

**BANK OF WESTERN AUSTRALIA AMENDMENT BILL 2012**

*Second Reading*

Resumed from 23 May.

**HON LYNN MacLAREN (South Metropolitan)** [3.00 pm]: I rise to indicate the support of the Greens (WA) for the Bank of Western Australia Amendment Bill 2012. I find it quite a privilege to speak on this bill because it is unusual to have a state bank in these times. We still have a state bank in Western Australia—or do we? We certainly have an act for one, and we are amending that act. It is a bit of an anomaly now that the bank has been purchased by the Commonwealth Bank of Australia. Because this act is hanging around, we have to tidy up the legislation to cope with the commercial reality that Bankwest has been purchased by another bank. It is kind of ironic because when Bankwest was purchased by a Scottish bank, we did not have to amend our act because it was a foreign bank and it did not have a separate authorised deposit-taking institution authority. Now it does have a separate ADI to the Commonwealth Bank, so the CBA has two ADIs. We are really just tidying that up to ensure our financial institutions operate as well as they can.

I thank the minister for providing me with access to his officers for a briefing. Even though this was an urgent bill, we were able to get together with those officers in the time necessary to make some learned comment on this bill. We also had an opportunity to speak with some of the legal counsels at Bankwest to see that they were happy with the way that this was rolling out, and we confirmed that they were happy. I want to acknowledge the expertise of my research officer, former general counsel at National Australia Bank. She did not really want me to mention it because she considers it part of her deep dark past but I fully appreciate the skills that she offers in being able to understand these commerce bills and, in this case, a finance bill. Every now and then we get a bill and I have no idea what they are talking about, but Dinny has done a great job of guiding me through it, and she has in this case as well.

Why are we here? My question was: why are we amending this act instead of just revoking it? It became clear to me that it is not really feasible for Bankwest to return to its operation as an independent bank. It seems that an effort has been made in good faith to preserve the Bankwest brand and Bankwest's services for its customers. In that regard, we are saving the best of what we created in Bankwest. I have to acknowledge that I am a customer of Bankwest; in fact, I was a customer of R&I Bank Ltd. I was delighted that Hon Matt Benson-Lidholm spoke as a rural member who would know well the value of this bank in the regions. When I was living in Albany, it was certainly a very important bank in the town. While we did have some other major banks, in many cases throughout Western Australia I have noticed that R&I Bank, or what became Bankwest, is the only bank in town. I think Bankwest has a very important role in the development of this state and in the fostering of a strong rural economy. My very first loan—a car loan—was from the R&I Bank. I wanted to buy a little red MG. I was making payments regularly, going into the branch and feeling like I was an adult because I was in debt! I am sure members can relate to that experience. Not all of us have had to have car loans but in order to have my very first favourite little toy, I had to engage the services of the bank. Through time I have used that bank, and my current mortgage is with that bank.

As I said, it is very unusual that we are dealing with a state bank act. I believe this does not occur anywhere else in Australia. The history of Bankwest goes back to 1895. Because it is such an historical occasion, I would like to quote a little from the Bankwest website. We do not really know how long this bank will exist in the character that it has developed. We do know that through the passage of this act, we will have guaranteed a five-year period in which it has to maintain certain requirements. A little bit of the character has to be retained beyond that. In these commercial times we do not know what will happen to Bankwest. I want to talk about the history and recap what it offers us in Western Australia today. In 2011, Bankwest was crowned the *Australian Financial Review's* bank of the year in the Smart Investor Blue Ribbon Awards for the second year running. It likes to think it won that award because it goes the extra mile for its customers. It has taken pride in doing that since it was established in 1895. I will quote a couple of paragraphs now. The website states —

Back then, we were known as the Agricultural Bank of Western Australia. We were set up by the WA Government to service the needs of the state's farmers. In those days, the only way to effectively do that was to hit the road.

If you think WA is a big empty land now, you should have seen it then! Our staff would often sleep outdoors while travelling between farms. We weren't exaggerating about going the distance for our clients.

By 1923, we'd grown to have 8 district offices throughout WA, and in 1945 we became a trading bank under our new name, the Rural and Industries Bank of Western Australia (affectionately known as the R&I).

By 1947, we were sufficiently large enough that the safe in our Morawa Branch crashed through the floorboards. Unperturbed, our staff cut through the boards so they could deposit our customers' cash 18 inches below floor level every day. Have we mentioned we also have a history of ingenuity?

We're also rather competitive—in the nicest possible way. In 1956, we became a savings bank—just 11 weeks after the Bank of NSW (now Westpac) and ANZ, and ahead of the other big banks. From then on, it was game on.

The innovation that Bankwest has demonstrated has meant that it has survived through many cycles of boom and bust. In the recent financial crisis, it was purchased by the Commonwealth Bank. I think that purchase was made in 2008. Bankwest has one million retail customers and it is part of a network of 4 000 ATMs with 115 years of service under its belt. It has won six major awards and *Money* magazine's 2010 Best of the Best awards, it has 139 stores, 72 business banking centres and 79 home loan specialists. With numbers like that, we can understand why we have let it do the talking. I want to bring members' minds to the value that Bankwest has. That is why we have an act for it. That is why we are not revoking the act; we are amending the act. It has developed this unique character and it has been very successful.

The purpose of this bill is to amend the act to facilitate the change that is required by the Australian Prudential Regulation Authority to transfer assets and liabilities to the new owner, the Commonwealth Bank, and operate under a single ADI, which is called an authority—an ADI authority. We want to do that while maintaining Bankwest as a significant financial institution that is headquartered here in Western Australia. One of the benefits we get out of this amendment is that the Commonwealth board has agreed to keep its manager in WA. I will reiterate the questions that I asked of the officers when going through this so that members understand what we are agreeing to. I asked why we are doing this now and why we did not do it in 2008 when the Commonwealth Bank bought Bankwest from the Bank of Scotland. The answer I was given was that Bankwest had an exemption from the rule that there could be only one authorised deposit-taking institution per banking conglomerate; that exemption was extended up to the present time, and we have basically run out of time to fix this problem because it has to be done by 30 June 2012.

There was an apparently contradictory statement in the minister's second reading speech in respect of whether Bankwest could maintain its single ADI authority and become an operating division of the Commonwealth Bank of Australia. However, the minister stated elsewhere in the second reading speech —

In short, while Bankwest is presently and fully owned by CBA, it is still a separate corporate entity. If this situation were not to change, Bankwest would be required by APRA to operate under its own separate ADI ...

The advisers agreed that this was a little confusing. Theoretically, Bankwest could revert to being an independent bank, as it was before being taken over by CBA, but it was not viable then and would probably not be viable now. It really needs CBA's backing and credit rating to raise these funds on the global market and keep the costs of borrowing down, so that it in turn can keep down its rates to customers. We could see that there was not really an option, as was evident in the second reading speech. What is the option? How can we pursue that? There really is no option; we have to reduce Bankwest and the CBA down to one ADI and, of course, that will be the Commonwealth Bank.

I also asked why the "keep the bank in Western Australia for Western Australians" provisions were limited to five years from the date of transfer. The response was that there are two strands. Essentially, the obligation that the Bankwest banking business should continue to be carried on in WA using the Bankwest brand is a long-term obligation which includes, as I have said, ensuring that Bankwest is of the same type as, and on a scale not significantly less than, the business in WA as at 30 June 2011; maintaining a head office in WA; and ensuring that the managing owner is based in WA. The head office of Bankwest will be moved to Raine Square, which is to be re-named Bankwest Square. It is not envisaged that the staff will be reduced, and that is really important, because it is really important to maintain employment in Western Australia. The other strand that is subject to the five-year limitation from the transfer date is the maintenance of rural branches, which was mentioned by Hon Matt Benson-Lidholm. In the metro region, it is anticipated that five branches may disappear, but a wholesale rationalisation that will result in many job losses is not anticipated.

If Bankwest is to be a division of CBA, will it still retain its autonomy? The intention is that Bankwest will still have its own products and brand and will not merely be a clone of CBA. We will not lose Bankwest branches in places where there are already CBA branches. However, since Bankwest and CBA will in fact be the same organisation operating under the same ADI, the anti-competition laws will not apply in situations in which the two co-exist.

Will the class action against Bankwest be preserved? There was a case in which people were concerned about excess fees, and we know that banking consumers are beginning to fight back against big banks that fine them

unfairly. I was concerned about whether this change is going to affect those customers, and I was advised that both assets and liabilities will be transferred with effect from the transfer date, which will preserve the claims, so people will still be able to get some fairness and equity out of the bank when that case is heard, regardless of whether it is owned by CBA or has its own separate ADI.

In summary, we have all but lost our state bank. This amending legislation will preserve the unique character, or brand, of a Western Australian bank, including the location of the manager in WA, with the cooperation of the Commonwealth Bank, which clearly sees an advantage in keeping the Bankwest brand. Points of presence in rural areas are going to be protected, but only for five years. However, it is important to note that this was not one of the mandatory principles under the original act, and it is now mandatory for at least five years. It was the closure of rural bank branches, identified in the 1990s as I recall, pre-mining boom, that was a key factor in what was seen as a shrinking of rural towns; people are particularly sensitive to the loss of banks in rural areas, and population migration to the “big smoke” in Perth was part of that closure of little country banks. Hopefully we will not see that in this case; I think this legislation goes some way towards protecting us from that—at least for five years. If it does occur, an annual compliance certificate is required, so we can keep track of how Bankwest is faring throughout Western Australia. That can be enforced through the Supreme Court by way of a \$2 million payment for a contravention.

I would like to accentuate the comments made by Hon Ken Travers, who said that we really need more advice on how those contraventions will be enforced. Will the minister make a statement? Will there be some way of keeping track as to whether the Commonwealth Bank is living up to its promises? The Greens (WA) will support this bill.

**HON PHILIP GARDINER (Agricultural)** [3.16 pm]: I rise to give the National Party’s support for the Bank of Western Australia Amendment Bill 2012, which reflects an unfortunate inevitability, as part of the globalisation process of the last 20 to 30 years, as financial institutions must be the first to adapt because money is the product that flows easiest around the world. Anything that happens in one part of the world will almost certainly have an immediate impact on banks, wherever they are. Therefore, it has come to pass that this is what has happened to Bankwest. Hon Lynn MacLaren, Hon Matt Benson-Lidholm and Hon Ken Travers have each spoken about the history of the bank, the warmth with which it is regarded and the way in which it played a material part in opening up the wheatbelt of Western Australia—particularly in the days, circa 1895, when the state was the main funder of Bankwest. Now, of course, we can raise funds anywhere and the bigger the bank is, the easier it is, usually, to raise funds, unless the bank has cruelled its pitch with bad quality assets. Any banking business is judged on the quality of its assets; if it does not have good quality assets, it will ricochet all the way down the line and affect its funding capability, sometimes with cruel effects. This occurred with the Royal Bank of Scotland under Bankwest’s previous ownership.

It makes sense to have only one authorised deposit-taking institution, so the Commonwealth Bank has to have that. That will have a small influence on the cost of funds; I have spoken to the chief executive officer of Bankwest and, yes, there will be a marginal impact on the cost of funds as a result of this rationalisation. The CBA wants to keep the same brand —

**Hon Ken Travers:** Are you suggesting the cost of funds will go up?

**Hon PHILIP GARDINER:** No—fall.

**Hon Ken Travers:** If we don’t pass the bill, the funds will go —

**Hon PHILIP GARDINER:** If we do not pass the bill, I presume that there will be some foreclosure on the bank to take it out some other way.

**Hon Ken Travers:** They’d have to seek other funds, which would push the —

**Hon PHILIP GARDINER:** It would not be able to fund itself, Hon Ken Travers, because if it tried to fund itself in the European or world market, it just would not have the size, and that market is very sensitive at the current time, as the member knows.

**Hon Ken Travers:** I apologise; I just thought you said it would go up.

**Hon PHILIP GARDINER:** The assets of Bankwest are about \$70 billion and of that, \$50 billion is in home finance, \$20 billion is in business, and there is a little around the edges for credit cards and personal loans. The largest component of its book is home loans. It might be asked what the benefit of the Bankwest brand will be, because CBA does want to hold onto it; I think it is rather cosmetic, really. I should declare my interest: I am a customer of Bankwest. It does come back to the service that any bank offers.

**Hon Simon O’Brien:** I’m trying to help all of you so I wish you’d help me get this bill through!

**Hon PHILIP GARDINER:** Yes, we will get it through.

The only other thing out there, especially in the regional areas, is the new competitors that have come into that area. Rabobank has a very strong presence out there. It operates as a Netherlands bank. It is a cooperative, which not many people realise. It just shows how strong cooperatives can be when they are managed well, as most of them are, I should add. It is very good at agricultural business finance. There are other competitors. There is the Bendigo Bank also, which has come through with this rationalisation. So it is not as though a big hole will be left if Bankwest withdraws or becomes more eastern states-oriented. Of course, one of the reasons for Bankwest being strong in the old days was that we thought we had to try to become more independent of the eastern states in a much stronger way than we do even today, because we were a claimant state really on the eastern states in those days and we wanted to make our own mark on our own, thanks very much.

The only other thing I wish to say is that on the funding currently, about 30 per cent comes from the Commonwealth Bank of Australia, and 70 per cent comes from deposits within Western Australia. It will probably be quite important to try to retain that level of deposits out of Western Australia. It also issues commercial paper, and that comes within that 70 per cent. From the deposit point of view, the brand is important for the CBA commercially.

There will be no board members from Bankwest on the CBA board, but I am told that there is a member of the CBA board who has specific responsibility for all the subsidiaries of the kind that Bankwest will be of CBA, and who then deals with New Zealand and Vietnam, I think. That is the only avenue by which the clients of Bankwest in Western Australia will have a voice on the board of CBA about their needs.

There will be no financial market trading over here. That will all be centralised in the main headquarters of the bank in Sydney. That had previously happened because the Royal Bank of Scotland had retained that when it was sold. So that left Bankwest at that stage. There will not be any other trading. The one opportunity for trading that Bankwest had was in the bullion market. I remember having a discussion with Sir Charles Court at one time in Tasmania when we were speaking at a conference there. He said that Western Australia should become a financial centre. In my view, that was totally unrealistic, but we could have been a niche operator in the bullion market because we have a mint, and it is a mint with a recognised mark around the world: it is the Perth Mint. It still is.

**Hon Ken Travers:** How would that be different from what the Gold Corporation itself does at the moment?

**Hon PHILIP GARDINER:** I am not quite sure how the Gold Corporation and the Perth Mint work in, to be quite honest.

**Hon Ken Travers:** The Gold Corporation runs Perth Mint and runs the gold trading side of the mint.

**Hon PHILIP GARDINER:** It could be much more active because I know firsthand, having a younger son in the business in Sydney, that they do not really come across the Gold Corporation much at all in terms of trading. The Perth Mint's little niche is in commemorative coins. That is a retail market. We could also have the wholesale market.

**Hon Ken Travers:** But you can also buy gold and it will store it for you.

**Hon PHILIP GARDINER:** Yes. But to deal, it needs to have turnover in a significant way. It is not a major player, but it could have been because the few dealers who are in Sydney and Melbourne are outside the natural time zone. By moving to Perth, they would have then traded with London and Switzerland in particular, and also now more with the Asian entities. That was always an opportunity that I think we might have missed at the time.

The story is that yes, we are in favour of this bill. It is an inevitable consequence. Without it, Bankwest would have nowhere else to go. The most distressing thing for me is that it was sold for a song—\$2.1 billion. The December 2011 financial result after tax was \$463 million. As a percentage of \$2.1 billion, that is 22 per cent, which is a remarkable return. Even though it made a small loss of \$45 million in the previous year, that was really because of the bad loans that it would have taken on. But I suspect this is an extremely profitable acquisition for CBA. The worst part is that it has consolidated the banking system into the few big ones. They have to be big to compete internationally, but the competition has lessened as a result. That is the sad part. But, again, Bankwest would have had to be sold to one of the big boys. If it was not CBA, it would have been Westpac or someone else, so the result would have still been the same. With that, I am happy to support the bill.

**HON SIMON O'BRIEN (South Metropolitan — Minister for Finance)** [3.25 pm] — in reply: I thank members who have contributed to this debate on the Bank of Western Australia Amendment Bill 2012 and indicated their support for the second reading of the bill. I note also that the lead speakers from the Labor Party, from the Greens and from the Nationals all claim to be customers of Bankwest. I hope they fully understand that I am trying to protect their interests in advancing this bill, as well as trying to preserve the interests of the bank itself. There are a lot of customers of Bankwest in this state. We have just heard about the size of the bank's

home loan portfolio, and behind that are a heck of a lot of Western Australian households that need the provisions contained in this bill. That is why it is important that we make progress on the bill.

I listened closely to the contributions of members. I noted also, as well as the absence of a supplementary notice paper, a willingness to progress the bill. Hon Ken Travers went so far as to indicate that a response to some answers to some of the questions that he asked by way of this second reading response may even preclude his requirement to go into the committee stage.

**Hon Ken Travers:** If you think it's easier to just go into the committee stage, and you have your advisers to go through that, I am happy to do it that way as well.

**Hon SIMON O'BRIEN:** I am more than happy to go into the committee stage, even though I want to proceed with this for practical reasons, and I will come to that in a moment. Having heard what was asked—Hon Ken Travers asked the lion's share of the questions, and they are all pertinent questions—I think I can have a crack at satisfying him now. I am quite happy to go into committee if he wishes, but I think I can satisfy him on the matters that he has raised.

One of the first matters that was raised was the question of why this is an urgent bill. I want to quickly deal with that point because it touches on a number of matters. Traditionally, a bill being introduced into this place will lie on the notice paper after its introduction, or after having been "read in", as we colloquially say, for a minimum of one calendar week before the government of the day brings on the bill for the continuation of the second reading debate. That has long been the practice of this house. In another place I understand it is three weeks. In any case, it is to allow members to familiarise themselves with the bill and to seek briefings or whatever else they need to do. More recently under this government, the Leader of the House has established a practice whereby if a bill is introduced into the Legislative Council, as opposed to simply being received from the Assembly—that is, it is being introduced into the public domain for the first time—we wait two weeks for the bill to be brought on. This is a bill that I have introduced in the Council, and it will go to the Assembly, hopefully, after its successful passage through this place. It was raised by the Leader of the Opposition and Hon Ken Travers that this bill is being dealt with in an urgent way in that we have brought it on after only one week.

**Hon Ken Travers:** I understand why it's urgent now. I understand that in the past it was one week and then the standing orders changed. My issue was more why the bill was not introduced earlier when this matter has been around for 18 months.

**Hon SIMON O'BRIEN:** I am about to come to that. I will say, with due respect, that it has always been the case that a week has been allowed, until this government quite recently changed it to two weeks. On this occasion, because of the urgency of the matter, we have asked whether everyone would be agreeable.

**Hon Ken Travers:** Most governments have been reasonable about that and most oppositions have been reasonable when it's urgent.

**Hon SIMON O'BRIEN:** That in itself is not a problem for dispute. I am glad we have clarified that.

**Hon Ken Travers:** I'm happy to deal with it, but I can't understand why it wasn't brought in earlier.

**Hon SIMON O'BRIEN:** In relation to the passage of this bill and the specific question that Hon Ken Travers just repeated, the fact is that we have not delayed or dragged our heels on this legislation. It is true that the initial approach from the banks was some time ago. Subsequent to that, engagement in serious negotiation occurred, but it was not always continuous. I invite members to consider the progress of the issue that has brought us to this stage today. We have had a development brought about by the policy position of the Australian Prudential Regulation Authority. We all know this, and it was referred to in the second reading debate. We have already discussed the imperatives for the actions to be taken so that we have a single authorised deposit-taking institution in effect. That has come from the outside. The banks have to deal with that. The Western Australian community, through its institutions, including Parliament, also has an interest in this matter, so we have to deal with it. The way that we propose to go forward is contained in this bill. I fear that there might be some at least unintentional misapprehension in a number of remarks that have been expressed in the public debate about what our role as a Parliament is in all of this. It is not up to us, with respect, to tell a private organisation how it must run its business or to assert our influence and powers over the decisions that a private organisation must make about the people it employs, what it does to conduct its business, how many premises it retains and all the rest of it. However, on this occasion, because of the need for government and the banks to cooperate with each other, we have an opportunity to visit some things that we would not normally get to visit. That has allowed the government, if the Parliament is willing to acquiesce, to secure some further benefits for Western Australia via this bill. I will explain what I mean by that as we progress, but that is the angle from which I will approach this whole issue. The parties involved have a mutual interest in finding that way ahead. From our respective perspectives, we have had to work out the terms by which we will allow the way ahead to be found. Those terms are now reflected in the bill before us, and I will come to those terms in just a moment.

In light of what I have just explained, I now return to the first question that Hon Ken Travers asked. I think he said in his remarks that even though this has been going on for some time, we are now at the eleventh hour. I think eleventh hours can be useful things, because they are the time when a lot of things get finalised that perhaps were not going to be finalised before. Because it is the eleventh hour, as we call it—we all understand what that means—those who want an outcome to be reached have to start working towards getting to that end point; otherwise, they will get to midnight and perhaps the opportunity will be lost. The eleventh hour is actually a good time in many ways to finalise some of these matters. Clearly, the banks, in reaching agreement on what we are discussing today after extensive and, as I say, not always continuous engagement with government, have now decided to come to terms with the government and vice versa. The fact that we are doing this at the eleventh hour is, in a very real sense, a good thing. If we had simply said, “Oh, heck, we had better get this done”, six months ago when we did not have much other legislation before the house and we had a bit of spare time, I do not know that we would have got as good an outcome for Bankwest customers and for the state of Western Australia as we now have before us. In effect, it is not a crime, a misdemeanour or a weakness that we are dealing with this bill at this time. It does mean, though, that we need to get on with our deliberation, and that is what I will now do. I just wanted to introduce that theme to show why I and the government see the bill as imperative and why I invite members to view this bill in a slightly different way from the way in which they might view some other legislation.

The bill is the machinery to deal with the matter that has arisen—that is, the APRA requirements. Because we now need to amend the Bank of Western Australia Act 1995, it gives us that rare thing—an opportunity to revisit that act and its terms and to revive them. Although I caution members that we really do not have any business in telling a private organisation how it can conduct its affairs or what business decisions to make, we have an opportunity, in this brief window of opportunity, to do just that. That is what I will now turn to, and we will see what we now achieve.

As we know, the Bank of Western Australia Act contains some enduring requirements to be observed by whoever becomes an owner of Bankwest in the future. Is it not good now that after 17 years or so we get an opportunity to revisit this and finetune it, as it were, and also give it an extra lease of life? Hon Ken Travers noted in his remarks that a couple of different types of provisions are contained in this bill, which I will refer to now as long-term or enduring obligations on the one hand, and five-year obligations on the other. The long-term obligations in the existing act are largely preserved. The only ones removed are the requirement for the bank to be registered in Western Australia and the residency requirements for the bank’s board. The other requirements all remain. This is where the first benefit accrues. The requirement to keep the running of a business of a similar scale, which is in the original act, has been updated, not with reference to the time of privatisation but to 30 June 2011, when the scale of the organisation is in fact substantially larger. We get to lock that in with this bill.

Some other matters that the bill will put in place that were not there before are, firstly, a stronger monitoring process, which is another benefit. Specifically, there is the requirement for an annual declaration by the banks that they have complied with the requirements of the bill, and the provision for the responsible minister to require information to satisfy himself or herself as to that compliance. That is something new and improved. Of course, there is also the requirement for the bank to keep sufficient records to provide that information that I have just alluded to.

A number of members asked about the benefit of the five-year provisions and what happens after the five years. It is fair enough to ask that but the point is at the moment we do not have any five-year provisions. This is something extra. This is the opportunity that we now have in joining with the banks to give this extra lease of life, if we like. We have the opportunity to agree on what we are now referring to as the five-year provisions. They are, of course, contained in the bill.

**Hon Ken Travers:** But, minister, how are those five-year provisions not picked up under the over-arching clause about the scale of the bank? How is the requirement not to close branches in any way different from the fact they have to keep open as many branches as they have in the bigger picture issue?

**Hon SIMON O’BRIEN:** I will come to that in a moment because I have prepared my response in line with the member’s comments. Hon Ken Travers asked about the contrast between the injunction process and the monetary penalty of \$2 million. These are the provisions contained within divisions 2, 3 and 4 in part 2 of the bill. I think the member’s query was termed, “Is there a risk of confusion between the two?” I do not believe there is any confusion between the two because the bill specifically provides that, under proposed section 42P, the injunction process is to be used only for the long-term provisions and the monetary penalties are to be used only for the five-year obligation. The terms refer to divisions 2 and 4 on the one hand and division 3 obligations on the other.

**Hon Ken Travers:** Once the five-year term ends, the monetary penalty section of the act ceases to have any effect?

**Hon SIMON O'BRIEN:** Yes; that is my understanding. We might think, “Well, that’s a poor thing”. I think something that might have been implicit in the honourable member’s address the other night, if I recall correctly, was, “Why is it only five years; why not two years, but more specifically, why not six years, 10 years, 50 years or forever?” Again, I go to my opening remarks in this speech and point out that the five-year obligations are something extra. In effect, they are the best arrangement we could negotiate with the banks at the time of progressing this matter. Our glass is indeed partly full, not partly empty. We are not being sold short; we have something extra by having these five-year terms.

Coming back to the matter Hon Ken Travers asked about earlier: at what time does this potentially get confused? I think he was looking at the theoretical position whereby it could be possible for the bank to do something such as closing several branches. At what point does the category of breach change; at what point would we see the triggering of the scale provision? I think that is what he was asking, as well as about the specific provisions contained in proposed section 42J. Apart from the indications given in the bill, it would be up to the minister of the day to make a judgement about the most appropriate remedy to apply, if there is a choice. During his contribution, the member also asked in a related question how many times a \$2 million penalty could be applied: is it the case that it might apply, say, with every branch that could be closed against what is in the act, or would it require some larger systemic change?

**Hon Ken Travers:** If they closed 10 branches all at the same time, is the penalty \$20 million or still \$2 million?

**Hon SIMON O'BRIEN:** The bill does not prescribe that. I think there needs to be regard for all the circumstances that might prevail at a particular time. But I draw attention to, for example, proposed section 42R(2) where it states, “A contravention notice may relate to more than one contravention.” Depending on the scale of what is occurring at the time or the number of instances that might be discerned by the minister of the day, the option is to say that it is a single contravention or there is a series of contraventions. If 10 branches shut, for example, that could result in 10 contravention notices and ultimately 10 penalties totalling \$20 million. That might be an outcome. Although I do not want to hypothesise about things that might happen, the key point to note is that the bill does not bind a future minister in this sense. It gives the opportunity for a judgement call to be made about whether what could be a series of contraventions is treated as a single contravention or some larger number of individual contraventions. Again, I think that is a good thing because I do not think we can contemplate what the circumstances of a future time might be.

**Hon Ken Travers:** I am concerned that at some point in the future if a contravention notice is issued, there will be a potential argument in a court about whether the minister should have issued one contravention or 10 if they close 10 branches. I would have thought the debate here will help inform the courts as to what the intent was in passing this legislation.

**Hon SIMON O'BRIEN:** The intent, as in proposed section 42R(2), is that whether a single contravention notice or more than one contravention notice is issued is a matter for the discretion of the minister. I believe that preserves the flexibility of the state’s interests for the future rather than now trying to prescribe some number. What are the other variables that might take place? What are the other pressures that might be noted at the material time? The other key points are: What does closure mean? What are the dates that apply? Will we say that it is deemed closed if there are multiple closures within a week of each other or within six months?

**Hon Ken Travers:** Or if they go to operating one day a week instead of five days a week.

**Hon SIMON O'BRIEN:** There are all those sorts of variables. I would not care to try to prescribe that now. In any case, the negotiations between the banks and the government have produced the divisions before us now and that is what will prevail over the five-year period.

Just quickly moving on, Hon Ken Travers also asked about the certificate of compliance to be provided to the minister. Members following this debate will know that that is at proposed section 42N. The question asked was: why not make it public? There might be two questions implicit in what the member has asked for. Although I have just referred to the standard certificate of compliance to be provided at the end of each financial year under proposed section 42N, I think when the member asked about this matter, he was referring instead to information required by the minister under proposed section 42O, which is information provided in response to a notice from the minister about some very particular matters.

**Hon Ken Travers:** No, I was referring to the proposed section about releasing —

**Hon SIMON O'BRIEN:** That is contained in proposed section 42O(6) on page 10 of the bill.

**Hon Ken Travers:** That is where one of them is. That is the disclosure. Keep going; I will find them.

**Hon SIMON O'BRIEN:** I will answer from both points of view, because I see no reason why the proposed section 42N certificate of compliance should not be made available. I think that would satisfy the honourable member. An interpretation of proposed section 42O(6) is that it is a challenge to the authority of Parliament or

anyone else who is responsible for examining the conduct of the government or, in this case, the bank or the bank and its relations to the government by way of providing information. As I said in my remarks during an earlier train of discussion, I invite members to view proposed section 42O from a different angle. This proposed section is not a challenge to anyone who properly needs to obtain this sort of information or may inquire after it in trying to determine the interests of Western Australians, including Bankwest customers. Proposed section 42O is all about the recognition of a couple of things. Firstly, it recognises that the minister may require information and has the authority hereby to demand it. As I said earlier, that is an improvement on what we have now. That is the first thing.

The second thing that is recognised by this proposed section is that a good deal of the meaningful information will have commercial sensitivity attached to it. That is the second thing that is clearly understood by those who included proposed section 42O. The purpose of proposed section 42O(6) is to say that although we recognise that there is some potentially very sensitive information here that the minister may need to access and is empowered here to access, and that information needs to be protected and should be protected, we still recognise that Parliament has primacy. Proposed section 42O(6)(c) ensures that there is no question that Parliament has the right, as it normally would, to send for and obtain that same information. It is a guarantee of Parliament's rights and privileges. It is not an attempt to circumscribe them.

**Hon Ken Travers:** We already have that under the Parliamentary Privileges Act. Why do we need to re-emphasise that? Arguably, you're starting to narrow the scope for other bills if they don't include that in there. We could potentially argue that the right of Parliament to seek that information has been diminished because it is not included in that bill but has been included in this bill.

**Hon SIMON O'BRIEN:** I do not believe that is what this clause is about and that is not where it leads us. Although it provides a minister with power to obtain certain sensitive information, and necessarily so, it also constrains the minister, for example, at proposed section 42O(5), which states —

- (5) The Minister must not disclose information provided ... for any purpose other than the purpose for which it was given unless the disclosure is authorised by subsection (6).

One of the parties to what we are dealing with today is of course the banks. The banks need the form of protection that is contained there, but, to put it beyond doubt, "authorised disclosure" most certainly includes a number of circumstances automatically, including that it is required under another written law, or that it is made for the purpose of answering a question in a house of Parliament or complying with an order or resolution of a house. That is how the government sees this provision. Those are the whys and wherefores as to why it was created, not as an attempt to restrict Parliament's capacity but in fact to guarantee it.

**Hon Ken Travers:** Is the minister saying that under proposed section 42N he sees no reason why that certificate of compliance could not and should not be made public? Is the minister able to give a commitment that the government will make those certificates public when they are received?

**Hon SIMON O'BRIEN:** I would have thought that this sort of certificate would be part of the normal review anyway, including via parliamentary committee. I cannot see any reason that that certificate, to the effect that it complies with the obligations, should not be made public. I honestly cannot. I cannot say what some other minister at some other time might do, but to my mind I see no constraint at all.

**Hon Ken Travers:** But the minister can understand the confusion. Proposed section 42N is silent about what happens to that certificate and whether it is public or private. When we go to the next proposed section—I take the point it is a different section, but it deals with information that is requested—there is a very clear procedure about the circumstances in which it can be made public. It may be more sensitive information.

**Hon SIMON O'BRIEN:** Proposed section 42N is not about providing information to anyone other than the minister. I am looking at it from the point of a view of a minister of the Crown. Bearing in mind this is the bill now at its genesis, I cannot see any reason to not respond to an inquiry about whether the end-of-financial-year certificate of compliance has been received.

**Hon Ken Travers:** Or you table a copy of it.

**Hon SIMON O'BRIEN:** Sure. But then again I do not think we need a provision in here to state that the minister will do it. Most years, I would hope, it would be met with complete lack of interest. It is a bit like the \$2 million penalties and so on—it is important to have those big sticks but I hope they are never in a position in which they need to be exercised.

**Hon Ken Travers:** I think it would arise if there was a wholesale closure of branches across the wheatbelt. I use the wheatbelt as an example only because I think it is probably the most likely area to be constantly under pressure. The community might ask, "Where is their certificate of compliance? We want to see it." It might be across metropolitan areas if there are wide-scale branch closures.

**Hon SIMON O'BRIEN:** Indeed. It is for extraordinary circumstances that arise. It is an opportunity that we have to guarantee certain —

**Hon Ken Travers:** It would apply only if someone thought they were not complying.

**Hon SIMON O'BRIEN:** Yes. At the moment we take advantage, via this bill, to put these sorts of provisions in for a five-year period; otherwise it would not happen. I think we should take them. That reflects a good, workable, negotiated arrangement.

**Hon Ken Travers:** The compliance certificate extends beyond five years, does it not? It is in division 4.

**Hon SIMON O'BRIEN:** Yes. They in effect go on. Sometimes when I do these things on my feet, there are a range of reference points. Sometimes I need to double-check the answers.

I will try to move on a bit. I am almost at the end of the questions that were raised. I think this is the last of Hon Ken Travers' substantive questions: what is the form of the agreement between the government and the bank and can the agreement be made a public document? My advice is that there is no document around stating that this is an agreement between the state of Western Australia and the Commonwealth Bank of Australia and Bankwest. There is no memorandum of understanding or anything like that. At one stage in the negotiation process there was some contemplation of drafting a deed of agreement. In effect, it was agreed that the better way to do it was for the entire agreement to be reflected in the bill before the house. That way, we have transparency and clarity. That is what happened. This bill represents the agreement in the sense that the honourable member refers to.

Hon Matt Benson-Lidholm also raised a couple of questions. He talked about regional amalgamations. If necessary, I can get him some further briefing assistance on these matters. Amalgamations can occur under this bill only when the two branches to be amalgamated are within five kilometres of each other, among other things. The idea is to ensure that a spread of existing branches is not lost to the regional communities that they service. In terms of maintaining levels of sponsorship in community sport, the banks have provided to the government baseline information that can be used to assess compliance with the provisions of the bill. I do not intend to go into that any more at this stage because this is commercially sensitive information. The disclosure matters, as we have just discussed, will be pertinent when we review future activities against those baselines. Finally, Hon Matt Benson-Lidholm asked: if the CBA on-sells the Bankwest brand, does all this go out the window? Certainly not. All the provisions and responsibilities in the bill will transfer to the new owner, whomever that may be.

The Bankwest brand is a sought-after and admired piece of property. That is why the CBA acquired it. It is also a reflection of the pride of Western Australia. It is a matter of some satisfaction, I am sure, that the CBA wants to own Bankwest, wants to run it as a stand-alone, identifiable business, and wants to grow that brand. It knows it can. That indeed is the recent history of Bankwest. I am sure that all Western Australians would like to see it continue to prosper as an institution, not least because so many Western Australians have their mortgages or other business with Bankwest and it would be a poor thing if we were to fail to take the necessary action to make sure they have access to competitively costed finance in the future. I am sure no-one wants their mortgage rate to go up by one or two per cent, so we wanted to make sure they continue to have access to the Commonwealth Bank of Australia's investment power.

I think I have acknowledged all the key points made, but most particularly I think I have responded to the specific questions raised. I once again thank Hon Philip Gardiner, Hon Lynn MacLaren, Hon Matt Benson-Lidholm and Hon Ken Travers for their contributions to the debate, for their willingness to consider the matter, and for the way they have worked with the advisers out of session; I hope I have now satisfactorily addressed the matters members raised. The Bank of Western Australia Amendment Bill 2012 still has a number of stages to go not only in this place, but also elsewhere, but for now I would like to see it read a second time. I thank members for their promises of support for that motion.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

*Third Reading*

**HON SIMON O'BRIEN (South Metropolitan — Minister for Finance)** [4.11 pm]: I move —

That the bill be read a third time.

**HON KEN TRAVERS (North Metropolitan)** [4.11 pm]: I did not think I would waste the house's time going into Committee of the Whole, but I make one final comment following on from the response given to the comments of Hon Matt Benson-Lidholm. I am not going to hold up the bill, but I would not mind getting some clarification from the minister about exactly what the intent is regarding what it means to have a "branch" and a "business". Is there anything in the bill that prevents, say, Bankwest amalgamating with the Commonwealth

Bank in a town and having a joint branch or having a Bankwest sign in a Commonwealth Bank branch, so that they could argue they are still complying?

**Hon Simon O'Brien:** Say, two former shopfronts become just one?

**Hon KEN TRAVERS:** Yes, with the staff of one branch rather than two. That was the only point of clarification I think Hon Matt Benson-Lidholm was trying to get to—I probably did not explain it very well—in asking how, through this bill, we prevent that happening. Effectively, there could just be Commonwealth Bank branches with Bankwest signs up everywhere.

**HON SIMON O'BRIEN (South Metropolitan — Minister for Finance)** [4.12 pm] — in reply: Yes, that is an important question for clarification. I would like to just reflect on it for a moment, noting that Mr Deputy President is about to leave the chair.

**Hon Ken Travers:** You can continue your remarks when we come back.

**Hon SIMON O'BRIEN:** Perhaps I will continue my remarks if Mr Deputy President interrupts me.

**The DEPUTY PRESIDENT (Hon Jon Ford):** I can read the will of the house, minister; I will leave the chair until the ringing of the bells.

Debate interrupted, pursuant to standing orders.

[Continued on page 3195.]

*Sitting suspended from 4.13 to 4.30 pm*