

WESTERN AUSTRALIAN JOBS BILL 2017

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Robin Chapple) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon MICHAEL MISCHIN: Before the dinner suspension, I believe the minister was part of the way through her explanation about how, although “local industry” has been framed broadly to include any other state or territory, or, indeed, New Zealand, the bill will operate in favour of industry in Western Australia.

Hon ALANNAH MacTIERNAN: As I explained in my response to the second reading debate—I think I have outlined it here, but I will just quickly run through it—it is true that there are constitutional constraints, and constraints imposed by the treaty with New Zealand. Notwithstanding that, it has been observed that other states are able, in a much more aggressive way, to utilise the government procurement exemptions to those limitations. In particular, there is a local procurement exemption that allows a government to seek to benefit small to medium-sized enterprises, which are defined as enterprises with up to 200 full-time equivalent employees. We also point out that the local participation plans require people to set out at the tender stage exactly what they are prepared to do, and that gives us more capacity to understand the benefits that might come from the structure of that plan. Fundamentally, we accept that there are restrictions, and that we have to work with those restrictions, but it has been very clear that other states have been able to operate successfully within that environment, in particular by exploiting the government procurement capability of supporting SMEs.

Hon MICHAEL MISCHIN: Which states in particular does the government consider to be models for what Western Australia could achieve?

Hon ALANNAH MacTIERNAN: As I set out in my second reading response, Victoria and Queensland have similar legislation in place. I believe that Victoria has had the legislation in place for over a decade and has been very successful in increasing the level of local or intrastate procurement.

Hon MICHAEL MISCHIN: This will be achieved, though, through the preparation of Western Australian local industry participation schemes. Why is legislation necessary for that? Much of it seems to be able to be achieved without the necessity for passing a bill. Surely, tendering policy and the like for government projects can be mandated or controlled without the need for an act of Parliament, particularly one which merely sets out some objectives but does not mandate a great deal, and under which much of the detail is to be set out in regulations that have not yet even been prepared, or can be seen in draft, to determine their objectives and what priorities are being accorded to different areas of operation.

Hon ALANNAH MacTIERNAN: I thank the member, and I am trying to be helpful here, although we are just talking about the short title. As has been set out in this place before, it is necessary to legislate to bring into effect one of the most important aspects of this legislation—that is, bringing the government trading enterprises into the fold. At the moment each of these GTEs has its own act of Parliament. We need to override provisions in their legislation to enable the government to deal with that. The procurement of these GTEs, many of which are right out in the regions in Western Australia, amounts to about \$9 billion a year. They include Synergy, Western Power, the port authorities and the Water Corporation. It is absolutely essential that we bring this in. I note that earlier the Leader of the Opposition was asking us what things were coming through from industry during our dialogue. One of the clearest messages was that industry wanted the GTEs brought in, because at the moment, under the current Buy Local policy, the GTEs are not obliged to conform with that policy. This is a very, very significant step. The annual investment by GTEs, particularly in regional areas, is critical for us to deliver the policy, and without legislation, we would not be able to include GTEs.

Hon COLIN HOLT: I want to follow a bit of the questioning by Hon Michael Mischin. I raised in my second reading contribution the fact that there seems to be a conflict within the bill, specifically clause 9 with other clauses. Clause 9 states —

Point of Order

Hon ALANNAH MacTIERNAN: Is it possible for us to deal with this when we get to clause 9, because I think it is important for us to understand that we are dealing with only the short title at this stage?

The DEPUTY CHAIR (Hon Robin Chapple): Yes, it is more appropriate that we deal with this on clause 9.

Hon COLIN HOLT: Deputy Chair, I have a point to make about the title of the bill and a general contribution to make about conflict within the bill. I am just trying to point out where the conflict is. I could deal with it on

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clause 7 if you wanted me to, but there is more to it than just clauses 9 and 7. This goes to the potential conflict in the bill and it goes across a range of clauses. I am happy to take your guidance on it, but my intention was to explore this particular issue in the debate on the short title.

The DEPUTY CHAIR: On that basis, Hon Colin Holt, please continue your comment.

Committee Resumed

Hon COLIN HOLT: It appears to me that there is a conflict within the legislation—that is, the bill needs to take into account the State Supply Commission Act and other written laws that relate to the procurement of goods or services, such as the Australia and New Zealand Procurement Agreement and section 92 of the Constitution. Clause 9 states specifically that they will be taken into account. With regard to clause 7, the explanatory memorandum states that when developing, amending or replacing the Western Australian industry participation strategy, the minister must take into account the objectives specifically related to the Western Australian economy and the promotion of Western Australian jobs. Is there a potential conflict within the legislation that has not been thought about? I heard the minister’s commentary before that other jurisdictions have got around it. I do not know whether other jurisdictions have such prescriptive descriptions in their legislation, but is there a potential conflict between commonwealth laws, the Constitution and what is being proposed in this bill? It seems that there could be that risk.

Hon ALANNAH MacTIERNAN: I thank the member for the question. As I explained before, these provisions are not dissimilar to the provisions that we find in the Victorian and Queensland legislation. We have had advice from the Solicitor General that the structures that we have in place here are compatible with the requirements of the Constitution and the Australia–New Zealand treaty. We specifically refer again to the special requirement that with government procurement, there is the ability to put in place mechanisms that advantage, benefit and foster local—that is, in our state or region—small to medium-sized enterprises of up to 200 people. We will try to make it clear within that particular provision what we will be looking for. We have been advised that this has been structured to be consistent with the Constitution. The Victorian legislation has been in place for some time and has operated quite successfully. We do not believe any of these things are easy or simple, but, as I said, we know from the Auditor General’s report that business as usual is not cutting the mustard and that we have to do something different, so why not look at what has been working elsewhere and try to put that in place? The other states have not found this to be an insurmountable problem.

Hon COLIN HOLT: I appreciate that answer. I wonder whether the minister could give the same assurance about any subsidiary legislation or regulations that pertain to the same outcome. At the moment, we do not know what that is. We have never seen any evidence of that, so I assume that it is yet to be developed and, at the same time, there is a risk of potential conflict with commonwealth legislation.

Hon ALANNAH MacTIERNAN: Each of the regulations will be subject to the advice of the Solicitor-General, but the general heads of power will be set out in this legislation. Obviously, all regulations cannot be ultra vires to this legislation, so the regulations will have to be consistent with the schema of the bill. The careful consideration of some of the exemptions available for small or medium-sized enterprises and careful consideration of what has been done elsewhere, together with the advice of the Solicitor-General, tells us that the schema of the bill, with which all the regulations will be consistent, is acceptable and will not contravene the provisions of the Constitution or the ANZUS agreement.

Hon COLIN HOLT: I take that as a good answer, given the very broad heads of law in this bill. I wonder whether the minister would be happy to table the Solicitor-General’s advice that there is no risk of conflict within the two components of this bill.

Hon ALANNAH MacTIERNAN: As the member, who is a former minister, will be well aware, it is a long-established practice that we do not table the advice we receive from senior law officers.

Hon MICHAEL MISCHIN: Perhaps the minister would assist me in one aspect. She mentioned government trading enterprises being captured by this bill. Is that all government trading enterprises or only a limited number of them? I note that “government trading entity” is defined in the bill, but that is specifically with respect to certain bodies established under certain acts of Parliament. Are there any that are not captured by this bill?

Hon ALANNAH MacTIERNAN: All entities of any commercial significance are captured. I will go through them. There is Synergy, Western Power and Horizon Power. All port authorities would be captured, including the Kimberley Ports Authority, the Pilbara Ports Authority, the Mid West Ports Authority, the Southern Ports Authority and the Fremantle Port Authority. The Water Corporation is captured. LandCorp is captured. Any subsidiary of those companies is captured. If the member has an entity in mind that he feels might not be captured and that might be a significant procurer, by all means he should raise it with us, and we will see what we can do.

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Hon MICHAEL MISCHIN: I thank the minister, but I was hoping that she might be able to assist me regarding whether any are not captured specifically by the legislation, and then I would be able to tell her whether I think they are significant trading entities and procurers.

Hon ALANNAH MacTIERNAN: We believe that the major organisations are represented. Some organisations such as the Gold Corporation and perhaps the Insurance Commission of WA have different financial provisions and are included via the Financial Management Act. So some entities are caught by being subject to the Financial Management Act, but if it turns out that something of significance has not been captured, the bill is structured in such a way that we can add it by way of regulation.

Hon MICHAEL MISCHIN: I am not sure whether that is right, but the minister might be able to assist me in how that works. Government trading entities are prescribed in clause 3 as bodies established under specific acts of Parliament or subsidiaries of bodies referred to. “Agency” is more broadly defined as “an agency defined in the Financial Management Act 2006” but I am not sure how that fits with the ability to prescribe participation strategies and policies or how they are captured. They are considered distinct from being a government trading entity. I also have a question about the ability to include, as an agency, and I quote —

(c) a person or body, or a person or body of a class, prescribed for the purposes of this paragraph;

That seems very broad to me. I would like some assurance that it means that regulations cannot include, for the purposes of this legislation, a private corporation or private business as an agency that could be captured within the meaning of the definition outlined in clause 3(1)(c).

Hon ALANNAH MacTIERNAN: We are getting well beyond the short title and very specific, so I will seek your guidance, Mr Deputy Chair, about when we are getting into this detail. It would be my preference when we are dealing with the sort of detail in clause 3(1)(c) that we do it when we come to that clause. I am quite happy to discuss it when we deal with the clause, but it is not relevant to the short title.

Hon MICHAEL MISCHIN: I am content with that. I can deal with it now or I can deal with it later.

I have another general question about the way the Western Australian Jobs Bill 2017 will work. I think the minister commented during her second reading reply that the number of public servants who had administered the previous schemes had gone from 20 to 2.5 full-time equivalents. How many public servants will be dedicated to the operation of this particular legislation? I do not mean seconded from departments or operating within departments, but who will be devoted to administering the strategies and schemes to assist the minister?

Hon ALANNAH MacTIERNAN: We will certainly take it up from two. Eight in JTSI will be responsible, and nine will be responsible in the regional offices of the Department of Primary Industries and Regional Development. That is a total of 17.

Hon Michael Mischin: What is JTSI?

Hon ALANNAH MacTIERNAN: The Department of Jobs, Tourism, Science and Innovation.

Clause put and passed.

Clause 2: Commencement —

Hon MICHAEL MISCHIN: I have one question on clause 2, and I want to pursue the issue I raised about the operation of the act, which embraces, in part, the definitions in clause 3. The act is intended to come into operation on various occasions as outlined in part 1, other than the definitions in clause 3 and, binding the Crown, in clause 4 it takes effect upon receiving royal assent; the rest of the act is to be proclaimed at the convenience of the government. When is it expected that the act will come into operation, and why will it not take effect on receiving royal assent?

Hon ALANNAH MacTIERNAN: I thank the member. As a former Attorney General, he would of course be aware that this is a standard provision that allows for different sections to be proclaimed at different times to allow some sections to commence earlier than others; they may require more matters to be attended to before they come into operation. As per the bill, part 1 will come into effect on the day it receives royal assent. It is the government’s intention that the rest of the act will come into effect on a day fixed by proclamation in March 2018. We have not yet determined the exact date, but we are very keen to get this piece of legislation up and running. I have said to members that this is a very genuine and sincere attempt to take advantage of that \$25 billion worth of state government procurement that occurs each year to drive some growth in our economy.

Hon MICHAEL MISCHIN: I thank the minister. As a former Attorney General, I am well aware of what it does. I am asking why it will not come into effect from the date of royal assent. The minister mentioned that other matters might need to be addressed. What are those other matters that might need to be addressed before this act

can come into operation? The minister also mentioned the \$25 billion worth of government expenditure that can be usefully tapped into and exploited as part of the objective of the bill. How much of that is being applied to local participation at the moment and by how much does the government expect that to increase?

Hon ALANNAH MacTIERNAN: As the Auditor General pointed out, the problem with the current regime is that there is no data collection; there is no baseline and no way of determining accurately what it is we are achieving. We need to change the entire structure before there is any possibility of accounting for what we are achieving. I commend to the former Attorney General that he look at the Auditor General's report. Obviously, we want to get the principle of the legislation in place and when we can, we will enact various parts as the appropriate regulations and strategies are developed. We want this framework signed off by Parliament before we complete all that work. That work is continuing. A team of people is working very hard to finalise the detail of the strategies, put in place the regulations and ensure that the portals that we spoke about before on the Tenders WA site and the Department of Jobs, Tourism, Science and Innovation site are ready and very available and usable. That work is continuing, and as soon as we get these measures in this place and all the regulations that are essential for each part, we will proceed to enact or proclaim those particular parts of the legislation.

Clause put and passed.

Clause 3: Terms used —

Hon MICHAEL MISCHIN: I will just revisit the issue I raised a little while ago about the scope of the definition of “agency” in clause 3(1), which reads —

agency means any of the following —

- (a) an agency as defined in the *Financial Management Act* ... other than a university ...
- (b) a government trading entity;

Which is specifically defined later in clause 3(1), and —

- (c) a person or body, or a person or body of a class, prescribed for the purposes of this paragraph;

Clause 25 provides —

The Governor may make regulations prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for giving effect to this Act.

Given the breadth of that, is this broad enough to enable the Governor to make regulations prescribing a non-government entity of some form, either a person, an incorporated association, a class of people or anything of that nature? Given that the long title of the bill is broad enough to provide for —

- the Western Australian Industry Participation Strategy; and
- participation plans in connection with the supply of goods or services to or for certain agencies or the State;

Not “of the State” —

and

- the determination of strategic projects; and
- related matters.

Is there not some potential that a minister may decide that, say, BHP could be declared an agency of the state for the purposes of being brought into the regime that the bill provides for; and if not, why not?

Hon ALANNAH MacTIERNAN: Member, in my view, the entire schema of the legislation and the second reading speech, which, as the member is well aware, can be and will be used by a court to interpret the legislation, is very clear that this is a bill about state government procurement. It is about the state using its capacity as a procurer of goods and services. We also point out that any additional body would have to be included by way of regulation. If such a thing were attempted, obviously, it would be a disallowable item. I think the member's example is completely fanciful. Of course, this house could disallow it and those entities could contest whether there was that power under this legislation. We would be very clear that this legislation is about utilising state procurement. If ever such a thing was attempted, we would expect people in this place to disallow the provision.

I point out that the reason the provision has been included is that it is quite possible that new entities will be created in the future. There will be new government trading enterprises, there may be new port authorities or port

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authorities that are not created under the Port Authorities Act and new development authorities might come into existence, and we want to make sure that they are captured by this legislation. That is the purpose of that particular provision. Member, I would certainly say that the entire schema of the legislation is such that it simply would not make sense. It would only make sense if government were to make the decision on the tender, and of course government would never make a decision on a tender for a private sector company or a company that was not a government agency. We have to think about the bill as a whole. The point of having a participation plan is so that we are able to look at that plan when assessing the tender before determining which company we award the work. There would be absolutely no point doing this for an enterprise that the government had no involvement with in issuing a tender.

Hon MICHAEL MISCHIN: That might be right, but I do not see anything in the bill that limits that. I know we are going beyond clause 3, but it is pertinent to the interpretation of clause 3. Participation plans will be required. Procurement agencies will require a participation plan. Nothing in any of that refers to tenders as such, but prescribes what agencies can and cannot do. The definition of “agency” is very broad and although it focuses on agencies of a specific type as defined under the Financial Management Act, it also includes government trading entities, as defined, and something broader —

(c) a person or body, or a person or body of a class, prescribed for the purposes of this paragraph;

I am interested in what sort of person or body is envisaged or can be captured by that and can be prescribed by regulation as an agency within the meaning of the act. The minister may be able to point me to it, but given that the rest of the legislation does not appear to have anything distinctly about it that would limit it to, let us say, government—in the broad sense—procurement and agencies, I question whether that particular prescription provision is too broad and might be misused or inadvertently used to achieve the ends of the act, as mentioned in the objectives under clause 7, that go beyond what was intended here; it is the state’s procurement strategy, rather than one of another body’s. If an entity was closely involved in a collaborative enterprise, such as a joint public–private partnership, and the government wanted to ensure that a greater share of the work and procurement be done within its policy, could that be prescribed as an agency for the purposes of that project? Is that possible; and, if not, why not?

Hon ALANNAH MacTIERNAN: I urge the minister to look at part 3 of the bill, because, as I said, we cannot look at this in isolation. We have to look at the full schema of the legislation. The whole point of a participation plan is to guide procurement. If the government is not the entity that is procuring, it is irrelevant and there is no point in a participation plan. Clause 11(1) states —

A *participation plan* is a written statement that outlines, in accordance with the WAIPS, the commitments of a prospective supplier in relation to the participation by local industry, in particular small or medium enterprises, in activities for or in connection with a WAIPS supply.

It then states that this must be taken into account when a supply contract is given. The idea that we would want the private sector producing all these participation plans does not fit in with the whole schema of the act, which is that a participation plan is to be taken into account in determining a tender. We would never determine a tender on a private sector entity. That would be completely and utterly beyond our power, so there would not be any point. I urge the member to look at the schema of the legislation, because indeed that is what a court would do to guide the reasonable interpretation of this legislation. The participation plans are there only to guide procurement. We cannot procure for BHP, nor can we procure for any private sector entity. We simply do not have the legislative power to do that.

As I said, this provision has been included for situations in which a new entity, a new government agency, is formed, such as the Peppermint Grove redevelopment authority or something, and we want to include it within the purview of the legislation. I understand the point that the member is making, but it simply does not make sense when we look at the entire schema of the legislation. The fact is that it has been said over and again in the second reading speech and throughout the legislation that this is about procurement. The industry participation schemes are there as a guide to procurement. The only procurement we can regulate is our own procurement.

Hon PETER COLLIER: I just want some clarification on a comment the minister made a little earlier. Government trading entities are prescribed. They are listed in paragraphs (a) through (e). The minister went through them and we can read that. Then, as I understand it—I do not want to verbal her—the minister said that further government trading enterprises could be added via regulation. Could the minister just confirm that that is what she said?

Hon ALANNAH MacTIERNAN: My understanding and advice is that paragraph (c) is there in case additional agencies were formed subsequent to this legislation so that they could be included.

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Hon PETER COLLIER: I thank the minister; that part answers my question. That will be captured under clause 3(1)(c). Is that what the minister is saying?

Hon Alannah MacTiernan: Yes, that is what my advice is.

Hon PETER COLLIER: All right. The government trading entities that are captured by the bill at the moment are listed in paragraphs (a) through (e) under the definition of “government trading entity”. Is that correct?

Hon Alannah MacTiernan interjected.

Hon PETER COLLIER: Within those confines, what other government trading entities currently exist?

Hon ALANNAH MacTIERNAN: I am seeking to get a list of those. The Gold Corporation, for example, would be an entity. I am seeking some clarification from our people here on whether there are any of the agencies that are also included under the Financial Management Act.

Hon PETER COLLIER: That is fine. If the minister can give me an undertaking that that information will be provided to this chamber, I will leave it at that. I would like to know which GTEs currently exist that are not captured within the bill as it currently stands and that could potentially be added via regulation through clause 3(1)(c). Is that clear enough?

Hon Alannah MacTiernan: Sorry?

Hon PETER COLLIER: I want to know which other government trading enterprises could potentially be added via clause 3(1)(c). Firstly, we need to know what GTEs exist and, secondly, which ones are not captured through either the definition of “agency” under the Financial Management Act or, in the list under the definition of “government trading entity”, paragraphs (a) through (e), which other government trading enterprises currently exist. I am not being difficult; I am just interested to know, and I think this chamber needs to understand what we have there. If the minister can give an undertaking to provide that information to the chamber, probably during the next day’s sitting, that would be helpful and I would be fine with that.

Hon ALANNAH MacTIERNAN: I am certainly happy to do that.

Hon MICHAEL MISCHIN: I do not want to pursue this for too much longer, but I am still curious about what sort of a person or body, or a person or body of a class, can be prescribed to come within the scope of “agency”. I would have thought that if it is a government entity of some sort that has a procurement policy or is susceptible to being directed to comply with the objectives of the legislation, and certainly if it is a substantial enough one, it would come within the scope of an agency within the Financial Management Act or could be defined as a government trading entity or some other mechanism. A person or body could be a corporate person, as well as an individual, but I would think that it would not be an individual as such. What sort of a person or body of a class would not also be susceptible to being a government trading enterprise or come under some other scope of direction by government that would fall within the legislation naturally, rather than have to be prescribed for the purposes of the paragraph? Can the minister give me an example of someone —

Hon Alannah MacTiernan: I did—the Peppermint Grove redevelopment authority.

Hon MICHAEL MISCHIN: But would that be an agency that would be set up in some fashion under some other legislation and fall within this bill as a matter of course?

Hon Alannah MacTiernan: Sorry?

Hon MICHAEL MISCHIN: Why would an organisation of that character not come within, say, the Financial Management Act or, by some other means, be an entity that would be associated with the Crown or the government and be susceptible to the legislation?

Hon ALANNAH MacTIERNAN: Other pieces of legislation may be in existence that either have not been captured through this specific list or do not come under the Financial Management Act. It could be a new entity that is subsequently created. We are also very keen to ensure that we do not see government trading entities, for example, creating spin-off organisations that might be used to resist the policy. It really is a catch-all. It is to make sure that no entity that we would want to have captured is not captured. I make the point that they can be included only via a disallowable instrument. I think that is very important. It is not open to us to include any entity that we may wish to. It is necessary for us to introduce this by way of regulation, which of course is disallowable, and that is the ultimate protection for this place.

Clause put and passed.

Clauses 4 to 6 put and passed.

Clause 7: WAIPS objectives —

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Hon MICHAEL MISCHIN: My question focuses on the objectives. I have already mentioned that the only reference to “job opportunities” in the bill is in clause 7(d). It is not even the first of the objectives to which the minister must have regard. Be that as it may, all the bill says is that the minister must have regard to these objectives. There is no priority or weighting—other than the order in which they appear, perhaps—as to how these objectives are to be considered by the minister. Once again, it gets back to the emphasis of the bill. The bill is described as the Western Australian Jobs Bill. However, only one of the five objectives appears to focus on jobs, and even then not on job creation, but job opportunities, whatever that might mean. Therefore, although the minister must have regard to these objectives, the minister may give absolutely no weight to one or more of these objectives as suits the minister.

Hon ALANNAH MacTIERNAN: I struggle to see the very arcane point the member is trying to make about how these objectives are not related to jobs. The objectives of the bill include promoting the diversification and growth of the Western Australian economy; providing suppliers of goods and services with increased access to, and raised awareness of, local industry capability; and encouraging local industry to adopt, where appropriate, world’s best practice in workplace innovation and the use of new technologies and materials. I struggle to see how any person who read those objectives in good faith would not see that they are related to jobs. That is what this bill is all about. We want a vibrant, thriving and diversified economy so that we can create jobs. The KPI that underpins all those objectives is jobs.

It is true that in this bill we do not, and nor could we ever in any piece of legislation, provide a weighting formula. A significant aspect of this will be a qualitative assessment about whether a project or a particular participation plan will offer positive value. There is nothing new in that. In most tender processes, qualitative judgements need to be made and are taken into account. The cheapest bid is not necessarily the one that is considered value for money. No algorithm or formula can easily be applied to this. At the end of the day, these will be complex questions of judgement. However, we would not have gone to the trouble of creating this piece of legislation and this reporting mechanism unless we wanted our performance to be reported against that mechanism. It is true, member, that all tenders have elements that require judgement about the amenity of a community, and the social benefits. These are not necessarily able to be reduced to a numerical formula. However, they provide strong guidance about how the grant of a particular tender might help build critical mass of capability in a region and enable the development of further skill sets so that, quite independent of government procurement, there will be opportunities to grow jobs. It is true that this is not a precise formula. This is not an algorithm in which the price and local capability are popped in. It will require judgement and proper quantitative and qualitative assessment of the participation plan. This provides for the sorts of issues that we can take into account in making that qualitative judgement.

Hon MICHAEL MISCHIN: I will get back to that. If I understand the minister correctly, it is also theoretically possible for the minister to craft a participation strategy that will support industries, and hence jobs, in particular areas that may not be self-supporting. Requiring government agencies to obtain goods and services from them may support them for a time, but they will not be able to support themselves once that government agency demand decreases, closes down or moves on, as the case may be. Is that correct?

Hon ALANNAH MacTIERNAN: We went to the election with a very clear commitment to introduce a piece of legislation like this.

Hon Michael Mischin: I know, I’m just asking a question; is it yes or no?

Hon ALANNAH MacTIERNAN: I do not think it is quite a simple yes or no issue. A basic principle that will still guide procurement is value for money, but we will not be assessing that value for money only in terms of the price charged for the good or service. We will be taking a more complex formula. We certainly do not view government procurement as being assessed just on the basis of how many jobs are created in delivering. The importance of a number of these objectives is that they focus our mind on what we might need to do, taking into consideration that there will be benefits well beyond the procurement of that particular good or service. By using government procurement, we can leverage capability in the broader community. We see this very dramatically in defence. The government procurement in defence has enormous spin-off for the development of skill sets needed to participate in advanced manufacturing. That is why Victoria and South Australia have been so active in fighting for that defence procurement. It is about not only the jobs created in delivering the product but also, much more than that, the capability to establish other industries and benefits for the community.

Hon MICHAEL MISCHIN: Finally, the minister mentioned key performance indicators underpinning the intent of the legislation. Where does one find the KPIs the minister has been mentioning?

Hon ALANNAH MacTIERNAN: It is the thrust of the legislation. It is the whole purpose of the legislation, and we will be reporting against jobs that have been created.

Clause put and passed.

Clause 8: WAIPS principles —

Hon JACQUI BOYDELL: In my second reading contribution I raised the issue of value for money. I made some comments about the concept of value for money in clause 8. Could the minister give some indication about what primary considerations will define value for money when making procurement decisions? If a local procurement decision made in regional areas is purely economic instead of also considering social and cultural outcomes, it will probably be detrimental to regional businesses. Could the minister give some indication about what is meant by “value for money” in clause 8?

Hon ALANNAH MacTIERNAN: I thank the member. The policy of value for money has, I think, been in place for some years now. We are now looking at a broader concept that includes price sustainability. It has woven into this concept of value for money the other benefits that can be delivered as a result of the procurement. In the objectives listed in clause 7, which will be government policy, there is the extent that the procurement could drive diversification in an economy, including a regional economy, and how awareness could be raised of local capability and services to give a local industry a chance to strut its stuff, we might say, in order to make people aware of its capabilities. Obviously, the increase in apprenticeship, training and job opportunities will be woven into that assessment of value for money. Rather than being based on price pure and simple, the concept of value for money can now weave in the broader economic concepts that underpin this notion of price sustainability.

Clause put and passed.

Clauses 9 to 14 put and passed.

Clause 15: Exemption from s. 12(1) —

Hon COLIN HOLT: I want to talk about this clause and also clause 16. I know that the minister made a commitment of sorts to talk to the Premier and ask him to consider the requirement we are seeking. Let me put this in some context. It seems that there are three things that can or cannot happen in this bill in terms of procurement plans. One is to have a procurement plan, one is regarded as a strategic project, and the other is for exemptions. The only thing that has to be reported to Parliament as such are those around the WA industry participation strategies. An important part of the bill is that an entity is allowed an exemption from putting in a Western Australian industry participation strategy. I understand that exemptions are needed, but why can the Parliament not scrutinise them rather than them being posted on a website? I think we will be very generous in allowing this bill with a fairly shallow framework, if you like, to pass, or potentially to pass. It is not unreasonable to ask for a bit more scrutiny in this part of the bill.

Clause 16 allows the minister to delegate to the chief executive officer of the department, and the CEO will be able to delegate down the chain to the department. Potentially someone with status within the department will be making decisions on the exemptions within this bill. I think it is reasonable to expect within this bill and within that exemption some reporting to Parliament when that occurs. It is an important part of the bill. I think the chamber is within its rights to ask for that reporting.

Hon ALANNAH MacTIERNAN: I understand the point the member makes. The purpose of going to the trouble of putting this legislation in and requiring it is that we actually want to do it, so we are not wanting to get out of it. If we wanted to get out of it, we would not be enacting the legislation. I think the member has a point. I give the member an undertaking that I will approach the Premier to get a commitment that the ministerial exemptions will be listed in the annual report so that it is clear what exemptions are being given. As I said, they have to appear on a website. I know that there is an antipathy in this place to mentioning websites and looking at them. We are keen to progress this legislation and to get it underway. We do not want months of more contracts being let without being subject to this legislation, which is why we want to get on with it. But I acknowledge that the member has a point. Tomorrow I will seek confirmation from the Premier to list those exemptions in the annual report.

Hon COLIN HOLT: I appreciate that, minister. From my point of view, this is our only chance to seek the minister’s reassurances or to move some amendments to bring about what we seek to achieve. If the minister would like to adjourn the debate and get that assurance from the Premier, that he would definitely consider reporting exemptions in the annual reports, that would be good. But the minister cannot speak on behalf of the Premier at the moment. If she wants to seek those exemptions, I am more than happy not to move my amendment.

Hon ALANNAH MacTIERNAN: I suggest that we defer consideration of this clause but continue with the rest of the clauses and bring that clause back, which we can do—we can recommit that clause tomorrow—but proceed with the rest of the bill.

The DEPUTY CHAIR: The minister has put forward a motion to postpone clause 15 until after clause 26.

Hon Michael Mischin; Hon Alannah MacTiernan; Hon Colin Holt; Deputy Chair; Hon Jacqui Boydell; Hon Peter Collier

Hon PETER COLLIER: Perhaps I will allow Hon Colin Holt to say something. I want to say something, but I will listen to what he is going to say first.

Hon COLIN HOLT: To seek clarification, is the minister suggesting that we defer clause 15 until some other stage of the debate, potentially tomorrow, as long as we can continue with the other clauses of the bill? I am happy with that, Mr Deputy Chair.

Hon PETER COLLIER: I am comfortable with that if the minister is comfortable with that. If that is the case, I would suggest that the rest of the debate on the bill will take five minutes. We will see what happens. I think that is probably what everyone wants at this stage, but I do not want to pre-empt anything. If we can get a commitment from the Premier, I would be satisfied and comfortable with that. The proposed amendment would then be withdrawn; is that correct?

Hon Colin Holt: Is that question for me?

The DEPUTY CHAIR (Hon Matthew Swinbourn): Yes. I am not quite sure that is how it works, but I give the call to Hon Colin Holt.

Hon COLIN HOLT: I think it depends on the answer from the Premier and the passage of the bill.

Hon PETER COLLIER: Yes, but if the member is satisfied with the response, he will withdraw the amendment.

The DEPUTY CHAIR: We might be in furious agreement here. The question is whether the minister's motion to defer clause 15 until after clause 26 be agreed.

Clause 15 postponed, on motion by Hon Alannah MacTiernan (Minister for Regional Development).

Clause 16: Delegation —

Hon COLIN HOLT: I know this is wrapped up in my previous commentary but even if I am unsuccessful in moving my amendment or satisfied with the minister's answer, potentially tomorrow, I wonder about the accountability of the delegation from the minister down to the CEO and potentially to another delegate within the department. How will that be dealt with and reported even in the normal sense? If we take the bill as is, unamended, how is that accountability reported on a website, to the minister or even to the CEO who is allowed that delegation?

Hon ALANNAH MacTIERNAN: This is a very standard delegation provision that appears in much legislation. It in no way changes the provision for accountability. Even if there is a delegation, the minister's responsibility to publish that exemption still exists. The delegation is fairly standard in some very big departments, as members can imagine. There is quite a regime of delegation otherwise that means it would simply not be possible for the business of government to proceed. Nevertheless, at the end of the day, anything that is done under a delegation is still ultimately the responsibility of the minister and must be published. We want to know what is being done and why.

Clause put and passed.

Clause 17: Determination of strategic project —

Hon JACQUI BOYDELL: Could the minister give some indication to the house on what sort of set criteria there will be for the minister to determine or deem a strategic project?

Hon ALANNAH MacTIERNAN: The monetary thresholds for strategic projects are outlined in the plan for jobs. They were projects over \$50 million in capital expenditure or construction, or \$250 million in cash flow measured on a whole-of-life basis.

Hon JACQUI BOYDELL: I thank the minister. In terms of those thresholds for determining that, can the minister outline how local regional businesses fit into that strategic decision-making in the interests of the Western Australian economy?

Hon ALANNAH MacTIERNAN: Yes. These thresholds will be subject to review and to the consultation process. Certainly I anticipate part of that, from the very strong feedback that we are getting, will be that those thresholds will be reduced in regional areas. I believe that we definitely need a two-tiered system so that there is a different framework for regional Western Australia.

Clause put and passed.

Clause 18 put and passed.

Clause 19: Minister to report on implementation of Act and WAIPS —

Hon MICHAEL MISCHIN: My question on proposed section 19 relates to the minister's comments about how the government is keen to pursue this and that the government will be judged by its success or failure in respect of

this strategy, but this is an important bill because it will enable the implementation of its election commitments and the like, yet it seems to me that in its terms, the reporting is fairly superficial. I wonder whether the minister could expand on that and explain just what will be reported upon in each financial year. The Western Australian Jobs Bill 2017 states that by 30 November of a particular calendar year, the minister must table a report before each house of Parliament that will —

... report on the implementation of this Act and the WAIPS in the financial year.

The implementation of the act and the strategies can mean simply which ones have been created and applied; it does not necessarily go into the specifics of how successful they may have been or whether the act is achieving its purposes, or say anything about how many jobs have been created or how much wealth has been created, and it may or may not extend to providing the methodology by which those assertions in the report can be verified. I wonder whether any thought has been given, or how much thought has been given, to what will be explained in the annual report. Plainly, it has to be something sufficiently accountable to allow people to assess whether the government has achieved the objectives that it claims this bill is crafted to achieve.

Hon ALANNAH MacTIERNAN: I thank the member for his question. What is proposed to be covered under this provision is the number of contracts that have been covered. The outcomes will be reported against the objectives in clause 7. We are hoping to include exemptions in the annual report, which will also identify areas that may need to be changed. As part of the development of the strategy, each agency will be required to report against all those items and those things will be collated and form the minister's report on the implementation of the act.

Hon COLIN HOLT: I want to follow up on the minister's commitment during debate on clause 15. I note that clause 19(1) reads —

After the end of each financial year the Minister must prepare a report on the implementation of this Act and the WAIPS in the financial year.

I assume that the "implementation of this Act" also extends to the development or determination of strategic projects. Perhaps when the minister talks to the Premier about exemptions in the annual report, she can suggest that strategic projects be included because they are clearly an implementation of the act and should also be considered as part of the annual report.

Hon ALANNAH MacTIERNAN: Given that contracts are covered in the annual report, that will obviously include strategic projects. It will be all contracts that have been covered by this scheme and that have required industry participation plans. That will be covered.

Clause put and passed.

Clauses 20 to 25 put and passed.

Clause 26: Review of Act —

Hon MICHAEL MISCHIN: My question on clause 26 concerns the review of the act. Once again, it refers back to the minister's statements about how important this legislation is as a manifestation of the government's intent and policy to maximise job creation and other opportunities that are the objectives set out in clause 7. However, the review of the operation and effectiveness of the act—I think the minister is well aware of the opposition's reservations about its operation and effectiveness—will not be ascertained before the fifth anniversary of the date on which the act comes into operation. If that is some time around, say, March 2018, we will not know whether it was a worthwhile exercise until five years from then, which will be March 2023. That seems to be an extensive period to determine whether this strategy has been misconceived and is actually counterproductive, as opposed to determining its effectiveness and tweaking its operation at a much earlier stage. Why was the fifth anniversary chosen? It would be handy to have some review of the act available in time for the next state election to determine whether this strategy has succeeded and is worthwhile pursuing. Why was the fifth anniversary chosen? Why not an earlier anniversary? Would the government be amenable to shortening the time to determine the effectiveness and operation of the legislation so that we can properly judge whether this bill was satisfactorily crafted?

Hon ALANNAH MacTIERNAN: I do not accept that critique, because annual reporting against the legislation's objectives is inherent in the schema of this bill. We will not wait for five years; we will report annually on our performance under this legislation. Members, an extraordinary amount of work has gone into developing this legislation and into developing the strategy and the whole schema around the participation plans. We have to be realistic about focusing on some implementation. We have chosen probably one of the most modest short-term reviews of legislation; normally, it is after five years, but we have said that it will take place before the end of five years. We ask members to consider the very strong requirement for annual reporting of the performance of the legislation. It will become very evident within a short space of time whether this strategy is working.

Hon MICHAEL MISCHIN: The review takes into account the operation and effectiveness of the legislation. Stating that it must be done before the fifth anniversary of the day on which the act comes into operation is all very well, but the bill does not state that the review has to be completed then, so it could commence and be carried out the day before. The report must be laid before Parliament as soon as is practicable after the report has been prepared, or so be it. But it is the review of the broader operation and effectiveness of the act in clause 26 of the bill, whereas the annual reports are under clause 19, and all that needs to be reported on is the implementation of the act and the strategy. That is a far more limited examination of the operation and effectiveness of the legislation. If that was meant to be as broad as the minister says that it is, why are the words “implementation”, “operation”, and “effectiveness of the act” not included in clause 19 and reported on every year? I suspect we will get only the good news, none of the bad news and something relatively superficial. We will wait and see. Again, why is there a difference in what will be reported on? Why will the more substantial review on the operation and effectiveness take place at some stage within the next five years, rather than have at least some form of review of the operation and effectiveness every year that is reported on as part of the implementation?

Hon ALANNAH MacTIERNAN: Member, this is the biggest change that has occurred in procurement since 2002, so it has been a massive exercise and we want to get on with it. I point out that the bill provides that we must carry out a review, which I am advised must be completed before the fifth anniversary. I ask members to look at any other piece of legislation. Very few pieces of legislation pass through this place that are reviewed before their fifth anniversary. This review will be done earlier than the review of virtually any other piece of legislation that comes to this place.

We do not pretend that this is easy. If it was easy, I suspect that you guys would have done it. To turn around the culture and to inculcate this into government departments and, more especially, into government trading enterprises will be a big exercise. We are not going to win this war overnight. It is going to take us some time to do it and we do not resile from that. We understand that this is a challenging task. As I said, we have put this legislation at the front and centre of our government’s agenda. We will provide annual reports and no doubt the opposition will critique them, as is its role. At the same time, this review will be carried out before the end of five years. We think that is perfectly reasonable. At some point, we have to get on and try to get this into practice. It will not be easy. As members will know, turning the ship around is not easy, but this is the biggest change in procurement policy since 2002. We appreciate that there is a certain degree of scepticism because it is not easy to achieve these things, but we will work very hard to do it. We think that the time frames that we have put in place for review are far less than those we see for any other piece of legislation. We urge members to support us and let us get on with trying to make it work.

Hon MICHAEL MISCHIN: I thank the minister for the advertising speech once again, but it gets back to the question of why clause 19 does not mention a review of the legislation’s operation and effectiveness on an annual basis so that we can really see whether it is working the way it is intended to work, rather than waiting up to five years to find out whether it is operating effectively. Its implementation and the number of contracts and terms of those contracts will be reported on every year. Rather than monitoring its performance, its performance will be disguised until something like five years after it has been in operation. But having made that point and not receiving a satisfactory response, I have nothing more to say on this legislation. It is what it is and we will see whether it is misconceived and simply like its title—a slogan.

Hon ALANNAH MacTIERNAN: Members, as I said, we will be reporting each year. Members on the other side of this place quite rightly perceive their job to be analysing the performance of the government, so the idea that we will not be critiqued until after five years is demeaning to the whole role of the opposition and the crossbenchers in this place. We will put forward our reports. The opposition will analyse those and scrutinise them as, no doubt, the private sector will. There will be accountability and we expect that accountability to come through this place.

Clause put and passed.

Progress reported and leave granted to sit again, on motion by Hon Alannah MacTiernan (Minister for Regional Development).