

LAND INFORMATION AUTHORITY BILL 2006

Second Reading

Resumed from 28 September.

HON MURRAY CRIDDLE (Agricultural) [12.11 pm]: I thank the parliamentary secretary for giving me the opportunity to make a couple of comments on the bill. I will be brief. The purpose of the bill is to establish a statutory authority to undertake the government's land titling, land information and land valuation functions. I had a briefing on the bill by people from the department, and I thank them for that. They were well-armed with the details and I got all the information that I required. I also received a call from my former colleague Hon Monty House who said that he thought it would be a good bill to support, and I certainly concur with that. The bill will lead to some commercialisation of the way in which the statutory authority will be run, and that will enable the authority to generate funds from the private sector, which will allow it to upgrade its computers and the like. I understand that an eight-year business plan has been put in place to allow for that upgrade to happen. This is one way of overcoming some of the pressures on our funding sources. Land information is used a great deal in the commercial sector, as well as in the mining, agriculture, transport and land and property development sectors. I know that nowadays it is very common to use modern satellites to manage crop yields. I note that reference was made in the second reading speech to combine harvesters. Land information is used for spraying, seeding and other farming activities and in firefighting. Certainly, the use of sophisticated images has been of enormous benefit across the commercial sector. The Department of Land Information has been successful internationally in the consultancy area. It has expanded into China, South East Asia and the Pacific region, and those sorts of activities certainly lead to an increase in Western Australia's stature overseas. I will not hold up the passage of the bill any longer. The National Party supports the bill. Again, I advise the parliamentary secretary that I am thankful for the briefings that I received.

HON KATE DOUST (South Metropolitan - Parliamentary Secretary) [12.14 pm]: I thank honourable members for their contributions to the debate on this bill. The purpose of the bill is to establish a statutory authority to undertake the government's land titling, land information and valuation functions. In addition, the authority will lead the commercial development of this state's land information databases. I note that the opposition has stated that it supports the bill, albeit with one amendment, and that the Greens (WA) have indicated that they are broadly happy to go along with the restructure of the Department of Land Information, but have also proposed one amendment. I will comment on the amendments later, but first I will respond to other matters touched on during the debate.

A number of complimentary remarks were made about the agency's online information, including satellite images and aerial photographs used for land management and monitoring. I encourage members, if they have the opportunity, to have a look at the Floreat and Midland sites. The facilities that are available at the sites are mind-blowing, and I look forward to the changes in technology in the future. A question was raised about the uses to which this program will be put by a commercial authority, and the spectre of a Big Brother surveillance role was mentioned. I assure the house that this will not be the case. Under this bill, the authority must confine its activities to information about land, not people. It will continue to run DLI's imagery programs, which exist primarily to assist public sector agencies to effectively administer the state. The imagery provided through the department's web site is not in real time; it shows only what was on the ground at the time that an aerial photograph was taken.

Questions were also raised about the commercial development of the authority. No doubt these matters will be discussed during the committee stage, but I will broadly set out how the government intends the authority to operate. The government has no intention of privatising the authority, or any part of it, now or in the future. We believe that the authority represents the right combination of functions, and see no benefit in separating any part of it, such as the land titling operations. The authority will remain in the public sector, generating benefits for the public good, and will be subject to the normal rules and accountabilities of public sector agencies. It will not be corporatised. The authority's financial position and performance will remain under the watchful eyes of the minister and Treasurer. Clause 186 of the bill requires the authority to administer its finances in accordance with the Financial Administration and Audit Act. The authority's financial statements will be published in an annual report to be tabled in Parliament. The authority's board will annually negotiate financial and operational targets with the minister through the strategic development plan and statement of corporate intent that is provided for in division 1 in part 5 of the bill. The minister will require the Treasurer's concurrence to sign off on these documents.

A question was asked about whether a government short of cash could raid the authority's coffers to the authority's detriment. That is not the intention of this government. The Department of Treasury and Finance has worked closely with DLI to develop an eight-year business plan, to which Hon Murray Criddle alluded, that

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will allow the authority to retain surplus funds for capital investment in systems and services to meet the state's long-term needs for land information. Under clause 71 of the bill, the authority is required to recommend to the minister whether it should pay a dividend at the end of the financial year and, if so, the amount to be paid. A minister who wished to increase a dividend payment would be required, with the Treasurer's concurrence, to formally direct the authority in accordance with clause 65 of the bill and to table that direction in Parliament.

I turn now to the issue raised with clause 68, "Deletion of commercially sensitive matters". The opposition has signalled that it intends to discuss this matter at the committee stage, so I will not make a detailed comment now. However, I remind the house that Parliament possesses considerable powers in its own right and may use any of those powers to obtain information from the authority. This bill will not interfere with those powers.

With regard to the authority's staffing arrangements, clause 94(1) of the bill provides for the automatic transfer of all the department's general staff to the authority. The State Solicitor has advised that transitional provisions for other staffing matters, such as employment conditions and entitlements, were not required in the bill and would be better dealt with administratively, so that is being done. I assure the house that this does not mean a lack of transparency. All staff have received extensive briefings and a detailed booklet on the transition and what it will mean for them. Information is continually updated on the staff intranet, and meetings between the department, union and staff consultative body occur regularly.

I now turn to the two proposed amendments. The opposition will seek to amend the authority's functions under clause 9. Although the government recognises the intent of the amendment, it will oppose it. The bill is broad enabling legislation that will establish the authority as a legal entity and provide for it to undertake certain functions. The government's view is that it is not appropriate to use this bill to remedy perceived failings in other acts or administrative practices. Furthermore, the government believes that the amendment is technically flawed and unworkable. The Greens have proposed an amendment to the pricing principles in clause 16 of the bill, which the government is also not inclined to support. It is our view that the clause as currently drafted will achieve the outcome sought by the Greens; therefore, that amendment is also unnecessary.

Finally, I acknowledge comments made during the debate on the valuable work carried out by the Department of Land Information and fully endorse those remarks. This bill will provide that agency with a new legal structure and a financially sustainable platform to continue and to expand its role of meeting the land information needs of our state. It will also ensure that the agency remains within the public sector and accountable to its minister and the Parliament for the discharge of its functions and responsibilities. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon George Cash) in the chair; Hon Kate Doust (Parliamentary Secretary) in charge of the bill.

Clauses 1 to 4 put and passed.

Clause 5: Authority established -

Hon RAY HALLIGAN: I seek a clarification from the parliamentary secretary. In her response to the second reading debate I thought I heard her say that the authority would not be corporatised.

Hon Kate Doust: That is right.

Hon RAY HALLIGAN: Clause 5(2) states that the authority is a body corporate with perpetual succession. My understanding was that it would operate in the same manner as a corporation, but of course still be a public authority. I am interested in the manner of operation; instead of just looking for cost recovery for its services, it was to charge a market rate for those services. Will the parliamentary secretary please clarify whether it will be a body corporate operating in that manner, or whether it will operate in some other manner?

Hon KATE DOUST: It will be a body corporate operating commercially, but it will not be subject to the Corporations Act. Part of the reason it will operate in that manner is that it will give the authority legal status so it can, for example, sue or be sued, if that situation ever arises.

Hon RAY HALLIGAN: I thank the parliamentary secretary, but I think it goes a little beyond that. What is put in the statutes can provide for the ability to sue and be sued. I was looking for some clarification of the operational area. It is purely to do with the day-to-day operation of the authority - which it will become should this bill be agreed to - and the charging out of its fees and the manner in which it organises itself and operates. It will still be a public authority as distinct from, as the parliamentary secretary has rightly said, a corporation under the Companies Code, but will it for all intents and purposes operate in the same manner as a company?

Hon KATE DOUST: The simple answer, I understand, is yes. I refer the member to clauses 9 and 10, which relate to the functions and guiding principles and which set out how the authority will operate on a day-to-day basis. I also understand the authority is bound by state and commonwealth laws that are applicable to public entities that trade or operate as a business concern. Those laws would cover things such as anticompetitive behaviour, fair trading and competitive neutrality. It provides that the authority can operate lawfully and on a level playing field when conducting its commercial activities. I hope that is the information Hon Ray Halligan was seeking.

Hon RAY HALLIGAN: I thank the parliamentary secretary for that explanation. In fact, the functions and guiding principles would be exactly the same as the articles and memorandum of association for companies. I think she has answered my question. Under clause 5(2), it is a body corporate with perpetual succession and it will operate for all intents and purposes as a corporation, but not be subject to the Companies Code. In all other respects that is the type of authority everyone will be looking to and that will be the picture we will see when this Western Australian Land Information Authority is in operation.

Clause put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Dual objectives of Authority -

Hon KEN BASTON: Part 3 deals with the functions of the authority and clause 8(b) refers to a fair commercial return. In other agreements in the past there was always a statement of what the return was to government. What is regarded as a "fair commercial return"?

Hon KATE DOUST: I cannot provide the member with a clear-cut response to that, because I understand appropriate pricing will be worked out for each individual product. I therefore cannot give a clear-cut, dollar-and-cents answer, but it will be based on each individual product that the authority provides.

Hon KEN BASTON: I guess I was after the benchmark to be used by the authority. There must be some direction. The authority would not go down the line of commercial reality without some form of direction.

Hon KATE DOUST: I understand the benchmark that the member is looking for is what is referred to as a standard hurdle weight, and that will be about 10 per cent. Therefore, if the authority is unable to make 10 per cent on a product, it probably would not provide it. However, other types of products will be on a different percentage; for example, information to community groups will obviously be provided at a lower rate.

Hon RAY HALLIGAN: I wonder whether it is appropriate now to seek clarification from the parliamentary secretary. Paragraph (a) refers to not making a profit and paragraph (b) refers to generating a fair commercial return and making a profit. Is it intended that the authority be cost neutral for the government, if at all possible? It is intended that the authority operate at a loss; and, if so, will it have to be subsidised from the consolidated fund? As the clause refers to a fair commercial return, is it up to the authority to decide whether it will sell something at a profit? Given that the authority will be for all intents and purposes a commercial operation, is it intended that the authority will compete with similar commercial operations in Western Australia?

Hon KATE DOUST: In response to the first question about the authority being cost neutral for government, it will actually be cost positive for government, as the authority will pay payroll tax and a range of other taxes. In response to the second question about operating at a loss, the authority will continue to get funds from the consolidated fund, but that will be for services to government, such as the payment for valuation use for taxation purposes. In response to the third question about competing against other commercial operations in Western Australia, the authority would not compete in the area of systems development; that commitment has already been given to the private sector. There will be competition against private providers in the provision of data, and the private sector is fully aware of that.

Hon RAY HALLIGAN: I thank the parliamentary secretary for that explanation. I have one further question. Is it intended that the authority will charge government agencies for services the authority provides to those agencies?

Hon KATE DOUST: The answer is yes, and a list of pricing principles will be established as to charges.

Hon KEN BASTON: What profit is anticipated? Obviously some modelling must have been done to get an idea of where the authority is heading. Can the parliamentary secretary give me some indication about that aspect?

Hon KATE DOUST: It is hoped that the net benefit to government will be between \$6 million and \$8 million a year.

Clause put and passed.

Clause 9: Functions -

The CHAIRMAN: There are two proposed amendments to clause 9 standing on the supplementary notice paper in the name of Hon Ken Baston. The first question is that clause 9 do stand as printed. Amendment 2/9 will need to be taken before amendment 1/9, because 1/9 is consequential on 2/9 being agreed to.

Hon KEN BASTON: I move -

Page 5, after line 17 - To insert -

- (3) The Minister will determine the types of interests in or notifications in respect of land that are issued or made by any public or private body, which must be notified to the Authority and be made publicly accessible on a basis which does not involve making a profit.

I moved this amendment because the shared land information program run by the Land Information Authority provides an opportunity to list registrations, of which there are many, that do not show up on a certificate of title. The types of registrations that do not show up on a title are Aboriginal heritage listings, easements for utilities, road widening, contaminated sites, environmental orders, wetlands on the Ramsar Convention list, watercourses and wetlands. This issue has come to my attention since I made my contribution to the second reading debate. I was considering buying a block of land in the Beverley area and inspected that land with the real estate agent. I was fortunate that I knew the farmer who was leasing that land from a long time ago. In viewing that land I noted an area of bushland, and it was pointed out to me by the farmer that the area was not used. The real estate agent quickly told me that it did not show up on the title. It means that the area could carry one of those other registrations of interest. The opposition believes that information such as that should be shown in some form, although not necessarily on the title. There should be a second tier that people can access to ascertain whether the land is listed as Ramsar wetlands or whatever. Environmental changes are taking place more frequently now, and there should be some way of registering these changes on the title.

It was pointed out at a briefing that this issue does not have enough teeth to include in a clause of the bill. It is important that we start somewhere. This amendment includes the words "The Minister will determine", and that means that the minister will have a discretionary power. My amendment will mean that the numbering of the paragraphs will change. Obviously, I had to move this amendment to this clause before the first amendment on the notice paper in my name.

Hon KATE DOUST: I thank Hon Ken Baston for his comments on the amendment. The government recognises the issues of concern that led to the amendment moved by the member. However, the government believes that the amendment lies beyond the purpose and scope of this bill.

Point of Order

Hon KATE DOUST: Mr Chairman, I seek a ruling about whether it is appropriate for the chamber to consider this amendment. Mr Chairman, should I go through the reasons now?

The CHAIRMAN: Yes.

Hon KATE DOUST: Among other matters, standing orders 232(b) and 237(a) may be relevant to consideration of this request. In seeking this ruling, I argue that the amendment is inconsistent with, firstly, the purpose of the bill and, secondly, the relationship between the bill and other acts. The purpose of the bill, as stated in the long title is -

... to establish a State agency to administer certain land information and provide and promote the use of land information and related goods and services; and to provide for related matters, including the amendment of certain Acts.

The primary purpose of this bill is to establish a state agency. It gives effect to the policy intent to restructure a department into a statutory authority with commercial powers. It provides the authority with functions consistent with those of the department. It provides the new agency with a legal structure, governance model, trading powers and accountability provisions that are necessary and appropriate for an agency that will engage in significant commercial activity. These will provide the authority with a sound footing to expand on the department's limited commercial activities.

This amendment goes beyond the administrative purpose of establishing a new agency. It creates new regulatory powers for the state. The amendment would permit the state to compel, by regulation, public and private bodies to hand over land information to the authority and compel the authority to make this information public. This actually picks up on the other amendment on the supplementary notice paper in Hon Ken Baston's name. This bill is not intended to empower a government to generally regulate land information, be it public or private, or to provide new regulatory powers that have not been the subject of any consultation.

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In addition, the amendment is inconsistent with the bill's fundamental relationship to other acts. The bill provides for the authority to undertake land information functions under other acts. Page 1 of the explanatory memorandum states -

The Bill . . . will establish the Authority and enable it to undertake functions in land titling, land information and valuation. However, legal authority for those functions is retained within existing Acts such as the *Transfer of Land Act 1893*, *Strata Titles Act 1987* and *Valuation of Land Act 1978*. The Bill amends these Acts sufficiently to enable them to synchronise with the functions of the Authority but otherwise leaves them unchanged.

In short, the bill does not supplant legal authority for land information functions arising under other acts, but does enable the authority to undertake such functions. This approach was based on close consultation with the department's stakeholders.

This principle is important in considering the relevance of this amendment. There are more than 30 acts in Western Australia's statute book that allow for interests or notifications in land, or restrictions on the use of land, to be created. These include the Carbon Rights Act, the Criminal Property Confiscation Act, the Environmental Protection Act, the Heritage of Western Australia Act, the Soil and Land Conservation Act and the Transfer of Land Act, to name a few. These acts contain various mechanisms for landowners and third parties to be informed about such matters. The opposition believes these to be deficient and seeks to remedy this by amending this bill.

The government believes that the opposition's approach falls outside the purposes of the bill. The correct legislative practice would be to amend the acts that create the interests, notifications and restrictions affecting land that are of concern to the opposition. Those acts are the rightful place to set out who should have access to information about such matters and whether and how that information should be made available to landowners, third parties and the public.

As noted, the bill amends a number of acts dealing with land information, including the Transfer of Land Act and Valuation of Land Act. However, these consequential amendments do not change the core principles and statutory processes for dealing with land information under those acts. The amendments merely seek to give the authority the proper control of administrative and trading functions residing in those acts, such as the receiving of documents, employment of staff, letting of contracts, raising of charges and supply of goods and services.

Finally, I note that the shared land information platform, which is being developed by the Department of Land Information and other agencies, will provide a practical, cost-effective solution to the problems concerning the opposition. Nevertheless, the government has listened to the opposition and is prepared to investigate whether legislative remedies may be available or required in addition to the benefits provided by the shared land information platform. However, I stress that the remedies to overcome apparent failings in other acts, such as this amendment, lie beyond the purpose and scope of this bill.

I seek the Chair's ruling on whether it is appropriate for the chamber to consider this amendment and the other amendment on the supplementary notice paper in Hon Ken Baston's name.

The CHAIRMAN: The parliamentary secretary has raised a point of order and, in essence, the point of order is about her claim that the amendment moved by Hon Ken Baston is beyond the scope of the bill. The parliamentary secretary then raised lengthy argument in favour of her assertion and, in so doing, has raised a number of issues. To enable me to consider the issues, I will have to leave the chair and, if I do, I will not be able to provide a ruling before one o'clock. Therefore, it is an option for the parliamentary secretary to postpone clause 9 until after consideration of the last clause. Whether it is beyond the scope of the bill, the amendment appears to be discrete to the functions provision of this bill, which will enable us to deal with other clauses, otherwise we will lose 15 minutes. If the parliamentary secretary is happy to have this matter considered in due course, I will do so and we can postpone clause 9 until after consideration of clause 188.

Committee Resumed

Further consideration of the clause postponed until after consideration of clause 188, on motion by Hon Kate Doust (Parliamentary Secretary).

[Continued on page 7733.]

Clause 10: Guiding principles -

Hon KEN BASTON: The clause reads -

- (1) In performing its functions under this Act, the Authority has to -
 - (a) act in a cost effective manner; and

- (b) act on prudent commercial principles.

This refers in part to what we were referring to before. What is a prudent commercial principle?

Hon KATE DOUST: The simple answer is that a prudent commercial principle would be not to lose money.

Hon KEN BASTON: Clause 10(3) reads -

In performing its functions under this Act, the Authority has to have regard to -

...

- (b) the importance of satisfying the land information needs of the State government; and
(c) the requirements of participants in the land information industry within the State.

Which motive takes priority: the profit motive, bearing in mind that the parliamentary secretary has said that the authority will not lose money, or the statutory motive?

Hon KATE DOUST: The statutory motive takes priority.

Clause put and passed.

Clause 11 put and passed.

Clause 12: Powers generally -

Hon KEN BASTON: Subclause (2)(d) reads -

participate, with the Minister's approval, in any business concern and, with the Treasurer's approval, -

Does this mean only the minister's approval or the joint approval of the minister and the Treasurer? It continues -

acquire, hold, and dispose of, shares, units, or other interests . . .

Does that mean the authority can deal in business other than its core business; in other words, can it become a trading entity and put funds at risk?

Hon KATE DOUST: The minister's approval is required for anything to do with business concerns, so that would be a single approval. The Treasurer's approval would be required for other matters in relation to shares, units and other interests. As for the authority being a trading entity, no, it is not the intention that it trade as a trading entity other than for the provision of land information.

Hon RAY HALLIGAN: Is it correct that the first part of subclause (2)(d), which refers to participating, with the minister's approval, in any business concern, can be differentiated from the Treasurer's approval to acquire shares and such? Is the first part to do with joint ventures when no share acquisitions are involved because they are purely joint ventures with other persons or corporations?

Hon KATE DOUST: Yes.

Hon KEN BASTON: Subclause (4) reads -

- (4) The Authority may -
- (a) make any gift for a charitable purpose or any other purpose of benefit to the community or a section of the community;
- (b) make any ex gratia payment that it considers to be in the Authority's interest;

Bearing in mind that the case of AWB is fresh in our minds and that we will be looking at countries such as China and Vietnam, does this clause allow the discretion to go to the extent of aid for obtaining deals?

Hon KATE DOUST: No.

Hon MURRAY CRIDDLE: I am interested in the Treasurer's role in this authority. Is the share issue the only issue in which the Treasurer could become involved; and, if not, where else would the Treasurer become involved? I am wary of his capacity to use money that may well be floating around in the system.

Hon KATE DOUST: I understand that there are other areas in which the Treasurer would become involved. Those examples are when the authority may need to borrow money, a statement of corporate intent, a strategic development plan and dividend payments. I understand that exemptions are listed under clause 14, which refers to the Treasurer's involvement.

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Hon MURRAY CRIDDLE: I am very interested in what requirement there is for dividend payments from the authority, bearing in mind the impact that they would have on port authorities and the like.

Hon KATE DOUST: Clause 71 deals exclusively with dividend payments. If the member wishes, we could perhaps defer discussion about that until we get to clause 71.

Hon Murray Criddle: I am happy with that.

Clause put and passed.

Clause 13: Transactions that require Minister's approval -

Hon RAY HALLIGAN: Under subclause (3), "relevant amount" means \$5 million. Will the parliamentary secretary explain where the \$5 million came from and in what context it will be used under the bill?

Hon KATE DOUST: I understand that the \$5 million was negotiated with the Treasury and that any transaction over \$5 million will require the Treasurer's approval.

Clause put and passed.

Sitting suspended from 1.00 to 2.00 pm

Clause 14: Exemptions from section 13 -

Hon KEN BASTON: Subclause (1) states -

The Minister, with the Treasurer's concurrence, may by order exempt a transaction or class of transactions from the operation of section 13 . . .

What type of transaction or class of transaction might be exempt?

Hon KATE DOUST: An example of a case in which an exemption might apply would be a contract for cleaning or information technology that was a fairly standard contract for that type of transaction.

Clause put and passed.

Clause 15 put and passed.

Clause 16: Pricing principles -

Hon PAUL LLEWELLYN: I move -

Page 12, line 5 - To delete "may" and insert instead -
shall

Subclause (9) states -

The Authority may approve of any goods or services being provided at a charge described in subsection (4) or (6) . . .

This is a simple amendment. It seeks to ensure that instead of the power being a discretionary power, the authority "shall" approve of any goods or services being provided at a charge described. I hope the parliamentary secretary will agree to the amendment. I am interested to hear the parliamentary secretary's view on this matter.

Hon KATE DOUST: The government will not be supporting the amendment. We believe the clause provides sufficient assistance to groups that are seeking to access information. Subclauses (4) and (6) provide that the authority may charge a non-commercial rate for land information supplied to state or local government agencies for their non-commercial use. I understand that if a community group is working with a government agency and that government agency believes it will be for the good of the community or to the benefit of the agency to provide information to that organisation at a low cost, or gratis, it can seek approval from the Land Information Authority to do that. The proposed amendment to change the word "may" to "shall" will require the authority to charge a non-commercial rate, whereas currently the authority has the flexibility to not charge at all in some cases. We believe the status quo fits in what the member is seeking to do. The amendment will make it difficult for the authority to provide that accommodation for certain groups.

Hon PAUL LLEWELLYN: The parliamentary secretary has said that the government believes the existing clause already makes provision for what we are seeking to achieve. I would like some examples of how that would play out for people who want to get information from the authority. I understand that the authority may have a discretionary power to provide information gratis from time to time. I would like to unpack this, because this is very important for community groups, research organisations and educational institutions that want to access information. How will this be a fair and just provision if it does not include an obligation to provide a subsidised service?

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Hon KATE DOUST: The authority has the flexibility to provide the information either at low cost or gratis if groups or individuals meet the criteria listed in subclause (9)(a), (b) and (c). Examples of groups that have been provided with this type of information are land care groups, universities and research organisations. I understand that if an organisation applied for this type of assistance and was rejected, it could go to the minister and the minister could direct the authority to provide that information. That is set out in clause 17. We believe those types of situations are covered adequately in the bill.

Hon PAUL LLEWELLYN: The parliamentary secretary mentioned land care groups, universities and research organisations that are performing activities on a non-commercial basis. However, that is at the discretion of the authority. It can choose whether it will meet a particular request. It is not ungenerous to suggest that instead of that being a discretionary power, the authority “shall” approve the provision of any goods and services to any compliant group. Surely it is not such a big impost if it is being done anyway. Why should a community group that might be stretched to its limits doing publicly good things such as land care, or a student who is undertaking university research, have to go down the pathway of applying to the minister for information when we have the ability, by way of the amendment, to ensure that the authority provides that information? There are adequate checks and balances in the bill to ensure that the authority will not go bankrupt. The authority has a community service obligation to provide what will amount to a very small service.

Hon KATE DOUST: I thank Hon Paul Llewellyn for his comments. I appreciate the position he is coming from. The member said that that this will be only a small ask of the authority. However, if we compel the authority to provide information to any organisation that asks for it, we run the risk of imposing a huge burden on it because it would require dedicated officers to access and provide that information. The potential exists for carte-blanche requests for any type of information from any type of organisation on any type of issue. That has the potential to cause difficulties for the operation of the authority. The authority must have the discretion to determine the volume and type of information that is provided. Clause 16(9) reads -

The Authority may approve of any goods or services being provided at a charge described in subsection (4) or (6), as the case requires, if it is satisfied that the person to whom they are provided -

- (a) has functions of a public nature; and
- (b) will not use them other than for the purposes of education, research, or activities of a community or regional nature; and
- (c) will comply with any conditions on which goods or services are provided at a charge as described.

That sets out the criteria fairly clearly. I imagine that as the situation stands, it would be quite difficult for the authority to knock back the request of an organisation if it had the support of another government department or agency. An organisation might say that it was working with a certain group, that it was providing that group with assistance and that the information being requested would be to its benefit. That provision already exists. I do not know the volume of information that is accessed by other groups. I have provided a few examples. I do not know the numerical volume. A concern is that the measure proposed by the member will open the floodgates to people who request information that is not necessarily in the best interests of the community, or to people who want to use that information for reasons that are not set out in the legislation. We must use a bit of discretion when deciding what information is available, and the proposed measure will impose a greater burden on the way the authority releases information on a day-to-day basis. This amendment may result in the authority being swamped with requests for information.

Hon Ray Halligan: You are suggesting that every case be considered on its merits.

Hon KATE DOUST: Yes. We must be careful about this.

Hon KEN BASTON: The Liberal Party does not support this amendment because, as was described by the parliamentary secretary, there must be the capacity for discretion. If an agency works with a non-profit organisation for the good of the community - for example, the Department of Agriculture and Food may work with Landcare - and that organisation requires information, the authority should have the discretion to charge a lesser amount, or nothing at all, for the information. If the word “shall” is used, there will be an emphasis on a set charge. The opposition does not support the amendment.

Hon PAUL LLEWELLYN: The parliamentary secretary said that the effect of my amendment would be to break the bank and encourage a run on requests for information. I understand that we must take a somewhat precautionary approach in the way in which we open up the facility. Will the parliamentary secretary provide volumetric examples of the community groups that have made onerous requests of the land information system? How many people have been denied information? Let us unpack this issue. I worked in a non-government

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organisation for many years and dealt with the public interest on land management issues. Often government departments would hold out on information. How many requests of this type has the department received? Given that this amendment has been on the books for months, some research must have been done. What kind of requests are made and on how many occasions have excessive and unreasonable requests for information been made?

Hon KATE DOUST: I am advised that we are not able to provide the data to respond to the member's questions.

Hon Paul Llewellyn: You can provide data on just about everything else.

Hon KATE DOUST: I am not able to provide that information. If Hon Paul Llewellyn puts that question on notice, I am sure that the department will be able to provide him with some information, although it might be more general than the member expects. One of the concerns about the member's proposal is that requests for this type of information might not be one-off requests. It may be that groups ask for and expect weekly or monthly updates on the type of information they need for their project. I suggest that the member put that question on notice and I will attempt to provide data to respond to those questions.

Hon PAUL LLEWELLYN: If I did that, I would receive an answer well after the fact and after this amendment would have been defeated. I refer to Landcare. As a member of the conservation movement, I have tried to access information, but that process has been difficult because information has been withheld. I ask the parliamentary secretary to explain what checks and balance in the bill will ensure that there is reasonable access - I know that she went through this a minute ago - for community groups to access information and a fair and reasonable process for the authority to make a decision. Let us unpack this issue. This is at the heart of freedom of information and open government. It is at the heart of supporting community initiatives and of ensuring that people can make a contribution to conservation work or educational pursuits. These people make a contribution to society. I ask the parliamentary secretary to unpack the checks and balances in the legislation.

Hon KATE DOUST: I am advised that - and to the best of my knowledge - land care groups have not been denied access to information. The checks and balances Hon Paul Llewellyn referred to so that groups can access information are set out in clause 17, "Certain information free of charge in exceptional cases". As I said earlier, if for some reason a group does not meet the criteria set out in clause 16, it can appeal to the minister, and the minister can make a decision about access and whether that access should be free. That is a check and balance. At the end of the day, access to information must be cost effective for the authority, in accordance with the guiding principles set out in the bill earlier.

Amendment put and negatived.

Hon BARRY HOUSE: I am interested in a further explanation of subclause (10) on page 12 and the definition of fundamental land information. I rise on this issue at this stage because many of us in this chamber were involved a few years ago in the Standing Committee on Public Administration and Finance inquiry that resulted in a large report on the impact of actions and processes on the use and enjoyment of freehold and leasehold land in Western Australia. Recommendation 34 of that report states -

The Committee recommends that the Department of Land Information maintains a comprehensive and publicly available list of all policies, strategies and plans which impact on administrative decision-making pertaining to land use.

Recommendation 35 states -

The Committee recommends that, in the short term, the Department of Land Information continue to implement its aim of establishing itself as a 'one stop shop' database of all interests affecting land as an urgent priority.

Recommendation 36 states -

The Committee recommends that, for the long term, the Department of Land Information introduce, as soon as practical, an electronic three dimensional certificate of title which records all interests affecting the land described on the certificate of title.

That report was tabled in Parliament in 2004. I appreciate that this issue may overlap a little in subject with the previous amendment Hon Ken Baston moved. However, I am interested in the parliamentary secretary's explanation of the progress on those recommendations and how they relate to the term in the bill, "fundamental land information". Does that term include any of the actions and recommendations of the parliamentary committee?

Hon Murray Criddle; Hon Kate Doust; Hon Ray Halligan; Hon Ken Baston; Chairman; Hon Kate Doust; Hon Paul Llewellyn; Hon Barry House

Hon KATE DOUST: I have forgotten the first recommendation. I should have it tattooed on my brain; it was such a voluminous, yet outstanding, report. The shared land information platform that is being developed is a move towards dealing with recommendation 35.

I have some information to clarify “fundamental land information” in the form of a series of headings and explanation. The proposed data to be prescribed by regulation as fundamental land information for the purposes of clause 16 are as follows -

1. **Administrative Boundaries:** a dataset of boundaries of official administrative areas in Western Australia.
2. **Aerial Photography:** a State-wide dataset of vertical and oblique aerial imagery of the ground surface of Western Australia.
3. **Baselines and Territorial Sea Limits:** a dataset of baselines and maritime jurisdictional boundaries relating to the State of Western Australia.
4. **Cadastral:** a dataset of boundaries of Crown and freehold property in Western Australia.
5. **Coastline:** a dataset of the limits of land features in Western Australia, usually at mean high water level.
6. **Geodetic Control:** a dataset containing three dimensional coordinates of geodetic marks in Western Australia and the Christmas and Cocos Keeling Islands.
7. **Geographic Feature Names:** a dataset of names of geographic and cultural features in Western Australia
8. **Road Centrelines:** a dataset of the centrelines of roads and tracks in Western Australia.
9. **Satellite Imagery:** an archive of satellite imagery of Western Australia
10. **Street Address:** a dataset of geo-referenced street addresses in Western Australia.
11. **Tenure:** a dataset containing information about the ownership and vesting of freehold and Crown land in Western Australia.
12. **Topographical:** datasets of digital information of the natural and built environment of Western Australia.

Hon BARRY HOUSE: It does not sound as though any of the policies, strategies, planning documents and other various government actions that the committee considered relevant to the land information that should be contained on a title and administered through the department have been included at this stage. The committee heard many instances of landowners feeling aggrieved because they did not have information on clearing regulations or policies such as Bushplan, wetlands or some other aspect of government policy that impacted on their land ownership and their title.

Hon KATE DOUST: As I understand it, recommendation 35 of the committee was not supported at the time by the government. However, through SLIP, we are working towards achieving that outcome.

Hon BARRY HOUSE: I do not want to labour the point. I am heartened to hear the parliamentary secretary say that the government is moving towards that, but how quickly? Is there a time frame for adding some of this information to the titles and for it to be publicly accessible?

Hon KATE DOUST: I understand that eight agencies are providing information and that the first phase will be publicly available next year. There is obviously still more work to be done. I cannot give a date for the final completion. I have been advised that a demonstration can be made available to the member.

Hon KEN BASTON: I refer to clause 16(3), which states in part -

. . . to provide to the Authority an overall profit representing a fair commercial return after covering the Authority’s total costs . . .

Who decides what is a fair commercial return? Is it the board or the chief executive officer?

Hon KATE DOUST: The board.

Clause put and passed.

Clause 17: Certain information free of charge in exceptional cases -

Hon MURRAY CRIDDLE: Clause 17(1) states -

The Minister may, under section 65(1), direct the Authority to provide information of a class identified in the direction free of charge.

Clause 17(5) states -

The Minister cannot give a direction as described in subsection (1) unless -

- (a) the Minister is satisfied that there is a public benefit sufficient to justify giving the direction; and
- (b) the direction is given with the Treasurer's concurrence.

That is fine provided it does not have a huge impact on the authority. I am wondering where the measure of the amount of impact on the authority starts and stops. The minister could give a direction that would involve a major impact on the budgeting arrangements of the authority.

Hon KATE DOUST: Under clause 17(4), it is up to the minister to decide on the level of impact. I understand that on such occasions the board would provide advice to the minister about the level of impact upon the authority.

Hon MURRAY CRIDDLE: I do not see any indication in this clause that the board will become involved. I understand what the parliamentary secretary is saying, but is there a direction from the board to the minister? Is the minister's direction required to be recorded somewhere?

Hon KATE DOUST: I understand that clause 65 gives the minister power to give directions. The directions must be tabled in Parliament and the authority must include the text of those directions in its annual report. Clause 65(2)(b) refers to section 17 of the Statutory Corporations (Liability of Directors) Act 1996. Under that act, the authority's board must notify the minister if it considers that compliance with a direction would not be in the interests of the authority, or that a direction is unlawful. The capacity for the board to provide advice to the minister is picked up in another piece of legislation, but it obviously links to this bill. That is where the member will find the capacity for the board to provide that advice.

Hon MURRAY CRIDDLE: Will the minister get a direction from the board?

Hon Kate Doust: The minister will get advice.

Hon MURRAY CRIDDLE: Is that advice binding?

Hon KATE DOUST: It is not binding but I understand that, under that section of the Statutory Corporations (Liability of Directors) Act 1996, the minister must confirm or cancel the direction, and must then table confirmation of that direction in Parliament.

Clause put and passed.

Clause 18: Use of names for Authority and its operations -

Hon KEN BASTON: Clause 18 states, in part -

The Authority may use and operate under one or more trading names allowed by the Minister . . .

I am looking for example of how this would happen. Why would the authority need to trade under other names, and could this practice be used to avoid scrutiny? I presume any such decision would go before the board, or will this decision be made entirely by the minister? Would it go to the board to make a recommendation to the minister, or could the minister decide it alone? Will this capacity to use other trading names apply to only the commercial arm of the authority?

Hon KATE DOUST: I understand that the board would make a recommendation to the minister. It is likely that only one trading name will be used for the whole authority.

Clause put and passed.

Clauses 19 and 20 put and passed.

Clause 21: Board is governing body -

Hon KEN BASTON: Will the chief executive officer be directly responsible to the minister, and what will be the chief executive officer's relationship with the board? If the minister appoints the CEO, will the CEO be responsible to the board?

Hon KATE DOUST: The CEO is appointed by the Minister for Public Sector Management. The CEO is responsible to both the board and the minister who has coverage of this area.

Clause put and passed.

Clause 22 put and passed.

Clause 23: Remuneration and allowances -

Hon KEN BASTON: What are the remuneration and allowances based on and do they vary from board to board? Does the minister have any influence over the amount paid or is it decided by the CEO? Can the parliamentary secretary give us an explanation of how that remuneration was arrived at?

Hon KATE DOUST: I understand that this is a standard clause. The level of payment will be determined by the Department of the Premier and Cabinet from a table of payments. I understand that historically it comes from the public sector management area.

Hon RAY HALLIGAN: I take it that this information will be included in the annual report.

Hon KATE DOUST: Yes.

Clause put and passed.

Clauses 24 to 29 put and passed.

Clause 30: Disclosure of material personal interest -

Hon KEN BASTON: Clause 30(1) states -

A member of the Authority's board of management who has a material personal interest in a matter being considered or about to be considered by the board must, as soon as possible . . . disclose the nature of the interest . . .

The penalty for not doing that is \$10 000. Bearing in mind the information this board will be privy to and the commercial arm as well, how was the fine of \$10 000 arrived at and is it enough to deter?

Hon KATE DOUST: I understand that it is a standard provision. This clause has been modelled on the provisions in the Zoological Parks Authority Act 2001.

Clause put and passed.

Clauses 31 to 37 put and passed.

Clause 38: Resolution without meeting -

Hon KEN BASTON: The wording of clause 38 seems a little loose. It states -

A resolution in writing signed or otherwise assented to in writing by at least half of the members of the Authority's board of management has the same effect as if it had been passed at a meeting of the board.

Resolutions passed at meetings of the board will require a majority vote. Why will it be possible for a resolution to be passed if at least half the members assent in writing?

Hon KATE DOUST: Again, I understand that this is a standard clause used in a range of legislation. I refer the honourable member to the Western Australian Land Authority Act 1992 and the Zoological Parks Authority Act 2001. This provision exists in both those pieces of legislation and a range of others. The Parliamentary Counsel's Office has drafted the provisions in this bill and a raft of other legislation. It is standard.

Hon RAY HALLIGAN: Hon Ken Baston has made a very valid point. Whilst this provision may be in other acts, that does not necessarily make it right. I do not see that as an excuse for continuing down this path. We have already agreed to clause 22, providing that the board be made up of at least four but not more than six people and that a quorum be three. If there are only four members and three form a quorum, clause 38 will remove the authority of one of them because two members - 50 per cent - would be able to make a decision in writing. One member could possibly be left out of the equation, not knowing what has gone on. All I am saying is that if only 50 per cent of a membership of four are required to make that decision, two people could get together and exclude the other two. It does not say that anything done in this way has to be ratified at a further meeting. Having become aware of it, one would hope that there would be the opportunity, if they felt so inclined, to move a rescission motion. There seems to be a little too much flexibility. Had six people been appointed, with a quorum of three, there would not be a problem.

Hon KATE DOUST: The minimum number for the board is five - four plus the CEO. It could be six plus the CEO. The quorum is three. The way I read clause 38 is that all members of the board and the CEO would receive the information. At least half of those members would need to respond. I have been on boards where these sorts of things have occurred. All members of the board are notified automatically. Whether all those people respond due to various circumstances is another matter. People may be away or whatever. I would expect that in this case all board members would be advised and that at least half of those people - at least three

out of five - would have to respond. That is effectively a quorum, as it would have been a physical face-to-face meeting.

Hon KEN BASTON: I find this quite amazing. It is in direct conflict with clause 35(2) which states that there must be a majority. Have I missed something or does the CEO have a voting right?

Hon KATE DOUST: The CEO has full voting rights.

Clause put and passed.

Clauses 39 to 42 put and passed.

Clause 43: Minister may declare sections 40 and 42 inapplicable -

Hon KEN BASTON: The minister may declare sections 40 and 42 inapplicable when the board member has an interest. Will the parliamentary secretary give me examples of when this might occur? I believe that the minister must table the declaration in both houses, but that would be after the event. A board member could have an interest and the minister could say it was okay for that person to participate. The minister must, within 14 days after a declaration, cause the text of the declaration to be laid before both houses of Parliament. It seems to be a matter of the cart coming before the horse.

Hon KATE DOUST: I understand that if a board member declares an interest, the minister may declare those sections inapplicable. If the board member is known to have made the declaration, the board member would not have to keep making a declaration on each occasion because it had already been declared.

Clause put and passed.

Clause 44 put and passed.

Clause 45: Other staff and contractors -

Hon RAY HALLIGAN: My question to the parliamentary secretary is somewhat rhetorical. Are all or the majority of the staff who are currently employed prepared to move across to the authority? I assume that the staff are currently working under the Public Sector Management Act. Will they continue to be employed under the Public Sector Management Act as employees of the authority?

Hon KATE DOUST: The employees will transfer across. I understand that staff have been told that if they do not want to transfer across, they should provide that information so that other arrangements or alternative positions can be found for them. I understand that about three people are in that situation. Staff will not be employed under the Public Sector Management Act. They will be public sector employees covered under the Government Officers Salaries, Allowances and Conditions Award, which I understand is called GOSAC.

Hon RAY HALLIGAN: This authority will be a body corporate and will be competing with private enterprise against employees who have similar expertise. Does the authority believe that at some stage - this is crystal ball gazing - it may have some problems retaining those employees? The only reason I mention this is that we are talking about expertise. I would expect that only a few people in this field would be able to undertake the tasks required of them. If the authority is to compete with private enterprise to retain some of these employees, are they likely to be constrained, considering the terms and conditions under which they will be employed?

Hon KATE DOUST: Yes.

Hon RAY HALLIGAN: In that case, is the authority likely to give consideration in the immediate future, should this bill become an act, to determining ways and means of retaining that expertise?

Hon KATE DOUST: I appreciate what the member has said. I understand that currently the department is considering a variety of ways to attract and retain people. The department is considering flexible working arrangements to meet family and lifestyle needs. The member might have seen the family room at the Midland site. Very positive work and family arrangements have been put in place there. The department has work-from-home provisions that are currently utilised by some staff. It has a strong focus on training and development, it conducts leadership development programs, a wellness program, and it provides support for study leave and new training programs. They are some of the options that the department is either considering or is currently utilising to keep people on board.

Clause put and passed.

Clauses 46 to 49 put and passed.

Clause 50: Minister's powers in relation to draft strategic development plan -

Hon RAY HALLIGAN: Subclause (1) states -

The Minister may return a draft strategic development plan to the Authority and request that its board of management -

- (a) consider or further consider any matter and deal with it in the draft plan; and
- (b) revise the draft plan in the light of its consideration or further consideration.

It would appear that the board is beholden to the minister to undertake what the minister wants. Subclause (3) states -

If the Minister has returned a draft strategic development plan to the Authority making a request under subsection (1) and, later than one month before the start of the relevant financial year, the Authority's board of management and the Minister have not agreed on a draft strategic development plan . . .

It would then revert to the previous plan that had been agreed to. I understand that. The minister appoints all the board members, including the chief executive officer. How then is it likely that the minister would have problems getting his or her message across to the board and why would the board be recalcitrant and not do what was required of it by the authority of the minister, as provided for under the new act? The point is that the board has a particular time in which to respond to the minister. If the board has no wish to respond, what would the minister do to try to overcome what could be a stalemate?

Hon KATE DOUST: Hon Ray Halligan is right; there is a direct link. Under clause 50(3) the minister has the power to direct. This situation has not arisen and I understand that it is hoped that it will not arise. It is fairly clear that if the minister is not satisfied, he or she can direct the board to reconsider and come back to the minister.

Hon RAY HALLIGAN: I understand that that is what clause 50 provides, and to a great extent I can understand why that has to be in place. If the board digs its heels in -

Hon Kate Doust: Is Hon Ray Halligan talking about sanctions against the board if it does not follow it through?

Hon RAY HALLIGAN: I know full well from previous clauses that we have agreed to that the minister appoints all the board members. One expects that the Lord giveth and the Lord taketh away.

Hon KATE DOUST: I would hate to think that sanctions would be imposed. I am having horrific thoughts about what could be done to board members, but that would never happen. Any disagreement about the way forward would have to be negotiated by the board and the minister to try to come to a satisfactory outcome. In those situations, negotiations would have to kick in.

Hon RAY HALLIGAN: I hear what the parliamentary secretary is saying; however, because we are now talking about a body corporate, I wonder whether the viability of the body corporate can allow for extended negotiations, or whether something a little stronger may need to be done, as might be done in the corporate sector.

Hon KATE DOUST: This clause provides that at the end of the day the minister has the ultimate responsibility for giving that direction on the strategic plan. It is quite clear. I am not too sure where Hon Ray Halligan is going with the line that the minister appoints people etc. The minister cannot remove people simply because they do not agree with him or her; that is already set out in other clauses in the act. The bill is quite clear about reasons for removal, or whatever, being required, and this does not come into it. As I said, if the minister sent the strategic plan back to the board and asked for it to be reconsidered, and the board could not move forward, they would have to negotiate. At the end of the day, the minister will give that direction about what would happen for this particular instance on the strategic plan.

Hon RAY HALLIGAN: I will not labour the point, but if there is the possibility - rather than probability - of this affecting the viability of this authority, we cannot afford to have that impasse for too long. We should not forget that once the agency becomes the authority, it will be more commercial than ever. What might the minister do? The parliamentary secretary suggests that other clauses within the bill provide for the removal of board members, and she might refer to that in answer to my question. If the minister wants one thing under clause 50 and the board members want another, there will be potential to have an impasse. We cannot afford for that situation to remain for an indefinite period.

Hon KATE DOUST: Under clause 50(3), the minister can direct that the board makes specific changes; that is it, and the board would have to do it.

Clause put and passed.

Clauses 51 to 63 put and passed.

Clause 64: Minister to be kept informed -

Hon Murray Criddle; Hon Kate Doust; Hon Ray Halligan; Hon Ken Baston; Chairman; Hon Kate Doust; Hon Paul Llewellyn; Hon Barry House

Hon KEN BASTON: This clause comes under part 5, “Accountability and financial provisions”. It states that the authority must keep the minister reasonably informed. Could the parliamentary secretary explain the phrase “reasonably informed” and by what means and how often - that is, letter, phone or e-mail, and every one, two or three months - should the minister be informed? What is “reasonably informed”?

Hon KATE DOUST: It is envisaged that there would be monthly meetings between the minister and the CEO, and also regular meetings with the chairman and the minister.

Clause put and passed.

Clauses 65 and 66 put and passed.

Clause 67: Minister to have access to information -

Hon RAY HALLIGAN: This is a matter that I raised during my second reading contribution. It relates to this clause and clause 68, “Deletion of commercially sensitive matters”. The two go together to some extent because clause 67 states -

- (1) The Minister is entitled -
 - (a) to have information in the possession of the Authority; and
 - (b) if the information is in or on a document, to have, and make and retain copies of, that document.

The minister, one assumes, has the authority to obtain and retain that information even if it is commercially sensitive. The minister could have it in the office and all the staff in the office could look at it. My argument has been - it is more relevant to clause 68, and I will go into that in a moment - that someone on the opposing side should also be able to look at that. I will further raise that argument under clause 68. I just wanted to refer to the those words in clause 67 about making and retaining copies of documents.

Clause put and passed.

Clause 68: Deletion of commercially sensitive matters -

Hon RAY HALLIGAN: Clause 68 states -

- (1) The Authority may request the Minister to delete from -
 - (a) a copy of a report under the *Financial Administration and Audit Act 1985* (and any accompanying document) that is to be laid before a House of Parliament or made public;

A matter can be excised from a report or document that is to be laid before a house of Parliament or made public because in someone’s opinion the matter is commercially sensitive.

Subclause 2(b) provides that such a document must be accompanied by an opinion from the Auditor General stating that the information deleted is commercially sensitive. There is no definition of “commercially sensitive”. We are relying on the Auditor General, the minister and the authority to determine what is commercially confidential and what we in this Parliament cannot see. I fully understand that in some instances, if sensitive information, whether it be commercial or otherwise, were to be made public, it could create a problem. However, if papers are laid before this Parliament, I do not think it is appropriate that the only people who will know what is going on are people on the government side of the chamber. I suggested during my second reading contribution that the Leader of the Opposition should at least be given the opportunity - without retaining copies - of seeing any information that is classified as commercially sensitive. If that opportunity is not provided, it will always leave me wondering: what does the government have to hide? We are talking about open and accountable government, but with provisos and limitations. As I have said, I am comfortable with the words “commercially sensitive”. However, the Leader of the Opposition should at least be given the opportunity to agree with the authority, the minister and the Auditor General. If all those people, including staff in the minister’s office, are to be given access to that information, the Leader of the Opposition should also be given access to it.

Hon KATE DOUST: I note what the member has said. This clause does not affect or limit the operations of the Parliamentary Privileges Act 1891 and the Parliamentary Papers Act 1891. Members who wish to assert the primacy of the Parliament to obtain information from the authority or the minister can do so through those acts. Nothing will prevent a member from accessing information, even if it has been deleted, through those acts. I understand that has been done on a number of occasions in the past. Hon George Cash made the following comments during debate on the Treasurer’s Advance Authorisation Bill 2003 -

... Parliament has the lawful right to call for any information required to discharge its constitutional duty in legislating for the peace, order and good government of Western Australia ...

...

... this House has the absolute power to call for papers to be tabled, notwithstanding any claim by a minister, parliamentary secretary or other person that the documents contain confidential information.

That is very succinct and to the point. I hope that resolves the member's concern.

Hon RAY HALLIGAN: Yes, it certainly does. However, it also makes me wonder why parliamentary counsel continue to write clauses such as this. However, that is neither the parliamentary secretary's problem, nor mine. Now that the parliamentary secretary has clarified the situation, I am satisfied. I hope that, in future, parliamentary counsel will word clauses such as this in a different way. It seems to me from the wording of clause 68 that it is all smoke and mirrors. Humble people such as I will take these words literally to mean that we cannot, and will not, have access to any information that in the opinion of the Auditor General is commercially confidential without undertaking some research into the matter. I thank the parliamentary secretary for explaining the situation. I am satisfied with that explanation.

Clause put and passed.

Clauses 69 and 70 put and passed.

Clause 71: Dividends -

Hon MURRAY CRIDDLE: Are any guidelines in place with regard to the payment of dividends? Even though dividends are just another way of giving money to Treasury and the consolidated fund -

Hon Kate Doust: Is that a bad thing?

Hon MURRAY CRIDDLE: In some cases it is. I believe that if some of the money that was paid in dividends by the boards was left with the boards, they might be able to operate in a way that was far more advantageous for the local community. That is particularly the case for ports. Is there any arrangement or agreement between the Treasurer and the authority on the amount of dividend to be paid by the authority?

Hon KATE DOUST: I understand the board will recommend to the minister the amount of dividend to be paid. The minister can either accept or reject that. In some cases the board will recommend that no dividend be paid.

Hon MURRAY CRIDDLE: Will there be a holiday period during which a dividend will not need to be paid, such as while the authority is being set up?

Hon KATE DOUST: I understand that as part of the business plan for the authority, which was developed with the concurrence of the Department of Treasury and Finance, all surpluses generated by the authority will be reinvested into capital funding for the first five years of the authority's operation.

Hon MURRAY CRIDDLE: That is fine. However, I wonder about the long-term strategy that the government has in mind for the Land Information Authority. Is there any intention to sell the authority; and, if so, what would be the impact of that on this clause?

Hon KATE DOUST: There is no intention to sell the authority.

Hon KEN BASTON: The authority can be directed to pay a dividend. Bearing in mind that the commercial arm of the authority may hold valuable assets, such as its land titling system, which is being used by countries such as Vietnam and China, and also by other states, for that matter - I commend the authority for moving in that direction - and bearing in mind also that the authority would build up equity in those assets, could the minister direct the board to pay a dividend or total aggregate amount that would exceed the authority's profit for the year?

Hon KATE DOUST: I understand that currently there is no limit in the act. The board could agree to pay, if directed, above its profit. Again, that decision could be made by the board only if it was acting in the interests of the authority. I again refer to the Statutory Corporations (Liability of Directors) Act 1996, which sets out its responsibilities. If the direction was unlawful or not in the interests of the authority, it would not have to follow that direction.

Hon KEN BASTON: I understand what the parliamentary secretary said about the board being responsible. However, an irresponsible minister could demand that it pay more. Where does the board sit then? Does the board say no to the minister, bearing in mind that the minister has the ultimate say?

Hon Murray Criddle; Hon Kate Doust; Hon Ray Halligan; Hon Ken Baston; Chairman; Hon Kate Doust; Hon Paul Llewellyn; Hon Barry House

Hon KATE DOUST: The board could say no, but the minister will have to table the direction in Parliament. In fact, I understand that he or she would have to table it twice. That would leave the minister open to broad scrutiny, particularly if the response from the board was negative. I imagine that the minister would be questioned about why he or she continued to pursue that line.

Clause put and passed.

Clause 72: Liability for duties, taxes and other statutory imposts -

Hon KEN BASTON: Clause 72(2) states -

Despite subsection (1) but subject to subsection (3), the Authority is not liable to pay any local government rate or charge.

Bearing in mind that the department is going down the commercial path and turning into an authority, why does it not have to pay a commercial rate to local government? Given that the department is being put on a commercial footing, one would have thought that it would have to meet normal commercial imposts.

Hon KATE DOUST: I refer the member to subclause (4). Although it may not have to pay local government rates or charges, it pays an equivalent amount to the Treasurer. I understand that this is a standard provision.

Clause put and passed.

Clause 73 put and passed.

Clause 74: Hedging transactions -

Hon KEN BASTON: Subclause (1) states -

The Authority, with the Treasurer's approval, may, for the purpose of managing, limiting or reducing perceived risks or anticipated costs in connection with the exercise of any power conferred by section 75 . . .

The authority may enter into agreements such as a hedging agreement. Does it need only the Treasurer's approval or does it require the approval of both the minister and the Treasurer? Is that normal government authority practice?

Hon KATE DOUST: I understand that it does not require both. I understand that the minister would be advised. Again, I refer to clause 13, which provides that anything involving more than \$5 million would require the approval of both the Treasurer and the minister.

Clause put and passed.

Clause 75 put and passed.

Clause 76: Guarantees -

Hon KEN BASTON: Clause 76(1) states -

The Treasurer, on the Minister's recommendation, may, in the name and on behalf of the State, guarantee the performance by the Authority, in the State or elsewhere, of any financial obligation of the Authority.

Will the parliamentary secretary provide an example in which this would apply?

Hon KATE DOUST: This would apply when large contracts come into play. Indeed, the authority will be undertaking some international work, and the size of those contracts means that the Treasurer would have to be involved in giving a guarantee.

Clause put and passed.

Clauses 77 to 92 put and passed.

Clause 93: Review of Act -

Hon KEN BASTON: The review of the act will take place as soon as is practicable after every fifth anniversary. Could "as soon as is practicable" refer to the sixth year?

Hon KATE DOUST: I understand that the review must be tabled within 12 months of the relevant anniversary.

Clause put and passed.

Clauses 94 to 125 put and passed.

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[COUNCIL - Thursday, 26 October 2006]
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Hon Murray Criddle; Hon Kate Doust; Hon Ray Halligan; Hon Ken Baston; Chairman; Hon Kate Doust; Hon Paul Llewellyn; Hon Barry House

amendments are inconsistent with the purposes of the bill and the relationship between the bill and other acts. I do not accept the parliamentary secretary's arguments.

The consequence of amending the bill in the manner proposed by Hon Ken Baston may cause administrative inconvenience and perhaps effect it in a better way through the amendment of other acts. However, the issue I must consider is whether the proposed amendments go beyond the scope and purpose of the bill. I note that in clause 9(3) the authority has a discretion to administer and provide access to information in land information systems other than those required by the laws of the state. This is consistent with the minister determining the types of interests in or notifications of land that must be notified by the authority. The power of the minister to determine which interests in land or notifications are to be accessible on a not-for-profit basis is also not contrary to the agency's commercial objectives contained in clause 8. The amendment does not reverse the policy of the bill; it merely provides a qualification for what goods and services from which the authority may generate a profit.

I accept that in some cases a fine line may be drawn between what is relevant and what is not relevant to the subject of the bill. It is my ruling, therefore, that the amendments proposed by Hon Ken Baston are relevant to the subject matter of the bill. They directly relate to one of the principal functions of the authority, which is the provision, administration and access to information in land information systems.

Committee Resumed

Amendment put and a division taken with the following result -

Ayes (15)

Hon George Cash	Hon Nigel Hallett	Hon Robyn McSweeney	Hon Barbara Scott
Hon Peter Collier	Hon Ray Halligan	Hon Norman Moore	Hon Giz Watson
Hon Murray Criddle	Hon Barry House	Hon Helen Morton	Hon Ken Baston (<i>Teller</i>)
Hon Donna Faragher	Hon Paul Llewellyn	Hon Simon O'Brien	

Noes (12)

Hon Shelley Archer	Hon Kim Chance	Hon Adele Farina	Hon Sheila Mills
Hon Matt Benson-Lidholm	Hon Kate Doust	Hon Jon Ford	Hon Sally Talbot
Hon Vincent Catania	Hon Sue Ellery	Hon Graham Giffard	Hon Ed Dermer (<i>Teller</i>)

Pairs

Hon Margaret Rowe	Hon Louise Pratt
Hon Bruce Donaldson	Hon Ken Travers
Hon Anthony Fels	Hon Ljiljana Ravlich

Amendment thus passed.

Hon KEN BASTON: I move -

Page 5, line 17 - To insert after "contain" -

and will include notifications of interests of a type determined by the Minister in accordance with subsection (3) and prescribed by regulation.

Amendment put and passed.

Postponed clause, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.