent operational capacity at the port, nothing will change tomorrow. We will go forward, their operations will continue, and they will forever and a day operate out of Utah Point port. As I said earlier, if one of the junior miners is in care and maintenance, a structure and framework in the regulations will provide for how the new owner would engage junior miners and negotiate some of their space for a major miner to come in for a specific period, as long as 50 per cent of the port remained for junior miners. If that led to less than 50 per cent of the port being available for junior miners, my understanding is that that agreement or potential short-term lease with a major miner would not go ahead. That protection has been recommended as a result of the committee's work, and I congratulate the committee on that. That recommendation is reflected within the proposed amendments. Major mining companies can potentially come in for a short time to use the facility.

If government was not going to sell that facility and there was no private investment and all the junior miners were in care and maintenance—absolutely nobody wants to see that—I am sure that the opposition would be putting pressure on government to be utilising that facility to get a return for the taxpayers of this state. If the port was retained in government ownership, I would not want to see that asset sitting idle, rusting away, and the people of this state not having the opportunity to benefit from the export out of that facility. I have had that direct conversation with the Treasurer. I agree with that. Any private owner of this facility is owed the opportunity, at least, to utilise the facility, but fundamentally it has an underlying obligation to maintain the facility for junior miners. I am very clear about that in my mind.

Recommendation 7 refers to the negotiate–arbitrate model and recommends that this model be extended to apply to prices to access the facility. I note that this sits within the pricing and access regulations and I am led to believe that this recommendation has been accepted and the regulations have been changed. At this point, before we reach the committee stage and before the Attorney General has his opportunity to respond on behalf of the government, members of this house are being asked to accept on good faith that that will be the case. I accept that on good faith. I have had the briefings and I have consulted. I feel comfortable that that issue will be rectified and clarified by the Attorney General. I put on the record that from my perspective, in my briefings with Treasury it was clearly stated to me that recommendation 7 is accepted; the price monitoring regime will be removed and amended so that a negotiate–arbitrate regime is applied to both access and pricing. Prices will be negotiated between the parties with binding independent arbitration in the event that the parties cannot agree. Therein lies another protection for the industry.

The prohibition on hindering access or discriminating against access seekers other than on cost of service grounds remains, as does the junior miner preference provision and the obligation for the lessee to negotiate in good faith. I consider that the industry, which I know well, would welcome that protection; I hope that it does. The negotiate–arbitrate regime is a key feature as it applies to both access and pricing. We need some assurance that the regulations will be amended and perhaps that the act will stipulate the requirement to address the regulations in some capacity. I look forward to the Attorney General's comments on that as we reach the committee stage.

I will make a couple of more comments before I sum up my contribution today. Ports in this state are exceptionally important to the people of Western Australia. They operate on a global level and are extremely efficient. The operators of those ports are extremely efficient and they operate with world-class technology and work practices. The argument that the port users and the port facilities will not be able to logistically manage users coming into and going out of that port is completely irrelevant to the operation of the port. They do it now on a daily basis. It is something that they will continue to do. I do not see that as a major impost to the users of that port.

To conclude my comments, I am extremely pleased that our concerns regarding protections for the junior miners have been realised in the form of amendments to the bill. I am also pleased that Treasury intends to change the price monitoring regime to a negotiate–arbitrate regime. In the interests of transparency, this is an extremely important aspect. I thank the committee for its findings and the very hard work that it did on this. It is a complex issue, as we saw when the committee had to seek an extension of time to report. I seem to recall that we debated that extension and whether it was in the interests of the bill. I believe it has been in the interests of the bill and I thank the committee for putting forward its recommendations. Through this process we have developed a bill that is in the interests of government, private investors and the junior mining industry, which, at the heart of this bill and the port's intended sale, remain the priority of this government.

HON SALLY TALBOT (South West) [4.08 pm]: I will not go through every clause of the bill this afternoon. The bill is exactly what the title of the bill says it is—the Pilbara Port Assets (Disposal) Bill 2015. The Labor Party is opposed to the sale of Pilbara port. I will have more to say about the structure of the bill in a moment, but every clause is about the sale of the port and we oppose that sale. Although it may be interesting when we reach the committee stage to look in more detail at some of those clauses, particularly to tease out all the major problems that remain with the bill from the perspective of all the stakeholders—because nobody is happy with this outcome—I will not spend my time doing that during my second reading contribution.

I should also point out in parenthesis that we are at an interesting part of the debate now because the bill has been through the other place and had half its second reading debate in this chamber before being referred to a committee. It has been through a committee process that lasted about six months. Now it has come back to the chamber and we are continuing the second reading debate. In a sense, it is a shame—we can see it very clearly in the context of this Pilbara Port Assets (Disposal) Bill 2015—that members on both sides of the chamber who spoke in the first half of the second reading debate before the Standing Committee on Legislation report was completed do not have a chance to make some second reading comments at this stage of the debate. I am the last one to suggest that we should extend our processes, which are often quite lengthy anyway, but it seems to me that there would be some value in hearing comments from both sides of the chamber that were as well informed as they could possibly be. Surely, that point is reached when the chamber can consider the bill, the explanatory memorandum, the minister's second reading speech and any committee report that has been produced. That, of course, returns me to the theme, which I raise very often and with which most honourable members are quite familiar; that is, we ought to have a better process for managing legislation. We should have a process that would produce better legislation and a higher standard of debate and that would save a great deal of time. That theme is that we have a legislation management group to look at each bill as it comes into the chamber to determine which ones might benefit from being referred to a committee. If we did that, we would not have to make any sort of change to our standing orders to allow the entire second reading debate to be informed by a committee report. I have no doubt that this is nowhere near the last time I will raise this, but I hope that when Labor is returned to office in March, that will be one of the practices the Labor government adopts in the Legislative Council.

That was a very long comment in parenthesis. I was going to say that the one thing that has become crystal clear at this stage of debate is that the National Party has completely lost the plot. I am very proud to be a member of a party whose leader, the Leader of the Labor Party in Western Australia, has said that under no circumstances will we form government with the National Party. I think that is absolutely the right thing to do, and it makes me very proud to be a member of that party. I am sure some members opposite wish their leader also would say that. Indeed, today, the president of the Liberal Party in WA published a lengthy piece in *The West Australian* urging the Liberal Party to make it clear that it will not govern with the Nationals because the Nationals are now embarking on this reckless and completely irresponsible path of political salesmanship, which is probably one of the most risky strategies we have ever seen unrolled in this state. It is directly related to what we are debating here today because all of us on this side of the house—from the previous speaker's comments, I know she has seen the email—know that the junior miners are very unhappy with what the Liberal–National government is doing. The junior miners are very, very unhappy. It is just not good enough for a member of Parliament to stand up in Parliament and say that the junior miners have no right to be unhappy. We cannot speak to stakeholders like that; we cannot speak to people —

Hon Jacqui Boydell interjected.

Hon SALLY TALBOT: We cannot speak like that to people who play a very important part in contributing to the economy of this state. The whole state, including my electorate in the south west —

Hon Jacqui Boydell interjected.

The ACTING PRESIDENT: Order!

Hon Michael Mischin: I didn't hear you complaining about a mining tax.

Hon SALLY TALBOT: I know that members of the Liberal Party are very unhappy about this. I know they will have read Norman Moore's comments in the paper this morning and squirmed.

Hon Michael Mischin interjected.

The ACTING PRESIDENT: Order! Probably about 20 minutes ago, I said that the bill on the notice paper is the Pilbara Port Assets (Disposal) Bill 2015 and that is what is being debated in the house.

Hon SALLY TALBOT: How unhappy are these people? I know that other members have seen the email to all WA politicians, which reads —

Extract from Hansard

[COUNCIL — Thursday, 15 September 2016]

p6066b-6088a

Hon Sue Ellery; Hon Stephen Dawson; Hon Jacqui Boydell; Hon Dr Sally Talbot

... It is understood that Amendments to the Pilbara Ports Assets (Disposal) Bill are to be debated in the Legislative Council this afternoon, 15 September 2016. There was absolutely no consultation with Juniors before these were tabled.

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

They are the words of the junior miners. We cannot deny those words; we cannot say that they do not exist or they are wrong.

Hon Michael Mischin: Why not?

Hon SALLY TALBOT: We cannot because the whole point is that the junior miners are unhappy and they have gone to considerable lengths to explain exactly why they are unhappy.

Hon Michael Mischin interjected.

Hon SALLY TALBOT: I know this is tricky ground for the Liberal and National Parties because, as Hon Norman Moore said this morning, the Liberal Party ought to be severing its connections with the National Party.

Debate interrupted, pursuant to standing orders.

[Continued on page 6099.]

Sitting suspended from 4.15 to 4.30 pm