

LAND LEGISLATION AMENDMENT BILL 2014

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Alanna Clohesy) in the chair; Hon Col Holt (Minister for Housing) in charge of the bill.

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon COL HOLT: Before question time, we were in the middle of a question from Hon Robin Chapple and I wonder whether he can perhaps repeat it. I apologise.

Hon ROBIN CHAPPLE: I will have to try to remember what question I asked now! It was basically in relation to a response to a briefing that we got from the department. I will go to the crux of it. The briefing said that the pricing the legislation changes in various acts will be greater than cost recovery and it will enable Landgate to recover and retain the difference between the amount of fee and the cost of providing that regulated product or service. My question really hangs on “retain”. I want to know where it is clear in the legislation that that money will be retained and not moved into general revenue.

Hon COL HOLT: We are not discussing the taxing bill yet, and that is the mechanism to do what the member is suggesting. It comes back to the decision of the Landgate board about where its profits reside—whether they are retained within the Landgate structure to improve services, implement new strategies, update software or whatever it may be or that the dividend be recommended to government.

Hon ROBIN CHAPPLE: So will it be retained and that money can never go into general revenue by way of dividend or any other process? That is what I am really trying to ascertain.

Hon COL HOLT: Those moneys go into a special Landgate account held for that purpose by Treasury and there is an ability for the Treasurer to access the surplus funds not needed by Landgate from that special-purpose account.

Hon ADELE FARINA: It is great to finally have on the record that this is an exercise by government to get its hands on more revenue and that the money can be directed to other areas of government expenditure.

Hon Ken Travers: Is there a bill in this house that is not all about getting more revenue for the government?

Hon ADELE FARINA: That is right.

I just want to pursue this issue about this whole price reform package we are dealing with. We have been told that Landgate is committed to holding the fees and services at current levels plus consumer price index increases until 30 June 2018—correct?

Hon Col Holt: Within CPI.

Hon ADELE FARINA: Okay—within CPI. That apparently may be beyond cost recovery.

Hon Col Holt: The CPI bit or the fee?

Hon ADELE FARINA: If it is being kept at current levels and there are increases within CPI up until 30 June 2018 and this bill’s passage, it would suggest that the CPI increases may result in the fees being charged being greater than cost recovery. I just want clarification on that.

Hon COL HOLT: It may be above cost recovery; that is why we need the taxing bill, which I assume we will debate next. However, if our cost structures reduce, it may go the other way: it may not be above cost recovery in the interim. I comment again that this bill is not a cash grab; it is about a mechanism for Landgate to give certainty to customers around the pricing it offers for its services. As we discussed, it is to take out the highs and lows when the market changes and for Landgate to have some certainty about how it deals with that.

Hon ADELE FARINA: This is the bit I am struggling with, because the minister is asking the Parliament to provide Landgate with the head of power that enables it to charge fees beyond cost recovery—so to impose a tax. However, the minister is giving a commitment, which is not in the legislation, that current fee levels will remain the same with only increases within CPI until 30 June 2018, yet these provisions expire in December 2019. It is not clear to me whether the intent of this legislation is for the period post 30 June 2018 and the increases after that time, which will get the government to the next election. If no cost increases are proposed beyond cost recovery until after 30 June 2018, why is the legislation being passed now? What is the purpose of that—for it only then to expire in December 2019?

Hon COL HOLT: Again, we are passing this legislation as a mechanism for Landgate to smooth out those fluctuations in the market that affect the fees it charges —

Hon Robin Chapple: That's not the answer.

Hon COL HOLT: I have not got to the answer yet.

In 2017 there will be a review of how the mechanism is working through the Land Information Authority Act.

Hon Adele Farina: But it will not have been applied yet because you are going to cap them until 30 June 2018, so your review will be reviewing nothing in terms of the fees and the new pricing mechanism.

Hon COL HOLT: It is reviewing where it is capped now and how Landgate adjusts to the circumstances of the fee structure, and things will be implemented in 2019.

Hon ADELE FARINA: This is where we have a problem. The following statement is contained in the second reading speech —

Landgate has committed to hold fees payable for regulated products and services at current levels until 30 June 2018, other than fee increases, if any, to reflect the annual change in ... CPI ... or in response to factors outside Landgate's control, such as changes to the law.

If that is correct and that is what we are dealing with, when the review is undertaken in 2017 the new pricing mechanism will not have been operating because this applied cap means the fee will only increase by CPI. I do not know what value the review undertaken in 2017 will present to government when the full effect of the new mechanism does not apply until after 30 June 2018.

Hon COL HOLT: The fee structure is only one side of it. The cost structure also needs to be considered during that time, and how the fee-setting mechanism reflects the changing potential of the cost structure, fluctuations in the market or the level of activity. There is more to the review than just the fee structure.

Hon ADELE FARINA: Proposed section 94A sets about amending the section 93 review in the principal act, so that the minister, as part of that review, will have regard to how the fees prescribed for the purposes of four acts have been calculated during the period covered by the review. The fees have been calculated according to the policy cap that has been put in place, if it holds. That is not much of a review, because we know the answer to that question already. Proposed section 94A(1)(b) reads —

whether, since the last review carried out under that section, the Authority has achieved efficiencies in its operations that would enable the fees referred to in paragraph (a) to be reduced or not increased.

If the authority has actually achieved efficiencies during that review period, it has achieved them without the new price reform structure, so it is not needed. It makes a nonsense of the whole argument that has been put forward for delivering a new price reform structure for Landgate. If Landgate is able to achieve efficiencies without the new price reform structure being applied, it is not needed.

Hon COL HOLT: There are two sides to every review; it is not just about the fee structure. There also is a need to review efficiencies being driven in the system. This provision sets in place a rolling review every five years. Maybe there is less to consider in the first review, but after that the whole mechanism would have been there potentially for eight years, and has been freed up over that time. This provision sets the review process into the future as well, not just in 2017.

Hon ADELE FARINA: Yes, but the government has included an expiry date in the legislation for this new mechanism of 31 December 2019. The expiry date can only be extended on the recommendation of the minister, and the minister cannot make a recommendation to extend it unless the minister is satisfied, on the basis of the most recent report laid before each house of Parliament under the Land Information Authority Act 2006, section 93(2), that the expiry of the section should be postponed. The review that will be undertaken in 2017 will not be able to provide the information the minister needs in order to be satisfied, under proposed section 131B(3), that the end date for the application of these provisions should be extended. If that is the intention of the government, the minister should just say so and make it clear. I do not see how the minister can be satisfied, as he is required to be under proposed section 131B(3), based on the 2017 review report, because the information the minister needs to make a decision on extending the application of these provisions will not actually be available to him or her. The new price reform system will not have actually been applied at that point, because it will not apply until after 30 June 2018. This does not make sense.

Hon COL HOLT: Again, the 2017 review will not consider only the fee structure; it will consider a range of other things that will impact on the potential fee, including property transactions and driven efficiencies. It is not a one-sided review; it will still be armed with some information on that part of the review to enable input into the decision.

Hon ROBIN CHAPPLE: The way I read it, the minister does not actually have to look at that review, because the expiry of the power to prescribe fees greater than cost recovery can be postponed by the proclamation of the Governor on the recommendation of the minister.

Hon Adele Farina: Yes, but subsection (3) states that the minister must have regard to the review, and has to be satisfied on the basis of the review.

Hon ROBIN CHAPPLE: So he does have to have regard. Can we just clarify that the minister does have to have regard for that review? Maybe I should just refer to the Land Legislation Amendment Bill 2014, and the new proposed sections in that, because that is where I think it says he does not have to.

Hon COL HOLT: Proposed section 22AB(3) reads, in part —

The Minister cannot make a recommendation under subsection (2) unless the Minister is satisfied, on the basis of the most recent report laid before each House of Parliament —

Hon Robin Chapple: On the basis of “a report”, or “the report”.

Hon COL HOLT: It says “the report”. The subsection continues —

— under the *Land Information Authority Act 2006* section 93(2) ...

Hon Robin Chapple: I am just trying to find out what “the report” is.

Hon COL HOLT: That is the review report.

Hon ADELE FARINA: I do not think there is any value in labouring the point. I just do not think the minister has provided us with a satisfactory answer to the question, because there is no way that the minister can be satisfied to the standard required under subsection (3), on the basis of a 2017 review, of the need to postpone the expiry date. It is just not achievable, because he or she will not have the information that he or she needs to make that assessment. The new price reform system will not actually have been applied properly. Do any of the fees currently charged by Landgate exceed cost recovery?

Hon COL HOLT: The advice is that I do not believe they are, but it is difficult to predict where exactly they are in the continuum of changes in market activity. However, the Auditor General’s report of three or four years ago indicated that Landgate was not actually overcharging. I guess the mechanisms in that review were satisfactory.

Hon ADELE FARINA: Will the minister please clarify the basis upon which that assessment is made? At what point is a review undertaken to determine whether Landgate fees are at cost recovery, and is it done on an annual basis? Could it vary at any point in a financial year or does it take the average cost over a 12-month period? I would be interested to know how it is determined that fees are set at cost recovery.

Hon COL HOLT: Reviews by Landgate on its fee structure are done annually. That process begins in about September each year, forecast to kick in on 1 July. Obviously the fluctuation through months, and potentially days, is hard to get completely right or be completely accurately estimated. That is why —

Hon Adele Farina: So it is an average?

Hon COL HOLT: Of the year, yes.

Hon ADELE FARINA: If all the fees are currently at cost recovery or below, is it suggested that an increase within CPI could actually result in those fees being over cost recovery?

Hon COL HOLT: Yes.

Hon ADELE FARINA: I have a further question I would like clarified. Is it intended that any cost savings would not be passed on to consumers? Is it the intention of this legislation that cost savings are not passed on to consumers? If Landgate improves its efficiencies in terms of cost efficiencies in delivering products or services so it is able to do so at a cost less than the current fee, is it intended that the cost savings would not be passed on to the consumer? If that is the case, would the government explain why that is its intention?

Hon COL HOLT: Yes, they would be passed on.

Hon SUE ELLERY: I might amplify that a little because Hon Adele Farina has raised a very good question. A couple of lines in the second reading speech say —

There is little incentive to reduce costs through efficiencies. Any reduction in cost must be passed to consumers as lower regulated fees.

The fact it says at the beginning “There is little incentive to reduce costs through efficiencies” suggests that it is inconvenient and not the desired policy to pass on savings through reductions in costs to consumers. I think

Hon Adele Farina is asking a pretty good question here. The second reading speech would have us believe that the government does not want to be in a position to pass on reductions to consumers. Is that the case or not?

Hon COL HOLT: I think every department wants to drive efficiencies into their service delivery and into what they do. If it results in a better service and better capacity within the agency, that is good. If it results in cheaper service for customers, that is what we should be striving for as well.

Hon SUE ELLERY: I am not sure I got the answer to the question. I think the minister is right when he says any agency wants to drive savings through efficiencies back into the agency—of course they would; that makes sense—but the question is: What does government want? Does government want to provide savings to consumers? The second reading speech is a little ambivalent about that. It is an extraordinary thing; it is as though the second reading speech is saying, “God forbid we should have to pass on savings to our customers!” which is why, at the risk of repeating myself on so many levels, this is an extraordinary second reading speech; nevertheless, that seems to be its tone. I hoped that the minister would be in a position to assure us that in fact it is the government’s intention that savings will be passed on to consumers.

Hon COL HOLT: Yes, there are obviously options to pass on savings to consumers as well as to use those funds to deliver better services, which I think I said before.

Hon SUE ELLERY: Yes, of course there are options to pass it on to consumers. What I am asking the Minister for Housing, representing the government, is this—I cannot believe I am trying to help the minister here—would the government not want savings to be passed on to consumers? If the minister cannot say that—he has not been able to say it twice—that is an extraordinary admission as well.

Hon COL HOLT: Of course.

Hon ADELE FARINA: Why did the second reading speech state —

If Landgate’s pricing reform is not implemented, cost savings would have to be passed on to consumers as lower fees.

Hon COL HOLT: Again, the purpose of this is to smooth out some of those transactional highs and lows, to try to drive some efficiencies, and to return better outcomes for the customers—all those sorts of things. Under the current pricing structure, if the fees were at cost recovery, the return to the customer over a seven-year period or an 18-year period—depending on how long we want to take the average time that a person holds onto their home—is a quite inconsequential amount; it is \$7 over a seven-year period for a transaction that costs \$500 000. In that sense, what we are trying to do with the Land Legislation Amendment Bill 2014 is to smooth all that out and deliver a better service and certainties. What they give up in the reduced fee is a result that gives them a better outcome.

Hon ADELE FARINA: By way of clarification, the minister’s answer to Hon Sue Ellery’s question—that of course the government’s intention is to pass on fee reductions and cost savings to consumers—was in fact wrong and the government’s intention is clearly to not pass on any cost savings to consumers; that is the only pricing certainty consumers have. If there is a cost saving, it will not be passed on to consumers by way of reduced fees; that is the only pricing certainty that this new pricing reform policy actually delivers to consumers. The fee is never going to go down, but it will keep going up. That is the only pricing certainty the government will provide, and it is stated in black and white in the second reading speech that the government has no intention of passing on cost savings to consumers in the form of lower fees or taxes.

Hon COL HOLT: It may be passed on as lower fees.

Hon ADELE FARINA: Then the second reading speech is wrong. Which one is it? The minister cannot have it both ways; he cannot say that it may be passed on when the second reading speech clearly states that if Landgate’s pricing reform is not implemented, cost savings would have to be passed on to consumers as lower fees. You cannot make that statement and then stand and say, “Well, it might be passed on”, because the two are mutually exclusive. It is one or the other; it cannot be both.

Hon Sue Ellery: If I can amplify —

The DEPUTY CHAIR: We are waiting for the minister to give a reply.

Hon Sue Ellery: Or he could answer us both at the same time.

The DEPUTY CHAIR: Minister?

Hon COL HOLT: I am happy to do that.

Hon SUE ELLERY: I just wanted to amplify that a bit because, if I may paraphrase the words in the second reading speech, unless we do this, we will have to pass on savings to the customers. It is written as if the government does not want to pass on savings to the customers. I referred to a different set of words earlier in the second reading speech, which set the same tone, and then Hon Adele Farina went to the next set of words that set

the same tone, and the minister gave her a different answer. We are getting ourselves in a tangle here; either the policy objective includes passing on savings to the customers or it does not. What is the policy objective? We can all agree that the policy objective is the sustainable financial footing of Landgate into the future—tick. But is it not also the case that the policy objective is to pass on savings to the customers? The second reading speech would have us believe that that is not the case, and the minister has given us two different answers as to whether that is the case. I think we pretty much need to clear this up: does the policy objective include passing savings on to the customers or not?

Hon COL HOLT: I will try my hardest for the Leader of the Opposition. The second reading speech states that if we do not pass this bill, we have to pass savings on to the consumer, because it is set at cost recovery. Passing this bill and the Land Legislation Amendment (Taxing) Bill 2014 will give us the ability to retain that over-and-above cost recovery, but the policy of the bill includes the potential to pass lower fees on to customers.

Hon SUE ELLERY: It is clearly uncertain; the government may do it, it may not. As I understand it—the minister can correct me if I am wrong—the substantive policy objective is financial sustainability for Landgate. Below that is another policy objective that is, potentially, to pass savings on to customers. But it is potential; it is not guaranteed, it is not certain, and it is an option because Landgate will want to retain some money for its own growth and future needs, and it may be that a decision is made to pass on some to customers as well.

Hon COL HOLT: Yes, that is correct.

Hon ROBIN CHAPPLE: I asked a question earlier, but I am now getting a tad confused; I hope it is not just me! We are going to have a sort of reserve for excess income and we have identified that those funds, if they become too much, can go to Treasury. I have got that right in my own mind. If it can go to Treasury, what decision-making process is there if it does not go to Treasury and can be returned by some method to the consumer, which would be what we understand this is about? Are we going to assist the consumer? We are not; we are going to put that money into Treasury, if we have a surplus.

Hon COL HOLT: All money collected from Landgate goes into an account with Treasury. The ability to spend that from Landgate is the same as any ministerial and budgetary process that happens now.

Hon ROBIN CHAPPLE: So the statements that are contained within the second reading speech that somehow this could be a cost saving to the community are fictitious—is that correct? If there is a surplus of funds generated because we are using the consumer price index and that generates more money than necessary, that money will never, by way of reduced fees, benefit the community. If there is a bucket of money, it will only ever go into consolidated revenue.

Hon COL HOLT: No. Again, the decisions to be made by Landgate can be reduced fees, use by Landgate to improve efficiencies or give greater customer service, or for it to be paid as a dividend to government.

Hon KATE DOUST: Just on something totally different, I notice it is stated in the second reading speech that Landgate provides the state with world-leading location information products, and I think that is a great statement. When the original bill went through this house in 2006, there was a lot of discussion at the time around Landgate acting as a consultant outside the state and drawing money back into the state using its technology and experience. For a time it worked in places such as Indonesia and Vietnam, dealing with strata arrangements and a range of mapping; it certainly does a lot of work in the mapping of fires throughout the state. I have asked this question in the house before, but have never received a satisfactory answer. I want to know whether Landgate still operates as a consultant outside the state, either in overseas countries or other states; and, if it does, can we have a list of programs of work Landgate has been engaged in? In terms of how this has impacted on fees, I would have thought that this was a great opportunity to raise revenue for the state and to hopefully pass that revenue on to reduce fees to consumers at the state level. I would be interested to know, firstly, what is the program of work and is Landgate still acting in that capacity as an external consultant; and, secondly, with this piece of legislation, if that is the case, what fee structures will be applied in those circumstances for those services.

Hon COL HOLT: Landgate provides a range of services outside Western Australia, and we are happy to get a list of what they may be, and the fees.

Hon ROBIN CHAPPLE: If those services to which Hon Kate Doust has referred—I am reminded of that debate—are provided, and obviously they are provided for profit, where do those funds go? Do they assist in any way, shape or form to reduce fees to users in this state or do all the funds that come in through that methodology go into general revenue? I would be interested to find out where that money goes, because we are almost dealing with a similar thing in this bill, in which we are generating an income stream that can also go to Treasury. If Landgate is making a profit at another level, one would hope that that profit would go directly into the community and not only into general revenue.

Hon COL HOLT: All commercial fees charged on activities overseas come back into the Landgate account within Treasury. Again, how that is spent is decided in reduced fees retained within Landgate or in dividends to government.

Hon ADELE FARINA: Correct me if I am wrong, I think I understood, in answer to an earlier question by Hon Sue Ellery about what other changes to law might occur that would result in the fees being increased higher than CPI, it was suggested that the Department of Lands may charge a survey fee. Did I get that wrong?

Hon COL HOLT: That was an example of something that occurred in New South Wales in which the High Court decided that the New South Wales lands department had to pay for copyright on survey plans. It potentially could happen here; so it is most likely.

Hon ADELE FARINA: Using that example, and assuming that the same result could occur here, in passing that fee on to the consumer—because that is what is done in cost recovery—under this new pricing reform, could Landgate charge a greater amount than the cost recovery of that copyright survey cost?

Hon COL HOLT: If that situation occurs in Western Australia, once that cost is known, it may be decided to pass all the cost to the customer, part of the cost to the customer or no cost to the customer.

Hon ADELE FARINA: My question was: could Landgate pass on a greater amount than the actual cost to the customer, because this entirely new pricing reform is intended to provide Landgate with the capacity to do more than cost recovery? Would it extend to that scenario in which Landgate could incur a cost of, say, \$100 for that copyright survey but pass on a cost of \$110 to the consumer?

Hon COL HOLT: That is something that needs to be assessed when we get to that point. It is a scenario that has to be considered once we know the parameter of exactly what that extra fee could do and how it impacts on the current fee and charges.

Hon ADELE FARINA: In essence, is the answer yes, it is possible under the new pricing reform?

Hon COL HOLT: It is possible, but highly unlikely.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 94A inserted —

Hon ADELE FARINA: In the amendments proposed for the Registration of Deeds Act, the Strata Titles Act, the Transfer of Land Act and the Valuation of Land Act, there are provisions that provide an expiry date of 31 December 2019 and provisions for that to be extended. However, in relation to the Land Information Authority Act 2006, that same provision does not apply; it simply says that the section expires on a day fixed by proclamation. Why was a different tack taken in the Land Information Authority Act than in the amendments to the other acts, because I would have thought that for consistency it would be kept the same?

Sitting suspended from 6.00 to 7.30 pm

Hon COL HOLT: In answer to Hon Adele Farina's question before the break, a power to tax has been confirmed in each of the four acts; that is, the Registration of Deeds Act, the Strata Titles Act, the Transfer of Land Act and the Valuation of Land Act. The power to tax may be renewed for another five years, as set out in those clauses, from 31 December 2019 for each act separately. The power to tax could be renewed for one act, but not for the other, into the future. In part 2 of the bill, under clause 4, proposed section 94A(4) allows a day to be fixed by proclamation for the ending of proposed section 94A. Proposed subsection (5) provides that that day cannot be before the power to tax in all four acts has come to an end. A date cannot be fixed now for the ending of proposed section 94A because we do not know when the power to tax in each of the four acts will come to an end. The power may be rolled for some or one of the acts, but not for the others. Does that make sense?

Hon Sue Ellery: Not really, but I did not ask the question.

Hon Robin Chapple: It does.

Hon COL HOLT: It does, yes.

Clause put and passed.

Clause 5 put and passed.

Clause 6: Sections 22AA and 22AB inserted —

Hon SUE ELLERY: I move —

Page 5, after line 20 — To insert —

- (1A) Monies received from the charging of fees that is more than the cost of providing the product or service the subject of the fees (the surplus), shall be expended by the Authority for the purposes of the Authority only, and any such surplus shall not be paid into the consolidated account, and the Authority's board of management and the Minister shall not take into account any such surplus when recommending or determining the amount of the dividend, if any, that the Authority is to pay to the consolidated account pursuant to section 71 of the *Land Information Authority Act 2006*.

This is the first of three amendments that seeks to do the same thing in three of the acts that the bill before us seeks to amend. Members will recall that in my second reading contribution I made the point that the second reading speech tells us that the money to be saved when the agency increases its fees above cost recovery is going to be retained by the agency itself. Although that was in the second reading speech, it is actually not contained in the legislation. This amendment seeks to do that. I will walk members through the first version of it to get the gist of it for the rest of them. Section 22 of the Registration of Deeds Act 1856, which I happen to have a copy of in front of me, states —

22. Regulations

- (1) That it shall be lawful for the Governor to make regulations for or with respect to —
- (a) the medium in which judgments, deeds, wills, conveyances or instruments presented for registration shall be written and executed and the size and quality of the paper to be used;

That is not the key issue before us today. The key issue is (b) —

- (b) the fees which may be charged by the Registrar of Deeds and Transfers; and
- (c) all matters and things authorised to be prescribed or necessary or expedient to be prescribed to give effect to this Act.

The bill before us amends section 22 to add sections 22AA and 22AB to put that clause, which is the same in each of the clauses being amended by this bill, the regulatory power to allow —

22AA Certain prescribed fees may exceed cost recovery

My amendment would add a new clause after section 22AA(1)(b)(ii), which is in the terms written in the supplementary notice paper. That would insert into each of the respective acts the clause that is in the bill before us, which says there is a power now under this act to prescribe fees in excess of cost recovery. If my amendment is successful, that would also mean that the —

Monies received from the charging of fees that is more than the cost of providing the product or service ... shall be expended by the Authority for the purposes of the Authority only, and any such surplus shall not be paid into the consolidated account ...

That is essentially the intention of the amendment that I have moved. It is in the same terms as was moved in the other place. It was not accepted in the other place. I invited the minister to tell us in his response to the second reading debate why it is that putting words in the bill to ensure that the agency is able to keep the money itself, rather than being diverted to other government agencies, would be so offensive given that that is what the second reading speech tells us that the bill is about. I have moved the amendment and I look forward to the government embracing an amendment that gives effect to what the second reading speech tells us this bill is about.

Hon ROBIN CHAPPLE: The Greens will obviously support this amendment, because this is the premise we have been arguing; that is, the money should be retained by the authority and not go into consolidated revenue. In talking to the amendment, I also want to touch on and deal with proposed section 22AA in so much as the problem with the proposed section is that it continues to set a very dangerous precedent of raising funds over and above cost recovery. Those regulations are sent to the Joint Standing Committee on Delegated Legislation, which is restricted in dealing with the matter of raising money by regulation for taxation purposes. That is basically abhorrent to the way that legislation should be dealt with in this chamber and within the Westminster system. We should not generate taxation moneys through regulation. Having said that, we totally support Hon Sue Ellery's amendment because, notwithstanding the fact that money will be raised in a way that it should not be, at least we will ensure by this mechanism that it does not just end up in consolidated revenue.

Hon COL HOLT: Obviously, the government will not support the amendment, as members would have heard in the response from the minister in the other house. This is about the ability for funds from Landgate to have three outcomes, including driving efficiencies and giving fee relief to customers. However, another part of it is providing, if needed, a dividend to the state Treasury at the time. That is just part of it. That is what we are trying to achieve.

Hon SUE ELLERY: Somewhere along the trail that got us to this point, the government has not been honest in telling us what this bill will achieve, because the government told us in the second reading speech and in the debate in the other place that this bill would ensure that savings could be retained by the agency. Assurances were given about that. If that is the case and if the minister thinks that the amendment before us does not allow for the other policy purposes of the bill to be achieved, why does he not try to amend it so that we can have a guarantee in the legislation before us that the agency can retain an amount of the savings to the extent that the government wants it to be necessary, the agency can continue to pay dividends to government to the extent that it is able to do so and moneys can be used for other agencies? I have not yet heard an argument that we do not want in the bill a provision that gives effect to what the second reading speech tells us we want to achieve—that is, the capacity for the agency to keep a certain amount of the money for itself. I do not see how putting that in the bill would cause offence, when the second reading speech tells us that that is what the government wants it to do.

Hon COL HOLT: The savings can be retained by the agency. Again, this is a board decision; the board of Landgate will make the decision about how it retains funds for future efficiency drives and fee relief and how much dividend will be given to government. The amendment will not change that in effect. The amendment is not needed. The decision remains as part of the board's deliberations about how Landgate functions.

Hon SUE ELLERY: We are talking about two different things. The second reading speech tells us that the legislation is about retaining some of the money for Landgate, but the minister has just said that, under this legislation, Landgate can retain some of the money. Actually, this legislation does not state that; it is silent on the issue. Given that it is silent on the issue, why do we not get it to spell out what the government wants to achieve? If my words are too narrow and are just about retaining everything within the agency and not handing certain of the savings over to government in the form of a dividend or other money, which is what I think the minister is trying to argue, let us amend them so that they reflect what the government wants. Right now, the bill does not state that some money may be retained by the agency; the bill is completely silent on that. All the bill states is that this is the mechanism by which an amount of money over cost recovery can be charged. The bill also states that there is a review period. It does not state anything about retaining money or not retaining money. It is completely silent on that.

Hon COL HOLT: Again, it is silent on that issue. It goes back to the board of Landgate making decisions about where it wants to put the potential profits of the agency. It may be that it retains some of the money, which is what we have been talking about. It is about the agency's ability to retain the money to smooth out the troughs and the highs. It is exactly the same; it is just not explicit in the bill, as the Leader of the Opposition has said. It is the mechanism that drives the ability to do it. The amendment is not required because it is a decision of the board to instigate it.

Hon SUE ELLERY: There is another way that that could be achieved. The minister could make a ministerial statement and say that it is the intention of the government, acting on the advice of the board, that the policy will be that some of the money will be kept to smooth out those peaks and troughs; some money will be given, which it can do now, by way of payment of a dividend to the government; and, if there is money over whatever the level is, that will be given to government to spend on other agencies. However, the minister has not chosen to do that; he has chosen to come into the house and read a speech that states that this bill allows Landgate to retain some of the money, but it does not. I still do not understand why the government does not want the bill to reflect the things it says it will do. All the bill does is create a mechanism to charge over cost recovery. The minister has told us that the board is, if you like, on board with retaining some of the money for the purpose of making sure that Landgate is sustainable into the future. He has said that the whole purpose of the bill is to make sure that Landgate is sustainable into the future, and Landgate will be sustainable into the future if it can retain some of the money that it generates by way of this mechanism. If that is what we want to achieve, I still have not heard a reasonable argument about why it cannot be incorporated into the bill. There are two different things happening. The minister is trying to tell us that a policy decision by the government and the board, which we support, is reflected in this bill. It is not. If that is what the government wants, why do we not put it in the bill?

Hon COL HOLT: I think it is also important to realise that this is a reflection of the original Landgate bill in 2006. The Landgate bill in 2006 deliberately set it up so that the dividends could go to Treasury. The original 2006 bill, which came into this house and was passed, is doing exactly what we are saying can be done. It is being true to the original Landgate bill. It gives Landgate the ability to do all those things now—pay a dividend and retain some earnings for greater efficiency and potentially lower fees. That is what the Landgate bill, as passed in this house in 2006, does. This bill reflects the same outcome that Parliament agreed to in 2006.

Hon SUE ELLERY: I do not have a copy of the 2006 act in front of me, but if the clerks get me a copy, the minister can show me which section says that Landgate can retain what it needs to retain for the purposes of running its own business.

Hon COL HOLT: The 2006 Landgate act enables dividends to be paid to government.

Hon SUE ELLERY: I did not ask about dividends. I asked about Landgate retaining money that it gets from charging fees.

Hon COL HOLT: That is not in the act.

Hon Sue Ellery: No; is it not!

Hon COL HOLT: No. The ability to retain the funds is not in the act. The funds go into an account that is held by Treasury and those funds are then able to be drawn on by Landgate through the normal budgetary processes.

Hon SUE ELLERY: Exactly, minister, and we find ourselves back at the beginning. It is a policy decision by government and a decision of the board of Landgate that that money that is held by Treasury will be spent in X, Y and Z distribution. It is not in the 2006 act that Landgate can retain moneys that it receives from charging fees. It is not in the bill that is before us now, but it is what the government wants and it is what the opposition wants, so why not find the words that will put it into the act?

Hon COL HOLT: I understand the member's point, but the government also wants the ability, through the budgetary process, to help determine where those funds are being spent.

Hon SUE ELLERY: I understand that, and I think the minister made that point about 10 minutes ago, which is why I said that if the minister thinks my amendment is too narrow and, effectively, the minister's reading of my amendment says that Treasury cannot get its hand on any of the money raised by the extra fees, let us find the form of words that protects so much of the money for Landgate to keep for itself and also gives the government of the day the capacity to take what it needs and does not impact on what is in the parent act, which is the capacity to pay dividends. I do not understand the unwillingness to put those provisions into the act.

Hon COL HOLT: It is not the form of the words; it is the principle.

Hon Sue Ellery: Which you don't want in the act.

Hon COL HOLT: No; it goes back to the normal budgetary processes for Landgate. It is not in the act because the principle is that it goes through the normal budgetary process of getting funds to do those things that Landgate needs to do.

Hon SUE ELLERY: I do not want to belabour the point, but why does the second reading speech tell us something different? The second reading speech is quite explicit about the government's intention. It is not good enough. If I can be so bold, it might be acceptable in the other place, but it is not good enough to come in here with a second reading speech that says what the bill will achieve when, in fact, the minister has stood now, by my count about five or six times, and said, "No, we do not want it. That's not what we want to put in the bill." The minister has said that what is spelt out in the second reading speech and was referred to by the Minister for Lands in the other place is not what the government wants to achieve out of this bill. All the government wants to achieve out of this bill is to give Landgate a mechanism to raise fees, a tax, above cost recovery, and for government to retain its ability to take what it wants based on its decision-making process, be it the Economic and Expenditure Reform Committee, cabinet or the normal budgetary process, and for dividends to go to government as well, but it does not want to spell that out in the act. That is the difficulty I have. I was going to use an unparliamentary term. I am not trying to be smart about this—I was going to add another word to the end of that—but this is not satisfactory drafting of the second reading speech or the bill, because it is not doing what the minister tells us the government wants it to do. I will retract that, because even that is not fair. Despite the fact that the minister read a second reading speech that says the bill will do X, the minister has stood in this place five or six times and acknowledged that the government does not want the bill to do X; it wants it to do X minus something. That is not a satisfactory way to legislate. I am not going to belabour the point beyond this: the fact that the government will not consider a way to get the bill to reflect what is in the second reading speech is sloppy legislating.

Hon ADELE FARINA: Can I clarify whether, under the current drafting of the legislation, it would be open for the minister to determine a set of fees for the various services and products and then to determine that a percentage of that fee will be paid directly to Treasury to consolidated revenue? It seems that is an option that is left completely open under the current drafting of the legislation.

Hon COL HOLT: I apologise, but could the member ask that question again?

Hon ADELE FARINA: Under the current drafting of the legislation would it be open to the minister to approve, by recommendation to the Governor—the fee increases are done by proclamation by the Governor—to set the fees and determine that a percentage of those fees will be paid directly to Treasury to consolidated revenue?

Hon COL HOLT: The answer to the honourable member's question is no. Section 70 of the Land Information Authority Act 2006 states —

Money received by the Authority is to be credited to, and money paid by the Authority is to be debited to, an account called the “Western Australian Land Information Authority Account” that is to be established —

(a) as an agency special purpose account under the Financial Management Act 2006 section 16;

Hon ADELE FARINA: So the money could be paid into that account and then provided to consolidated revenue, through to Treasury?

Hon COL HOLT: That is Landgate's operating account, and for money to come out of that there needs to be a dividend to government.

Hon ADELE FARINA: Is there capacity under the current legislation for the minister to have regard to the amount of the dividend payment to government when setting the fees? For example, if government has a black hole, a debt that it needs paid off, and it sees this avenue of revenue raising through this tax as a means to assist in paying off that debt, there is nothing in the legislation that would prevent the minister having regard to paying off that state debt in setting the fees.

Hon COL HOLT: I seek from the honourable member clarification of the question. Is she asking whether the minister can set the fees or is she talking about setting a percentage of the fees that is used for a different purpose?

Hon ADELE FARINA: I meant setting the fees, taking into account that a dividend of, say, \$10 million is to go to government, so the fees are set so that that \$10 million that is needed as a dividend is delivered to government.

Hon COL HOLT: Fees are set by a recommendation that goes through Landgate, so the minister, through the Economic and Expenditure Reform Committee and Treasury process, has to approve those fees for Landgate. It is part of the normal budgetary process.

Hon Adele Farina: There can be a complete variance from what is recommended by Landgate, as has frequently happened throughout history.

Hon COL HOLT: Yes. Again, the dividend goes through the board mechanism under which a recommendation is made that a dividend be paid.

Hon ADELE FARINA: I seek clarification from the minister. Does the board decide the dividend that is paid to government or does Treasury tell the board the dividend that it will pay to government, because I think the minister may not have that correct?

Hon COL HOLT: The dividend is agreed to through the board, the minister and Treasury —

Hon Adele Farina: With a lot of direction from Treasury.

Hon COL HOLT: — but the minister has the final say.

Hon ADELE FARINA: That is right. Therefore, here we have a clear taxing mechanism by which government can raise the revenue it needs to retire state debt. We have finally got that on record. This has nothing to do with Landgate necessarily; it is a revenue-raising exercise that can be used by the state government to retire debt.

Hon SUE ELLERY: I am going to give it one last shot, because I can hear three voices in my head, and that does not mean I need any assistance from Hon Helen Morton. I can hear three voices. I can hear the voices of Hon Norman Moore, Hon Peter Foss and Hon Derrick Tomlinson, who would be —

Hon Robyn McSweeney: What a trio!

Hon SUE ELLERY: A very effective trio of legislators who would consider this —

Hon Liz Behjat: Not Hon George Cash?

Hon SUE ELLERY: Okay; I am thinking of four voices. Hon Derrick Tomlinson, Hon Peter Foss and Hon Norman Moore would not have tolerated this for one minute, and Hon Simon O'Brien on a good day would not have tolerated it either if we were —

The ACTING PRESIDENT (Hon Simon O'Brien): Order! We do not involve the Chair in the debate lest he succumb to outrageous temptation!

Hon SUE ELLERY: If they were sitting on this side, we would be here for days and days and days just torturing the government over the fact that this is appallingly sloppy legislation.

Hon Helen Morton: You're involving Hon Ray Halligan now too, saying "days and days and days".

Hon SUE ELLERY: No, I was not. He was a solid performer, but it was Hon Peter Foss, Hon Norman Moore and Hon Derrick Tomlinson who could rip us apart. They would not have stood for this—they really would not have—because it is absolutely appalling. The government has contradicted the minister who has responsibility for the legislation. The minister in the other place has misled the house about locking in fees. The legislation does no such thing. The second reading speech tells us that one of the key objectives for Landgate to be financially sustainable into the future is to retain its own funds, and the government will not even contemplate an amendment that gives effect to that in the legislation. It is sloppy on every single level. Ultimately, the buck has to rest with Minister Redman, but the legislation is sloppy all around. It really is unacceptable that the government is not able to demonstrate a way in which this bill achieves any of the key objectives that it has said it does in the second reading speech. Rejection of this amendment, and not even trying to put an alternative to give effect to what the government says is its key objective, makes it laughable; it really does.

Hon ROBIN CHAPPLE: As Deputy Chair of the Joint Standing Committee on Delegated Legislation, I have to say that we have now come out with the fact that this is nothing more than a taxing bill. The government will have the temerity to send these regulations to us and we will be able to do nothing about it, when, in essence, our job is to make sure that there is no taxing legislation via regulation. I think it is an affront to the Westminster system and to this chamber.

Division

Amendment put and a division taken, the Deputy Chair (Hon Simon O'Brien) casting his vote with the noes, with the following result —

Ayes (9)

Hon Robin Chapple	Hon Kate Doust	Hon Lynn MacLaren
Hon Alanna Clohesy	Hon Sue Ellery	Hon Ken Travers
Hon Stephen Dawson	Hon Adele Farina	Hon Samantha Rowe (<i>Teller</i>)

Noes (19)

Hon Martin Aldridge	Hon Jim Chown	Hon Alyssa Hayden	Hon Michael Mischin
Hon Ken Baston	Hon Peter Collier	Hon Col Holt	Hon Helen Morton
Hon Liz Behjat	Hon Nick Goiran	Hon Mark Lewis	Hon Simon O'Brien
Hon Jacqui Boydell	Hon Dave Grills	Hon Rick Mazza	Hon Brian Ellis (<i>Teller</i>)
Hon Paul Brown	Hon Nigel Hallett	Hon Robyn McSweeney	

Pairs

Hon Sally Talbot	Hon Peter Katsambanis
Hon Amber-Jade Sanderson	Hon Donna Faragher
Hon Darren West	Hon Phil Edman

Amendment thus negatived.

Clause put and passed.

Clauses 7 to 12 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Col Holt (Minister for Housing)**, and passed.