PILBARA PORTS ASSETS (DISPOSAL) BILL 2015

Committee

Resumed from 20 September. The Chair of Committees (Hon Adele Farina) in the chair; Hon Michael Mischin (Attorney General) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon KATE DOUST: I am not sure whether it was Hon Lynn MacLaren or Hon Simon O'Brien who was still on their feet when we last dealt with clause 1, but if they want to pursue matters, I am sure they will rise to their feet at some point.

I want to make comments about the very good report from the Standing Committee on Legislation and pick up on some of the matters that I think were canvassed by Hon Simon O'Brien or Hon Lynn MacLaren about some of the recommendations and findings in the committee's report. Recommendation 1 is a good recommendation. I know from my experience on the Standing Committee on Uniform Legislation and Statutes Review that there are significant concerns about how some bills are introduced into the house because of timeliness issues and concerns that some bills are bereft in their detail or structure. Today my committee tabled another report, its 103rd report, and in it we commented on a range of matters about bills and suggested that things could be done better. We will have an opportunity to talk about the detail of that report.

The recommendation refers to how the government should allow sufficient time in its legislative schedule for comprehensive parliamentary scrutiny of legislation. I think that is an excellent recommendation. I know that at this point in the electoral cycle we can have that broader discussion. I know that other members have talked about it from time to time. When I saw the recommendation, it brought to mind what occurs, as I understand, in New South Wales. The New South Wales Parliament has a system whereby all legislation automatically goes to a legislation committee after it has been introduced and before it is debated. The committee looks at the structure and detail of bills. I am not too sure, but I would imagine that it looks at the policy behind bills. The committee does the work that it needs to do to inquire into a bill and make any improvements and by the time it goes back to the chamber, a lot of the hard grunt work, if you like, has been done. I understand that it is a cross-party committee that resolves a lot of concerns about a bill, so that when it goes back to the chamber, it is much more refined, which expedites its passage through Parliament. When a bill comes in here and there are concerns about its detail and the policy behind it, the process to refer it to a committee is usually quite difficult and protracted. During my time in this place, bills have been referred to committee very quickly or before debate commences on only a couple of occasions. At this point in the cycle, we can probably have a useful discussion about how we can do it better, given we are the house of review. Do we need to change the way that we look at bills in how we manage our committee work rather than prolonging the debate in here and then making it even more difficult to try to improve a bill? Improving a bill is not necessarily about changing the policy; it might be about adding detail or filling out or moving parts around so that it reads better, is more user-friendly and achieves its aims.

I thought that the recommendation that was put at the top of the list by this committee was extremely significant. I do not know whether the committee put that recommendation right at the top of its list out of frustration, but I think it is a recommendation that we perhaps need to discuss more broadly. I know that we have only a few more sitting weeks to go and we are probably not in a position to do that. However, I think it is very sensible. Given some of the bills that we have had to deal with recently—as we get into these last few weeks, there is traditionally a big push to get legislation through both houses—sometimes the detail can be missed. For a committee to make such a strong recommendation at the beginning of its report is significant and I hope that the government takes that recommendation on board.

I am not too sure what the minister's response was to that particular recommendation. He might want to remind us. Then I will come back and talk about a couple of other matters in clause 1.

Hon MICHAEL MISCHIN: I do not have the record of my comments in *Hansard* before me but I recall that the government noted the recommendation. I responded by pointing out that there was significant debate on the bill before it went to committee. Evidence was heard by the committee. The committee seems to have had an opportunity to seek its own evidence, consider that evidence and produce a comprehensive report. We have subsequently had debate on the bill and now we are in Committee of the Whole. In a sense, there seems to have been satisfactory time for the bill to be considered by this place. I expect that even more time will be occupied, certainly today, with scrutinising the bill and its implications.

There may be some merit in the recommendation of the automatic referral to a committee and the like. There may be some difficulties with it. I really could not say. It is not what the committee was referring to. That would

be a matter for the Procedure and Privileges Committee to consider and perhaps propose amendments to the standing orders in order to facilitate something like that if the chamber thought that that would be a worthwhile exercise. I am not sure that I can comment much further about that recommendation or the point that was made about other means of doing these things. I recall that we reviewed the standing orders several years ago. The way the chamber manages its business can always be reformed.

Hon KATE DOUST: I want to come back to a matter that I think Hon Lynn MacLaren canvassed yesterday. It relates to part of the minister's reply in the second reading debate. I think Hon Lynn MacLaren was questioning the nature of the language that had been used by the minister when he talked about the access of junior miners to Utah Point. I do not know whether there was confusion or whether the member just wanted clarity of the use of the words "up to 50 per cent access". I do not know whether the minister responded to her concerns. I think she was linking that back to the first finding and other findings around access by the junior miners and the concerns that the government's amendment on protections for junior miners was not adequate. I do not know whether the minister has had the opportunity to look at the *Hansard* of her final comments on that 50 per cent matter but I do not recall that he responded. I would appreciate it if the minister is able to provide better clarity about whether it is "up to 50 per cent" or what it really is.

Hon MICHAEL MISCHIN: As the member is aware, the government has a proposed amendment relating to the insertion of a new clause 46A. The effect of that amendment will ensure that at least 50 per cent of the access capacity of Utah Point facilities will be available to junior miners.

Hon KATE DOUST: I return to the committee's report. In the conclusion in chapter 4, paragraph 4.7 says that the majority of the committee outlined its concerns with a series of findings. The first finding states —

> *The Committee finds that the Utah Point Bulk Handling Facility's primary role is to facilitate and develop the junior mining industry in Western Australia and this role should continue, notwithstanding the divestment of the facility as proposed by the Pilbara Port Assets (Disposal) Bill 2015.*

The second finding states —

> *The Committee finds that there are currently insufficient protections for junior miners in the proposed access regime under the Pilbara Port Assets (Disposal) Bill 2015.*

The committee then outlines its recommendation about amendments. Given this level of concern from the committee, which is obviously based upon evidence that it has taken from relevant stakeholders, given that we know that this particular bulk handling facility was originally established to provide that facility for these junior miners to use, and given the larger players can access other facilities, I suppose the question is: what empirical evidence does the government have to show that its amendment will provide the protections to the junior miners that they purport to provide?

Hon MICHAEL MISCHIN: There cannot be any empirical evidence until after the bill is made law, hopefully with the amendment that the government proposes to provide the legal underpinning of its intention that the interests of the junior miners be protected in the manner that I outlined in my response to recommendation 6 during the second reading reply. The government has acknowledged the original purpose of the Utah Point facilities. Hon Simon O'Brien was cited as the relevant minister of the day. Indeed, his comments are reported in the committee's report. I think he expressed doubt on where the footnotes were.

Hon Simon O'Brien: Just a footnote!

Hon MICHAEL MISCHIN: There is more than one, in fact. His name appears in footnote 5 on page 5, and in footnotes 6 and 8.

Hon Simon O'Brien: It could almost be called the O'Brien report.

Hon MICHAEL MISCHIN: It could be; it could be Simon's law!

We have indeed taken into account the purpose of the facility and the need to protect the junior miners, and also that with changing economic conditions junior miners might disappear or their activities may go into abeyance for a period if operations are suspended. Junior miners may become major miners over time and new miners may be introduced into the economic and resource environments. There will be some flexibility to take into account those contingencies and to ensure that the facility is not left idle by simply reserving it outright for any junior miner alone. It would be most unfortunate if, in the future, because of economic circumstances—we have gone through some of this recently with certain miners suspending or downgrading their operations—an asset sat idle, sterilised and contained and could not be used by other operators or made available for others who may need it. Accordingly, the formula in proposed new clause 46A will provide protection for junior miners and still allow a future operator of the facility the flexibility to make sure that the asset is not wasted.

Hon MARTIN PRITCHARD: Does the minister believe the amendment gives a preference of use to junior miners over senior miners?

Hon MICHAEL MISCHIN: It will preserve the position of the junior miners in tandem with the proposed access pricing regime that has been explained and which has its own levels of protections and stages that have to be gone through. It is a combination of that clause plus the access pricing regime.

Hon MARTIN PRITCHARD: All things being equal, there would be a preference. The amendment that has been drawn up guarantees a minimum, but does it give a preference above 50 per cent or to the point of 50 per cent?

Hon MICHAEL MISCHIN: The priority of the junior miners will be preserved; it will be reflected in the access pricing regime, and that will be supplemented by proposed new clause 46A.

Hon SIMON O'BRIEN: It might assist the committee if I make an observation about where I think we are heading with this bill. For those who are inclined to support the bill if certain amendments are made, there are two central issues, and they are about the matters that the last two speakers have raised. Firstly, it is about making sure that access is indeed available to the so-called junior miners—or the minor miners, if you like—for whom the facility was ostensibly built in the first place. That was just touched on by Hon Martin Pritchard. As the minister helpfully responded, we will come to that when we look at proposed new clause 46A.

The other matter that we must rely on is also about access, but in a different way, and it is about pricing. I am not sure at which point it is best to have that debate. However, if the minister has a view, I would seek to tap into that so that we can know when is the best time to consider those matters so they can possibly be put out of the way rather than our going here, there and everywhere. I am sure the minister at the table would appreciate doing it once rather than 23 times over the course of the next four weeks or however long this committee stage takes.

Hon Sue Ellery interjected.

Hon SIMON O'BRIEN: Ken is not here so somebody has to pick up the slack.

Hon MICHAEL MISCHIN: I appreciate the honourable member's offer of assistance in that regard. I direct members' attention to clause 46(2) which provides —

> Regulations may provide for access to a service, or price regulation of a service, or both.

That, in combination, will establish the access pricing regime, but it will provide sufficient flexibility to alter that as necessary in the event that it does not seem to be achieving the objectives to preserve not only the access regime, but also the pricing regime. That, in combination with proposed new clause 46A, which provides the guarantee of a certain level of access and how junior miners' interests will be protected to a bare minimum while allowing that flexibility to use the asset to its maximum capacity rather than allowing it to be wasted.

Hon SIMON O'BRIEN: I thank the minister for that response. Of course, he is right. The only trouble is that by the time we get to clause 46, of course, which is about doing things by regulation, we will come back to another argument we have visited before on many occasions. Perhaps we might take some other opportunity before we resume after the break that we are about to have to contemplate another clause that might give us an earlier vehicle to contemplate the substantive act as it will be rather than simply relying on regulations. We look forward to all of that in due course.

Sitting suspended from 1.00 to 2.00 pm

The DEPUTY CHAIR (Hon Liz Behjat): I take this opportunity to congratulate Hon Mark Lewis for being appointed Minister for Agriculture and Food. Congratulations also to my colleague, Hon Nick Goiran, who is obviously off on urgent parliamentary business, for being appointed Parliamentary Secretary to the Minister for Mental Health; Child Protection. Well done.

Hon KATE DOUST: I come back to the Standing Committee on Legislation's thirty-third report. I am looking at recommendation 2, in which the committee recommends —

> … that the Treasurer make relevant documents about the retention value of Utah Point Bulk Handling Facility public after the completion of the divestment and that these documents be tabled in both Houses.

Is there any reason, minister, that the Treasurer could not make those documents available prior to the divestment?

Hon MICHAEL MISCHIN: It does not seem to the government to be a good idea to reveal the reserve price before the contract is sealed and hence jeopardise the ability to obtain the best possible price from the market.

Hon MARTIN PRITCHARD: I seem to recall that an aim was not to actually achieve the best price because that might jeopardise the appropriate ongoing processes and the amount that needs to be recovered. I am sorry

I have not framed that question particularly well, but maybe the Attorney General gets the gist of what I am asking.

Hon MICHAEL MISCHIN: In assessing the bids, the government will be looking at not only the price, but other qualitative factors to ensure that the proponent is capable of operating the port in a manner consistent with the government's objectives, not only presently, but into the future and to keep it as a going concern. The government's objective is to beat the retention value. Publicising the retention value in advance would simply give the advantage in any negotiation to any proponent for the operation of the port and disadvantage the government's negotiating position.

Hon MARTIN PRITCHARD: If I understand the Attorney General's answer correctly, the government wants to hit a price that would beat the retention value then look at the other objectives. Would it matter if people were aware of the retention price if the other objectives were the main drivers of the sale of the port?

Hon MICHAEL MISCHIN: Perhaps I could put it another way. A person may have a reserve price when they offer their house for sale, but they do not go publicising the reserve price in advance of trying to achieve the best deal available. Other factors will, of course, come into play in determining that a state asset of this character is to be used in accordance with the government's objectives and for the betterment of the state of Western Australia. Price is one element of that and the government has an objective to get as good a price as it can. However, other factors will be taken into account. It is not even a question of beating the retention value then looking at other things. It is an assessment, in a holistic way, as to whether the proponent is the best one to take over the operation of this asset. One does not conduct any negotiation by telling people what the reserve value is.

Hon MARTIN PRITCHARD: Using the Attorney General's analogy, if I am selling my home, the objective, really, is to get the best price.

Hon MICHAEL MISCHIN: That is right, because people do not intend to sell and hang onto it afterwards, but we intend to keep this as a going concern and as an asset. The analogy goes only so far; when an asset is being sold—yes. But if it is someone's home, they are not going to live there afterwards and they would have no interest, ultimately, in what happens to it if someone gives them the price. That is only one factor in the case of selling a state asset, or rather, I should say, disposing of a state asset as planned. We are looking at maintaining, under law, an operation into the future. Price would be one factor, but not exclusively the governing factor.

The DEPUTY CHAIR: If I might, Attorney General, it is probably best to allow the member on his feet to finish his contribution before responding. It makes it much easier for Hansard to be able to get down a correct record of what we are saying.

Hon MARTIN PRITCHARD: I agree with the Attorney General that the analogy goes only so far. I believe that the minor miners in particular are concerned that if the port is sold or leased at too high a value, a lot of pressure will be put on the purchaser to recoup money. That concern is the reason for the question. It seems to me that it may not be a bad thing to have in the arena the approximate price that the government believes it should be sold for, so that the government can balance the other aspects of the objectives that it wishes to achieve. Indeed, probably the almost more important objective, considering that the port was built and designed for a reason, as I understand it, is to ensure the opportunities for minor miners. Given that that should be, in my view, a higher priority, it may not be such a bad thing to have the approximate price in the public arena so that people do not overvalue the asset and put pressure on themselves. I believe that when selling or leasing the port, it is not in anyone's best interest to get too high a price for it. It might be worthwhile reconsidering whether those documents should be in the public arena given the other objectives. If the Attorney General could flesh out the other objectives, I might better understand why keeping the retention value private would be worthwhile.

Hon MICHAEL MISCHIN: As I have already indicated, the government would take into account a number of factors when determining who ought to operate this asset. So far as the junior miners are concerned, there is an access and pricing regime, which has already been explained. There is also a negotiate–arbitrate regime, which has been explained. Existing contracts will continue into the future. The Economic Regulation Authority will have oversight of the entire process.

One element is the price that the government can obtain for the asset. However, it is not the exclusive objective. The other objectives are: to not only maximise the transaction proceeds and the financial return for the state, but also minimise the residual financial risk and liabilities to the state; to ensure that the operating models for the remaining businesses are financially sustainable such that retained activities are effectively and efficiently structured and managed; to facilitate private sector provision of infrastructure for the future; to drive efficiencies through the introduction of private sector disciplines in the management and operation of the asset; to facilitate

the continued efficient and reliable operation of it; and to contribute to the growth of the state. There are a variety of factors.

As to the retention value, for what that is worth, one of the objectives is to exceed that. However, there is no advantage to the state in revealing that figure before negotiations are completed. As has already been indicated, once a contract is signed, the relevant material will be disclosed. That would seem to the government to be the appropriate time to do it to maintain negotiating flexibility and advantage. We may have to agree to differ on that.

Hon MARTIN PRITCHARD: I will conclude my questions on this matter by asking one last question. I thank the Attorney General for his assistance. What protections are there, or does the Attorney General have a figure, that would be too high a price? In other words, is the Attorney General aware of an offer that would put pressure on the new owner to increase prices? I suppose the question is: does the government also have an upper limit?

Hon MICHAEL MISCHIN: No.

Hon MARTIN PRITCHARD: The reason I continue down that line, which I was going to conclude on, is that I think that one of the real concerns of the minor miners is that if the objective of the state government is to try to balance the books a bit by using this asset, it may be that it inadvertently puts pressure on the pricing regime. It concerns me that considerable thought has not been given to the level of that price. I understand the Attorney General's answer, but I wonder whether the Attorney General could flesh out why he believes that is not a concern. I think that the minor miners might be interested in that.

The DEPUTY CHAIR (Hon Liz Behjat): Just before I give the Attorney General the call, Hon Martin Pritchard, we have been calling the smaller mining companies "junior miners" rather than "minor miners", which makes it easier for Hansard. I think if we could stick to that terminology, even the junior miners might feel more comfortable with that.

Hon MARTIN PRITCHARD: Thank you for your guidance.

Hon MICHAEL MISCHIN: The bid price has no connection to the price that will ultimately be paid by the junior miners. As I have indicated, a negotiate–arbitrate regime will be put in place. The ERA will oversight the regime. The existing contracts will continue. If the negotiations for new contracts or a renewal of contracts are unsatisfactory, there is an ability to arbitrate. The bid price will have nothing to do with it.

Hon SIMON O'BRIEN: We seem to be getting down to quite a bit of detail now about pricing. Before we rose for the luncheon adjournment, I asked for an indication of when would be the most appropriate time to have this detailed examination. If this is it, so be it and I will participate. If not, is there another time when we might want to enter into it, Attorney General? I have a few things to say about it.

Hon MICHAEL MISCHIN: There is no earlier place than clause 46(2), which provides for regulations to be made for not only access to a service, but also price regulation of a service. New clause 46A incorporates a protection. I can provide a flowchart. I think the honourable member has had the opportunity to see a flowchart of the proposed access and pricing regime and how new clause 46A fits within that. But there is no logical legislative place before clause 46.

Hon Simon O'Brien: I will leave my remarks.

Hon MICHAEL MISCHIN: If it is of any assistance, I can table the flowchart at this stage and members can see what is proposed. As I indicated, draft regulations will be brought to this place for the scrutiny of members in due course. I table a document marked "Draft: 22 September 2016" and entitled "Access and Price—Amended Regime".

[See paper 4698.]

The DEPUTY CHAIR: Taking into consideration what the Attorney General has said, I think we can continue at this stage. If Hon Simon O'Brien has issues he wishes to canvass—we will not re-canvass them at clause 46; I thought perhaps at clause 22—we will continue on the question that clause 1 do stand as printed.

Hon SUE ELLERY: The Association of Mining and Exploration Companies has raised a range of issues with a number of members of Parliament. One of the issues raised is the question of jobs as a consequence of this sale. I am interested to know whether the government has done any modelling on the impact on jobs and on downstream industries in the Pilbara region as a consequence of this sale and as a consequence of the way in which access to Utah Point has been restructured.

Hon MICHAEL MISCHIN: No, but the expectation is that there would be no impact on jobs, as the existing contracts will remain on foot when the new proponent takes over the operations of the facility.

Hon SUE ELLERY: The logical implication of what I understand the Attorney General is saying is that he does not at all accept the proposition by the junior miners that the changes to access will have an impact on their capacity to do their business. It is the consequences of those changes to access that will lead to job losses. Does the Attorney General not accept at all the proposition they have put, which is that this sale will make it harder for them to do business and that there may well be job losses as a consequence?

Hon MICHAEL MISCHIN: The concerns of the junior miners appear to be based on the proposition that there will be a change of access that will be to their detriment. As I have indicated, there is no proposal to change access. The existing contracts will continue. A preservation and a protection will be introduced as to the access they can have, and, in any event, an access and pricing regime will be established with the ability for arbitration in order to preserve their position into the future—something that does not exist under the current regime with the Pilbara Ports Authority. Therefore, they actually will be better off in the future than they are currently.

Hon SUE ELLERY: Those who know their business say the complete opposite, so I am interested —

Hon Michael Mischin: Perhaps they could point to the evidence.

Hon SUE ELLERY: Perhaps the Attorney General could point to the evidence as well. If we are going to restructure a significant bit of infrastructure used by a particular industry, it would seem to me prudent to do some modelling to test what impacts it is likely to have, not only on the section of the industry that uses the infrastructure but also on downstream jobs. Therefore, I put that right back to the Attorney General. At this point in our economic cycle, it is a very courageous government decision to change the way in which industry deals with a particular piece of infrastructure. The government is saying, "We think that's going to make it better for them, but we're not going to test it; we're not going to do any modelling and we're not going to measure at all whether that will have any impact on jobs."

Hon MICHAEL MISCHIN: There is an assumption upon which that is based that there is going to be some change that will affect them. AMEC has provided some information as to the contribution of its industry to the Western Australian economy in respect of jobs as well as in respect of revenue and the like, but before we can start talking about modelling the effect of changes to access, we need to point to how access is going to change. I have already indicated that the current contracts will continue; there will be no change to access. There will be, in the future, an arbitration regime and pricing and access regime that is not in existence now, and that will preserve the ability of the junior miners to come to an appropriate access arrangement if new miners come into the game or if old ones leave and the like. We need to show that there is going to be some actual change before we can start talking about whether modelling needs to take place to see what the effect of it will be. I get back to the question: how is it going to change? The member needs to point to the evidence that there will be a change of access—not just what someone is worried or concerned about, or fears and the like. She needs to show how it is going to change.

Hon SUE ELLERY: The people who are operating now are the ones who are raising these questions. I operate on the basis that they actually know how to run their business; that is the theory I start from. They are saying that they have concerns about the impact on jobs. If I follow what the Attorney General is saying, he is saying that, in fact, they will be better off because there will be an arbitration process in respect of access and pricing. Access is one of the drivers of impacts on jobs, and obviously pricing is as well. I ask the Attorney General to explain something to me. Arbitration occurs to resolve a dispute. In the event that a dispute has arisen about access and a junior miner takes the view that they have been unfairly treated and denied access, they go through the arbitration process. It seems to me that, although it is good to have an arbitration process in place to resolve disputes, that process happens after the fact—after whatever it was that led to the dispute has happened, and it may be that a consequence of that dispute is job losses. I reiterate the point: if the junior miners were of the view that this legislation would be better for their business, would generate better profits for their companies and would result in all the flow-on consequences of that, they would embrace it. They do not. They do not think this legislation is good for their business. I do not think it is enough for the Attorney General to say that I have not shown him the evidence. I am not an expert on the ins and outs of the industry; I am acting on the material they have provided to me in which they say that they have real concerns that this will be detrimental to their business. If the Attorney General does not think it will be detrimental to their business, what in his mind is their motivation in raising these issues? Why would they raise them were they not concerned about the future success of their business? They do not have a political agenda; why would they raise these concerns unless they saw this legislation as being detrimental to their business?

Hon MICHAEL MISCHIN: We can go around this forever. Chicken Little was concerned that the sky was going to fall on his head. How do we prove that is not a legitimate concern other than to say that is not the case and there is no evidence that that would happen? These concerns are quite legitimate—I can understand that

when there is change, people become worried and anxious. However, the premise that there will be some effect on their business needs to be established first. What I have indicated, and what I am inviting the member to do, is point to how this legislation will change what they are currently enjoying. The existing contracts will continue—so, no change.

Hon Sue Ellery: For the life of those contracts.

Hon MICHAEL MISCHIN: For the life of those contracts. Into the future, whether the asset is retained by Pilbara Ports, with its requirements under its legislation to maximise the profit that is available from the port, or under an independent operator, bound by regulations and legislation and the protections that are being put in place by government, the risk is the same. What will be done, and what is not currently in place, is that an access and pricing regime will be established to enable the junior miners to have a structured way of getting access and achieving a price. There will be a negotiate–arbitrate regime that will enable independent arbitration if the price is seen to be unfair or unreasonable, or destroy their operations, or affect them adversely. There will also be oversight by the Economic Regulation Authority. That currently is not in place. However, leaving all that aside, if there is a question of something happening that will be to the detriment of their business, that will happen only when the current contracts expire—which is a risk that they face in any event—or when there is a new junior miner that wants to access that facility. Those risks are currently in place, but without any structured means of dealing with them. The regimes that I am talking about are those that were recommended by the standing committee.

I can understand that when there is change, people will be worried about it. I can understand that they will require reassurance. However, worries in themselves are not evidence of a detriment. I invite the Leader of the Opposition to point out how this regime that will be set up will change the current contracts or be to the detriment of anyone. There currently is not an established regime. It is arbitrary.

Hon SUE ELLERY: If I can just finish this point, the issue is not about the current contracts, because the current contracts contain the conditions that they contain. The issue is about access in the future and whether the regime that will be put in place, to the extent that it is different from what is in place now, will be better for the junior miners. The minister has said that the junior miners will be better off, because if there are disputes, there will be an arbitration mechanism. What is the difference between what is in place now and what will be in place in the future? It seems to me that what is in place is the provisions that are set out on the supplementary notice paper. I do not have the amendments in front of me, but it is proposed new subclause (3) of the amendment that is on the supplementary notice paper in the name of the Attorney General. I stand to be corrected if I need to be. That is where the hook is. It is that part of the amendment—I guess we can talk about it when we get to it—that includes the new definitions of "prescribed" versus "protected", and the provisions that go to a request being granted for someone who is a prescribed user versus a protected user and whether those arrangements are better than the arrangements that exist now. I make the point that I cannot see a motivation for the junior miners to make up this stuff for the purpose of having a political disagreement. They are driven by their base business, which is to make a profit for their shareholders. I cannot see why they would be raising these concerns with us if they were not worried about what it would do to their share price for their shareholders and what it would do to the nature of their business. I cannot see any other motivation for them to raise these issues. They are concerned that the regime that the government is putting in place will not protect their capacity to operate at the level at which they are operating now and may impact on jobs. That is the point I think they are making. If the minister wants to describe them as being the Chicken Little of the industry, they are the minister's words and he will be judged accordingly.

Hon Michael Mischin: I did not describe them as that.

Hon SUE ELLERY: I will look at *Hansard*, because I am pretty sure that is what the minister just said.

Hon Michael Mischin: That is not what I called them at all.

Hon SUE ELLERY: Then explain to me the Chicken Little reference, because I must have completely missed it.

Hon Michael Mischin: I was using an analogy with respect to the use of concerns as a substitute for evidence.

The DEPUTY CHAIR (Hon Liz Behjat): Order! Minister, only one person has the call at the moment. If the honourable Leader of the Opposition wants to resume her seat, the minister may give the explanation. I will be corrected, but my understanding was that the minister was just drawing an analogy to something entirely separate to that and saying that the Chicken Little thing might happen, but he was not specifically referring to the mining companies when he said that. The minister might like to elucidate on that.

Hon MICHAEL MISCHIN: Thank you, Madam Deputy Chair. As I have indicated, I entirely understand why, when any change is proposed to anything, someone who is used to a current regime may have concerns and

anxieties and have an interest in how it will affect them and the like. The Chicken Little analogy was simply to point out the difference between concerns and evidence.

Leaving that aside, there is currently no control over who has access. There are contracts in place. However, when those contracts expire, Pilbara Ports could choose to give that access to BHP—it could do so. There is nothing to stop Pilbara Ports from doing that. The concern that access will be lost is addressed by proposed new clause 46A and by the regime that the committee has recommended be put in place, which the government had in mind anyway but is now expanding to cover access and pricing and the like. Therefore, there will be more certainty as to how it will be approached than there is currently.

If the Leader of the Opposition wants to take the political element of it, if that access and pricing regime, which will be incorporated into regulations, proves to be unsatisfactory in some fashion, there will be power for the government of the day to tweak it in order to make it work in accordance with the objectives of the government of the day. I cannot predict what will happen into the future. However, a regime will be in place that will be subject to scrutiny by Parliament. There will be the political element that if the government of the day decides to change that regime to the detriment of junior miners, it will be scrutinised. Currently, none of that exists, and Pilbara Ports can do what it likes as an independent authority and with certain obligations under its legislation.

I can understand that there are concerns. However, concerns alone are not a reason for not doing something, unless we can actually show where the detriment lies. The contracts will continue. When those contracts expire, there will be a means of determining the best way of getting access and price. There will also be a means of resolving disputes over those negotiations. That regime does not currently exist. I cannot take that any further. We can argue about differences in perspective and how much weight we put on concerns. What I am saying is that unless someone can show me evidence of some detriment, all the material that is at our disposal indicates that this will be a protection, a preservation and a certainty that does not currently exist, and also a guarantee of a certain amount of access that is not currently in place and could be lost the moment a contract expires.

Hon SUE ELLERY: I will leave it at this point. If the minister is right—I do not know that he is—it may reflect a sense of frustration that they were not consulted about the terms of the amendments that the minister will make to the legislation. It may reflect that. I will leave it there.

Hon LYNN MacLAREN: I want to ask, because I was out of the chamber on urgent parliamentary business, whether the diagram that was circulated was given to the junior miners. Have they seen it?

Hon MICHAEL MISCHIN: I understand that they have not as yet; the junior miners saw an earlier version.

The DEPUTY CHAIR: It is now a tabled document.

Hon LYNN MacLAREN: I also join the previous questioning because it seems to me like there is quite a bit of agreement between what the minister is saying and what the opposition is trying to impart. The point of difference is that we do not see what the minister is telling us is in the bill—the junior miners have not seen it explicitly in the bill—and that is the intention of the amendments on the supplementary notice paper. The intention of the amendments on the supplementary notice paper is to explicitly put in the legislation what the minister seems to be saying is the government's intention. It makes it clear to all involved that the government's intention is not to disadvantage junior miners. It strikes me that, quite apart from some hypothetical situation, this did happen for the Port of Melbourne because its bill did not prescribe any ground rules for the pricing regime. All we are asking for is something in the bill that will potentially limit the capital costs to be recovered and the rate of return. That would help us to understand what the pricing access regime is.

From my reading of the committee report, it is clear that the concerns we are now expressing on the floor of the chamber have been expressed already about the bill by the stakeholders, and the committee agreed with them. The committee felt that it would be better to be explicit about the government's intentions. I draw members' attention to page 15 of the committee report. It states —

> The Committee is concerned that the Parliament is essentially being asked to endorse the divestment … without having all relevant information disclosed to it.

Because Treasury chose not to reveal or release any information that relates to the retention value, it leads to confusion about the government's intention. The lack of transparency, at least amongst the stakeholders, and the lack of provision of detailed information has led to this suspicion—I would say there is quite a bit of evidence to back it—that, indeed, the pricing regime is not explicit enough. The legislation leaves it open for junior miners to suffer an economic consequence that, from what the minister has said, is clearly not the intent of the government.

Hon SIMON O'BRIEN: I invited the Committee of the Whole to consider whether we would deal with this matter now or later, and I thought we were going to do it later but seeing as everyone wants to deal with it now I will try to get it over as quick as I can. Without any sense of revisiting a second reading debate—there might

have been a tendency to do that a little bit already this afternoon—the central point needs to be understood for the record. In the course of inviting the Committee of the Whole House to adopt each and every bit of this bill, we need to understand, for the record, what our concern is and we need to understand how it will be addressed. If that is all seen to be satisfactory, we can agree to it and report to the house accordingly. That is what we are trying to do.

As I see it, the central issue at hand here is twofold. The word "access" can be applied to any. "Access" in the sense of access for a junior miner's capacity to move a product over a wharf in the future to the markets beyond the seas is an issue that we will come to in proposed new clause 46A in due course. The issue that is outstanding, which does not appear to be incorporated in the bill and members might suggest that I am suggesting we might consider placing in the bill, is the question of access through the mechanism of pricing. I want to distil this to the very simplest of terms. At the moment, a junior miner utilising the Utah Point facility can get its product over the wharf and onto a ship at a cost of so much per tonne. Offhand, I would not know how much it is, but let us say it is $6.75—I do not know whether that is the figure. I am also aware that the government, through its policies, can provide a discount of $2.50 a tonne to encourage and facilitate trade. That concession is being utilised at this very time. As an aside, I might wonder how on earth a future private owner will be expected to make discounts of just $2.50 a tonne available to exporters in the future. I cannot imagine them queueing up to do that because there is no competition for them to try to beat in order to get the custom of junior miners. Putting that matter to one side, a price is charged per tonne for junior miners to move their product over this wharf. Hypothetically, if the price is, $6.75 a tonne—I honestly do not know what the price is under the current contract—the junior miners and this member of Parliament who is now on his feet advocating again for the development of industry in Western Australia, do not want to turn around and discover, at the end of the current contracts, that a private owner has suddenly put the price up, in today's terms, to $20 a tonne. The private owner can say, "Take it or leave it because I'm here to make a buck." That is the concern in simple, unvarnished terms, and it is a legitimate concern.

If members want some evidence that it is a legitimate concern, I can give it to them. It could work very well for the state government railways to be privatised and operate effectively under arrangements that have been entered into in this state. However, after that is done, it does not matter what precautions are put in place; as time develops, there can be unforeseen circumstances and un-dotted i's and uncrossed t's can be shown up in very sharp relief. That can happen, for example, as an entity changes hands when it has been onsold to subsequent buyers on an open market. How will those buyers be held to the same account? Perhaps, under the terms of this bill, the terms that are meant to guarantee access will apply in perpetuity, but I am not so sure.

Again, if we look at the example of the grain rail network, the above and below-ground operations passed through various hands until, ultimately, we had vertical integration. What did that do? I think I can safely say that it is conspired, through pricing, to exclude other rail operators. At Utah Point I do not want to see some future vertical integration or some other mechanism whereby someone, and it might just be an iron ore major, gets hold of this facility and through a punitive pricing regime denies access to junior miners seeking access to common-user infrastructure. There is precedent for this happening all over the Pilbara, at every railway and every port. At the moment, the sole avenue of recourse in any substantial way available to juniors is Utah Point; that is what it is there for. It is a legitimate concern that this question of access through price be preserved. I do not know how we do that. For argument's sake, the current operators of Utah Point could be charging $675 a tonne. Perhaps the minister can tell the chamber, if it is not too commercially confidential, what the price is, what sort of return that represents on the investment, and what the investment was—whether it is the $315 million or perhaps the $235 million that I think the Association of Mining and Exploration Companies prefers. Then we can look at the rate of return. What rate of return might a future owner or leaseholder expect? How will it be promoted to them by those seeking to maximise the rate of return that they will get on their investment, because they would want to talk it up, would they not, if they were trying to maximise the sale price? What will their attitude be if they pay, say, $500 million or $1 000 million to acquire this asset? Will they reasonably be expected to get a similar rate of return on their investment as reflected in the price per tonne that they charge? If they are, it will certainly go up—it will double and it will triple. Members of the Committee of the Whole are trying to get reassurance that that sort of outcome will not occur. At this stage I do not see any assurance of any of that in the Pilbara Port Assets (Disposal) Bill 2015. If it is the case that ultimately we will just say, "Righto; let the market forces decide", the minister should tell us that and we will go down that path. However, if there is a genuine commitment to make sure that this facility is still available to common users, we need to get the answers to these questions.

Hon MICHAEL MISCHIN: With respect, I have already addressed all of that. I have indicated the safeguards that will be included in the legislation. The scenarios that the honourable member mentioned are currently available but not in place. What is proposed will improve the situation by providing checks and balances and the ability to negotiate a price and access. If there are no fruits of that negotiation and if there is a dispute, it can be arbitrated. There will be provisions under which there cannot be discrimination on the basis of price. With things

such as discounts, the government has provided those and there is no reason why it cannot in the future provide discounts in one way or another. However, there is no current bar to the Pilbara Ports Authority increasing the price for its commodity, at the expiration of its access, to the figure that the honourable member has mentioned, and by that degree, there is nothing stopping it. However, a regime will be in place. The Australian Competition and Consumer Commission rejected the idea of a price monitoring regime, which is why it is being replaced with a negotiate–arbitrate regime. I do not think I can take the matter much further, but, as I indicated, what will be provided will give greater certainty and greater protections to junior miners about their access, and a means of scrutiny of the regime that is in place that will be able to deal with disputes. None of that is currently in place. In any event, there will no change until the contracts expire.

Hon SIMON O'BRIEN: The last point that there will be no change until the contracts expire is noted and agreed to. However, there is one restraint on predatory or discriminatory pricing at the moment—that is, the government owns the asset—and that is the difference. If some capacity was identified for the year after next by a developing junior who came along and said that it needed to talk about access for 500 000 tonnes of the mineral that it was hoping to export, and someone at the Pilbara Ports Authority or the people running Utah Point on its behalf said, "No worries. That will be $50 a tonne", which, if it were iron ore, for example, would make it completely not worth taking out of the ground, it would not just end up with the junior saying, "Okay; we'll go somewhere else"; it would come back into this Parliament and we would be making demands of the government, saying, "What on earth is your port authority doing? Doesn't it understand in black and white that its job is to facilitate trade and all the other things that are required in the port authorities legislation?" There is a very real protection against that sort of behaviour happening right now. It is real and we want to preserve it. I am failing to see how, through the promise of regulations, we will see anything different. My enthusiasm for this bill, lukewarm as it was at the outset, will start to chill rapidly if I cannot be given any more assurance than what I have obtained so far.

Hon MICHAEL MISCHIN: We could go on about this all day. Who knows; we may. At the end of the day, the Standing Committee on Legislation considered all these matters and recommended a negotiate–arbitrate regime, which is what the government is putting in place.

Hon KATE DOUST: I will just pick up on those last words. The committee may have recommended that that particular system be put in place, but the committee was quite clear in its findings, minister, particularly finding 2 on page 68 of the report, that it felt that there were currently insufficient protections for junior miners under the proposed access regime. Although some of the matters about access and pricing have been canvassed by Hon Simon O'Brien, I understand that until sometime next year a set price is in place, but there is no guarantee what will happen afterwards. I do not believe that the amendments the minister is proposing are tight enough, if you like, to afford those protections or allay the concerns of Hon Simon O'Brien. I do not know whether the government has gone far enough, based on the concerns raised in this report by the committee, to resolve those concerns. My second statement and concern is that given this committee report was tabled in August and a majority of members in this place have received correspondence from the Association of Mining and Exploration Companies raising a number of matters as a result, did the government seek any consultation with the junior miners to discuss the matters raised in this committee report after it was tabled? It seems to me, based on the information we received, that that did not occur. If it did not occur, why not?

Hon MICHAEL MISCHIN: Firstly, AMEC and the junior miners' views were made very apparent in the lead-up to the committee report. I have already mentioned that there were eight meetings with the Treasurer. The recommendations and findings on pages 67 and 68 have been addressed. Finding 2, that there are insufficient protections for junior miners in the proposed access regime, has been addressed. We have gone from a price monitoring regime to a negotiate–arbitrate regime for price as well as for access, which was there previously. What the committee had recommended has been addressed and done and there is simply no benefit to the government in seeing the junior miners go out of business. There is a benefit to the government and Western Australians in having an asset operated in a way that maximises its effectiveness. There is also a benefit to the people of Western Australia to ensure that that asset is being used to its maximum capacity, hence the flexibility to allow that use of capacity by others if it is not being used by junior miners, but it is also a protection for junior miners to have access to the asset as and when they desire it. From the flowchart I have tabled and would urge members to consider, the process is quite clear, as are the checks and balances in it. Also, the fact that a regime is now proposed that is not currently in existence ought to be of comfort to the junior miners because at the moment there is no restraint over the way Pilbara Ports deals with that particular asset and with them—whatever the purpose of that asset was originally. The purpose is now being enshrined in legislation whereas that is not currently the case.

Hon SIMON O'BRIEN: Through the Chair, it might help if the minister can advise the house: what is the current rate of return per annum that this facility is achieving against the investment that was put in in the first place?

Hon MICHAEL MISCHIN: The information that the honourable member has sought was provided to the Standing Committee on Legislation by letter dated 24 May under the hand of the Under Treasurer. That indicated that the historic rate of return on assets for the Utah Point bulk handling facility from the independent pricing review by HoustonKemp and confirmed by another independent assessor, Incenta, was as follows: in 2010–11, 0.6 per cent; in 2011–12, 9.1 per cent; in 2012–13, 6.3 per cent; in 2013–14, 26.3 per cent; and in 2014–15, 28.3 per cent; and on average over the five-year period the return on assets was approximately 14.12 per cent. The cumulative internal rate of return to 2016 was 13.8 per cent. Two independent economic consultancy reports, as I indicated, Incenta in 2015 and HoustonKemp in 2016, concluded that the returns earned by Pilbara Ports Authority for Utah Point are reasonable in light of the risk profile associated with that asset.

Hon MARTIN PRITCHARD: It will come as no surprise to anyone in the house that Hon Simon O'Brien has put more eloquently the concerns I was trying to express earlier. I will just make this a comment rather than a question, because I think the minister would indicate that he has answered the question. The concern, if I can crystallise it, is that the objectives of the government in controlling the facility now and the objectives that it wishes to achieve in leasing it or selling it, do not bear any resemblance to the objectives of any new owner. Any new owner's objective will be to try to extract the best results for its shareholders, and that is my concern. I apologise to the minister, but I am not convinced that safeguards are within the bill or the amendments to satisfy that. I will not ask a question, because, as I said, I believe the minister has suggested he has answered the question. Unfortunately, my concerns remain.

Hon KATE DOUST: I come back to the committee report and recommendation 3. On page 19 of the report, members will see evidence taken by the committee about whether the successful bidder of Utah Point would be required to comply with section 30 of the Port Authorities Act 1999. These were questions asked by Hon Ken Travers of Mr Mann when the committee held its hearing. He asked whether the lessee would have to comply and the response was, "I would have thought not", and then Hon Ken Travers went on to expand upon that question, to which the response was that that obligation under the Port Authorities Act would not be an obligation for the lessee. Can the Attorney General explain to the chamber why the new operator or owner of Utah Point would have a different set of arrangements from others and why they would not have to comply with that section of the port act?

Hon MICHAEL MISCHIN: There are two things. Firstly, it is not a port authority. Secondly, I have already covered all of this in my second reading reply. If members are going to go through each of the recommendations in the committee report and ask what the government thinks about them and how it will respond, I will make the same response: I covered it in my second reading reply in detail.

The DEPUTY CHAIR (Hon Liz Behjat): Attorney General, I was also going to say that. I was in the chair on Tuesday evening when the Attorney General gave his response to the second reading and went through every recommendation in quite some detail for well over an hour. I am not sure whether the member was away from the chamber on urgent parliamentary business at the time, but I certainly listened closely to everything the Attorney General said and I know he covered those recommendations in quite some detail. It has been a wideranging debate on clause 1, and that is the purpose of it, but I feel that we are starting to get a little circuitous in some of our talk at the moment. Unless members have anything to say that they think is different from what has already been raised in the 70 minutes since the lunch adjournment during which we have been discussing clause 1, I propose to move on a little if I might.

Hon LYNN MacLAREN: I have one further question. It is a general question, so I think it is appropriate in the debate on clause 1. There was quite an extensive reply to each of the recommendations in the committee report in the second reading reply, and I acknowledge that. My concerns are fundamental in that if the Attorney General just says in his second reading reply that the government has this position on or approach to things, does that mean that it would hold up in court, for example? To what degree does what the Attorney General is saying is the government's intent have to be explicit in the bill, rather than just him referring to it in the second reading reply? I think that goes to the heart of the matter. We have some different perspectives on this bill, and there has been a breakdown in communication whereby some people think the bill states a certain thing and other people are saying that the bill could mean something else. I would like the Attorney General to talk to us about the difference between a second reading reply and an amendment to the bill. In my view, my amendments on the supplementary notice paper will put in writing what the government has said in the second reading reply and will basically implement in a much more clear and legal way the government's stated intention.

Hon MICHAEL MISCHIN: I thought it was patently obvious that what is said in this chamber is not justiciable; otherwise, there would be an awful lot of lawsuits going on. Otherwise, the bill is the bill. What is stated in it will, if passed, become law, and any regulations made pursuant to the powers in the bill will become law. What I say or what any member says in a second reading debate, or any debate in this place, is not

justiciable, although it can be taken into account by the court if an issue before it requires adjudication on the intent of Parliament as an assistance to interpretation within the bounds of what is allowed under the Interpretation Act 1984.

To get back to it, the government's policy has been stated in the second reading speech and it has become plain during the debate and my reply. There will be ample political opportunity to test those propositions in due course should it ever come to pass that something happens contrary to the government's objectives or what is being said.

Division

Clause put and a division taken, the Deputy Chair (Hon Liz Behjat) casting her vote with the ayes, with the following result —

Ayes (15)

Hon Martin Aldridge	Hon Jim Chown	Hon Peter Katsambanis	Hon Helen Morton
Hon Liz Behjat	Hon Nick Goiran	Hon Mark Lewis	Hon Simon O'Brien
Hon Jacqui Boydell	Hon Dave Grills	Hon Robyn McSweeney	Hon Brian Ellis *(Teller)*
Hon Paul Brown	Hon Alyssa Hayden	Hon Michael Mischin	

Noes (10)

Hon Alanna Clohesy	Hon Nigel Hallett	Hon Martin Pritchard	Hon Samantha Rowe *(Teller)*`
Hon Kate Doust	Hon Lynn MacLaren	Hon Amber-Jade Sanderson	
Hon Sue Ellery	Hon Rick Mazza	Hon Darren West	

Pairs

Hon Peter Collier	Hon Stephen Dawson
Hon Phil Edman	Hon Sally Talbot
Hon Col Holt	*Vacant seat*
Hon Donna Faragher	Hon Robin Chapple
Hon Ken Baston	Hon Adele Farina

Clause thus passed.

Clauses 2 to 4 put and passed.

Clause 5: Purposes of section 10 disposal —

Hon SIMON O'BRIEN: We have just adopted with near unanimity clause 3, which includes a definition of "section 10 disposal", which means —

> … a disposal for which an order is in force under section 10;

That has a certain symmetry about it—an elegance and a sort of natural flow that even the most argumentative of us would not be able to take issue with. Then there is clause 5, "Purposes of section 10 disposal". It reads —

> The purposes of a section 10 disposal include the following —
>
> (a) the purpose of effecting or facilitating the section 10 disposal;
>
> (b) any purpose ancillary or incidental to, or consequential on, the section 10 disposal.

Again, there is that total compartmentalisation that achieves a sort of geometric completeness. When we turn to clause 10, "Minister may order disposal of port assets or associated assets", we discover that the minister may by order published in the *Government Gazette* direct certain things, or vary or revoke an order and so on. That brings us to the end of a little journey about the question of what a section 10 disposal is. Clause 10 provides for it in some detail, with five subclauses. Clause 3 states that a section 10 disposal is "a disposal for which an order is in force under section 10". What on earth is the purpose of clause 5? Seriously, apart from clogging up the statute book, what function does clause 5 have and why are we seeing this sort of stuff? Do we have drafters of legislation who are paid by the line or the word or something?

Hon MICHAEL MISCHIN: The starting point is really clause 10 itself, which provides a mechanism for how the disposal of port assets or associated assets takes place. When one looks at, say, clause 9, it refers specifically to the sorts of orders made under clause 10. Clause 5 expands the concept to extend, where there are references to purposes, what is embraced by a section 10 disposal to clarify that the disposal, as well as matters such as facilitating a disposal, or purposes ancillary to or consequential on the disposal, are all for the purposes of the disposal. The definition in clause 3 further identifies the meaning of the phrase "section 10 disposal", which is used as a shortcut reference to both what is being done in clause 10 and what is embraced by clause 5.

Hon KATE DOUST: I thank the Attorney for the explanation. I must say that I am probably not really much clearer than Hon Simon O'Brien was.

Hon Simon O'Brien: I knew other members would be concerned about that clause.

Hon KATE DOUST: I would have thought the purpose and intent of clauses 9 and 10 was fairly clear. I do not know whether there needs to be a precursor, if you like, that announces what clause 10 is set up for. Even if it was needed, I would question why it is positioned where it is. I would have thought that if there needed to be a clause to further outline or provide information about an extension, what is now clause 5 might have been put under part 2, rather than where it is now. I really do not know whether it adds a great deal of value to the rest of the bill to have that clause there. Is it just words for the sake of it?

Hon MICHAEL MISCHIN: I have never known parliamentary counsel to spill ink just for the sake of it. Clause 5 is included in part 1 because part 1 deals with preliminary matters. Among the preliminary matters that part 1 would ordinary deal with would be the short title of the bill, commencement dates, definitions of terms used and the like. In most cases, the definitions of terms used would be included in clause 3 of a bill. On other occasions, broader concepts are expressed in other preliminary clauses of the bill—clause 5 being one of those. It refers to what the purposes of a section 10 disposal include. That term is not used in clause 10 and it is not used, as far as I could tell on a quick perusal, in clause 9, but it is used in later clauses of the bill such as clauses 33, 36 and so forth. If that definition were to be included in part 2 of the bill, it may, by a matter of interpretation, be limited only to use in that part. I understand clause 5 has been put in the preliminary part of the bill because these matters operate across the legislation.

Hon LYNN MacLAREN: If this clause were to be deleted, what would be the effect on the bill?

Hon MICHAEL MISCHIN: It would have to be repeated every time the term "purposes of a section 10 disposal" was used. For example, that would be the case in clause 33, which states —

> This Part applies if, for the purposes of a section 10 disposal ...

Clause 36 also refers to "the purposes of a section 10 disposal". That term would have to be defined in other places, as would what the term embraces. It is not simply a reference to proposed section 10, but gives a broader effect to it because, as I have indicated, proposed section 10 is simply a mechanism for how the disposal takes effect. It states nothing about what is embraced by the concept of the disposal. The term "the purposes of a section 10 disposal" is defined in clause 5. If that clause were to be deleted, some interpretive problems in other parts of the bill would be created or there would be a requirement for that term to be repeated and expanded upon in other parts of the bill. If the whole purpose of deleting it was simply to save a bit of ink, I think I would prefer to leave it there.

Clause put and passed.

Clauses 6 to 10 put and passed.

Clause 11: Effecting disposal —

Hon LYNN MacLAREN: The amendment on the supplementary notice paper at clause 11 is intended to follow through on the minority recommendation of the committee report. Anyone who wants to understand the intent of it can look at page 15 of the committee report, which follows a section that largely deals with the degree to which the government has been transparent about the information it has provided about the value of this sale and how it will ensure some fairness. This is a public asset that we originally built with an intent to support junior miners so that in the competitive environment in which they find themselves, they could conduct their business with the support of the Western Australian government. Therefore, it is important to us that we retain that purpose. Over time, we have controlled the fees and charges, and there has been some transparency about the fees and charges that have been levied. However, once we sell off Utah Point, we run the risk of losing that transparency. The government has not seen fit to correct the bill in the way that the committee highlighted it should. I would be really keen to hear from the committee, if someone here was part of these discussions, about why it did not feel that we needed to be explicit in the bill —

> … **that all documents relating to the retention value of Utah Point Bulk Handling Facility be made public after the completion of the divestment and that these documents be tabled in both Houses of Parliament at that time.**

It seems to be a pretty reasonable request. Amendment 1/11 on the supplementary notice paper is to insert at clause 11, which relates to the conditions effecting disposal —

> (1A) Without limiting anything in (1), prior to giving effect to a section 10 disposal order, the Minister is to cause to be laid before each House of Parliament a report detailing the retention value of port assets and associated assets.
>
> (1B) Prior to giving effect to a section 10 disposal order, the Minister shall order the publication of all source documents upon which the retention values referred to at (1A) are based.

If members were wondering what kind of information is relevant, they need to look no further than pages 14 and 15 of the committee report. I am reticent to read the whole thing into *Hansard*, but I draw members' attention to paragraph 2.35 on page 14, which states —

> Treasury has advised the Committee that the transaction to dispose of Utah Point will only proceed if the following criteria are met:
>
> - *acceptance of the access and pricing regime including the preferential treatment of junior miners;*
> - *facilitation of trade through Utah Point BHF;*
> - *meeting of transaction objectives;*
> - *retention value being exceeded by the transaction proceeds.*

That all sounds very reasonable, but then the committee report states —

> In light of the evidence above, the Committee is concerned that the Government does not intend to publicly release any information relating to the retention value of Utah Point, nor will it be tabled in the Parliament.

In other words, this is a "trust us" clause: "Trust us. She'll be right. We know what we're doing." Unfortunately, I do not think we have that level of trust here. The committee report continues —

> Treasury has advised that:
>
> > *Disclosing the base discount rate is not market standard practice as any disclosure has the potential to impact on proceeds received by the State.*

That may be why this recommendation is a minority recommendation, rather than a majority recommendation, of the committee. However, the committee report continues —

> The Committee is concerned that the Parliament is essentially being asked to endorse the divestment of the facility (by passing the Bill) without having all relevant information disclosed to it. The decision to dispose of Utah Point will therefore ultimately be made by the Executive at a future date, possibly based on different information.

I am interested to hear other members' views, but the amendment that I intend to move would address this issue. It would make that transparent. It would require the government to table in both houses significant information so that there is transparency in this transaction. I am interested to hear whether the Attorney General is interested in supporting this amendment.

The DEPUTY CHAIR (Hon Liz Behjat): Member, I ask you to move that amendment formally.

Hon LYNN MacLAREN: I move —

> Page 9, after line 8 — To insert —
>
> (1A) Without limiting anything in (1), prior to giving effect to a section 10 disposal order, the Minister is to cause to be laid before each House of Parliament a report detailing the retention value of port assets and associated assets.
>
> (1B) Prior to giving effect to a section 10 disposal order, the Minister shall order the publication of all source documents upon which the retention values referred to at (1A) are based.

Hon KATE DOUST: On behalf of WA Labor, I indicate that we support this amendment moved by Hon Lynn MacLaren on behalf of Hon Robin Chapple.

Hon MICHAEL MISCHIN: The government does not support the amendment. As I outlined in my second reading reply and the government's response to recommendation 2, the government has already provided an undertaking that deals with the issue that this amendment is designed to address, and deals with the majority recommendation from the committee, which was —

> **The Committee recommends that the Treasurer make relevant documents relating to the retention value of Utah Point Bulk Handling Facility public after the completion of the divestment and that these documents be tabled in both Houses of Parliament at that time.**

I accept that a minority came to a different view, but the government has acceded to the recommendation of the majority of the committee. The summary of the results of the retention value analysis will be made available

after the divestment is complete. It will be similar in principle to the public release of value-for-money analysis under the Treasury's public–private partnership disclosure policy. I note that various underlying assumptions will need to be kept confidential. The amendment before the house refers to "all source documents". Some material will need to be kept confidential to not prejudice any future active or future divestment process, but all that can be reviewed at the time of disclosure. Furthermore, it should be noted that the amendment proposes the publication of the retention value prior to giving effect to a section 10 disposal order. That is not an appropriate time for such a disclosure, as the section 10 disposal order is the instigating step of the process and will occur prior to the time that final binding bids are received. We would be disclosing the cards in our hand as a negotiator, which would not operate to the advantage of the state. Therefore, such a disclosure would be detrimental to the competitive bidding process and the state's interest and may reveal information that might even prejudice some of the bidders.

As such, the government does not support the amendment to clause 11 as outlined, but I reaffirm the government's undertaking made through the Treasurer that an appropriate disclosure will be made at an appropriate time.

Division

Amendment put and a division taken, the Deputy Chair (Hon Liz Behjat) casting her vote with the noes, with the following result —

Ayes (10)

Hon Alanna Clohesy	Hon Nigel Hallett	Hon Martin Pritchard	Hon Samantha Rowe *(Teller)*
Hon Kate Doust	Hon Lynn MacLaren	Hon Amber-Jade Sanderson	
Hon Sue Ellery	Hon Rick Mazza	Hon Darren West	

Noes (15)

Hon Martin Aldridge	Hon Paul Brown	Hon Peter Katsambanis	Hon Helen Morton
Hon Ken Baston	Hon Jim Chown	Hon Mark Lewis	Hon Simon O'Brien
Hon Liz Behjat	Hon Nick Goiran	Hon Robyn McSweeney	Hon Brian Ellis *(Teller)*
Hon Jacqui Boydell	Hon Alyssa Hayden	Hon Michael Mischin	

Pairs

Hon Stephen Dawson	Hon Peter Collier
Hon Sally Talbot	Hon Phil Edman
Hon Adele Farina	Hon Col Holt
Hon Robin Chapple	Hon Donna Faragher
Vacant Seat	Hon Ken Baston

Amendment thus negatived.

Clause put and passed.

Clause 12: Disposal of land —

Hon LYNN MacLAREN: The Attorney General in his reply to the second reading debate made some comments about whether the government's intention was for 99-year leases or 50-year leases. I must admit, I found that all very confusing; it is referred to on page 49 of the committee report. It is clear to me that the government's stated policy is to limit the lease of Utah Point bulk handling facility to 50 years, with no option to renew. But then we have this bill before us which states it is a 99-year lease. I am baffled about why we do not explicitly state in this bill that it is a 50-year lease, and I am not alone in that bafflement; in fact, the junior miners are also concerned about this. How can the government state, "We have no intention to make it 99 years; we want it to be 50 years", but then write 99 years in the bill? It makes no sense.

Hon Simon O'Brien: There could be a rational explanation as good as the one we got for clause 9.

Hon LYNN MacLAREN: If there is a rational explanation, I provide this opportunity to the government to give us that rational explanation. I do not want in any way to indicate that I was not paying attention during the Attorney General's reply to the second reading debate, because I was paying attention; I was listening intently to try to figure out why we have 99 years instead of 50 years in this clause. I must admit, it was still a mystery to me at the end of the Attorney General's reply to the second reading debate why that was happening. There was a lot of detail in that. Now is an opportunity to focus on that one part and to tell us quite simply. If the Attorney General cannot explain it to our satisfaction, to facilitate debate I will move the amendment to the clause on page 10, line 6, to delete "99 years;" and insert "50 years;". We will start with the amendment at 6/12.

Madam Deputy Chair (Hon Liz Behjat), if you will allow, I will cognately move my second amendment right after that.

The DEPUTY CHAIR (Hon Liz Behjat): Member, I think there are four amendments we could move—at 6/12, 7/12, 8/12 and 9/12. I am sure the will of the house will be, as they are very similar, that they could be moved en bloc. I am sure the member is going to seek leave to do that.

Hon LYNN MacLAREN — by leave: I move —

Page 10, line 6 — To delete "99 years;" and substitute —

50 years;

Page 10, line 8 — To delete "99 years." and substitute —

50 years.

Page 10, line 14 — To delete "99 years;" and substitute —

50 years;

Page 10, line 16 — To delete "99 years." and substitute —

50 years.

Thank you, Madam Deputy Chair, I appreciate your pre-emptory granting. Can the minister explain why we have 99 years there instead of 50 years?

Hon KATE DOUST: I am very pleased to see that Hon Lynn MacLaren has been able to move those four amendments en bloc, and I indicate that the opposition supports the amendments she has on the notice paper. From our point of view, changing the words from "99 years" to "50 years" will perhaps provide clarity for the government's intentions for how long these leases will be in place.

Hon RICK MAZZA: I rise to also say that the Shooters, Fishers and Farmers Party supports the amendments. The Attorney General explained that he wanted flexibility beyond the 50 years recommended by the committee report. However, an extra 49 years is an extraordinary amount of flexibility. Unfortunately, most of us probably will not be here in 50 years' time, let alone 99 years' time. People who are born today will be 99 years old before this lease expires. It is an extraordinary length of time. We certainly support the amendment.

Hon MICHAEL MISCHIN: We may not be here in 50 years' time, but we may still be dealing with this bill at that time! The government does not support the proposed amendments. I am sorry that Hon Lynn MacLaren had some trouble understanding what I was saying. She seems to have misunderstood the clause that we are dealing with. It is not a question of having a lease for 99 years; it is for a term not exceeding 99 years. That is the upper limit. The government has indicated that its preference would be a lease of around 50 years. However, it may be necessary, if there were a good reason, to have a period slightly in excess of 50 years. That flexibility may be required in order to allow for the proponent to sensibly operate the facility and have that certainty. I made mention of all this in my second reading reply and the government's response to recommendation 8 of the committee's report, that there is a need to retain the flexibility to assess bids against the objectives of the asset disposal program, in order to determine whether a lease of up to 99 years, including all further potential interests, renewals and options, is the best outcome for the state. We will not know that until we see the bids from proponents and can assess them. Furthermore, it is considered beneficial to retain some consistency within the legislative framework for asset disposal legislation. I understand there is a proposal for the Fremantle Port Assets (Disposal) Bill 2016 to also involve 99 years, which may be something that will be necessary for the effective disposal of that asset. The government does not support the proposed amendment for the deletion of "99 years" as proposed by Hon Lynn MacLaren in each of the cases that term appears.

Hon LYNN MacLAREN: I am still bemused because 50 years is the clear policy of this government. People would think bills are to implement government policy, not to implement something else. This implements something else, an extra 49 years on top of what the government policy is. If the government has a policy of 50 years, let us see that in the bill. I am not convinced and now I understand. I appreciate the explanation that we have received, but it does not serve to allay my concerns; in fact, it increases them. We now see that the government is trying to act beyond its policy—beyond what everybody expects of it, which is that it has a policy of 50 years. The government says, "In this bill we are going to increase it by 49 years to 99 years." I do not think that is a reasonable way for a government to behave, unless it is adopting my policy. If the government wanted to change its bill to adopt my policy, there would be debate, negotiation and consideration and, hopefully, I would be able to convince members of the government to change their minds. In this case it is their own minds that they are changing on their side. I think it is unfair for the government to propose an up to 99-year lease, which includes all those 49 years that are above 50 years. The government is proposing that lease, even though it is contrary to its own

policy. I have moved these amendments and I ask that members continue to support them. I am not convinced by the government's response and believe it is important to amend the bill to change "99" to "50".

Division

Amendments put and a division taken, the Deputy Chair (Hon Liz Behjat) casting her vote with the noes, with the following result —

Ayes (10)

Hon Alanna Clohesy	Hon Nigel Hallett	Hon Martin Pritchard	Hon Samantha Rowe *(Teller)*
Hon Kate Doust	Hon Lynn MacLaren	Hon Amber-Jade Sanderson	
Hon Sue Ellery	Hon Rick Mazza	Hon Darren West	

Noes (14)

Hon Martin Aldridge	Hon Jim Chown	Hon Mark Lewis	Hon Simon O'Brien
Hon Liz Behjat	Hon Nick Goiran	Hon Robyn McSweeney	Hon Brian Ellis *(Teller)*
Hon Jacqui Boydell	Hon Alyssa Hayden	Hon Michael Mischin	
Hon Paul Brown	Hon Peter Katsambanis	Hon Helen Morton	

Pairs

Hon Stephen Dawson	Hon Peter Collier
Hon Sally Talbot	Hon Phil Edman
Vacant seat	Hon Col Holt
Hon Robin Chapple	Hon Donna Faragher
Hon Adele Farina	Hon Ken Baston

Amendments thus negatived.

Clause put and passed.

Clause 13 put and passed.

Clause 14: Functions and powers of Minister —

Hon KATE DOUST: I have a simple question about this clause, and I have the same question for clause 15. Clause 14 states that the minister—in clause 15 it is the authority—has a range of powers, including the power to acquire land. Can the minister explain under what circumstances for the purposes of this bill—which is about divesting this facility—the minister or the authority would need to acquire land?

Hon MICHAEL MISCHIN: I am informed that this is a standard empowering provision. It is consistent with sections 17 and 18 of the Perth Market (Disposal) Act. It may be the case that in order to effect the disposal of the asset to a proponent, there is a requirement to acquire some parcel of land that the proponent considers necessary for the operation of the facility. This clause will facilitate the acquiring of that land or other asset in order to enable the disposal to go ahead, of course with appropriate consideration as part of the bid for the asset itself. It is to cover a contingency that is not expected to arise but might arise at some stage.

Clause put and passed.

Clauses 15 to 17 put and passed.

Clause 18: Directions by Minister —

Hon SUE ELLERY: I do not think I was in the chamber on Tuesday evening when this matter was discussed—if I was, I might not have been my usual sharp self—but I want to ask about the conflict between the bill that is before us and section 30 of the Port Authorities Act 1999. The minister is obviously aware that the committee canvassed this matter. Part 4 of the Port Authorities Act, "Functions and powers", provides in section 30(1)(a) that the functions of a port authority are to facilitate trade within and through the port and plan for future growth and development of the port. It provides in section 30(2)(aa) that another function of a port authority is to prioritise development of trade over profit. I ask the minister to explain how that conflict will be dealt with. I understand that the government's position is that that section will not apply. However, how can we ensure that the facilitation of trade through Pilbara port will be protected and maintained going forward?

Hon MICHAEL MISCHIN: I am sorry that the Leader of the Opposition may not have been in the chamber when that matter was addressed, but I did address it at length on Tuesday evening during my second reading reply, and what I have to say about it will be set out in *Hansard*.

Hon Sue Ellery: Come on!

Hon MICHAEL MISCHIN: I am prepared to repeat—so that Hansard gets the privilege and pleasure of having to record it twice—for the member's assistance, that the Pilbara Ports Authority will continue to have the function of facilitating trade through the port of Port Hedland in accordance with section 30(1)(a) of the Port Authorities Act 1999. Similar to the current position with all other privately operated berths in the port of Port Hedland, the Pilbara Ports Authority will discharge its function under section 30(1)(a) of the Port Authorities Act for the whole of the port but will no longer have control over Utah Point. The terminal operator will be subject to the requirements of the Pilbara Ports Authority in its role as the controller of the port, including through the Pilbara Ports Authority's control of vessel movement, and the terminal operator will also be subject to the access and pricing regime and the obligations that I have already outlined in respect to the government's response to recommendation 3 of the committee.

Clause put and passed.

Clause 19 put and passed.

Clause 20: Minister may make transfer orders —

Hon LYNN MacLAREN: As members know, on the supplementary notice paper there are two amendments to this clause standing in my name. Before I move those amendments, I want to ask the Attorney General a bit more about part 3 of the bill, "Implementing disposal". Clause 20 has several subclauses. The purpose of my amendments is to try, yet again, to improve the transparency of this disposal of a public asset. Clause 20(3) at line 28 of page 14 of the bill states —

> A transfer order may specify persons or things by reference to schedules that —
>
> (a) need not be published in the *Gazette*; …

It seems a little vague to say "need not" be published in the *Government Gazette*. In most of the legislation that we deal with, the words that are used are "may" publish or "must" publish. We have in this clause the interesting phrase that it "need not" be published. Can the minister explain why the words "need not" have been used in clause 20(3)(a)?

Hon MICHAEL MISCHIN: The government does not support the proposed amendment, as I outlined in the second reading reply and also in the government's response to recommendation 11. The government will publish all schedules to transfer orders online at a location and within the time frame specified in the transfer order; thus, they will be available for review by both members of the public and members of Parliament. The transfer orders effect the transfer. The schedules, however, will identify each of the assets concerned. By way of an example that was given to me, the transfer order might be that all motor vehicles will be part of the transfer. However, the schedule will identify each vehicle by way of its registration number and other details to identify those assets. That is plainly something that would be unnecessary and, indeed, undesirable to have reflected at length in the *Government Gazette*. That information can be made available in other ways. The member also mentioned the use of the word "may" in clause 20(1), which states —

> … may, by order published in the *Gazette* … specify all or any of the following

That is a permissive, not a discretionary, provision. It is saying that this will take effect by way of the publication. It is not as though it is an optional extra; it is done by publishing it in the *Government Gazette*, rather than a "must".

Hon LYNN MacLAREN: I will mull over that response. Before I move the amendment to clause 20 standing in my name, I want the minister to also explain subclause (7), which states —

> … the Minister must consult each relevant official to whom a copy of the schedule must be given under section 25(2) about the form and content of the schedule for the purpose of facilitating the recording and registration of instruments or documents as required …

As the minister knows, I am trying to seek transparency, so what do the words "each relevant official" mean and in what form is it intended that that consultation will take place?

Hon MICHAEL MISCHIN: For the purposes of clause 25, each "relevant official" is defined in subclause 1. For example, the Registrar of Titles has to be consulted. That provision tells us what is meant by those words.

Hon LYNN MacLAREN: Now that I have had some time to reflect on the minister's answer to my earlier query, I think the minister is saying that the schedules that sit under the transfer orders will not in some circumstances be published in the *Government Gazette*, but in other circumstances they might be. Can the minister explain why the bill has to specify that they need not be published in the *Government Gazette*? Is the minister saying that in some cases the detail might not be so impractical to be published in the *Government Gazette*, or is he saying that it has to be explicitly stated that this information need not be published

in the *Government Gazette*? I am wondering whether some schedules will be published in the *Government Gazette* and others will not, and whether someone will make the decision about whether they need to be or do not need to be published. Alternatively, is the minister saying that whatever the schedule is, it does not have to be published in the *Government Gazette* because we explicitly said that it need not be published in the *Government Gazette* in clause 20(3)(a)?

Debate interrupted, pursuant to standing orders.

[Continued on page 6593.]

Sitting suspended from 4.15 to 4.30 pm