

WESTERN AUSTRALIAN FUTURE FUND BILL 2012

Second Reading

Resumed from 18 September.

MR P. PAPALIA (Warnbro) [12.41 pm]: I understand the Treasurer is unwell, and he has a great deal of sympathy from me because I am feeling exactly the same way at the moment. I would suggest to my colleagues that they do not remain seated in front; it may get untidy!

Several members interjected.

Mr P. PAPALIA: It is not that bad! If I rush out quickly, the member for Armadale is ready to take my place.

The Western Australian Future Fund Bill 2012 is in many respects emblematic of the Barnett government's cavalier behaviour in respect of taxpayers' money, and its focus on stunts or spin at the expense of financial probity. Also, it is probably indicative of some of the struggles the government is confronting, beyond that that was on the front page of *The West Australian* today, associated with the loss of one of its intellectual heavy-hitters in the form of the former Treasurer, who is now no longer able to pursue advocating for what would have been a really difficult task even with him at the reins of the Treasury. Even with him at the reins, it would have been a challenging and confronting task to convince people after the initial announcement—after the initial flurry of activity and, in some quarters, enthusiastic reception to the initial announcement—of the future fund. After that it became difficult even for the member for Bateman, who is a very skilled salesman when faced with such a difficult task and who is capable of reaching out to the community, particularly media commentators, to convince people of the positive aspects of even really questionable government initiatives. But once he left, the wheels really did fall off.

We must also thank him for making a genuine and honest evaluation of the future fund during the estimates hearings, when he suggested that, effectively, it will cost more than it will make. It is incredible that the former Treasurer, who was the man at the helm at the time of the future fund announcement, should concede under questioning and scrutiny—a little more scrutiny than perhaps was given at the time of the announcement—in this place during the estimates hearings that by virtue of the necessity to only invest in certain places and be responsible about the investment, the likelihood of receiving an income from the money allocated to the future fund beyond the interest being paid on the debt associated with creating the fund is very low. The likelihood of actually having a net positive income is low. That begs the question: why would the government do it? Every neutral observer and every rational and reasonable assessment of the government's future fund has identified that it is being done at the wrong time. I understand that there may have been members of the cabinet such as the Minister for Planning who may have thought it was a good idea; I was present in perhaps 2007 when he made his speech when in opposition that suggested a sovereign wealth fund might be a good idea at that time, when we did have an environment conducive to creating a sovereign wealth fund. We had more revenue than we were capable of spending; more money was coming in than could be spent. We heard about the overheated environment from the former Labor government Treasurer; that was at a time when infrastructure could not be built fast enough to use the incoming revenue. There was an opportunity at that time, and with the creation of the Fiona Stanley Hospital account the previous government created a type of wealth fund that enabled it to set aside money to create a real asset. Conceivably, as argued by the then member for Darling Range and now Minister for Planning, the former government could have done that then. Unfortunately, the wheels turned so slowly within the current government that by the time decision was made to create this fund and the announcement made, things had moved on. The environment has changed so rapidly and significantly that it just does not make sense to allocate a significant amount of money to this fund through borrowing. I think the most colourful and, in many respects, accurate analogy drawn was that of the member for Mindarie, although I am inclined to appreciate the member for West Swan's brussels sprouts story. She told us that for many years her mum sold brussels sprouts at the side of the road, dedicating herself to creating a dowry for her beloved daughter and putting that money away in a chest.

Mr M.P. Whitely: Completely ungracious, she was.

Mr P. PAPALIA: She was fairly ungracious; I must say I have some sympathy for her mum!

Nevertheless, the member for West Swan's observation was that perhaps that money might have been better invested, rather than being put in a trunk somewhere and set aside, so that when it was opened a couple of decades later it might have actually represented something that had grown rather than depreciated. I accept that observation, but far and away the best analogy, in my view—the one that spoke so clearly to the most people—came from the member for Mindarie. He used the analogy of borrowing on a credit card to create a savings account. Everyone with a credit card knows that the interest paid on a credit card is far in excess of the interest rate received for any savings account; that simple explanation by the member for Mindarie says it all to the

people of Western Australia, and they understand that. They also understand that now is a bizarre time to be setting up a future fund; no-one can understand why we would borrow on a credit card to put money into a savings account, and receive less money than we would if we were paying off the credit card. It is just irrational; it makes no sense at all. The member for Mindarie said that if one of his constituents went to a bank and asked for a credit card, explaining that that was his intention, they would tell him to get off—what was the member for Mindarie’s term?—the whoopee weed, I think he said! That would be ridiculous; the person would be kicked out of the bank and the bank manager would laugh at him and send him on his way. The same thing would happen if the Treasurer of Western Australia were to walk into the bank and suggest that he was going to do exactly the same thing, which is what he is doing; it is bizarre.

Dr M.D. Nahan interjected.

Mr P. PAPALIA: I do not mind the member interjecting; I am just ignoring him. If he interjects and I happen to be looking at him, I may succumb to waves of nausea, so I would not interject too often if I were him!

Ms R. Saffioti: Like that episode of *Little Britain*!

Mr P. PAPALIA: That is not fair on Hansard! The offering of receptacles for my potential vomit is much appreciated, but I will push on.

Not only the member for Mindarie, the member for West Swan and the opposition have identified the flaws in the government’s plan; numerous other observers have as well. The Chamber of Commerce and Industry of Western Australia—that well-known leftist organisation!—has clearly stated that it does not make sense at this time to create a future fund. It would rather see investment in assets for the state that facilitate further growth and efficiencies in the economy; that would make sense. Just prior to the previous Treasurer’s now-notorious speech at a CCI breakfast, where he tried to sell the future fund, the CCI made comment on the issue in the public domain. An opinion piece written by Peter Kerr titled “CCI wants infrastructure, not future fund” appeared in *The West Australian* of 15 May and reads, in part —

Ensuring the State squeezes the most out of the mining boom by investing in ports and roads should be the Government’s priority rather than a future fund, WA’s main business lobby group says.

The article states —

State debt on latest trends is estimated to rise to about \$24 billion and the CCI says this will limit regular contributions from the Government that are essential to give the fund critical mass.

That is true, and the government has conceded that. There is no way, under the current circumstances, that the government can achieve critical mass within this fund to make it worthwhile, so it is irrational for the government to continue pushing on with it. We know why the government is pushing forward with it; this has come about through the Premier’s impetuosity. His standard decision-making process appears to be to drive around the city in the back of his chauffeur-driven car, gazing wistfully out the window, waiting for moments of sharp clarity to arrive in the form of a message from above or wherever.

Dr A.D. Buti: But only in relation to the CBD.

Mr P. PAPALIA: Yes; the radius within which the Premier makes his decisions is about five kilometres from the middle of the CBD, or less.

We saw that happen with the stadium. A considered, well-funded and independent task force deliberated for some time and determined that the most appropriate site for a new stadium in Perth was Subiaco. The Premier threw that out the window and abandoned both that recommendation and the second recommendation by the same task force, which was to build the stadium at East Perth, and instead went with the option that was rejected by that considered task force process because he knew better. When he makes decisions based on that sort of flimsy process, he incurs considerable costs to the people of Western Australia. He then enters into a state of denial about the additional cost and refuses to accept that by having his way and building a monument to his own ego, he has imposed incredible costs to future generations of Western Australians in the form of interest payments on loans. However, he also imposes an opportunity cost on the current generation. It is undeniable that if the Premier chooses a site for a stadium or any other great monument in the centre of the CBD that costs hundreds of millions of dollars more to the taxpayer than an alternative that would be just as suitable and would just as easily and appropriately meet the purpose intended, it means that our opportunities right now have been limited. We will not have the opportunity to use those funds for investment in things that might make life better right now and into the future.

There is a further opportunity cost. We could be talking about potentially taking half a billion dollars or more; we do not know. The government refuses to identify how much the stadium and many of its other projects will cost. It is refusing to include those costs in the budgetary process, so they cannot be analysed in a fair and open

manner. However, when the government takes that quantum of money out of the source of funding for other potential activities, it is further constraining the economy because it is not investing in projects such as the opposition's proposed investment in more and better public transport in the suburbs to enable people to get into the CBD, do their work, and go home again, and also to move around the city in a more efficient manner. Instead, we are experiencing increasing traffic congestion, and that constrains the economy even further, so there is a double jeopardy in respect of opportunity costs. There is the opportunity cost of not spending on something that might be beneficial right now and into the future, but there is also the opportunity costs associated with worsening conditions for going about one's daily business. That will impact on small business people and commuters who work in businesses around the city; they are constrained in their ability to get around, and that has a cost.

An article that appeared on the Royal Automobile Club WA's website on 31 August, titled "RAC and CCIWA reveal Perth's congestion crisis" cited a survey of RAC BusinessWise customers and CCI members, jointly conducted by the RAC and CCI. That cost is identified in the article as a real cost; it does not link it to the future fund, but the CCI has already done that. The article states, in part —

Perth's growing congestion is slicing into the profits and productivity of WA businesses, with 90 per cent of businesses saying the amount of time their workers spent on the road had increased in the past year.

...

84 per cent of the 400 surveyed said traffic congestion is having a negative impact on their business. Two in five businesses reported turning down new work opportunities because of congestion and one in four said they had lost work.

How do we respond to that? We do not respond to that with PowerPoint projections, glossy photos and announcements that make some very vague references to potential costs, just to get into the Sunday paper and on Sunday night television. That is apparently the government's *modus operandi* and appears to be its only intention—to get itself into 24-hour cycles of announcements with no substance behind them. That is not how to respond. It does not deal with the issues that are happening right now. Mr Speaker, may I have an extension, please?

The SPEAKER: Only if you can guarantee me, member that you are fit to proceed!

Mr P. PAPALIA: There are no guarantees in life, Mr Speaker!

The SPEAKER: Another 10 minutes are granted, member.

[Member's time extended.]

Mr P. PAPALIA: I will push on; I will have a go.

Wherever it can, the government must identify opportunities to invest right now in infrastructure or transport to reduce congestion and facilitate business being conducted now, to facilitate growth and to make people's lives easier in the suburbs of Perth. People are wondering about this government's motivations. They see an increasing number of monuments to the Premier's ego being constructed within a short radius of the centre of the central business district and very little happening out where people live. The further we move from the CBD, the less we get from the Barnett government. There is a direct link between actions such as creating this future fund when it is inappropriate to be using borrowed funds that will ultimately have a negative impact on the state's financial situation and constrain our ability to respond to real challenges right now, such as congestion and the difficulty of getting around in the suburbs, and restricting government's ability to provide basic services in the suburbs. My electorate is a classic example because it is at the furthest reach south of the metropolitan area. It is at the other end of the freeway where anyone travelling from there to the city or back is confronted by congestion challenges. It is serviced by a magnificent southern railway network now as a result of the actions of the previous Labor government. But that is becoming constrained by greater demand than can be met through the infrastructure that has been provided since that government left office. People out there are asking: why are we creating this future fund when in Golden Bay the government is putting in another 4 500 homes in a new development that the government is running? It is the Department of Housing's and the Treasurer's own baby. They are creating this added congestion and this new population with its own service demands. Why are we putting money into this future fund for 20 years when we need a school at Golden Bay? The three primary schools in the surrounding area are already well beyond capacity. The Comet Bay Primary School, which is within a kilometre of Golden Bay, has 1 094 children, which grows at the rate of 100 to 200 students a year, depending on how many Brits come out for the mining boom. Secret Harbour Primary School has in excess of 600 students and Singleton Primary School has in excess of 700 students. Those three primary schools are already well beyond their capacity. There is a site in Golden Bay but no announcement has been made by the

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government about an allocation of funds for a primary school to meet that growing demand right there. It is a primary school.

The same communities in that area are wondering why we do not have a police station. It is a pity the Minister for Police is not here. I would have liked to personally extend an invitation to her to hold her second police forum in my electorate. I know the Commissioner of Police has been to Rockingham, and that saw the demise of the last round of public forums. It is a very sensitive issue. I, personally, did not see the event hijacked by politicians. There were three members there towards the end, and they asked one question each. That aside I would love to have extended—I will do—a personal invitation to the new police minister to come down to the electorate of Warnbro and meet constituents in the southern half of Rockingham, and probably some from the northern part of the Mandurah electorate, who live in a vacuum of adequate policing. That lack of policing is not as a result of any lack of service or drive on behalf of the police; everyone has great admiration for the police, but they are under-resourced and are physically located in the wrong place to service that area. In the order of 40 000 to 50 000 people reside in the southern suburbs of Rockingham, in the eastern suburbs in Settlers Hills, Baldivis and Karnup and in the northern suburbs of Mandurah, Lakelands and the coastal strip, who are geographically a long distance from the hubs of Mandurah and Rockingham. There has never been an adequate explanation for that lack of policing. I suspect the explanation is that there is not enough money. That is because we are putting money into things such as this future fund and projects that are great monuments to the ego of Premier Barnett in the centre of Perth city, such as a stadium that may cost half a billion dollars or more—who knows—than alternatives. We are putting money into those sorts of projects that pander to the ego of the Premier but do not provide much in the way of response to the immediate problems confronting people on a daily basis in the outer metropolitan area. We could extend the “outer metropolitan area” to a very short distance from the CBD because if we do not live in the middle of the CBD, we are not getting much.

Other services to that area are inadequate and I take this opportunity this afternoon to read—not something I have written—to the house and into *Hansard* an observation made by three residents’ associations in the southern part of my electorate, which is outer metropolitan. It is a classic example. This is the message we want to convey to the Barnett government, especially the Treasurer, that while he is concentrating on things that are largely irrelevant, other than the significant cost to the vast majority of people in Western Australia, serious issues in the suburbs of Perth and in the regions of Western Australia are not being addressed. In many respects, this letter probably articulates that far better than I could possibly do. It is signed and co-signed by the president of the Golden Bay Progress Association; the president of the Secret Harbour Residents Association and the president of the Singleton Residents Association. Those three suburbs represent the southernmost tip of the metropolitan area before entering the regional seat of Mandurah. Those people wrote to the Premier on 10 September in despair at the manner in which they have been treated over the Barnett government’s Golden Bay development. I am introducing it to this debate because it represents what could be the focus of the government were it not focussing on questionable and largely irrelevant activities such as a future fund to get itself into part of a news cycle or portray itself as somehow being more responsible than it really is or creating some monument to the Premier’s ego rather than dealing with the concerns of communities in the suburbs. This letter was written to the Premier and is titled “High Density Housing and Lack of Infrastructure in Golden Bay Development”. It reads —

The planned development for high density housing in Golden Bay has been approved by the WAPC and is proceeding without the necessary support infrastructure such as schools, transport or police as identified by community consultation.

This flies in the face of every comment made by the Premier regarding the necessity for provision of infrastructure for new developments.

People in the southern part of Rockingham are very astute; they get straight to the nub of the point. The letter goes on to outline a very sound argument for why there should be provision of proper services, why the community should be consulted and why the development should not push ahead in the current planned manner without appropriate resources being provided to the area. I will skip part of the letter and read what it states near the end —

It is evident that the Local Government and community groups may express well founded views for change but developments will go ahead regardless according to the Government’s political and social agenda.

History has shown that such poorly planned developments will not be beneficial to the people requiring it or the community at large.

The Premier’s previous statements indicate he is aware of this fact.

The Golden Bay Progress Association, Secret Harbour Residents Association and Singleton Residents Association have joined forces in protesting this development.

That the State Government continues to ignore the community's views regarding this development demonstrates an authoritarian and imperial attitude that is both worrying and typical.

As I said, the residents in the southern part of Rockingham are very astute. The reality is that the emperor's lack of clothes is becoming evident to more and more people as the days go by. It is increasingly evident that the Premier's decision-making process lacks any substance. As a consequence, the plans he is proposing, the costs he is incurring and the opportunity costs that the state is missing are multiplying. More and more people are becoming aware that they are missing out on the basic services and supports that they would have expected the state government to provide because the Premier, his ministers, cabinet and the entire government are more focused on building monuments to the Premier's ego in the central part of the CBD at the expense of everybody else, who are confronted with the consequences of that on a daily basis. We see the congestion and we see businesses doing it tough. Increasingly, those businesses are doing it tough in the normal environment within which they operate, but their lives are being made even more difficult because there is no concerted effort by the government to reduce the impact of congestion and the challenges people confront as a result of the growth in population and the demands on our transport infrastructure, both in the city and the suburbs. Regional communities that have had very little in the way of infrastructure support are also confronting challenges. We see a lot of glossy promotion material, a lot of ribbon cutting and flying around the state in the government jet by the member who aspires to represent the people in the Pilbara to ensure that he gets an opportunity to put his face on the television and be reported in the local paper and on the local radio. We see a lot of that but we do not see much in the way of repairing and improving major infrastructure such as roads and ports that the Chamber of Commerce and Industry of Western Australia has said should be the focus of the government.

This future fund is being established at the wrong time, it was done for the wrong motivations and it is increasingly becoming a millstone around the neck of the government. I can only wonder how the Treasurer hopes to try to rectify the disdain with which the majority of Western Australians, and an increasing number of Western Australians, view this project. Very little consideration was given before this was implemented.

DR A.D. BUTI (Armadale) [1.13 pm]: I rise to contribute to the debate on the Western Australian Future Fund Bill 2012. Looking at the Treasurer, I am not sure about his immediate future; he looks very sick and I sympathise with him. I want to make some comments on the policy and merits of the so-called future fund bill and then move on to some of the legal issues that were traversed yesterday by the member for Victoria Park. In the member for Victoria Park's response to the budget when the future fund was first announced, the member said that this was just like the ABC series *The Hollowmen*. That reference resonated; the government has tried to come up with a visionary statement to show that the Premier has a vision for the future. The budget was announced by the former Treasurer, the member for Bateman, who has decided that he will make his political future in Canberra. I wonder whether the former Treasurer, if he were the Treasurer today, would have brought a bill before the house that has major legal questions that need to be answered, which I will get to in a minute.

As was mentioned by previous speakers, it is interesting that we have a future fund that seeks to entrench the future fund legislation for at least 20 years but that no such apparatus was installed for the royalties for regions funding. The way the royalties for regions funding is entrenched is through political will. It is done during the election process when the political parties go to the election and state their policies on royalties for regions. That is how to safeguard an economic situation. The government should not try to entrench this legislation in a way that is constitutionally invalid, which I will talk about shortly. Members have spoken about the absurdity of creating a future fund at this time when we have so much demand and need for infrastructure and other government services. When the Treasurer is able to keep his promise to visit my electorate—it will not be today; I do not think he will do anything today because he is looking very, very sick—he will see in Kelmscott the desperate need for infrastructure funding for the Davis Road underpass. The member for Darling Range can attest to the bottleneck created by traffic trying to move from east to west or west to east across Kelmscott. The only option at the moment is to use Denny Avenue. Unfortunately, the railway crossing is very near the Kelmscott station so the boom gates are down more than they are up, which creates a bottleneck. The solution, of course, is to build the Davis Road underpass, which was costed at around \$50 million a couple of years ago. That project desperately needs to commence.

Also, money needs to be spent generally in the hospital system as well as on infrastructure. This morning I received an unsolicited email from Jennifer Maplesden, which I would like to read. It states —

Hello Tony,

I would like to say that the staff that looked after me in Freo hospital were fantastic esp the nurses that I had on the day of my Op. But the short stay ward was really a down fall for the hospital with only one toilet and shower on the ward it was not the good part of it. The shower has no screen and the floor

floods as it's not able to drain properly so the whole area floods when you take a shower. If there is some one sick in there or makes a mess in the middle of the night there is only the nurses to clean it up. That night there was only two Registered nurses on, the ward and they had to forgo their break time until someone came up and re-left but that night there was no other registered nurse available so they sent up someone that could only check obs not hand out medication. Sorry but Mr Barnett you need to help the hospital system now not make more cuts to things that the People of Perth and Western Australia need. On the 11th of September 2012 there were problems as someone was sick in the only bathroom in the ward ... and that bathroom has to be used by male and female patients and that night there were about 14 people staying and there were the problems with water all over the floor and someone taking it out of action because of being sick in there. Our nurses are NOT CLEANERS they are there to help the Patients not to Clean ... so please do something about it soon ... Myself and others who had just been in for operations had to go off the ward to go to a PUBLIC Toilet. Less Stress for the staff and Patients please ... Something has to be done and soon ...

I responded by thanking her for the email and she responded shortly after —

Thank you for your quick response ...

I am so glad that I have had my operation now even after waiting on the Fremantle hospital Wait list for just over 18 months and on Armadale hospital wait list before Fremantle for nearly 12 months before that, so nearly 3 years just to get my Gall bladder out ... and the Fremantle hospital ppl asking me if I still needed the operation only about 4 weeks ago even when I had an operation date.

Also, recently an announcement was made at Armadale hospital that all non-elective surgery that required an overnight stay would be put on hold until 16 November. It was then stated that each doctor could perform only one operation per day. After much advocacy and agitation, the hospital has now reversed that decision. But that shows that the need for the government to properly fund government services, and to look at the various infrastructure needs of our state, is so huge that to talk about putting resources into a future fund is absolutely absurd.

The policy merits of this bill should be called into question. But we need to look also at the quality of this legislation. One thing that we have to say about the Barnett government is that it is not very good at legislating. The number of bills that the government is bringing into this house that have been poorly drafted and thought about is increasing day by day. A classic example of that can be found on the front page of today's *The West Australian*, which reports the former Minister for Police, the member for Hillarys, as saying that he cannot support the Corruption and Crime Commission Amendment Bill that is before the house—and rightly so; of course he cannot support the CCC legislation that is before the house, because it is an absurd piece of legislation. The legislation that is before us now is also an absurd piece of legislation.

Yesterday, the member for Victoria Park, in leading this debate for the opposition, spent a considerable amount of time talking about the constitutional validity of the bill before the house, particularly the manner and form provision in clause 10. I think the Treasurer was shell-shocked to hear that, and maybe that is part of the reason that he is very sick today; I am not sure. But I think the Treasurer might benefit from a repeat lecture. As members would know, at university, often there are repeat lectures. I have to say that probably there are as many people here today as would attend a university lecture, because lectures are recorded, and people generally do not attend lectures now—and generally they pay about as much attention as members are paying to me as I am speaking! But it is important to talk about this issue, because apart from the pros and cons of the policy argument with regard to a future fund, we need to look at the quality and the legality of the bill that we are being asked to vote on. So, in many respects it is irrelevant to look at the policy objectives of the bill, because the bill is fundamentally flawed, as the member for Victoria Park talked about, because of the manner and form provision in clause 10.

It would have been good if I had been able to give a PowerPoint presentation on this next point that I want to raise, but I do not think that would have gone down that well today. I want to give members an overview of the constitutionality of state Parliaments. State constitutions differ from the commonwealth Constitution, because they are much more flexible. They can be amended easily through the normal process and do not require specialised processes, such as the holding of a referendum, as is the case for the commonwealth Constitution. However, it would be wrong to say that Australian state Parliaments are not subject to external limitations on their legislative capacity. For instance, the imperial limits that are placed on state Parliaments revolve around the doctrines of repugnancy and extraterritoriality. The federal limitations are as a result of the commonwealth Constitution. The commonwealth Constitution places multiple limitations on state Parliaments. These can be categorised in the following three ways. There are, of course, powers that are exclusively within the legislative domain of the commonwealth Parliament, such as the defence power. There are also express limitations on the legislative powers of the states, such as states cannot impose taxes on properties that belong to the

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commonwealth. There are also implied limitations as a result of section 106 of the commonwealth Constitution, which provides that state constitutions are ultimately subject to the commonwealth Constitution.

There has also been argument and discussion about whether the term “peace, welfare and good government” imposes a limitation on state Parliaments. This question was discussed in the High Court of Australia in what is known as the BLF case—Building Construction Employees and Builders’ Labourers Federation of NSW v Minister for Industrial Relations—and it was determined that the term “peace, welfare and good government” did impose a limitation on state Parliaments. However, a subsequent case in the High Court—Union Steamship Co of Australia Pty Ltd v King—basically determined that the term does not impose a legislative limitation on state Parliaments.

There is also some argument that there are some deeply rooted limitations on state Parliaments due to our democratic system and the common law that we inherited from the British Parliament. The High Court case of *Durham Holdings Pty Ltd v New South Wales* determined that state Parliaments are limited from abrogating rights that are deeply rooted in the democratic system and the common law. But, in any event, these external limits on states’ legislative powers, whether they are colonial or federal in origin, are relatively peripheral. The legislative power of state Parliaments for practical purposes is unfettered. By contrast, as I mentioned previously, the federal Parliament has greater restrictions on its power to legislate due to the commonwealth Constitution, which contains a list of enumerated powers; and it is only if a power falls within that list that the commonwealth Parliament has the power to legislate. State Parliaments do not have that limitation.

State Parliaments basically are the closest Australian examples of the doctrine of parliamentary sovereignty that we inherited from the British Parliament. As was mentioned yesterday by the member for Victoria Park, the idea of parliamentary sovereignty has a great champion in Dicey. The classic formation of the doctrine of parliamentary sovereignty as proposed by Dicey was that the sovereignty of a sovereign Parliament is limited by the doctrine that it cannot bind its successors. So, a current Parliament cannot bind a future Parliament. It is interesting, as the member for Victoria Park mentioned, that we have a conservative government that is seeking to bind a future democratically elected Parliament. Conservative governments have generally been champions of parliamentary sovereignty and also of the Dicey theory of parliamentary sovereignty. But in this bill we have an attempt—may I say a poor attempt—to try to bind a future Parliament. What this government is saying is, “We won’t worry about the wishes and desires of the people at a future election with regard to the future fund. We, the elected government of today, as a result of an election in 2008, have the right to override the wishes of the people”—because, remember, Parliament is the representative of the people of Western Australia—“whether that be in 10 years or in 15 years.” That is an absurd position, and it is completely contradictory to conservative political thinking. How the Treasurer formed this idea of the manner and form entrenchment that is seeking to bind a future Parliament and therefore bind the wishes and desires of the people of Western Australia, whether in five, 10, 15 or up to 20 years, is really a mystery to me. It will be interesting to hear a response from the Treasurer as to why he has gone down this route. If the Treasurer and the government are confident that this is good policy, they should not have to worry about a manner and form provision, because the political process will play itself out, as royalties for regions has done. The royalties for regions legislation does not have a manner and form entrenchment. That legislation will be determined through the political process. So, if the Treasurer and the government are confident that this bill is good policy, they should let it be tested by the people and by the parliamentarians in the future, rather than seek through this legislation to bind future parliamentarians. The attempt to bind future parliamentarians will fail. As was eloquently articulated by the member for Victoria Park yesterday, the manner and form provisions of clause 10 will be found to be constitutionally invalid.

I will now move on to the manner and form provision and its limitations. There is no doubt there is an ability to have a manner and form provision in state legislation.

[Member’s time extended.]

Dr A.D. BUTI: The historical genesis for the manner and form limitation lies in section 5 of the Colonial Laws Validity Act, which has now been re-enacted in section 6 of the Australia Act 1986. The Australia Act was the final legislative process that stated that Australian Parliaments are independent of the British parliamentary system. There is legislative authority to impose a manner and form provision, but it is very important for members to realise and for the Treasurer to understand the phrase, “respecting the constitution, powers or procedure of the Parliament of the state”. The only possibility to have a valid manner and form provision is to have a law “respecting the constitution, powers or procedures of the Parliament”.

Mr B.S. Wyatt: Member, it is the amending law so defined.

Dr A.D. BUTI: Yes, member for Victoria Park, it is the amending law. It is clear that section 6 of the Australia Act gives effect to the manner and form requirement, and not just for the Constitution Act, but as long as a law

respects the constitution, powers or procedures of the Parliament. But it is obvious that the Western Australian Future Fund Bill 2012 is not a law “respecting the constitution, powers or procedures of the Parliament”.

Mr B.S. Wyatt: Nor will a future bill to repeal or amend the WA future fund act be considered that.

Dr A.D. BUTI: That is because the government needs to look at the substance of the law, otherwise every manner and form provision would be valid if we did not have that rider or test. The actual test has to relate to the amending legislation “respecting the constitution, powers or procedures of the Parliament”. The member for Victoria Park quoted Professor Anne Twomey, who is one of Australia’s premier scholars in the area of manner and form of state constitutions. I am not sure whether the member for Victoria Park quoted this part of one of her articles, but as I said this is a repeat lecture so it will not matter.

Mr B.S. Wyatt: The professor has written prolifically, so I dare say you found something else.

Dr A.D. BUTI: That may be the case; I am not sure. Professor Twomey states —

The first point to make here is that the ‘constitution, powers or procedure’ test does not apply to the ... ‘entrenched provision’ (i.e. the provision that the manner and form requirements protect from ordinary amendment or repeal). The test is whether the law that purports to amend or repeal the entrenched provision is one respecting the constitution, powers or proceedings of the Parliament.

The last sentence refers to respecting the constitution, powers or proceedings of the Parliament. What do we mean by the “constitution, powers or procedures of the Parliament”? Of course, it has to relate to the Parliament, and if it has some relationship to the Parliament, we then need to ask what we mean by the “constitution, powers or procedures”. As mentioned by the member for Victoria Park, WA cases have dominated the jurisprudence in this area and the case of Attorney General (WA) v Marquet, who of course was an officer of this Parliament, involved amendments to the Constitution Acts Amendment Act 1899 and the Electoral Act 1907. Those acts dealt with extra members in the Legislative Council and also electoral distribution. It was held by the High Court that electoral distribution and extra members of Parliament dealt with the Parliament and the constitution of the Parliament and therefore the matter and form provision was valid. However, the earlier case of Yougarla, in which the plaintiffs were a group of Aboriginal elders in the Pilbara region, dealt with whether the state was under a continuous constitutional obligation to set aside an amount of one per cent of annual public revenue for the benefit of the Indigenous population of the state. That obligation was derived from section 70 of the Constitution Act, which came about at the time of responsible government because the imperial government did not have confidence that the colonial Parliament of Western Australia would properly take care of the welfare of the Indigenous population of Western Australia.

Mr T.G. Stephens: They must have foreseen that there would one day be a Barnett government.

Dr A.D. BUTI: I think they did, member for Pilbara. They could see into the future!

Of course, that matter dealt with the constitution of the Parliament, so there was a valid manner and form entrenchment provision. In order to amend section 70 of the Constitution Act, which at the time stated that one per cent of annual revenue had to be spent on the Aboriginal inhabitants of Western Australia, there was a certain entrenched manner and form provision that had to be followed. There was an issue in this case of whether that procedure had been followed. Ultimately, it was held that, at least in 1905, the procedure was followed, so there was no continuing obligation, at least from 1905 onwards. However, it is quite logical to connect the fact that section 70 of the Constitution Act requiring that one per cent be held for the benefit of Aboriginal people was a matter that dealt with the Parliament and the constitution of the Parliament; therefore, we could have a valid manner and form provision. What do we have before us? We have a bill that has nothing to do with the constitution of the WA Parliament or the procedures of the WA Parliament. It is an economic issue, and may I say that it is an economic issue that does not have much economic merit; nonetheless, it is an economic issue. If I recall, yesterday the member for Victoria Park asked the Treasurer whether he had advice—I think from the Solicitor-General—on this. It will be interesting to eventually hear from the Treasurer whether he does have advice from the Solicitor-General that there is a valid manner and form provision in this bill before us. I would be very surprised if the Treasurer can produce an opinion that is dated before 18 September. You never know, the Treasurer might have rung the Solicitor-General yesterday and asked for an opinion, but if there is such an opinion, I wonder whether he had that opinion when he brought the legislation into the house. I must say that I doubt it. However, it remains to be seen, and it will be interesting to read that opinion, if the Treasurer does have that opinion, because the jurisprudence on this is against the Treasurer.

Mr T.R. Buswell: In your view!

Dr A.D. BUTI: Yes, in my view, and I must state that I do not have the Treasurer’s resources. The Solicitor-General, of course, is a man of immense intellectual capacity, but the legal precedents, the theory and the

scholarship on manner and form, I think, will support the view that was expressed by the member for Victoria Park yesterday and that I have restated in this repeat lecture today.

Several members interjected.

The ACTING SPEAKER (Ms A.R. Mitchell): Members, could I just remind you that the member for Armadale has the call.

Dr A.D. BUTI: That is right.

In regards to the specific manner and form provision, as Professor Twomey said, we have to characterise the law according to its substance, so we have to look at the substance of the law. In the same article she goes on to say that if, in substance, it is not one with respect to the constitution, powers or procedure of the Parliament, then it is an incidental application to amending or repealing a purported manner and form requirement and, therefore, it would not be considered to be a valid manner and form entrenchment provision and it would not be a law respecting the powers of the Parliament. As I stated previously, this proposed entrenchment provision before us, which is clause 10 and seeks to entrench clauses 6, 7, 8 and 9 of the bill, is not a valid manner and form provision. It is quite easy, actually. While the jurisprudence around manner and form is difficult, it is actually quite clear here. I would say that it is impossible to characterise that the manner and form provision here, which seeks to entrench a future amending bill, has anything to do with the constitution, powers or procedures of the Parliament of Western Australia. It is absurd that we have a conservative government that normally would be in lockstep with the principle that Dicey enunciated many years ago that a current Parliament cannot bind a future Parliament. Of course, that is paradoxical in some sense, because if that cannot be done, the sovereignty of the current Parliament is being limited because it is being said that it cannot actually bind a future Parliament. But that is the price we pay for parliamentary sovereignty and that is the price that we pay to allow the will of the people of the time they elect their parliamentarians to have its say. What this government seeks to do, which I think will fail, is to bind a future Parliament of Western Australia, which would therefore not be able to fully represent the views and wishes of the people who elect members at any election within the next 20 years. I think the Treasurer can save face by coming back to this house with an amending piece of legislation that deletes this entrenchment provision, this manner and form provision, in clause 10. It will not be constitutionally valid and it is also against conservative parliamentary sovereignty theories, and therefore the Treasurer should not be associated with it.

MR T.G. STEPHENS (Pilbara) [1.43 pm]: We are dealing with the Western Australian Future Fund Bill 2012 and although this bill is titled to be dealing with the future and our second reading debate is trying, in a sense, to look into the future as to how this bill, if enacted, would play itself out, that should not have us ignorant of the past. If we are not alert to a history and the history of this government and the personalities that have brought this bill before us, I fear that we, as a Parliament, are faced with the prospect of simply repeating some of the mistakes of the past and some of the futility of the past actions of the current government, and the personalities of this government when they have been in previous governments. I will flesh this out in some detail, but I am particularly conscious that this falls into what I would consider to be a long series of catastrophic mistakes being delivered by Premier Barnett and his government, which are consistent with the delivery of catastrophes that he has had in his pursuit of public office in the state.

I have been in this place long enough to have watched some of those early catastrophes of the past that throw light upon any consideration of bills such as the Western Australian Future Fund Bill. I remember only too well the decision taken by Premier Barnett when the government effectively privatised the Ord hydro scheme to deliver to the present, and definitely into the future, the high cost of energy to that region of Western Australia, which plays havoc with the power supply and prices to the Argyle diamond mine, and that places the whole economics of that infrastructure at risk. I have been in the Parliament to watch the Premier's failed stewardship with the education department, where budgets meant nothing, forward estimates were irrelevant, budgets were allowed to blow out and it was all somebody else's problem to resolve. It actually led to the development within the government of the day of the "anyone but Colin" faction—the ABC group. They would have had anyone but Colin to replace Richard Court as Premier because they remember what a catastrophe this bloke was. This is the Premier who now delivers us the future fund bill and who previously delivered to us the hot briquetted iron plant in Port Hedland, which discharged from BHP Billiton its obligations to do any downstream processing in return for not having an obligation to continue to operate our HBI plant in the future but just for starting one. It then blew up, was partly shut down and has now been demolished, and that was the end of BHP Billiton's downstream processing obligations in reference to iron ore. This Premier, who delivers us the future fund bill, delivered to us the vision for the Oakajee project and his meddling with that project. This is the Premier who has delivered us all the catastrophes associated with Ord stage 2. This Premier, now delivering us the Western Australian Future Fund Bill, is the bloke who took away from the table the strategy for attracting funds for the Pilbara power grid that would have come largely with funds from the commonwealth's infrastructure funding, which would have delivered to that Pilbara region the capacity for the golden goose up there, if we like, to

continue to lay those eggs that would have been of benefit, hopefully, for the people of the Pilbara, but certainly for the companies trying to exploit the Pilbara, and hopefully to the people of Western Australia and beyond. The Western Australian Future Fund Bill comes in the context that I am describing—that is, project after project and initiative after initiative of this Premier that have been nothing short of a disaster. Not all of them have been. He is doing very well with the palace around the corner; the palace is growing by the day. But we cannot help but look at a future fund bill without also looking at the context in which it has been delivered, and that is that context I believe I have now dealt with.

I now want to deal with some other aspects of a bill such as this. The inspiration for it, in part, comes out of looking at other models, one would have hoped, around the globe. This chamber in the past has heard a lot of discussion about a similar fund, which was known as the Alaska fund. But what distinguishes the Alaska fund from the one we are debating goes to the heart of the debate in this chamber to this point; that is, the Alaska fund was dealing with the arrival of, if we like, windfall gains into Alaska as a result of the carriage of vast quantities of oil and gas across Alaska, which delivered the opportunity for massive amounts of funds. The Alaskan people and the Alaskan government knew that those windfall gains could be quite easily spent, and potentially misspent, on the present without sufficient regard to the future if the fund was set up so that it was up to the whim and fancy of the government of the day. So what did they do? They embedded that fund in the constitutional provisions of the state of Alaska. Constitutional amendments were delivered to the legislature and Alaska's permanent fund has delivered through that process.

If this government is about something of substance, it would look around the globe. What jumps out, and what we have heard a lot about in past debates in this place, is that we know how to do it. The only way to protect the windfall gains which are flowing to this metro-centric Barnett government from the extraction of vast quantities of resources out of regional Western Australia is through a constitutional amendment. We know this by looking at what has gone on in Alaska. I am delighted that the previous speaker, the member for Armadale, made some reference to the one per cent provision contained in our Constitution when we acquired responsible government back in 1890. The Westminster Parliament delivered a Constitution that would effectively entrust the colony of Western Australia with the opportunity to govern itself. Excluded from the purview of the government of the day was any responsibility for Indigenous people because, quite frankly, they did not trust the colony of Western Australia with Indigenous people. Instead, section 70 of the Constitution required that those affairs be run effectively by Westminster. It required that one per cent of the colony's wealth generation be spent to the benefit of Indigenous people. That was immediately ignored by the colony upon the establishment of responsible government. The colony never did what it was supposed to do, and Westminster never stood up to it. There was a provision within that constitution that eventually played itself out in 1905. We cannot look at a bill like the Western Australian Future Fund Bill and ignore this history. If we look at a bill like this as though it just emerges out of nowhere, that is based on nothing and draws on none of the lessons of the past, we are destined to repeat the mistakes of the past. Despite the way our Constitution was set up, because Westminster chose to ignore the failure to honour the Constitution and because no-one pursued those processes through the legal channels of the time, it was not until 1905 that the colony—by that stage the state of Western Australia—was successful in getting the amendments that protected the state from having to set aside one per cent. There is still an argument about what went on from 1890 to 1905. Why do I know a little about this issue of such things as the future fund? It is because almost on the day that I was elected to Parliament I was subjected to constant lobbying by a Pilbara resident at the time —

Mr M.P. Whitely: It wasn't because you were here in 1905?

Mr T.G. STEPHENS: You're an unkind man, member for Bassendean!

It was the famous man Don McLeod who lectured me chapter and verse upon how important constitutions are in protecting the financial interests of people for whom funds have been allocated. He pursued that case right up until his death on behalf of what he called the beneficial owners of Western Australia, the traditional owners —

The ACTING SPEAKER (Ms A.R. Mitchell): Member for Pilbara, I hope you will come to —

Mr T.G. STEPHENS: If you're concentrating, Madam Acting Speaker —

The ACTING SPEAKER: I am concentrating very hard, but I would like you to come to this bill.

Mr T.G. STEPHENS: I am spot on with this bill; absolutely spot on.

The ACTING SPEAKER: I understand the background. I am very pleased that you will be moving to it very quickly.

Mr T.G. STEPHENS: I am absolutely spot on with this bill, Madam Acting Speaker. I have more confidence on this than I have had on almost any other thing I have spoken on in the house. I would encourage you not to go down that path.

Extract from Hansard

[ASSEMBLY — Wednesday, 19 September 2012]

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Mr Paul Papalia; Dr Tony Buti; Acting Speaker; Mr Tom Stephens; Mr Ben Wyatt

The ACTING SPEAKER: I would like you to move there quickly, please.

Mr T.G. STEPHENS: Don't go down that path; I encourage you not to. It is absolutely germane to the task of looking at a future fund bill like this to understand our past. For those in this chamber who do not want to look at our history, they will force Parliament to repeat the mistakes of the past about which I am just speaking. If we do not —

The ACTING SPEAKER: Member, would you take a seat, please. A full seat; thank you.

Mr T.G. STEPHENS: I am sorry, I did not hear.

The ACTING SPEAKER: Into your complete seat; thank you.

Member for Pilbara, you have given some wonderful background but I have asked you to move to the content of the future fund bill. That is what I have asked you to do.

Mr T.G. Stephens interjected.

The ACTING SPEAKER: Member for Pilbara, I call you to order for the first time today.

Mr T.G. Stephens interjected.

The ACTING SPEAKER: I beg your pardon, member for Pilbara? I am on my feet. You may want to withdraw something.

Mr T.G. Stephens: I don't.

The ACTING SPEAKER: In that case, I call you to order for the second time today.

Point of Order

Mr B.S. WYATT: Could Madam Acting Speaker perhaps explain to the house what it is that the member for Pilbara is to withdraw?

The ACTING SPEAKER: While I was on my feet and speaking, the member for Pilbara continued to speak.

Mr B.S. WYATT: I am curious about the withdrawal.

The ACTING SPEAKER: He chose not to withdraw something—that is fine; I accept that. But at the same time he was speaking while I was still on my feet.

Mr B.S. WYATT: So that is the issue; right—not an unparliamentary issue. That is what you have to withdraw.

Debate Resumed

The ACTING SPEAKER: Member for Pilbara, do you wish to continue?

Mr T.G. STEPHENS: I do. I make this point absolutely firmly: the house, in consideration of the Western Australian Future Fund Bill, is absolutely entitled to look at the history of Western Australia in the handling of issues like this in its distant past and its recent past before it rushes to pass this bill. That is why I will stand in this place very defiantly arguing the case for why Parliament should look to its past and understand its past before passing a bill like this. Otherwise, this Parliament will repeat mistakes of the past if it does not have regard to those issues as it looks at this bill.

I have been in this house long enough to know that when I am speaking on an issue like this, members might not like my view. There have been times when I have spoken for 11 hours at a time to make sure Parliament understands the problems it faces. Other parties might get excited about this issue from time to time; nonetheless members might not like it but they will have to listen to it. In our past, in handling issues such as section 70 of the Constitution, mistakes were made. Problems emerged that did not deliver in the best interests of Western Australians.

The Alaskan government, when faced with the windfall gains of that period, recognised that the only way to protect a future fund was to embed it in the Constitution. Constitutional provisions were put in the Alaskan permanent fund. I understand that even parliamentary committees of inquiry from this place went to look at the Alaskan fund. Recommendations were made to embed in the Constitution of the people of Alaska a fund that secured opportunities not just for the present but for long into the future. Alaskan communities fought off efforts to alter those constitutional provisions. Alaskans have shown complete reluctance to allow that fund to be removed from its Constitution and to be just simply left to the discretion of the legislature and government of the day. Opinion polling in Alaska shows that something like 90 per cent of the community supports constitutionally embedding the Alaskan fund so that it cannot be tampered with in ways that this Western Australian Future Fund could be tampered with if it just simply passes through this Parliament in the form before us today. For those reasons I think the house should pause and look at the failure of Premier Barnett in the other areas in which he has been engaged in government, such as his failures with Oakajee and everything else he has put his hands to,

Extract from *Hansard*

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Mr Paul Papalia; Dr Tony Buti; Acting Speaker; Mr Tom Stephens; Mr Ben Wyatt

with the exception almost of the palace around the corner. Whether it has been the Ord hydro scheme, the administration of the education department or the BHP Billiton hot-briquetted iron plant, the range and the litany —

Debate interrupted, pursuant to standing orders.

[Continued on page 6169.]