

**ABORIGINAL HOUSING LEGISLATION AMENDMENT BILL 2009**

*Consideration in Detail*

**Clause 1: Short title —**

**Mr T.G. STEPHENS:** The minister might recall that during the second reading debate, some issues were raised with him about the opportunity for clarifying the flow of funds that come with this agreement, referred to in the short title. I outlined to him a set of figures that I understand to be the flow of commonwealth funds to the state of Western Australia.

**The SPEAKER:** To the best of my knowledge we are dealing with clause 1, with respect to the title of the bill. It is not an opportunity to debate any other further content.

**Mr T.G. STEPHENS:** I am sure you will appreciate, Mr Speaker, that this provides an opportunity for the minister to outline in his consideration of the detail of this bill the way this legislation will, in its entirety, create an opportunity for the flow of funds into Aboriginal housing. With due respect, the short title is traditionally the opportunity for that.

**The SPEAKER:** It is not the opportunity in this house to, in effect, go through a second reading debate. In this place we simply debate that clause 1 be the title of the bill and that is the point we are discussing at the moment. The member can propose something other than this particular title.

**Mr T.G. STEPHENS:** That would depend upon the response of the Minister for Housing and Works. If the minister were able to provide me with the information I am seeking, I probably would not proceed to seek to change the short title of the bill. I think you will find, Mr Speaker, that there is some information the Minister for Housing and Works wants to proffer and this seems to be the best opportunity for him to do that.

**Mr T.R. BUSWELL:** The member raised an issue during the second reading debate about the flow of funds under the national partnership agreement. I think he mentioned a figure of \$1.18 billion over 10 years. The advice I have received is that we have signed a five-year implementation plan with the commonwealth. That plan deals with a total of \$496 million. The balance of the funding over the 10 years, as I understand it, is what is termed a notional or an indicative amount that will be put on the table. I can give the member a breakdown of the five-year plan if he would like, because it is something we have effectively worked through with the commonwealth as part of the implementation plan. Beyond the five years I cannot, simply because it is effectively a notional figure that takes it up to \$1.18 billion. I can give him that information; however, it is subject to change because renegotiations are occurring with the commonwealth around the matter I raised yesterday of competitive funding. I hope we will attract our share of competitive funding and, therefore, our total amounts will not change, but there is still some change.

**Mr T.G. Stephens:** The other part to the question was the issue of the state contribution that will flow as a result of the passage of this legislation.

**Mr T.R. BUSWELL:** My understanding is that there is no state co-funding requirement associated with the national partnership the member referred to.

**Mr T.G. Stephens:** Will there be some state contribution?

**Mr T.R. BUSWELL:** Yes.

**Mr T.G. Stephens:** Are you going to be able to quantify that?

**Mr T.R. BUSWELL:** Not today. If the member for Pilbara asks me some questions on notice I can easily get that information to him. State contributions flow across a range of areas, such as housing.

**Mr T.G. Stephens:** You might remember that, during the second reading debate, you said you would get that information.

**Mr T.R. BUSWELL:** I have endeavoured to get that information to the best of my capacity. I do not have it available to present to the house now, but I will source it and I am happy to provide it to the member later.

**Mr T.G. Stephens:** Thank you. You did commit to it before.

**Mr T.R. BUSWELL:** Unfortunately, I have not had an opportunity to get that data collated in a way I would like to present it to the member, simply because I have been on the go since then. I appreciate that I made that commitment. I will provide the data to the member. In relation to the national partnership, \$496 million is on the table as cash flow over the next five years.

**Clause put and passed.**

**Clauses 2 and 3 put and passed.**

**Clause 4: Section 4 amended —**

**Mr R.H. COOK:** I seek clarification about the purpose of proposed section 4(ca), which seeks to amend the objects of the Housing Act. Clearly, the objects of the Housing Act are very broad and have been amended to take into account this extra scope of activity. I guess, in one sense, I am looking for a specific explanation about this proposed section. Why is it necessary to visit the objects of the Housing Act given the breadth in which they appear in the act in the first place? What is it about these particular activities under the Aboriginal Housing Legislation Amendment Bill that will alter the objects of the act in this way?

**Mr T.R. BUSWELL:** I advise the member that the drafting process indicated that the objects needed to be broadened to effectively enable the role of the housing authority to be expanded to include a few things, and I will touch on three of them. Firstly, and most importantly, is the letting and leasing of homes that may or may not be held by the authority. I understand that at the moment the authority can only let or lease houses held by it. This clause expands the ownership of houses that the authority can let or lease. Secondly, the clause provides for an expansion of the objects to ensure that there can be engagement in the provision of related services—for example, maintenance and refurbishment of houses. Thirdly, the bill enables the authority to make arrangements with third parties to provide services for letting and leasing of housing. A good example of that—although I cannot remember the name of the body involved—is a local community-based association in Fitzroy; the member for Kimberley might know its name.

**Mrs C.A. Martin:** It is Junjuwa.

**Mr T.R. BUSWELL:** Yes, Junjuwa—and we have contracted with it to manage a lot of the houses and to provide the maintenance. There is also Marra Worra Worra, which is south of Port Hedland. They will effectively take over control under contract with the housing authority.

**Mrs C.A. Martin:** They own that maintenance company I talked to you about.

**Mr T.R. BUSWELL:** Yes, and that has flow-on benefits that relate directly to what I talked to the member about. In the case of Marra Worra Worra, it has an association with a maintenance company that employs local people to fulfil a number of the maintenance requirements.

**Mr R.H. Cook:** Are you saying those arrangements are currently outside the act?

**Mr T.R. BUSWELL:** My advice is that they are not, but this tidies it up and broadens some of the permissible activities. Everybody knows it happens, but this bill tidies it up.

**Mr R.H. COOK:** Previously we had either an Aboriginal housing authority or Aboriginal housing board, would that not be another example of the housing authority having that indirect approach? Again, is this just a tidying up exercise?

**Mr T.R. BUSWELL:** It is a tidying up exercise. Theoretically this bill is expanding the role of the housing authority.

**Mrs C.A. MARTIN:** Clause 4(ca) states —

the letting and leasing of houses, the provision of services relating to the letting and leasing of houses and the entry into arrangements for the provision of such services;

Would that be a tenancy agreement under the Real Estate Institute of Western Australia act? I understand that currently REIWA actually provides the baseline for tenancy agreements and its ability to enter into agreements with tenants. Has that been taken into consideration in this clause? Would that be the baseline standard? In other words, when I sign a contract to say that I will lease a particular house, will it be a mainstream process? That means that the house I am moving into, firstly, is up to scratch; secondly, is safe; and, thirdly, is at its premium condition for me to lease.

**Mr T.R. BUSWELL:** My understanding is that we will have these housing management agreements with the broad community. The relationship with individual householders—I suppose the best term I can use and it is the term the commonwealth uses—will be normalised. I take it that “normalised” effectively means that the relationship between the housing authority, as the landlord, and the tenant will operate under the relevant legislation, which is the Residential Tenancies Act.

The member is correct, the REIWA documentation is the most common presentation of the Residential Tenancies Act, as it applies more broadly. I am not sure that housing authority tenants are signed up under a standard REIWA contract. I suspect they are not. I know that these provisions will comply with all the requirements of the Residential Tenancies Act. The agreement will not be on a REIWA form, but the form will

Mr Tom Stephens; Speaker; Mr Troy Buswell; Mr Roger Cook; Mrs Carol Martin; Acting Speaker; Mr Paul Papalia

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be similar in that it will reflect all the requirements of the authority as the landlord under the Residential Tenancies Act. That is a big step forward.

The second part of the member's question was: what are the implications of that for maintenance? That is a valid question. I cannot guarantee that every home for which these agreements are entered into will be of a consistent standard. I could be wrong, but I could not guarantee that. However, we will ensure that they are of the minimum standard required under the Residential Tenancies Act. I cannot describe exactly what that is. The member can take it that people will not be entering into arrangements with us unless the house is of the minimum standard as required by the Residential Tenancies Act.

I have visited a lot of communities in which the homes are not of a minimum standard and, quite clearly, those homes will need work done on them. Similarly, I have been to communities in which there are a lot of houses that would easily meet the standards of the Residential Tenancies Act.

In moving forward, as the landlord, we have obligations in terms of the maintenance of those properties. That is one of the important parts of transition in and around this move. The authority, as the landlord, will have ongoing obligations under the act for the maintenance of the property. The tenant will have obligations as well, but the authority will certainly have obligations.

**Mrs C.A. MARTIN:** The minister is telling me that under these arrangements there is not a baseline that provides a tenant with a service that is comparable to that given under, for example, a REIWA arrangement.

The minister is unable to tell me that the fiduciary duty of the housing authority will be met or that the stock that is coming from the federal government is in a condition that would make me want to rent it. I need to clarify this. I do not want to cause the minister any heartache, but I need to know because half of my electorate are Aboriginal and the houses we are talking about are in my electorate. These houses are already substandard. Only \$4 000 per house is coming from the federal government. We talked about it yesterday. In some of these communities it costs two grand to get a window replaced. Where is fiduciary duty in this process; how will this agreement benefit the Western Australian Aboriginal community; what is the minister's department doing to ensure that this is done properly; and if a person is required to sign a tenancy agreement, would it, firstly, stand up in a court of law, and, secondly, provide a baseline for service provision? Further, is it true that \$2 billion is needed to upgrade these houses to hand over in a state that will comply with that process? Is that the maintenance cost? What about electricity, water, sewerage and road infrastructure?

**The ACTING SPEAKER (Mr P.B. Watson):** Member, can we make it easier for the —

**Mrs C.A. MARTIN:** Is it about a tenant's arrangement? If I were a tenant, I would want to know the answer.

**The ACTING SPEAKER:** Member, can you make it easier for the minister? Would you wait for him to reply to those questions?

**Mr T.R. BUSWELL:** I will try to cover as many items as I can, and no doubt the member for Kimberley can jump up again. I will reiterate that the plan is for tenants of these houses to sign the same sort of tenancy agreement as any public housing tenant in Western Australia. It is not a REIWA standard contract, because we do not use those. However, in the sense that the REIWA standard contract compels landlords to follow all their obligations under the Residential Tenancies Act, it will do that. Section 42 of that act deals with a range of issues around owners' responsibility for cleanliness and repairs. The other commitment is that people will not be required to sign one of these agreements until the house has been upgraded to a level that fits within the guidelines of the Residential Tenancies Act.

By extension then, could the tenant of every single house sign one of these tomorrow? No. As an example, the national partnership agreement currently provides funding to upgrade 125 000 houses in remote Aboriginal communities. Let us say there are 3 000 houses —

**Mrs C.A. Martin:** For the purpose of this debate, yes.

**Mr T.R. BUSWELL:** We have 125 000 houses and the average cost of each of those upgrades that the state has been funded for is \$175 000.

**Mrs C.A. Martin:** What! Where does the money come from?

**Mr T.R. BUSWELL:** The commonwealth has provided the state government with \$175 000 to upgrade 125 000 houses.

**Mrs C.A. Martin:** Each?

**Mr T.R. BUSWELL:** For each house. I can share with the member what I saw when I was in Jigalong last week. Previously, eight houses in Jigalong were not habitable. They have been completely upgraded with verandas expanded—with a range of different stuff. The average cost is around \$175 000 for each house. That is

Mr Tom Stephens; Speaker; Mr Troy Buswell; Mr Roger Cook; Mrs Carol Martin; Acting Speaker; Mr Paul Papalia

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the quantum of money that is required, on this program, to upgrade those houses. Yesterday I mentioned the stock audit. That showed that to upgrade all the properties we would have required around \$560 million. The initial swag of commonwealth money will not solve the problem today, but it will make a significant dent in improving the quality of housing stock. To go back to my earlier point, we cannot force people to sign these contracts; it will have to be by agreement. People will not be signing contracts for properties that do not meet the minimum standards under the Residential Tenancies Act in exactly the same way that a public housing tenant in Busselton, my electorate, or in Perth would be required to. We are trying to treat everybody as consistently as we can as public housing tenants.

**Mrs C.A. MARTIN:** I do not think it is possible for Aboriginal people and communities to sign any sort of tenancy agreement, simply because I think this is completely untenable as it currently is. I know that the minister is under the gun when it comes to the bilateral agreement with the federal government. I understand that but I am saying that this is not possible. To enter into an annual arrangement and —

**Mr T.R. Buswell:** Why would it not be possible?

**Mrs C.A. MARTIN:** It cannot happen because there is not enough money coming across to provide what we need. That includes infrastructure. I have a real issue with it. When the government builds new houses—because it will have to do that as well—the power and water will have to be upgraded and all of those things. Where is that money coming from? There is an issue of fiduciary duty that has not been thought through. I have a real issue with it. Whether it is the federal government alone, or the federal government with the state government, is irrelevant. There is an issue of fiduciary duty that needs to be stated. I want to know where the infrastructure money is coming from to enable tenants to get the services that they need.

**Mr T.R. BUSWELL:** The member for Kimberley is right about the need to upgrade municipal and essential services infrastructure and this particular legislation does not deal with that. This particular national partnership agreement—again the point has been made many times —

**Mrs C.A. Martin:** You have been shafted. I am sorry, but that is what it is!

**Mr T.R. BUSWELL:** The housing agreement was separated from the other negotiations. They are ongoing. It is a very delicate matter, and it is a difficult set of negotiations.

**Mrs C.A. Martin:** But Aboriginal people will wear this in the end. This is the issue I am trying to raise here.

**Mr T.R. BUSWELL:** Unless this is put in place and unless we are able to normalise the relationship between tenant and state as the landlord, the commonwealth will not give us any of this.

I was in Jigalong last Wednesday. The Jigalong community do not want to move away from their community-based rent collection and maintenance model. The message for them was that it was an unfortunate reality. If they can convince Jenny Macklin to do it any other way, good; but if they do not agree to a process of normalisation, they will not get any money. They have on the table 30 or 35 housing upgrades and another 10 or 12 houses. This is a big challenge.

**Mrs C.A. Martin:** How long since anyone could make money in there? This is the other thing.

**Mr T.R. BUSWELL:** There are nine houses in Jigalong that have just been refurbished. They are not even occupied yet. I met with the member for Victoria Park's father, who is now running the community there.

**Mrs C.A. Martin:** He has been there a while.

**Mr T.R. BUSWELL:** He went away and came back, as I understand it. He even acknowledged there has been an improvement in the quality of the houses. It is not nearly enough. It is almost the sort of discussion we need to have on a community-by-community basis. Some communities are embracing the change and some communities are less willing to embrace the change.

**Mrs C.A. Martin:** Some communities are going on very well, thank you. Not many, but there are a couple.

**Mr T.R. BUSWELL:** All I know is that the commonwealth has given us \$496 million. I said, "Cedric, you are a persuasive man. You go and convince Jenny Macklin that she needs to change because unless you can do that, you have no chance." I visited Jenny Macklin last year. She had just met with a group of senior people from the Cape in Queensland, and they went in all bolshy and gung ho and came out without anything positive. Her position was imprinted on them when they left! She has a very firm view on this. I am not trying to downplay the broader significance of the issues the member has raised, but this bill in isolation deals with the issues around housing and using national partnership agreement money and about the normalisation of landlord-tenant responsibilities. I cannot get into a detailed conversation about the other issues that the member raised, even though they are very valid concerns.

Mr Tom Stephens; Speaker; Mr Troy Buswell; Mr Roger Cook; Mrs Carol Martin; Acting Speaker; Mr Paul Papalia

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**Mrs C.A. MARTIN:** Again, it is the same issue. When I look at this, when the Minister for Housing and Works looks at it and anybody who knows what the figures are looks at this, we know that the state is being shafted by the federal government. There is not enough money, regardless of how it spread it, or how the government does this. It is trying to do something on the cheap. This involves a fiduciary duty. Handing the state government a dirty handkerchief will not help Aboriginal people. Again, in the end, Aboriginal people are the only ones who will suffer in this whole process. I do not need the minister to respond to this. I just need it on the record.

**Mr P. PAPALIA:** On the same point, Minister for Housing and Works, as I suggested during the second reading debate I am interested in much the same way as the member for Kimberley in the provision of municipal services. I understand what the minister is saying: a different national partnership agreement is targeting that provision of services to remote Aboriginal communities. However, as we all know, that is linked to only four locations in Western Australia and this money will be spent in a number of areas that are not covered by that particular agreement. What measures does the minister intend taking to ensure that the investment by both governments in this housing infrastructure is going to be protected, in that it will be provided with adequate municipal services to wrap around the new housing or the upgraded housing? Is that entirely dependent upon these delicate negotiations that are still underway on the provision of funding for other services?

**Mr T.R. BUSWELL:** Again, it is a good question. In terms of the physical aspects of a community—a whole lot of other stuff also needs to be fixed—the member is saying that he is fixing one bit but that to get the true value out of that, we have to fix the other bits. Those other bits are essential services and municipal services. A series of processes are happening in parallel. The national partnership agreement on remote Aboriginal housing has been struck and we are implementing it. The development of new arrangements for the delivery of municipal services and essential services is still very much a work in progress. It will be done but it is not nearly as advanced as the housing model. We went back and said that we need to conduct an audit of our current municipal service delivery and essential service delivery because we do not know the extent of the liability, if I could call it that.

**Mr P. Papalia:** Was the Local Government Advisory Board report of August 2008 looking at the provision of municipal services to remote communities from the perspective of local governments deemed to not be adequate?

**Mr T.R. BUSWELL:** The commonwealth has required us to conduct an audit. The audit is being funded by the commonwealth. There is a national steering committee. That audit is ongoing. My advice is that that audit did not commence until November last year. It only covered 17 Western Australian communities. It is running behind schedule. We only recently received draft audit results. I think a meeting is now planned for later this week where that will be advanced. That is moving forward. Everyone knows that we have to sort it out. The housing issue was elevated by the commonwealth at last year's COAG. This was the deal. The member for Kimberley may have been right. As she said, we may have been "shafted", but it was the best deal we could squeeze out of the commonwealth at the time. This is a significant move forward. More work is being done on essential and municipal services but there are some issues. It is a major area of potential cost shift. We have been involved in the service delivery aspect but not the funding aspect. There is the capital funding aspect. We approached this as a state very cautiously. I think we have a good working relationship with Minister Macklin and we have a good working relationship at officer level between our departments. There is a real desire to make long-term changes.

I do not have any information on the local government report that the member is talking about.

**Mr P. Papalia:** Are the negotiations with regard to these services and who provides them and this audit with Minister Macklin's office or are they with someone like Albanese?

**Mr T.R. BUSWELL:** No, Jenny Macklin, the Minister for Families, Housing, Community Services and Indigenous Affairs, is firmly in charge of this process.

**Mr P. Papalia:** So is the Parliamentary Secretary for Western and Northern Australia not involved?

**Mr T.R. BUSWELL:** No. He is involved in the delivery of some aspects, in particular the east Kimberley program.

**Mr P. Papalia:** But he is not doing these negotiations?

**Mr T.R. BUSWELL:** No.

**Clause put and passed.**

**Clause 5 put and passed.**

Mr Tom Stephens; Speaker; Mr Troy Buswell; Mr Roger Cook; Mrs Carol Martin; Acting Speaker; Mr Paul Papalia

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**Clause 6: Section 12A replaced —**

**Mr R.H. COOK:** Obviously, this clause involves the deletion of the entire section 12A of the Housing Act. It is somewhat lengthier than the replacement. In the first instance, I am looking for some indication from the minister about the intent of these changes. Do they relate solely to the object of putting this Aboriginal housing legislation in place or is this part of a broader tidying-up exercise? There is a marked difference between the old section 12A and the new section 12A. I am seeking some guidance from the minister on the intent and effect of these changes.

**Mr T.R. BUSWELL:** It is a good point. My advice is that this is a 30-year-old bill and there is an opportunity to tidy up some bits on the way through, and that is what is happening. However, I have also been advised that these changes are required to enable us to enter some innovative joint ventures that we are looking to enter into to deliver Aboriginal housing, especially with Indigenous housing organisations.

**Mr R.H. Cook:** Will this impact upon other commercial activities or other activities that the department is involved in?

**Mr T.R. BUSWELL:** Yes. I can tell the member more broadly as the minister that I am driving the department to be more innovative in the way it enters into joint ventures to deliver social housing.

**Mr R.H. COOK:** In the old section 12A(1)(b) the Governor has to tick off on joint venture arrangements. The minister has lifted that requirement so that it just requires the tick of the minister. Is that correct? What is the intent behind the loosening up of these arrangements?

**Mr T.R. BUSWELL:** It is a bit odd, given my current ministerial responsibilities. Effectively, “Governor” is substituted with “Treasurer”. Every joint venture must be approved by the Treasurer of the day and subsequently endorsed by the minister, which I think is probably more reflective of contemporary government.

**Mr R.H. COOK:** I agree. I will flick forward to proposed section 12A(3), which says that a joint arrangement has to be approved by both the minister and the Treasurer. I think this has been referred to a number of times as the *Mikado* effect. Could the minister provide the house with details of the sort of terms and conditions under which the Treasurer would approve these arrangements? Are those guidelines or thoughts available?

**Mr T.R. BUSWELL:** I do not have that detail. In response to the member’s *Mikado* descriptive, it is often the case that as both the Treasurer and the minister, I deal with conflicting advice. It does not always make it easy for the agency that reports to me. It is something that happens in government quite a bit. People hold a range of portfolios and occasionally we deal with matters where the agency has a view that is different from that of Treasury. I make my best judgment based on the advice that I am given.

I do not have any specific details of the “terms and conditions approved by the Treasurer”. I cannot imagine that there would be a dramatic need to change those that are currently being utilised. I cannot see a logical reason why the terms and conditions under joint venture arrangements that were entered into up to now would need to change significantly. I would be very surprised if Treasury’s advice was different from that.

**Mr R.H. COOK:** If I may be guilty of some loud musings from someone who has not had the opportunity to be a minister, I notice that both subparagraphs (a) and (b) of new section 12A(3) deal with one and the same person. Would that be overseen by cabinet or is that a level of bureaucracy that the minister regards as unnecessary?

**Mr T.R. BUSWELL:** From my experience, it would be unnecessary. If the member is looking at it from an accountability point of view, by and large he can access the advice that we receive from our agencies in relation to this sort of stuff. A lot of these joint ventures are not part of the cabinet process. In fact, I have not seen one yet; actually, I have seen a potential one but it has not come to fruition yet. I do not think that is necessary and I do not think it would matter what side of the house one is on as the professionalism of both agencies would shine through in the advice provided.

**Mr R.H. COOK:** I want to refer the minister to the old section 12A(5), which details the levels of accounting and records that would be maintained by a joint venture arrangement that the authority enters into.

**The ACTING SPEAKER (Mr P.B. Watson):** People in the public gallery, especially one of our members, could you keep the noise down, please. We have a debate taking place down here.

**Mr R.H. COOK:** By way of anecdote, I will describe the concerns that I have in this regard. One concern is to strike a balance between transparency of grievance between third parties and Aboriginal corporations, while at the same time respecting the confidence that needs to be preserved in relation to commercial agreements.

Certainly from the experience of the native title process, when Aboriginal corporations entered into some very complex agreements with third parties—in some cases those agreements were entered into involving many

Mr Tom Stephens; Speaker; Mr Troy Buswell; Mr Roger Cook; Mrs Carol Martin; Acting Speaker; Mr Paul Papalia

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millions of dollars—the debate always goes on about the lack of transparency of those agreements, and whether they are good agreements and whether all parties are abiding by the spirit and letter of those agreements. I am sure that the member for Kimberley would testify to this experience. . For instance, there could be a situation involving an Aboriginal corporation entering into an agreement with a mining company. The mining company might make all the undertakings in the world, but by virtue of resources and by virtue of the complexity of that agreement, the Aboriginal party in that instance has no way of monitoring the success of that agreement and has no way of monitoring the conduct of the other party in relation to it. In particular, the Aboriginal party has very little recourse in the event that the third party decides not to honour that agreement or aspects of it.

For other members' benefit, old section 12A(5) of the Housing Act essentially details the level of accounting and records to be maintained. At the end of that section, it specifically calls upon the authority to ensure that the records that are kept are open to inspection by responsible officers of the authority, the Treasury of the state and the Auditor General. I assume in this instance what is sought are assurances and guarantees from the authority that they are acting in a transparent and appropriate manner. I am sure members will agree that that is an appropriate way for the authority to act. It becomes even more important in circumstances in which a range of agreements take place across various lands. In addition, an instance could arise whereby one agreement is held up to be good and another agreement is held up to be bad. Unless there is transparency about the nature of those agreements, we will be none the wiser. I think Parliament will play a very important role in assisting stakeholders to ensure that the behaviour of the authority in entering into the agreement and carrying out that agreement is of such a standard that no agreements go through that would leave a bad taste in people's mouths or indeed are held up to be bad ones.

The minister is quite right—there will be good agreements and bad agreements. Agreements will be made all over the shop and all over the state. There will be aspects of that that some people will hold out to be a good example of a housing agreement. There will be some aspects that will be held out to be a very bad agreement. I think the important thing —

**Mr T.R. Buswell:** I am sorry to interrupt. A housing agreement is not a joint venture. A joint venture is a slightly more complicated vehicle than a housing agreement. Very few housing agreements will be joint ventures.

**Mr R.H. COOK:** In which case, I shall finish up very quickly and the minister can explain that.

Under the native title process, a great deal of frustration arose about the lack of transparency and lack of capacity to provide a standard or a test to these sorts of arrangements. I invite the minister to reflect on why that aspect of section 12A was taken out.

**Mr T.R. BUSWELL:** My advice is that this joint venture provision covers a range of things the department does. In relation to Aboriginal housing, circumstances in which we would be likely to enter into a joint venture—it is sort of outside the scope of the bill—would be where an Aboriginal corporation, for example, owns freehold land and the department engages in a joint venture to deliver housing on that freehold land. Not every housing agreement will be a joint venture, but that is not to say that some housing agreements will not involve the delivery of the service through a jointventure vehicle. The member raised a couple of important issues around some of the provisions of the existing joint ventures as they relate to record keeping and the like, which I think is valid. My view is that that will be picked up in the new act in two ways. Firstly, because the Treasurer will approve terms and conditions for the joint venture, there is just no way that we will approve terms and conditions for a joint venture involving the Housing Authority and another body that does not provide a transparent flow of information back to government. Secondly, and I think more importantly, the joint-venture vehicle would involve the participation of, for example, the Aboriginal corporation that owns the freehold land and the department. The establishment of the jointventure vehicle and, I suppose, the reporting and the control mechanisms that are put in place around that would be the opportunity for a lot of those things to be picked up, I would imagine, to the satisfaction of both. They do not have to sign them. They might sign them, but ultimately if there are not enough safeguards in there from the point of view of, let us say, the Aboriginal corporation involved in the joint venture, it would not happen. My sense, from talking to a number of corporations, is that they are generally mature organisations that have access to good advice. I would like to think that that advice would ensure that the joint-venture vehicle deals with the issues that the member raises and, more importantly, protects the best interests of the Aboriginal corporation. I could say that we could rely on the benevolent nature of the department, but I would not rely on that at all. Notwithstanding the fact that everyone I have dealt with in the department dealing with Aboriginal housing has a genuine intent to make a difference, I would rely on the fact that the establishment of a joint-venture vehicle really would require, for example, the Aboriginal corporation to be heavily involved in the reporting and other mechanisms that sit around that.

Mr Tom Stephens; Speaker; Mr Troy Buswell; Mr Roger Cook; Mrs Carol Martin; Acting Speaker; Mr Paul Papalia

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**Mrs C.A. MARTIN:** Where joint ventures exist because the Aboriginal community has the land and the department comes in, or the land is held in some sort of legal arrangement, is there a forfeit if there is some sort of problem with the agreement or, say, the community does not uphold the agreement? Would it be possible for those people to lose their land as a result of forfeiture or any sort of problem with an agreement that has been signed? The reason I ask is that I have a long memory, unfortunately. I remember the Anne Street reserve that was taken from the native welfare department and vested in Homeswest in those days. Aboriginal housing was created, which is all in private hands right now. I know it is now 27 years later, but I am just wondering if that sort of thing could possibly happen again, because it did not happen just in Broome; it also happened in Derby and in other places. Collie is another place where freehold land was held under the old Aboriginal housing scheme. I understand there was a separate vote for property that was held, which was called Aboriginal housing and F3 housing, as it was designated in those days. It all disappeared. It was put on the market and sold off really cheaply. I am just wondering, if there was any forfeiture or any problem with an agreement, whether the land would be taken away under any circumstances and be on-sold and the money put back into general revenue. I have seen Homeswest do this to so much of the Aboriginal estate that over a number of years it has been completely depleted. Of course, the Aboriginal housing board was never an authority or a statutory body to protect the rights and interests of Aboriginal people. I am just wondering if the statutory structure has changed in any way to ensure that Aboriginal people's rights and interests will be paramount and looked after.

**Mr T.R. BUSWELL:** The short answer—I had better be careful—is that the statutory framework of these joint ventures has changed. The authority is required to enter into a formal legal relationship with the body with which it is partnered. Generally, that will be the body that owns the land. I imagine that that would more than likely be the case. The Aboriginal corporation would own the freehold land and the department would provide the houses. That would probably be, but not exclusively, the most common relationship. People are impressed by the member for Kimberley's recollection of events —

**Mrs C.A. Martin:** I will never forget it; it affected all my family.

**Mr T.R. BUSWELL:** The former arrangements resulted from loose or informal agreements that had been built up over a number of years, whereas this is a formal agreement. The agreement will proceed only when the parties are happy with what they are signing. As I told the member for Kwinana, with my knowledge of Aboriginal corporations and the advice that they receive now, I cannot imagine that they would ever sign up to something that would allow them to lose their land in those circumstances. I cannot say that they never, ever would, but I cannot imagine that it would happen. That is the best answer I can give. The formal legal agreement will require both parties to consent to the arrangements that sit within the joint venture framework. On top of that, it will have to be approved by the minister and the Treasurer. Not that I would trust a politician to safeguard all my land, to be honest, especially given the cases that the member for Kimberley has outlined. However, the fact that there is a formal legal procedure to establish the joint venture indicates that there is enough opportunity for people to be provided with advice that will protect them. I cannot imagine that what happened in the past will never happen again. Can I say with my hand on my heart that it will never happen again? No. However, I would like to think that the relationship has matured significantly since then and that this framework acknowledges that.

**Mrs C.A. Martin:** You have not finished your negotiations with the federal government. I ask you to put to the federal government that it must enshrine within the body and the goodwill of this arrangement the rights and interests of Indigenous people in Western Australia so that the federal government lives up to the fiduciary duty that it holds under the Constitution, which allows it to govern this country, and looks after the rights and interests of Aboriginal people. That has not happened in the past. I am asking you, as the Minister for Housing and Works and the person who is up-front with the federal government and who represents this state, to ensure that the rights and interests of Indigenous people are upheld throughout the body of any agreement in perpetuity. That is what I am asking you to do. I know that it is a tall order and I am not being nasty, but I am asking you to look after the rights and interest of Western Australian citizens who happen to be Aboriginal, in this case.

**Mr T.R. BUSWELL:** I can give a commitment to work out how we can follow it up with the commonwealth. I cannot answer it now. Between the passage of this bill in this place and the other place, we might explore the particular issue that the member has raised.

**Mrs C.A. Martin:** I have a good memory.

**Mr T.R. BUSWELL:** It is a shared memory. I am happy to look at that issue to make sure that we, as a government, can be comforted that what I have just said is what will happen. I do not mind if there are issues because we can address them in the upper house and when bill comes back.

**Mr R.H. COOK:** The member for Kimberley raises a good point and the Minister for Housing and Works is correct in saying that history is a good teacher on these matters. I refer the Minister for Housing to the Lost Lands Report 2004. That provides details about the known land around Western Australia that has essentially

Mr Tom Stephens; Speaker; Mr Troy Buswell; Mr Roger Cook; Mrs Carol Martin; Acting Speaker; Mr Paul Papalia

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been absorbed by either the government or private transaction and taken away from the hands of—for want of a better description—Aboriginal control. I understand that the Minister for Indigenous Affairs has submitted the Lost Lands Report to cabinet and that it is under consideration. There has been no indication about whether that information will be made more widely available and even if the government will release it publicly. I commend that report to the Minister for Housing. I believe it has some really useful information in it that has been learnt from these things; indeed, the rest of the community should get a copy of it as well.

**Mr T.R. Buswell:** Before the member sits, we are happy to look at that. I want to make sure that we are not setting up something that is going to dud people down the track, so we have given that commitment.

**Mr R.H. COOK:** I want to confirm and get on record from the Minister for Housing that even though, in the context of proposed section 12A, the government is taking out the exclusive reference to the availability of the accounts to the Auditor General, these joint ventures will all be subject to public examination by the Auditor General.

**Mr T.R. BUSWELL:** My advice is that that is the case, and that the joint venture vehicle—not necessarily the other partner in the joint venture—could be subject to, but is not necessarily automatically subject to, inquiry by the Auditor General.

**Mr R.H. COOK:** I wish to make one final point, and I thank the house for its patience and indulgence. The Minister for Housing made a comment before that he was sure that an Aboriginal authority would not enter into a joint venture if it realised that it was not in its interests to do so. I just want to remind the Minister for Housing that people do extraordinary things when they are desperate and if there are good resources available to move forward. They do things such as introduce whole chunks of legislation to access \$469 million, and if an Aboriginal community is facing the physical evidence of poverty around it and what is on offer is some housing, ultimately it will in some cases do anything just to get hold of those resources.

**Mr T.R. BUSWELL:** I accept the point, member; it is a valid point. There is some significant incentive at the moment for people to engage, but, in my view, the use of joint ventures to deliver a national partnership housing agreement will not be a significant component of what we are looking at in total. We use joint ventures for a whole range of reasons, from big land development projects to aged-care units for local government. It is much broader than this arrangement, but I still accept the member's point about this land issue, and we will look at that.

**Clause put and passed.**

**Clause 7: Section 13 replaced —**

**Mr R.H. COOK:** In the briefing that was given on this bill, this was put to us as a tidying-up exercise —

**Mr R.F. Johnson:** Are you talking about the amendment?

**Mr R.H. COOK:** We are not up to that. We were told this was a tidying-up exercise to bring the —

**The ACTING SPEAKER (Mr P.B. Watson):** Which clause are you speaking to, member?

**Mr R.H. COOK:** Clauses 7 and 8. We were told that these clauses were about making sure that we eliminate any confusion or, I guess, ambiguity in relation to the current act. I just wanted to get the minister's reflection on that and confirm that that is the case.

**The ACTING SPEAKER:** We will have to say that the question is that clause 7 stand as printed, and then it is back to the minister.

**Mr R.H. COOK:** I am sorry; I thought we were taking them together.

**Mr T.R. BUSWELL:** My advice is that this is really just tidying up some operational level delegation and putting some consistencies around how that occurs. Some of these things are incredibly antiquated—as the Minister for Housing and Works I sign off on every oversized awning in Perth, and I do not like doing that.

**Clause put and passed.**

**Clause 8 put and passed.**

**Clause 9: Part VIIA inserted —**

Leave granted for the amendments to be considered together.

**Mr T.R. BUSWELL:** There are two amendments to clause 9 on the notice paper. I move —

Page 7, lines 3 and 4 — To delete the lines and substitute —

*Aboriginal land* means —

**Extract from *Hansard***

[ASSEMBLY - Wednesday, 10 March 2010]

p560c-569a

Mr Tom Stephens; Speaker; Mr Troy Buswell; Mr Roger Cook; Mrs Carol Martin; Acting Speaker; Mr Paul Papalia

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(a) Crown land; or

(b) freehold land that is owned by AAPA, ALT or the State,  
over which an Aboriginal entity has power to grant a lease;

Page 10, line 10 — To delete “agreement;” and substitute —

agreement, but only if the parties to the agreement agree to the early termination;

**Amendments put and passed.**

**Clause, as amended, put and passed.**

**Clauses 10 and 11 put and passed.**

**Title put and passed.**