

LAND LEGISLATION AMENDMENT BILL 2014

Second Reading

Resumed from 18 March.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [2.34 pm]: Mr President, do you want the Land Legislation Amendment (Taxing) Bill and the Land Legislation Amendment Bill dealt with cognately?

HON COL HOLT (South West — Minister for Housing) [2.34 pm]: I can move that the bills be debated cognately. I understood that because I read in the bills together, they were already cognate.

Hon Sue Ellery: You need a motion.

The PRESIDENT: One of these bills is a taxing bill, therefore, it is not appropriate for the bills to be dealt with cognately; they have to be dealt with separately.

Hon SUE ELLERY: Members might find that the two speeches sound remarkably similar and they might find that the word “cognate” slips into my comments on the first bill if I am not paying attention to what I am reading, but they will know what I am trying to do.

The Land Legislation Amendment Bill, which we are dealing with now, amends five bills and sets out the head of power for the fees charged by Landgate, as the agency responsible for managing land titles and related services, to be greater than cost recovery, and for the expiration of the relevant section to occur by 31 December 2019. There will therefore be a time limit on this extension of power. It also requires the Minister for Lands to take into consideration matters relating to the setting of prescribed fees as part of the statutory review every five years.

Lodgement of fees and title searches are the bread and butter service offered by Landgate. The second reading speech tells us that, subject to the approval of the minister and the Economic and Expenditure Review Committee subcommittee of cabinet, and cabinet, the measures in this bill will allow Landgate fee changes, which will be by regulation and thus a disallowable instrument. The second reading speech tells us also that the power of Landgate to increase these fees will not be unconstrained. But, of course, the check and balance referred to in the second reading speech and, indeed, in the debate in the other place—that is, a subcommittee of cabinet and cabinet itself—is not referred to in the legislation. A statutory review after five years is referred to in the bill, but the notion set out in the second reading speech that additional checks and balances are in the bill before us today is just not true. They are not in the legislation. It is the government of the day saying we will make sure there is an annual check of the fees, and we will use a budget process to do that, and the goodwill of the minister. But that is not reflected in the bill we are debating now. It is a time-limited power granted to Landgate, and at every five-year review, the minister of the day will be required to consider how the fees have been calculated under each of the respective acts that are being amended by this first bill, and whether Landgate has achieved the efficiencies that will enable the fees to be either reduced or, at the very least, not to be increased. This statutory review is to be tabled before Parliament.

The second reading speech tells us also that Landgate has committed—as though somehow Landgate is completely separate and divorced from the government of the day—to hold fees for regulated products and services at current levels until 30 June 2018, other than by increases related to CPI or what is referred to as “other law changes”. I invite the minister to canvass what those other law changes might be. There must have been some anticipation of that. It is an interesting time line because if we bear in mind that a time-limited power exists until 31 December 2019 and does not come into effect until 30 June 2018, that is 18 months of foreseeable fee increases before consideration is given to reviewing whether they are reasonable and further increases are needed. Given that particular timetable, I suspect it is not a problem the current government will face but a problem that a future government—ours—will have to deal with.

Reference in the second reading speech to effectively capping fees to the current rates plus CPI and/or other law changes is a policy decision; it is not reflected in the bills. It is not legislated, and I note that in the debate in the other place the minister is on the record as saying that these bills lock in current fees. Minister Redman, in the debate in the other place on 12 March 2015, stated —

The bills do not actually set any increases in fees at all; they lock in current fees.

The bills do no such thing, but I invite the minister, on my reading, to point out where in the legislation what minister Redman said is the case. Where in the explanatory memorandum does it set out that that is what the amendment bill does? It is not actually there in the legislation. It is a policy decision; it is a decision and commitment to honour a policy decision made by a government already known for its reckless breaking of promises. The second reading speech goes on to tell us that the outcome of this legislation will be more certainty for customers and a more sustainable funding base for Landgate as it is able to keep in-house any savings that it

makes. Again, I invite the minister to point out to me where in the legislation it is set out that Landgate will be guaranteed to be able to keep any savings in-house. In the second reading speech Minister Redman also states that the outcome of the successful passage of this legislation will be that Landgate is able to —

... pay an increased dividend and a higher national tax equivalent amount to the state to support government expenditure in other areas ...

That is really interesting, and I looked to the legislation to see how the tension between those two that is creating an increased dividend and a higher national tax equivalent amount to the state to support expenditure in other areas would be managed against what the second reading speech tells us will be the outcome for Landgate to be more sustainable because it is able to keep any savings that it makes in-house. I could find no such reference to that tension in the legislation, nor in the explanatory memorandum, so I invite the minister to demonstrate how the legislation gives effect to what the second reading speech tells us it will do.

It seems to me that it is a policy decision that has been made. Who knows whether that policy decision will be this government's position in six days, six hours, six weeks or six months? It is a policy decision. It is not legislated at all, it is not delivered by these bills at all, and it will be delivered only if this government keeps its promise. We are not legislating to lock in fees. We are not legislating to ensure that Landgate can keep whatever it generates itself—we are not legislating that. It is not in the legislation. If the Minister for Lands thinks that the second reading speech was not accurate, he should not have given that second reading speech. If the minister thinks that I have missed something in the legislation, I am happy to be shown where it is.

Due to a variety of circumstances, I have not been briefed on this legislation. I am not blaming anyone for that; I did not seek one and the government did not offer me one. I am not holding anyone responsible for that, but it is a fact that a briefing was not held for me. Just to assure the Leader of the House, a briefing was provided for the members of the Legislative Assembly.

Hon Peter Collier: It still should have been provided.

Hon SUE ELLERY: Indeed it should, and I should have followed it up, which is why I am not blaming anyone. I think it was a variety of circumstances, which is what I said, so I am not seeking to blame anyone. It would have been polite for the minister with the responsibility of the bill to make sure I got one, but it would also have been prudent of me to make sure I got one, so I am not blaming anyone; I am just saying it did not happen.

I am happy for it to be pointed out to me where I have got the legislation wrong. It seems to me that fairly critical accountability measures are referred to in the second reading speech, but I cannot find them in the legislation. Sometimes legislation is complex; sometimes it is simple. This piece of legislation is not particularly dense; it includes tiny little bits of legislation. There is a page and a half of amendments to each bill. I thought maybe I was reading the bill wrongly so I went to the explanatory memorandum and I could not find any explanation there, so that tells me that this legislation does not put in place checks and balances. It is a policy commitment by the government.

We will support this legislation, because Landgate manages some 1.4 million titles. The system of managing that securely and efficiently for the conduct or the type of commerce that average Australians are most likely to engage in is a very important task. It is a mammoth and essential task and it is important that it is funded appropriately. The reason I think it is interesting to explore the increasing pressures and scope of work that Landgate is required to do is twofold. There is the complexity of information that people want when they are searching a title these days, which is different from what it was many years ago, and then there is the issue of security.

I want to touch on the issue of security. People are well aware there have unfortunately been far too many cases of scams in which it has been found that people who did not have legitimate ownership of property were able to effectively hijack other people's property. They were able to do so by way of a combination of things, including, at various times, inappropriate access to titles information. I want to put another scenario to members about why the security around land titles is important. It is a hypothetical scenario. Let us imagine that it is 2017 and there is a new Minister for Child Protection. Let us say she is a "she". She has been minister for five weeks. She goes away over Easter and when she comes back, on the front door of her house is a note that says, "Dear Sue, please call X" with a mobile phone number. At the very same time there is an acting director general who has not been in the position very long who also gets home from her Easter break to discover a note on her door saying, "Hello, blah. Please call blah on this phone number". Two of them—not very wisely—use their mobile phones to respond. For different reasons, both of those people think that they are ringing somebody they know. They ring the mobile number and they have now effectively given their mobile number to somebody who knows where they live and who should not, because that person has a dispute with the Department for Child Protection, has a history of violence, has a criminal history, and should not know where the minister and the director general live. Both of those people go to work the next day, and it takes about 24 hours for them both to click that something is not right, because both of them that night, after they had made the phone calls, left a message on the mobile phone telling whoever the people they thought they knew to return their call. Both of them get

unsettling phone calls at nine o'clock that night. At the end of the next day—they are busy people—both of them liaise with each other and say, “Hmm. This happened last night” and the scenario rolls out that the person who hypothetically had several children in child protection but who really was a dangerous person, was able to get their details by doing a title search under our names—hypothetically, under those people’s names. Hypothetically, of course, state security was involved. Hypothetically, police went out and dealt with the matter and, hypothetically, a massive security upgrade was made to both houses. The first question was: could it have been through the electoral roll? The hypothetical acting director general has recently moved house, so they are not on the electoral roll at their new address. The only way the information about where those people lived could have been gained, it was emphatically advised, was by searching the title. There was a disconcerting period of about 36 hours for both those hypothetical people.

Several members interjected.

Hon SUE ELLERY: I am saying “hypothetically”. Read the body language.

It was a disconcerting period, hypothetically, for the people involved in that scenario. The upshot was that nothing happened, police intervened, hypothetically, and the problem went away. It was unsettling, but nothing really bad happened. Security measures were taken subsequent to that. However, it certainly highlighted the need for the information held by Landgate on those people to be held securely, because of the positions they hold, so they can be protected should the need arise. I do not think it was driven by that hypothetical circumstance, but subsequent to it steps were taken on name suppression in Landgate. It is now possible for anyone to apply to have their name suppressed. The service suppresses the details of a person’s address and interests in property on the Western Australian land title register and powers of attorney lodged at Landgate when a name search is conducted on the register. The details will remain discoverable by other search types, such as address and title reference. A person is eligible to apply if their personal safety or that of their family is deemed to be at risk, and if a person holds property, holds an interest in property, has lodged a purchaser’s caveat over property, or is a donor or donee of a power of attorney lodged with Landgate. A person whose name appears on a title, power of attorney or other document alongside that of a threatened person, is also eligible to apply. That is a good thing. I am not sure that it goes as far as it needs to go, because some people need to have their names suppressed only after something bad has happened, and much worse than in the hypothetical case I just gave. Interestingly, I notice that the WA Police Union is conscious of this issue. I refer to an article in *The West Australian* yesterday that states —

The WA Police Union has also urged officers to consider having their names removed from all government-controlled databases such as the electoral roll and the Landgate system to make it harder for terrorists and criminals to track them down. For a small fee, Landgate allows members of the public to search its database for properties owned by other individuals.

It is a real issue for a range of people because of the job or position they hold, but I suspect it is also an issue for people who find themselves unfortunately caught up in family or domestic violence and a range of other circumstances. This bill does not go to that issue at all, but I raise the point because it is important that Landgate has certainty of funding to enable it to stay on top of the technological changes it needs to ensure that information is secure.

The other reason the opposition is supporting the bill to make sure that Landgate has sustainable income is that the kind of information people now require from a title search is very different from the kind of information they sought many years ago. For example, people no longer want information only about the size of the block or the features of the land. Increasingly, as more people live in higher density strata title blocks, the information people need about those titles is more complex. At the very least, people are seeking a much broader range of information. If members need to be convinced of that, in 2014 the Property Council of Australia, the Conservation Council of Western Australia—perhaps considered by some to be unlikely bed partners—and the property developer Psaros commissioned some research to understand community attitudes towards housing choice and the future development of Perth city and its surrounds. They released that research in December 2014, in a report titled “What Perth Wants”. The executive summary of the report states —

The research shows that the preferences of Perth residents for housing type and for the future of the city are changing. The historical desire for large blocks and stand-alone housing no longer dominates housing choice in Perth. Instead, a growing majority of Perth residents are ready to embrace the benefits of apartment-style living in affordable and eco-friendly developments, especially around transport nodes.

In its key findings, the report notes —

There is very strong support for more medium & higher density apartment-style developments around transport hubs (71% support) and in inner areas (68% support).

...

The most appropriate housing types for Perth city are:

- a mix of mid-sized apartments, townhouses & retail / cafés (like Leederville and Northbridge) (79% support)
- a mix of high-rise, town houses and parks (Like South Perth) (71% support)

...

The majority of respondents (73%) do not believe that the benefits of a separate house and garden outweigh the benefits of inner city living.

The researchers gave respondents a series of statements describing possible future directions for Perth city, and asked them how appealing each of these statements for Perth's future were. Support for a focus on medium and higher density apartment-style developments around transport hubs was around 71 per cent. For each statement, a rating of five was extremely appealing, and a rating of one was not appealing at all, and more than 60 per cent of people rated that statement either four or five on the spectrum. The proposition of more medium and high-density apartment style developments within existing metro boundaries was also highly ranked, at around 68 per cent. I refer to that report to reinforce the proposition that, at least in metropolitan Perth, people are looking at different forms of property, and therefore the information required to be kept by Landgate and made accessible to the public is much broader than it used to be. That is why it is important that Landgate be able to keep abreast of the different kinds of information that people want.

In debate in the other place, my colleague the member for Gosnells, Chris Tallentire, in a briefing that he was able to get, raised the issue of the extent to which it is guaranteed that Landgate would be able to retain any funds that it raised. He was provided with a response from the agency that basically said that there is no likelihood of Landgate's surpluses being lost to other agencies. Landgate's operating surpluses are fully audited by the office of the Auditor General. The national tax equivalent regime, taxes and payroll taxes are calculated and paid in accordance with applicable taxation legislation. Dividends are paid in accordance with section 71 of the Land Information Authority Act 2006. Dividends are recommended by the board to the minister who, with the Treasurer's concurrence, may accept the recommendation or, after consultation with the authority's board of management, fix the amount of a dividend to be paid. The mechanism for that is set out in the parent legislation, not the amendment bill. The mechanism is set out in the substantive act, which is being amended. Then, to give us assurance, the information provided by the agency to my colleague stated that to date all dividends had been accepted as recommended by the Landgate board of management, all remaining surplus funds were held on Landgate's statement of financial position, the balance sheet, as retained earnings and that retained earnings were protected by the fact that Landgate can incur expenditure only when that has been approved as part of the annual parliamentary budget estimates process or where it is within its powers under the Land Information Authority Act to invest in a relevant business concern subject to the minister's and the Treasurer's approvals.

All that offers some comfort; however, with the exception of the power that rests with the board to take dividend recommendations to the minister, which is set out in the parent legislation, all the other things are matters of practice or matters of policy. It is good practice and good policy, but it is not reflected in the bill in front of us today. The Minister for Lands, Mr Redman, who is responsible for the legislation, told us in the second reading speech that the bills before us do not set any increases in fees, but lock in current fees. The bills do not; the bills give the power to the agency to increase fees and to take those fees. That is what they do—full stop! The government tells us in the second reading speech that it will manage that by taking any proposed increases through the Economic and Expenditure Reform Committee and cabinet, which is good, but that is not legislated, and I do not think it is appropriate to legislate that. It is not the case that the commitments and promises made in the second reading speech match what is contained in the bill before us. I reckon this is the third of this type of speech I have made since Parliament resumed this year. I do not want to get on a hobbyhorse about this, but I think the government ought to reflect, as my mother would say, on that and maybe try to make second reading speeches match what is in the bills, because it is a serious thing that we are doing in this bill and the government should not give people assurances, as the minister did, that these bills lock in the current fees. These bills do not do anything of the kind and the minister should not tell the Parliament that is what they do if that is not what they do.

It is important that the bills do one thing at least. The opposition contemplated amending the bill to lock in the fees, but we figured that that was not what the government wanted to do, and that is not generally how Parliament deals with fees. The opposition contemplated some other amendments as well, but the amendment that we think the government ought to be able to put in the legislation is that which makes it clear that Landgate is able to keep the income that it generates through increased fees, subject to certain things. If that is the policy intent of the government, we ought to be able to put that in the bill. The amendment I will move when we go into

committee is in the exact terms as the amendment moved in the other place but which was defeated there. That may well happen here, but it is important that the government go on the record that it had the choice to consider whether it wanted to give effect to what the minister's second reading speech stated that this bill delivers. If the government does not want to give effect to what was contained in the second reading speech, then it needs to put on record why it does not want to put that in the bill. It seems to me, more than any other thing in which the bill is different from the second reading speech, that that intent goes to the core of what this bill is about: financial sustainability for Landgate into the future. If that is what the government wants to achieve, how can it possibly disagree with an amendment that will ensure that savings will be retained by the agency, when the government is telling the opposition that is the purpose of the bill? How could the government possibly disagree with the amendment that has been proposed by the opposition? The government might say that our drafting is not appropriate and there is a better way to word it, which is fine, because I am happy to contemplate alternative drafting. It is not as though the government did not know this amendment was a possibility, because the opposition moved the exact amendment in the other place. Hopefully, the government will be prepared with alternative wording to the opposition's amendment. The government cannot introduce a bill in the Parliament the sole, prime and core purpose of which is to ensure financial sustainability in the future for Landgate and then say it is not prepared to legislate that the savings are kept by Landgate. I do not know why the government would bring in this bill if it is not prepared to do that. That is a critical concern of the opposition and I will move in committee the amendments that are set out on the supplementary notice paper that is circulating in my name.

A drafting issue was raised in the other place around the word "or" and I note an amendment in the name of the minister in this place representing the Minister for Lands.

Hon Col Holt: That relates to the Valuation of Land Amendment Bill 2015, not this bill.

Hon SUE ELLERY: The minister is quite right, so scrap that. I will quite possibly be speaking on that other piece of legislation later today.

That is where I think the critical difference is between us. I look forward to the minister explaining to the house why we cannot find a way to do what Mr Redman said and lock into this legislation that Landgate is able to retain the savings made by the head of power that we are giving the agency to increase its fees.

HON ROBIN CHAPPLE (Mining and Pastoral) [3.07 pm]: Like Hon Sue Ellery the Greens will support the Land Legislation Amendment Bill 2014. I make the point that, in fact, much of what we need to deal with is contained in the second bill, the Land Legislation Amendment (Taxing) Bill 2014, so I will be raising a number of points during debate on that bill.

This bill, together with the Land Legislation Amendment (Taxing) Bill 2014 aims to implement reforms to the Landgate pricing framework for regulated products and services. Landgate is the sole property record keeper in WA and currently generates 75 per cent of its customer revenue from regulated products and services, predominantly from document lodgement fees and title searches and is responsible for approximately 1.4 million titles. Landgate uses the Torrens title system for record keeping, which enables people to see a mirror image of their certificate of title held by Landgate. Landgate requires extra funding to provide quality and accurate services, which is relevant to the second bill.

This bill and the other bill seek to amend the Registration of Deeds Act 1856, the Strata Titles Act 1985, the Transfer of Land Act 1893, the Valuation of Land Act 1978 and the Land Information Authority Act 2006. The intent of this bill is to empower fees prescribed in regulations under these acts to be greater than cost recovery and for the expiry of the relevant empowering sections of each act on 31 December 2019 unless postponed by proclamation. The bill requires the Minister for Lands, when reviewing the Land Information Authority Act and the effectiveness of the Western Australian Land Information Authority's operations every five years under section 93 of the LIA act, to consider matters relating to the setting of prescribed fees under the acts that this bill will amend.

Like Hon Sue Ellery, I picked up on the debate in the other place on Thursday, 12 March 2015, when the Minister for Lands said —

The bills do not actually set any increases in fees at all; they lock in current fees ... any introduction of new fees is limited to CPI.

I would like some clarification from the Minister for Housing about how that will be done. The second reading speech states —

The reforms will deliver fee certainty to consumers; provide a more sustainable and less volatile funding source for Landgate by reducing the impact on Landgate of property market volatility; and provide an incentive to deliver efficiencies by allowing savings to be retained and used to reduce the real cost of services to consumers by holding increases in existing regulated fees, if any, to the increase in the CPI, or to an amount less than the increase in the CPI; improve Landgate's systems and deliver

better services to customers; pay an increased dividend and a higher national tax equivalent amount to the state to support government expenditure in other areas; and invest in capital works or other programs or strategies under Landgate's approved strategic development plan. The reforms will also enable the self-funding of important capture, maintenance and dissemination of location information to government and industry; and reduce reliance on government appropriations and avoid a negative impact on the state's net debt position, estimated to be \$21.4 million over five years if the reforms are not implemented.

That reference was to *Hansard* when the minister dealt with this matter in this chamber.

I suppose we come back to the same sorts of concerns: what guarantees are in place that the funds raised will not somehow be transferred into consolidated revenue? A fund needs to be established to hold Landgate surpluses. There is also the importance of Landgate and the Real Estate Institute of Western Australia working at a distance so that information is not conflicted.

From looking at the second reading speech and the explanatory memorandum, the Greens understand the intent of the legislation. Most critique will probably come when we deal with matters in the Land Legislation Amendment (Taxing) Bill 2014, which will be dealt with separately.

HON ADELE FARINA (South West) [3.14 pm]: I rise to contribute to the second reading of the Land Legislation Amendment Bill 2014. Like Hon Sue Ellery, I also did not have the advantage of being briefed on this bill; nevertheless, I have a few comments to make. This bill actually addresses the issue that the Joint Standing Committee on Delegated Legislation grapples with every time it meets; that is, when is a fee a tax? We all know that fees are supposed to be imposed at a level at which the funds raised from the fee are simply at cost recovery for the service or the amenity being provided. A fee has two critical features: it is user pays—it is not something that is applied generally to the population—and the funds collected do not exceed the cost to deliver the service or the amenity. On the other hand, a tax is collected to raise general purpose revenues. They can be collected and are unrelated or completely disproportionate to the expenditure. There are very clear distinctions between a fee and a tax. This bill provides Landgate with the legislative head of power —

Hon Robin Chapple: It provides it with a taxing power.

Hon ADELE FARINA: That is right, it is effectively a taxing power because it will enable Landgate to impose fees—which, in my view, can no longer be called “fees”—that are higher than cost recovery. I hope that all new Landgate material that comes out after the passage of this bill refers to these fees as taxes because that is in fact what they will be—taxes, not fees.

The second reading speech states —

In performing its functions, Landgate has a statutory obligation to act in a cost-effective manner and on prudent commercial principles, and in a way that supports the sustainable economic management and development of the state.

We then learnt that —

The changes proposed by the bill will ensure Landgate's ongoing financial sustainability, reduce Landgate's reliance on government appropriation and provide Landgate with an incentive to deliver greater efficiencies and cost savings while delivering fee certainty to consumers.

That is a great statement, but it more reflects a propaganda statement than what the bill will do. I will go on to explain that further. We learnt from the second reading speech that —

Landgate has high fixed costs for maintaining the land titles register, and this is not suited to recovering costs on a transactional basis.

Changing the ability of Landgate to collect a fee higher than cost recovery will not address that problem. That problem still exists. Unless the minister intends to enable Landgate to charge substantially higher than cost recovery, that might have a bit of an impact on that equation. But in the absence of doing that, that problem identified in the second reading speech is not addressed by the proposed changes in the bill.

The second reading speech goes on to say that there is little incentive for Landgate to reduce costs through efficiencies. I find that extraordinary because Landgate actually has a statutory obligation to act in a cost-effective manner. I would have thought the government needed no greater incentive than a statutory obligation to do something, so I find it extraordinary that that statement is contained in the second reading speech as the policy of this bill. If it is a statutory obligation that Landgate is required to act efficiently, that is what it is required to do; it does not need any further incentive through the ability to charge higher than cost recovery fees.

In addition, we are told that through this bill Landgate will be able to charge higher than cost recovery, and retain the surplus between the fees charged for regulated products and services and Landgate's costs to provide the products and services. Nothing in the bill before us provides that guarantee, as Hon Sue Ellery stated in her contribution. Some statements were made at a briefing but they do not translate into the legislation as it currently exists or the amending bill before us. I would like some certainty from the minister about where the head of power is in either the act or the bill that will ensure Landgate is able to retain the surplus between the taxes charged for regulated products and services and Landgate's cost to provide the products and services.

We were further informed during the second reading speech that —

Giving Landgate the power to prescribe fees greater than cost recovery does not mean that Landgate's ability to set fees for its regulated products and services will be unconstrained. Fees will still be reviewed annually as part of Landgate's usual budget approval process. Any fee increase will still need to be approved by the minister and the Economic and Expenditure Review Committee, and endorsed by cabinet. Fee regulations will still be published in the *Government Gazette* and laid before Parliament.

The only constraint on Landgate will be whatever the executive chooses it to be. If the executive has a budget problem and needs to raise more money, it can require Landgate to have regard to that in new taxes that it imposes, as opposed to fees. There is nothing in the bill currently before us, the Land Legislation Amendment Bill 2014, to constrain Landgate's power to prescribe fees greater than cost recovery, so it is left wide open. There are no guidelines and no parameters; there is not even a regulation-making head of power to enable the matter to be dealt with through regulations. The legislation leaves it broad. We have what is, in effect, a very skeletal bill that basically gives Landgate an open ticket—open to the extent that it requires only the minister's consent—to set whatever tax it likes for the provision of its services and products, and provides no ability to scrutinise or fetter that activity in any way once the legislation has been passed. There are no guidelines set out in the bill before us for determining how Landgate will go about setting those fees; nor does it specify any constraints or provide a regulation-making power.

If we determine to pass this bill, we will be approving a very, very broad power, and I think it is important that we give very serious consideration to this matter. We are dealing with a bill that will provide Landgate with the ability to impose a tax; it will not be able to call it a fee anymore, it will be a tax. Parliament should be very careful about providing an agency with that sort of unfettered power, particularly when no justification has been put forward for going down this path.

We also understand that the bill contains a sunset clause, which I find interesting. The sunset clause needs to be read in conjunction with the review provision. The bill seeks to amend section 93 of the Land Information Authority Act 2006, which provides for a review to be undertaken on every five-year anniversary of the enactment of the legislation. The minister is required to conduct a review, and within 12 months of that review report being prepared, he or she is required to table it in both houses of Parliament. The Land Information Authority Act was passed in 2006, which means that there should have been a review in 2011—I do not know whether there was—and then again in 2016 and 2021. However, the expiry date of these powers that we are handing to Landgate is 31 December 2019; that does not actually coincide with any of the review dates of the legislation under section 93. The bill sets out an expiry date of 31 December 2019 but states, under proposed section 22AB(2) —

However, the Governor, on the recommendation of the Minister, may, by proclamation made before section 22AA expires, postpone the expiry of section 22AA until the end of a date specified in the proclamation, and in that case that section expires at the end of that date.

Hon Robin Chapple: That can't be extended.

Hon ADELE FARINA: It can be extended, but that decision needs to be made before December 2019. As part of the annual review and the amendment of the five-yearly review of the act that is being proposed under this legislation, there will be the ability for the minister to also consider how the fees prescribed for the purposes of the acts have been calculated during the period covered by the review and 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 proposed section 94A(a) to be reduced or not increased.

I do not know how the minister is going to make a decision or a recommendation to the Governor before December 2019 if the review is not going to happen until 2021. In the provisions of the principal act that was passed in 2006, section 93 provides that the minister is to conduct a review on the five-year anniversary of the enactment of the legislation. That takes us to 2011, and assuming there is to be a review at the end of every five-year period, the next one will be in 2016, which will not give enough time to allow for a review of the implications of these new provisions that are being proposed, and the next review will not be until 2021, which comes after the date by which these provisions will actually expire. I do not know how the minister will make a recommendation to the Governor to extend the expiry provisions, and the minister also has to be satisfied on

the basis of the most recent report laid before each house of Parliament. That means that he or she will be making that decision based on a report that relates to the 2016 review under the principal act, and there will not have been enough time for any real review to have been carried out on the impact of these provisions. I would really like an explanation from the minister as to why December 2019 was chosen and how that is going to work in with the section 93 review provisions under the principal act. By my calculations it simply cannot work. I would also like clarification from the minister about whether a review of the principal act was carried out in 2011 and, if so, whether the report of the review was actually tabled in Parliament, and whether there will be a further review of the act in 2016, which there should be.

The critical issue here is that it is fine to say, “Look, we’ve got review provisions; be calm. If it’s not working or it’s being exploited, the review of the act will enable us to pick up these issues because we’ve now extended the review parameters to include also this new tax-prescribing power.” The problem we have is that by the time the minister needs to exercise his or her mind to the expiry of these provisions in December 2019, the last review will be two to three years old and too close to the passage of this bill for the minister to be able to make any comment on how these new provisions have been implemented. We have a problem here; someone has not done their calculations and at the very least, the expiry date of these new provisions needs to coincide with the review dates of the principal act, otherwise it is just not going to work. I seek some clarification from the minister on those points because I think that is a significant problem with the bill before the house.

Proposed section 94A(2) states —

For the purposes of subsection (1)(a), the things that the Minister is to consider and have regard to include —

(a) the principles and methodologies applied in determining the prescribed fees;

I would like to know what they are, because a google search has not delivered any principles or methodologies on the Landgate website. If that is what the minister is to have regard to, I think the Parliament should be informed about what those principles and methodologies are. Preferably, I think they should be set out in the act so that it is very clear that there is no capacity to alter or amend them, and we know exactly what we are dealing with. However, we do not; again, the bill is very skeletal in nature, and we do not know what they are. I ask the minister to table them so that we can actually be sure that they are the principles and methodologies that will deliver the stated policy of the bill.

The other issue, of course, is that when those principles and methodologies are not set out in the legislation, they are simply policies that can be amended at any time. Although we are being told, “Be calm, all is good; in setting all these new taxes under these new provisions, the minister has to have regard to the principles and methodologies”, they can be altered at any time by Landgate or the minister. The alteration of those principles and methodologies may very well be to deliver a greater revenue source for government. We simply do not know that because it is information that is not before Parliament. I again raise concern about that, and emphasise that the minister really does need to table those principles and methodologies and explain to Parliament whether they are simply policy positions that have been enunciated by Landgate, whether there are heads of power in there—in fact, regulations—and what capacity Parliament has, should they be amended at any time, to actually scrutinise what those changes might be.

On that issue of scrutiny, we are informed in the second reading speech that each extension can be for a period of up to five years in terms of the application of these provisions, and —

The Governor’s proclamation will be laid before Parliament to provide parliamentary scrutiny of any renewal of the power to prescribe fees greater than cost recovery.

My concern about that is that “after proclamation” means that the extension has already been granted. I am really not clear whether there is real capacity for disallowance in that set of circumstances; again, that is not made clear in the legislation before us. I would like some clarification on the statements contained in the second reading speech that there will be an opportunity for parliamentary scrutiny of any renewal of the powers to prescribe fees greater than cost recovery, because it is not clear to me how that would actually work and it is certainly not contained in a clear way in the bill before us.

Also, I would like some information on the capacity for disallowance to actually be achieved. Currently, if Landgate were to set a fee above cost recovery, the Joint Standing Committee on Delegated Legislation would pick that up straightaway and a disallowance motion would come before Parliament to disallow that fee because it would be greater than cost recovery. Through the changes made by the Land Legislation Amendment Bill 2014, we will give Landgate the power to prescribe whatever tax it likes. As a result of that, I am not clear about the basis on which any disallowance could be moved. It is fine to say that the Governor’s proclamation will be laid before both houses of Parliament, but if it is going to be disallowed, there actually has to be grounds to

disallow it. It is not clear to me what they would be when we have just given Landgate a head of power to charge whatever tax it likes for its services and products.

The second reading speech continues —

The pricing reform will deliver fee certainty to all consumers of Landgate's regulated products and services.

I do not know how that statement can be made. The argument that has been presented to this house is that by charging cost recovery, Landgate is not making enough money and still needs to rely on a government appropriation, and that under the cost recovery model Landgate is required to know its costs and to estimate property market activity and transaction volumes approximately 18 months in advance. That is not going to change whether it be cost recovery or a tax. Unless the new tax is being imposed at much greater than cost recovery, that will not matter. So, it will not provide customers with any greater certainty as to Landgate's prices, unless there is going to be a significant jump that places it well above cost recovery and provides Landgate with that buffer during its inability to estimate market activity and transaction volumes. That is the only way that certainty can be provided to the consumer. I question that policy position: I do not think it is appropriate for us to be taxing people at such a high rate for a government service. We should be keeping it as close to cost recovery as we possibly can. On one hand, the second reading speech states that the government's aim is not to massively increase costs but just to make Landgate more sustainable, but on the other hand, it is talking about \$21.4 billion over five years in appropriations from the state government in order to achieve that sustainability. That is a sizeable increase in fees or taxes that will be imposed on consumers in order to achieve that sustainability, if that is the aim. I am not persuaded by the statement that customers of Landgate will have pricing certainty as a result of this pricing reform. I just do not see how it is possible.

The second reading speech states —

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 the All Groups CPI, Perth, or in response to factors outside Landgate's control, such as changes to the law.

Nothing in the legislation currently before us stipulates that there will be any capping of Landgate's prices for its products and services, so it is wrong to include in a second reading speech that is supposed to outline the policy of the bill a statement that is not reflected in the legislation, hence my earlier statement that the second reading speech is nothing more than a piece of propaganda because it does not at all reflect what is in the bill. Minister, if there is in fact some head of power or provision in the bill before us that stipulates that Landgate has committed to hold fees payable for regulating products and services at current levels, I am happy to be corrected, but I certainly cannot see it. I am very concerned about that sort of statement being contained in a second reading speech although it is not actually detailed and specified in the bill.

In terms of the policy of this bill, the second reading speech makes a range of statements. The first is that it will deliver fee certainty to customers: it does not. The second reading speech states that the bill will —

... provide a more sustainable and less volatile funding source for Landgate by reducing the impact on Landgate of property market volatility;

The only way that can be achieved is by a massive increase in the amount of fees being charged, because if it is being said that Landgate cannot gauge 18 months ahead what market volatility and volume of transactions will be like and make that judgement and set the fees to cushion it from those sort of variations, there needs to be a significant increase in the fees to provide that cushioning impact. Again, if that is the government's intention, it needs to stipulate that; it should not be saying that it provides a less volatile funding source. The only way that can be achieved is through massive increases. If it is the intention not to cap the fees, or taxes as they should be referred to from this point on, and significantly increase them, the government needs to put on the record what it is intending those new prices to be, because the impact on consumers can be quite prohibitive.

The other statement made as being a reason for the reform is to —

... provide an incentive to deliver efficiencies by allowing savings to be retained and used ...

First of all, there is no guarantee that the savings will be retained by Landgate. I invite the minister to tell us where the head of power is in this Land Legislation Amendment Bill or any other legislation that will ensure that Landgate can hold onto any of those additional funds. There is no guarantee that this new price reform will create incentives to deliver efficiencies. Those incentives are already prescribed in the principal act. It is Landgate's statutory obligation to operate in an efficient manner. This pricing reform agenda will deliver nothing in relation to that.

One of the other objectives is to reduce reliance on government appropriations and avoid a negative impact, estimated at \$21.4 million, on the state's net debt position. I am sorry because I said billion earlier in my address,

and I correct that now; the impact will be \$21.4 million over five years if the reforms are not implemented. The only way the government will be able to achieve the \$21.4 million saving is by a substantial increase in the prices charged by Landgate to provide that cushioning impact when the volume of transactions is low or market volatility is high and Landgate finds it has underestimated that cost recovery. The only way to protect against that is by significantly increasing those prices. If that is the intention, government needs to table what it intends those fee increases to be. Regardless of the model, whether it be cost recovery or a tax, if the stated purpose is to reduce the impact on the state's net debt position, there will still be the problem of not being able to gauge market volatility or the volume of transactions 18 months ahead of the time the fees are set. Regardless of the model the government is operating under, that will continue to be a feature that Landgate needs to grapple with unless the minister is talking about providing a substantial cushion in the prices. It will then make untrue the fact that consumers will not be worse off as a result of this legislation, because clearly they will be.

This is a very significant bill. It may not be very interesting but it is significant in that it will provide Landgate with the opportunity to impose taxes on the citizens of Western Australia, a power that until now has been with this Parliament. It will allow very little scrutiny of those taxes. I think it should be of great concern to all members of Parliament that Parliament has scrutiny over the taxes imposed on the people of Western Australia. I have very, very serious concerns about how the expiry date of the review provisions will work under the bill before us. A lot of issues are contained in what is a very, very small bill. The biggest issue we need to grapple with is: do we really want to muddy or grey the very clear distinction between a fee and a tax, because that is what this bill will do? We need to be very careful about the legal ramifications that will flow from the action we are taking today because it will muddy the waters and we need to be very clear about that. I put on the record that I am very glad I am not serving on the Joint Standing Committee on Delegated Legislation because I suspect its task will be far more difficult if Parliament passes this legislation; in fact, it will be made impossible. We need to understand that this legislation will have significant ramifications, not just for Landgate but right across what has been until now a very clear distinction between a tax and a fee because this legislation will muddy that water. It is a step that should be taken only with very careful consideration, which I do not think has been given. How we deal with those issues certainly is not explained in the second reading speech. The government seems to be intent on saying, "It doesn't matter if it's greater cost recovery; as far as we're concerned, a fee is a tax and a tax is a fee." That is very dangerous ground to be heading down and it has implications well beyond the provisions of the bill before us. The minister needs to come armed to the Committee of the Whole with a lot of information and knowledge on how we will deal with these issues because they raise serious concerns that Parliament needs to give full consideration to.

HON DARREN WEST (Agricultural) [3.45 pm]: I will make some brief comments to reiterate the excellent contributions made by my parliamentary colleagues. This Land Legislation Amendment Bill will certainly affect constituents in my area, but my main concern is that for the second time in as many months, legislation has come before Parliament that is completely at odds with the second reading speech of the responsible minister in the other place. That is of major concern. It is good that government is being proactive in drafting new legislation and revisiting old legislation, but I think the government can do much better in informing and briefing even its own members on what to perhaps include in their speeches to make their speeches more reflective of the contents of the legislation. That is of great concern to not just those of us in this place, but also the public at large.

It is puzzling that the detail of the bill is at odds with what is contained in the second reading speech. I take on board what I think is a very good question raised by my colleague Hon Adele Farina: when is a fee a fee and a tax a tax? It opens a questionable debate when we give a government agency the right to increase a fee or set a tax on people who use its services. Although, in the main, there is general support for the bill, I think the government has presented bills to Parliament in a very sloppy way, particularly in the way it has presented information through its ministers and lead speakers in the respective houses. As my colleagues said, we did not have an opportunity to have a briefing on this bill, which is a little unfortunate but not entirely the government member's fault, so we can accept some blame there, and perhaps file away that lesson for the future.

Although it is disappointing—not sufficiently to outright oppose it—there is some merit in the legislation. Members opposite are in government and it is incumbent on them to do a better job when speaking to legislation and their speeches go nowhere near the true intent of the legislation.

HON COL HOLT (South West — Minister for Housing) [3.47 pm] — in reply: I thank members for their contribution and support for the Land Legislation Amendment Bill 2014. I apologise in advance that the opposition and the Greens were not briefed on the issues. I asked a number of times that members opposite be briefed. I was advised that a letter went from the minister to the Australian Labor Party offering a briefing, which was given. I think there has been a problem recognising the difference between the two houses in this Parliament. I reminded people that the briefing was for Legislative Council members and I was assured that it was. I apologise for the miscommunication and suggest that it will not happen again as much as I can help it.

I will try to answer as many questions as I can with the knowledge I have. If I do not quite hit the mark to meet members' needs, I am sure we will have an opportunity in committee to explore them more deeply. I want to recap that this bill is about a mechanism to set a fee. It is a mechanism for Landgate to iron out some of the peaks and troughs it has faced in setting its fee. In years of high activity, the overhead cost of managing Landgate is spread over a wide range of transactions, so the cost per transaction is low. In times when activity reduces, the fixed costs that underline the activity of Landgate have higher individual transaction rates. That has been difficult for Landgate, and this legislation is a mechanism by which those peaks and troughs can be ironed out. This is not just for the benefit of Landgate, but also for the expectation of customers using the Landgate services. It will give some fee certainty so that Landgate customers will know what the service will cost from year to year. I take the points made by members who contributed to the second reading debate about what that means and how the best guess will be made at this point to ensure that the fees charged, which are just held to the consumer price index, will be reflective of Landgate's business at this time. I guess that is why there is a sunset clause and a cap for 18 months. Given Landgate's knowledge of the market, its forecasting suggests that the current fee mechanism is set at about the right rate. That will give certainty, and the costs of supplying that service will be managed within that parameter. That is an important point given that we are talking about a restriction to CPI for 18 months.

The Land Legislation Amendment Bill 2014 does not set the level of the fees, but provides for the mechanism to make sure that the fee can be set at over cost recovery, which is a point that has been raised by members opposite. The legislation allows the collection of the fee over the level of cost recovery for the reasons I outlined before. We need to allow Landgate to manage that business within those constraints. It is hugely hard to predict what those fluctuations may be.

There have been questions around what stops Landgate charging an excessively large amount over what it needs to set. I will reiterate some points about that. Landgate has given a commitment until 30 June 2018 not to increase fees payable to the registrar or the Valuer-General by more than CPI, unless Landgate needs to adjust its fees in response to factors outside its control. Although that is not in the legislation, it was a commitment made by Landgate and by the minister in the other house. Again, this is about setting the mechanism to recover above cost recovery, not the actual fee amount. The fee may have to be changed in 18 months or 24 months and the legislation will not be brought back to Parliament to do that.

Hon Adele Farina: Or a month's time.

Hon COL HOLT: A commitment has been made to set it for 18 months and that has to be backed in some way. Fees will still be reviewed annually as part of Landgate's usual budget approval process. Any fee increase will still need to be approved by the minister and the Economic and Expenditure Reform Committee, and endorsed by cabinet, which is a normal mechanism within government. The Land Legislation Amendment Bill 2014 contains a sunset clause. The power to prescribe fees greater than cost recovery ends on 31 December 2019, unless extended by proclamation of the Governor on the recommendation of the minister after the review of the Landgate fees. The review of Landgate fees must take place as part of a five-yearly review of the Land Information Authority Act and this review must be laid before Parliament. Hon Adele Farina asked about the timing of that. My understanding is that the review was done in 2012, not 2011, and the next one will be done in 2017, not 2016. Having the review done in 2017 allows enough time to implement any changes in 2019.

Hon Adele Farina: No, it doesn't if you have got an 18-month cap.

Hon COL HOLT: We can explore that in the Committee of the Whole if the member likes.

This legislation has come out of a review into Landgate and its fee setting, which I believe was done in 2012, so it has taken two and a half years to get to this point of making a legislative change in that sense.

Regarding fee regulations subject to disallowance, annual fee regulations will continue to be referred to the Joint Standing Committee on Delegated Legislation and will be disallowable instruments; however, the committee will not be able to disallow the regulations on the basis that the fees are over cost recovery. There may be other reasons why they might be looked at.

Hon Adele Farina: Like what?

Hon COL HOLT: Again, the member will have to ask me for some of that information in committee.

Hon Sue Ellery: She asked in the second reading debate and you're replying to the second reading debate.

Hon COL HOLT: She did not ask me in the second reading debate at all; she asked me just then.

The ACTING PRESIDENT: Order, members! The minister has the call.

Hon COL HOLT: After an independent review, it will be up to the minister to then take up any recommendations.

A major question was about managing the dividend and financial stability. Under this mechanism, the board of Landgate will have to make a determination of what the dividend will be to government, as it does now. The board will have to make a judgement call about what is retained within Landgate to deal with fluctuations in potential fees, infrastructure changes or improvements. The board of Landgate has the ability now to recommend what the dividend may be. To my knowledge, the dividend is recommended and the minister, in discussion with the Treasurer, can accept that dividend. Every dividend recommendation that has come from the Landgate board up to this point has been accepted without it being told that it will have to potentially give up more funds or keep more funds in the Landgate system.

I have talked about the ministerial commitment, but I am sure members will require more detail and I am happy to answer those queries in the committee stage. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Amber-Jade Sanderson) in the chair; Hon Col Holt, (Minister for Housing) in charge of the bill.

Clause 1: Short title —

Hon SUE ELLERY: I will go back to the things to which I invited the minister to respond in his second reading reply, because he did not do that. I cannot deal with them in relation to specific clauses of the bill because they are not in the bill. They are in the second reading speech, but they are not in the bill. I want to deal with three elements. The minister started his second reading reply by assuring us that this bill is effectively a mechanism; it is a mechanical bill only. Unfortunately, in the second reading debate in the other place, the minister with responsibility for generating the bill, Minister Redman, said that the bill did more than that. I ask the minister in this place to show me where the bill shows whether the minister in the other place was right or wrong. I will also ask the minister about how the bill locks in the current fees. Also, as the second reading speech refers to fee increases being effectively limited to the consumer price index or other law changes, what other law changes are contemplated? Finally, as the second reading speech refers to the outcome of the bill being the payment of an increased dividend and a higher national tax equivalent to support the state in other areas, what modelling has been done around that?

I will start at the beginning. In the other place, there was debate around the question of fee increases. Minister Redman is on the record as saying —

The bills do not actually set any increases in fees at all; they lock in current fees.

Where, in the legislation, does that happen?

Hon COL HOLT: Thank you, Leader of the Opposition. No, the fees are not locked in in the current legislation. Again, this is a mechanism that allows collection of fees over cost recovery. There has been a ministerial commitment and a Landgate commitment to customers and the Treasury that they will remain locked in at current levels, plus CPI.

Hon SUE ELLERY: Thank you for that. Indeed, I agree with the minister that the legislation does not lock in the current fees, so that leaves us with the possibility that Minister Redman has misled the other place. That is a serious thing to do in Parliament, so I hope somebody is going to draw that to his attention. It has just been confirmed by the minister representing him in this place that the bill is a mechanical bill; it is a mechanism. It does not, as Minister Redman said, lock in current fees. I hope someone will draw that to the attention of Minister Redman.

The second reading speech delivered in this place on 18 March by the Minister for Housing representing the Minister for Lands, states —

Since 2011 Landgate has made savings that have allowed it to hold the majority of document lodgement and search fees steady. Increases in the consumer price index and increased wage costs have been absorbed by Landgate. Consumers of Landgate's regulated products and services include members of the public, business and the wider property industry. They will not be adversely affected by Landgate's pricing reform. The pricing reform will deliver fee certainty to all consumers of Landgate's regulated products and services. 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 the All Groups CPI, Perth, or in response to factors outside Landgate's control, such as changes to the law.

How was the minister envisaging that changes to other laws might have an impact on whether fee increases go beyond the consumer price index?

Hon COL HOLT: Although potentially laws we do not know about could affect changes in the fee structure, one example is a recent New South Wales Supreme Court decision requiring the lands department in that state to pay surveyors copyright fees for the lodgement of their plans. That could potentially be introduced here through the Department of Lands, and there would be a response in the Landgate fee structure if that cost needed to be incorporated. That is one of the things that could occur.

Hon SUE ELLERY: I come now to the third issue I invited the minister to comment on in the second reading reply. The last paragraph of the second reading speech states —

The Land Legislation Amendment Bill 2014, in conjunction with the Land Legislation Amendment (Taxing) Bill 2014, will implement important reforms to Landgate's pricing of regulated products and services. The reforms will deliver fee certainty to consumers; provide a more sustainable and less volatile funding source for Landgate by reducing the impact on Landgate of property market volatility; and provide an incentive to deliver efficiencies by allowing savings to be retained and used to reduce the real cost of services to consumers by holding increases in existing regulated fees, if any, to the increase in the CPI, or to an amount less than the increase in the CPI; improve Landgate's systems and deliver better services to customers; pay an increased dividend and a higher national tax equivalent amount to the state to support government expenditure in other areas; and invest in capital works or other programs or strategies under Landgate's approved strategic development plan.

Has any modelling been done about the amount that Landgate might be able to deliver back to the government to spend in other areas? Has the Landgate board considered what might be the right balance between keeping what it needs and what it might do if requested to provide money for services in other agencies across government? My question is really about what modelling has been done, and how much money is likely to be generated for other parts of government.

Hon COL HOLT: It should be noted that when Landgate was established in 2006, no dividend was to be paid to government for the first five years. As of last year, the dividend payable to the government was 20 per cent of net profits. Modelling has been done. The estimated national tax equivalent regime payment to the state in 2014–15 is \$7.5 million and the estimated payroll tax to the state is \$4 million. The estimated dividend paid to the state out of net profits will be \$4.4 million. The modelling has been done in the past.

Hon SUE ELLERY: That is based on what the fees are now. The minister must have given some thought to the fact that if he is able to adjust the fees under the mechanism in this bill, he might anticipate more or he might anticipate an additional amount of money. The purpose of this is to give Landgate the capacity to raise its fees by around CPI, but a bit more than CPI if it needs to. Can the minister tell me where in the bill it states that it is capped at CPI? It does not. The minister says that he has made a policy decision around capping it, but the legislation does not say that. Has any modelling been done about whether that money might be increased in the future based on the fact the minister might be able to go above the current arrangements?

Hon COL HOLT: The capping of fees at current levels and within CPI is a commitment made by the minister and Landgate. The modelling suggests that profits are increasing at the moment. Modelling has been based on different scenarios. One prediction is that costs will go down for Landgate, based on automation and it getting better at its business. Another prediction is a bit of a retraction in activity over the next few years. That will also put a bit of pressure on that profit margin. The return to government maintains the same dividend. Again, it is through the board mechanism. The board recommends what is retained and what is paid as a dividend to government.

Hon ADELE FARINA: I would like some clarification. I understand that in response to a question asked by Hon Sue Ellery, the minister said that 20 per cent of the net profits of Landgate are paid to government as a dividend each year. We are told that it received \$21.4 million in appropriations over five years. I am interested to know the actual figure for that 20 per cent net profit dividend over five years.

Hon COL HOLT: I might find it difficult to give the honourable member five-year dividends. Is it for the last five years or the five years moving forward? The 2013–14 dividend paid to the state was \$5.597 million. Last year, as I indicated, it was \$4.4 million. Sorry; I should say that that is next year's estimated payment. This year's estimated payment was \$5.597 million.

Hon Adele Farina: Sorry; what was that?

Hon COL HOLT: I will get the figures right. In 2013–14, the dividend paid to the state was \$5.597 million. In 2014–15, the estimated return to the state is \$4.4 million.

Hon ADELE FARINA: If that is averaged out, the dividend paid to the state is about the same amount of money as the government appropriation to Landgate. There is no impact on state net debt at all because the

government is basically receiving the same amount from Landgate as the government pays Landgate, on the basis of the information provided in the second reading speech and the minister's answer. I am really not clear what this pricing reform seeks to achieve. There does not seem to be a big impact on state net debt if the dividend paid by Landgate basically covers the government appropriation.

Having said that, I am really interested in clarification of the statement contained in the second reading speech that members of the public, business and the wider property industry will not be adversely affected by Landgate's pricing reform. What does that statement mean? How is the minister able to make it? The whole point of the pricing reform is to enable Landgate to recover higher than cost recovery.

Hon COL HOLT: This is exactly what this mechanism does; it tries to give fee certainty to customers. It sets fee certainty—that ministerial guarantee that it will not increase other than within CPI. That gives customers the certainty. Have I missed the point of the member's question?

Hon ADELE FARINA: Yes. I think the minister has entirely missed it.

Hon Col Holt: It is quite likely!

Hon ADELE FARINA: The statement says that customers will not be adversely affected by Landgate's new pricing reform. The whole point of the pricing reform is to enable Landgate to charge a tax—which is higher than cost recovery—as opposed to a fee. If it is charging more, it is charging the customer more; therefore, it will impact on the customer, surely.

Hon COL HOLT: I am with the member now. We are not charging more. It gives fee certainty because over the last six years, as an example, fees have almost doubled, which is way above CPI. That has fluctuated. This is about giving certainty so that customers know exactly what it will cost for a Landgate service. It is set at that fee to enable that certainty. That has to be an advantage to customers.

Hon ADELE FARINA: Nowhere in the legislation before us does it set any fee certainty for consumers. Nothing in the bill says that prices will be set at cost recovery plus CPI. It does not say that. How can the minister say that there is any certainty provided to customers? There is not. If the government makes these statements, it needs to back them up with some legislative provision. Nothing in the bill says that fees will increase only by CPI. Also, from my reading of the second reading speech, it refers to a period of 18 months, not beyond 18 months.

Hon COL HOLT: The fee is actually set for two and a half years, to June 2018. It is not in the bill; it is a ministerial guarantee and a Landgate guarantee to its customers.

Hon ADELE FARINA: Can I just clarify that that guarantee is only until 30 June 2018 and not beyond that date?

Hon COL HOLT: That is correct.

Hon ADELE FARINA: Where is the fee certainty for customers beyond 2018?

Hon COL HOLT: This is what this mechanism was trying to do—give some fee certainty. At the moment, without this legislation, fees fluctuate on the basis of cost recovery. We are trying to make it certain and flatten out some of those peaks and troughs by providing the ability to set the fee at or above cost recovery to give certainty to the customer for the service they are buying from Landgate. It is guaranteed until June 2018. After that point, it will go back to the board and the review will occur in 2017 to influence what happens next.

Hon SUE ELLERY: I honestly think the minister has been sold a pup here, because the language of the second reading speech is quite misleading. It is probably a lesson for new players to make sure—it does not matter what they do down there—that when the second reading speech is read, the minister can confidently read it knowing that it matches the legislation. The thing that the minister has said that I agree with is that this bill provides a mechanism. The minister has also said that the mechanism will kick in in 2018 and will effectively exist for an 18-month period, after which there will be some kind of review. That is true; it is reflected in the legislation. Everything else that is in the second reading speech, and the minister's commitment that that mechanism by itself provides certainty, is a policy decision. It is a commitment by the government, but it is not in the legislation. We are being asked to pass a piece of legislation that creates a mechanism by which, for at least an 18-month period, the fees that are charged by Landgate can be above cost recovery—full stop. They will not be constrained by the consumer price index, because that is not in the legislation. As the government's policy commitment, that is the promise to the people of Western Australia and that is the promise to the customers. The only thing in the legislation before us is a mechanism that will allow Landgate to charge fees above cost recovery for an 18-month period. I understand the argument that, rather than putting customers through the unpredictability of a housing market that goes up and down, resulting in them sometimes being charged quite

a low fee and at other times being charged a significantly higher fee, it should be a little above cost recovery. I get the policy decision. If it is a little above cost recovery, some of the troughs and peaks can be avoided. That is the policy decision and I understand that, but that is not what is in the bill. What is in the bill is a mechanism to allow it to go above cost recovery. There is no cap in the legislation—none whatsoever. That is why I think we need to be precise in the language in the second reading speech. Not only is the second reading speech a speech to this place, but also when matters end up before the courts, the courts look to the second reading speech to interpret the intention of the legislation. There is no way that they could rely on this second reading speech because they cannot read the second reading speech and the legislation and see where the two combine, other than that for that 18-month period, it will be within the power of Landgate to charge above cost recovery—full stop. There is nothing beyond that in the legislation. That is either poor drafting of the legislation, because maybe the government’s intent was to lock it in—but I do not think it was—or poor politicking in the minister’s second reading speech. I think that is what it was; it is politicking in his second reading speech. If the minister genuinely wanted to have a mechanism that capped the fees at the consumer price index plus a little bit, he should have put that in the legislation, but he has not. The minister made a conscious decision not to do that. I think we ought not kid ourselves about what we are legislating. We are legislating for a mechanism that, for an 18-month period, will take it above cost recovery and it may well let it continue beyond that, because there is the capacity in the legislation to review and extend the power beyond that 18-month period. That is all we are doing in this legislation; we are not guaranteeing anything other than that a mechanism will be in place to allow more than cost recovery to be charged.

The DEPUTY CHAIR: Does the minister wish to respond?

Hon Col Holt: I think it was really a set of advice that came from the Leader of the Opposition.

Hon ROBIN CHAPPLE: I think the points being made by Hon Adele Farina and Hon Sue Ellery are really important. We did have a briefing, and I would like to thank the officers for giving us a briefing. We asked a number of questions in that briefing. We asked a series of questions around some of these points about the taxing and over-recovery and what would happen to the funds. I just want to read in a couple of answers I got and then maybe ask some further questions.

The pricing reform legislation changes in the Land Legislation Amendment Bill 2014 and the Land Legislation Amendment (Taxing) Bill 2014 will enable Landgate to prescribe under the Registration of Deeds Act 1856, the Strata Titles Act 1985, the Transfer of Land Act 1893 and the Valuation of Land Act 1978 fees for regulated products and services that are greater than cost recovery and “retain” the difference between the amount of the fee and the cost of providing that regulated product or service. Where does the legislation provide that that fee will be retained? If it is not retained, where can that money go? Can it just disappear into general revenue as general taxing powers? That is really what I would like to find out, because if the legislation is allowing that, it is something that we should not be considering at all.

Committee interrupted, pursuant to standing orders.

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