

PORTS LEGISLATION AMENDMENT BILL 2013

Committee

Resumed from 6 May. The Chair of Committees (Hon Adele Farina) in the chair; Hon Jim Chown (Parliamentary Secretary) in charge of the bill.

Clause 9: Section 14A inserted —

Progress was reported after the clause had been partly considered.

Hon KEN TRAVERS: Sorry, I did not take the call because I was expecting the parliamentary secretary to respond to a question when we were so rudely interrupted by the process of the house.

Hon JIM CHOWN: Hon Ken Travers is absolutely correct. His question was in regard to the words “without limiting section 13”. Clause 9 mandates that a community consultation committee is at each port site. That the words “without limiting” have been included because the new section mandates that the community consultation committee must be established under the bill. The words make sure that this does not indicate in any way that not mandating other committees means they cannot be put in place by the board. Therefore, we need to make sure that the new section does not limit the board’s ability to put in place committees as it sees fit.

Section 13 also states that every committee established by the board does not have to have a director on the committee. The power is that a board may establish committees and that these committees may consist of all directors, one director or no directors. That is at the board’s discretion, other than for the community consultation committee.

Hon KEN TRAVERS: Will a community consultation committee established under proposed section 14A be subject to a direction of the board as provided for in section 13(2) of the Port Authorities Act?

Hon JIM CHOWN: Yes.

Hon KEN TRAVERS: I will not labour the point, but whilst I accept that there needs to be cooperation, I think it does potentially limit what community consultation committees can and will do.

I want to clarify another matter about community consultation committees. During the second reading debate, a question was raised about future ports that may be brought under the act. I accept that is the intention, and I would be very surprised if the government does not have Albany, Esperance, Bunbury and Geraldton community consultation committees, but what is the government’s expectation for some ports such as a future James Price Point or even a port at some of the established communities of, for example, Useless Loop or Cape Cuvier, where there is no established town but Indigenous communities that will be impacted on by the operations of that port? Is it the government’s intention that those communities will be given the opportunity to have a community consultation committee or is it the government’s intention that the port authority could apply for an exemption under proposed section 14A(5)?

Hon JIM CHOWN: This is similar to the issue that Hon Robin Chapple raised and I responded to that matter during the second reading reply.

Hon KEN TRAVERS: With all due respect, there was general talk about it, but the specific question I am asking is whether the government intends to provide for community consultation committees for those types of ports. I accept that they are not part of it at this stage, but the second reading speech clearly states that the government’s intention is to bring those ports under this legislation. Is it the government’s intention that those communities will be provided with a community consultation committee even though there may not be a gazetted town, and Aboriginal communities will be impacted?

Hon JIM CHOWN: The answer is yes. A community is not defined in the bill if there is a community.

Hon STEPHEN DAWSON: I have a couple of questions on this issue and I will ask them en bloc. In relation to the community consultation committees, I am aware that the act stipulates that there will be local government representative on the boards. It does not stipulate who else will be on the board. What will be the process for selecting committees? Is there the potential for these committees to get rid of the port user groups that the parliamentary secretary has mentioned previously? Will there be an advertising process and who will make the decision on appointment to the board?

Hon JIM CHOWN: The board will establish the selection criteria for each consultation committee.

Hon STEPHEN DAWSON: The other question I have relates to an issue Hon Ken Travers raised the last time the chamber debated this, and it concerned the interaction or intersection between community consultation committees and the board. Is the parliamentary secretary in a position to guarantee that there will be a process so

that the minutes of each of these consultation committees will go to the board? Can the parliamentary secretary give us a guarantee today on that issue?

Hon JIM CHOWN: Proposed section 14A(4) states clearly —

Minutes of the proceedings of the consultation committee are to be made available on the port authority's website or in a prescribed matter.

Hon Stephen Dawson: That is not what I asked you.

Hon JIM CHOWN: The minutes from the consultation committee will be made public on a website and the minutes will be forwarded to the board.

Hon STEPHEN DAWSON: Thank you for that answer. The last question on this clause relates to proposed section 14A(5), which states —

Subsection (2) does not apply if the regulations exempt the port from the operation of this section.

Can you give us an example of when this might happen or when this might be used?

Hon JIM CHOWN: An example would be Useless Loop or Cape Cuvier and it would have to be done by regulation, so it would have to go to the Joint Standing Committee on Delegated Legislation.

Hon COL HOLT: I have a couple of questions on this clause. The parliamentary secretary responded to my question in the second reading reply, however, I would like some more definition from the parliamentary secretary concerning where community consultation groups are established. The parliamentary secretary's reply to my questions said that they would be within the vicinity of the port. What does that mean? How far does that vicinity extend from beyond the port boundaries or the communities that the port is in?

Hon JIM CHOWN: There is no specification in regard to the footprint of the consultation committee. Obviously, for a port like Bunbury or Esperance that footprint could involve a grain grower or a transport provider to the port many hundreds of kilometres away from the actual port.

Hon COL HOLT: I want to get this on the record. As an example, for the Bunbury port, which has produce going through it from a fair hinterland, including places like Collie and potential coal exports, would the government envisage that the community consultation group has representatives from the Collie area, including the Collie shire council, because of the requirement to have local government representation on the community consultation group? How far does that extend to? Take Bunge, for example, which collects its grain from the Wagin shire.

Hon Ken Travers: West Arthur would be a definite one.

Hon COL HOLT: I was extending it even further than that as an example.

Potentially a local government representative would have to come from there. If you look at it, every port has a potential network to gather produce, export material, minerals and grain, whatever you like, from the whole of Western Australia. What sort of definition are we going to put around that and what guarantee can the people who it really impacts on have that they will be represented on that community consultation group to provide that information to the port?

Hon JIM CHOWN: The only specification for a member of the consultation committee is the local government representative, and that local government representative has to be somebody who has electors who are or may be affected by port operations at the port. There is no jurisdiction on the boundaries of representation for other members or community groups or communities at large that make up these particular committees.

Hon COL HOLT: I think we are almost there. To define this again, there is a requirement for a local government representative to be on the board. Let us use Bunbury as an example. The committee is made up of a local government representative from the Collie shire council, as that is the statutory requirement. Will a Bunbury city councillor be required to be on that community consultation group if, as you say, there has to be at least one local government rep? Does one election exclude others? How does that work?

Hon JIM CHOWN: No. The specification in the bill that there has to be one local government representative does not exclude other local government representatives as ordinary members of the committee. The key words about the local government representative are "at the port". Proposed section 14A(3) states —

A local government that has electors who are or may be affected by port operations at the port ...

That does not exclude any other local government representative affected by port operations or any other matters to do with the port, going out hundreds of kilometres or wherever, from putting their hand up and becoming a member of that committee.

Hon COL HOLT: I thought we were there. I will use Bunbury as an example again, because it is easy. In the definition the parliamentary secretary just read out, it seems to me that the local government representative for the Bunbury community consultation group would be someone —

Hon Jim Chown: For the port consultation group.

Hon COL HOLT: The representative for the port consultation group would be a councillor from the electorate of the City of Bunbury. That is how I interpret what the parliamentary secretary just said.

Hon Jim Chown: As a member.

Hon COL HOLT: As a member. Obviously that definition does not potentially exclude councillors from other regions, but it could exclude others. It could mean that members do not necessarily need to be councillors from anywhere else.

Hon JIM CHOWN: No, no exclusions are stated or intended.

Hon COL HOLT: The statutory requirement for a local government representative on that port community consultation group, which the parliamentary secretary has just defined as having to be from the local government where the port is situated, would mean a Bunbury local councillor, an Esperance local councillor and an Albany local councillor. But there is no statutory requirement beyond that for any other local governments from a community affected by those port operations.

Hon JIM CHOWN: That is correct.

Hon KEN TRAVERS: I am becoming concerned about how the parliamentary secretary has described this. Is he implying that there is only a requirement to have one local government representative on this board? Is that correct?

Hon JIM CHOWN: To make it very clear, it is only a requirement in this particular bill that a local government representative in a port community area has to be on the community consultation group. The legislation does not exclude any other local government representative from being part of the consultation group.

Hon KEN TRAVERS: I do not think that is what the bill says. Proposed section 14(3) states —

A local government that has electors who are or may be affected ...

If there is more than one local government that has electors that are or may be affected —

Hon Jim Chown: You have not read the whole bit of it, it says “at the port”.

Hon KEN TRAVERS: I will read it and I will explain my point —

A local government that has electors who are or may be affected by port operations at the port is to be represented on the consultation committee.

It strikes me that the proposed section does not limit membership to one local government; it limits it to local governments whose electors are or may be affected by port operations at the port. Is the parliamentary secretary saying that the words “at the port” are intended to restrict membership to only the local government area that actually surrounds the port?

Hon JIM CHOWN: I have sought advice and the honourable member’s interpretation is correct. If more than one community is affected by port operations, they can have their local government representative as part of the committee.

Hon KEN TRAVERS: I think the crucial point Hon Colin Holt was trying to tease out is the government’s intention on how it will define “affected by port operations at the port”. Does this refer only to people affected by the loading facility at Bunbury port, or the coal loading facilities—it does not really matter what the commodity is—or, because that product has to get to the port, is it the government’s intention that a person affected by the supply chain that delivers the commodity to the port would get a right under this definition to have a local government representative on the consultation committee? It is absolutely crucial for us to fully understand that. I think the people of Collie would expect from a short glance at that definition that they are clearly affected by the loading of coal or grain out of Bunbury port and would want to have a local government representative on the committee, not at the minister’s discretion but by the absolute guarantee of how this bill is written. I want a clear understanding of how the government intends to interpret this definition in proposed section 14(3) and who exactly can be included on that committee.

Hon COL HOLT: I might just speak for myself on what I was trying to tease out. I thank Hon Ken Travers for his assistance. My approach has been to set the expectation of what these community consultation groups are for and where members are drawn from. I think it is a fantastic step forward to have this in the legislation in the first place. In my mind this is a great opportunity to learn and get input from the local community. What I am trying

to get from the parliamentary secretary, and potentially he has answered it, is that the local government representative is to come from a certain area, and if that is the definition in the bill, we need to set the expectation of the community. However we would be expecting members from other communities further from the port operations affected by the port operations in some way, to also have the opportunity to be a representative on the port consultation group. I want to get to what the expectations are, so we can go out to the communities and talk about the changes with confidence and say we know where the local government representative is coming from, but that other community leaders, often councillors, have the opportunity to interact and be a part of the consultation group, even though it may not be a statutory requirement.

Hon JIM CHOWN: Clause 4(1) reads, in part —

port operations means —

- (a) the carrying out of port activities or port works;
- or
- (b) the provision of port services; or
- (c) the provision, management or operation of port facilities;

The interpretation of “port operations” or “affected by port operations” will be up to the board, because each region will have different issues in regard to port operations or affected by port operations.

Progress reported and leave granted to sit again at a later stage of the sitting, on motion by Hon Jim Chown.

Sitting suspended from 1.00 to 2.00 pm