PILBARA PORT ASSETS (DISPOSAL) BILL 2015

Council's Amendment — Consideration in Detail

The following amendment made by the Council now considered —

New Clause 46A, page 35, after line 16 — To insert —

46A. Preservation of rights to future access

(1) In this section —

access means access to a service;

access capacity means the capacity to provide services of the person who owns, controls or operates a port facility;

eligible request for access means a request for access that would not, if granted, result in the proportion of the access capacity taken up by protected users exceeding 50%;

prescribed period for a request for access means 180 days, or such other period as is specified in regulations, after the day on which the request is made;

prescribed user means a person specified in regulations as a user or potential user of a service;

protected user means a user or potential user of a service other than a prescribed user;

service has the meaning given in section 46(1).

(2) It is a condition of the operation of a port facility that, subject to subsection (3), 50% of the access capacity must be reserved for protected users.

(3) Despite subsection (2) if a request for access made by a prescribed user would, if granted, result in the proportion of the access capacity taken up by prescribed users exceeding 50%, the request may be granted as long as it is granted on terms that would not prevent a protected user who subsequently makes an eligible request for access from being provided with access within the prescribed period or at a later time agreed to by the protected user.

Dr M.D. NAHAN: I move —

That the amendment made by the Council be agreed to.

As members may remember, the Pilbara Port Assets (Disposal) Bill 2015 was transmitted to the other house on 25 February 2016. The Legislative Council referred the bill to the Standing Committee on Legislation, and during the course of that inquiry, the committee received eight submissions and held four hearings over three days. On 25 August 2016, the committee tabled report 33 on the bill. As a process to address the recommendations proposed by the committee, the government introduced an additional clause to improve access to the Utah Point bulk handling facility for junior miners. Members may remember that there was a whole range of conditions in the bill that passed this house that led to priority being given to junior miners. This amendment augments that and I will go through it.

The additional clause—clause 46A—to the Pilbara Port Assets (Disposal) Bill 2015 provides for greater access protection measures to be extended to junior miners, which are defined in the bill as "protected users", by ensuring that at least 50 per cent of the bulk handling facility's capacity must be made available within the prescribed period of 180 days. This will allow protected users—that is, junior miners—the ability to access the facility, if sought, within the prescribed period or at a later time as agreed with the protected users in the circumstances in which the Economic Regulation Authority has approved, through regulations, the use of the facility for a non-junior miner. New clause 46A provides significant additional protection for junior miners, while it also ensures that the asset is not at risk of being stranded and unused if no protected or junior miner users were able to use the facility. Asset protection measures extend to 50 per cent of the facility's capacity. It provides a balanced approach to maximising efficient use of the asset in the event that the prescribed users—that is, the larger miners—are granted approval to use the facility. I reiterate that that can occur only if no junior miners are seeking access to the capacity.

In addition, in response to the committee's report and comments from the Australian Competition and Consumer Commission, the government amended the proposed access and pricing regime for the Utah Point bulk handling facility by adopting the negotiate and arbitrate regime to access pricing. Previously, a price monitoring regime, regulated by the ERA, was proposed. Under the new amended regime, pricing will be negotiated between the

parties, with binding independent arbitration in the case that parties fail to agree. I also note that Rod Sims, the chairman of the ACCC, commented at the Ports Australia conference in Melbourne in October 2016 —

> In 2015 the ACCC engaged with the Victorian government regarding the privatisation of the Port of Melbourne and, more recently, the ACCC had been talking with the WA government about privatisation of … Utah Point bulk handling facility at Port Hedland.
>
> We saw some positive results from our engagement with the Victorian government last year …
>
> However, an even more pleasing result has been our recent engagement with the Western Australian Government on the proposed privatisation of the Utah Point bulk Handling Facility.

After the ACCC pointed out the limits of price monitoring to constrain pricing, the WA government now proposes to replace the monitoring regime with a negotiate and arbitrate framework. We consider that this will provide a credible constraint and monopoly pricing, while still allowing users to commercially negotiate terms of access.

Adoption of the regime with the regulations still provides flexibility for the regulator to determine more stringent measures; these changes are in regulations rather than in the bill. They provide more flexibility for the regulator to determine more stringent measures should the regime be found to achieve its desired outcomes. This will allow for timely modifications to be made to the access and pricing regime without the need to seek amendments to existing legislation, which would be time-consuming and potentially disadvantageous to the users or the terminal operator in a period prior to effecting any necessary remedial action.

Fundamentally, issues of pricing will be a matter for commercial negotiation between the operator and the users of the bulk handling facility, with the backing of a comprehensive negotiate and arbitrate access pricing regime that stipulates protection and preferences for junior miners. It should also be noted that the current customer contracts will continue and will be transferred from the PPA to the terminal operator as part of the lease package of the facility. Therefore, the access and pricing regime will provide the framework for negotiation between operators and customers.

Mr W.J. JOHNSTON: I reiterate at the start that the Labor Party is opposed to this legislation. We now want to go through some of the issues in detail regarding this amendment. The first issue I would like to ask the Treasurer to explain is about subclause (3) of the amendment, which reads —

> Despite subsection (2) if a request for access made by a prescribed user would, if granted, result in the proportion of the access capacity taken up by prescribed users exceeding 50%, the request may be granted as long as it is granted on terms that would not prevent a protected user who subsequently makes an eligible request for access from being provided with access within the prescribed period or at a later time agreed to by the protected user.

This is all quite complicated, as necessary legal language is used. My point is that a prescribed user is one of the large companies—BHP Billiton, Rio Tinto et cetera—and a protected user is of the type that currently uses Utah Point; that is, a junior mining company. I would like the Treasurer to describe the purpose and effect of this subclause, and then I will raise some issues with him.

Dr M.D. NAHAN: I thank the member for the question. I would like to indicate to the member how this fits with the various measures already in place to ensure that the junior miners—I will not use those other terms—have preferential access to this facility, for which it was designed. Let us take the scenario in which the junior miner flags that it will stop operating. If a junior miner stops operating, which Atlas did last year, nothing takes place for three months. The terminal operator may then issue a show cause notice, asking whether it will come back. Importantly, the terminal operator has a right to use the facility but it does not have a minimum throughput requirement on these contracts. When the terminal operator issues a show cause notice, it can sit there for up to three months. If shipping has not resumed, the contract can be terminated. There is a period of three months until after shipping and then the contract may be terminated. The terminal operator would then advertise for capacity. Junior miners may apply. The facility sits there for three months. There are nine months after the cessation of the operation.

Mr B.S. Wyatt: Is the advertising period three months?

Dr M.D. NAHAN: Yes. It sits there for three months, which is nine months cumulative at that point. If no junior miner responds, the terminal operator may then apply for ERA approval to negotiate with a non-junior miner. Let us say that a non-junior—one of the majors—wants to use it, and the terminal operator wants to issue a contract with it. That has to go to the ERA. If the ERA says no, it will not happen. If the ERA says yes, the terminal operator will advertise the capacity. The junior miners may apply at that time, and it has to sit there for three months. There is a period of 12 months from the cessation of, let us say, throughput to the junior miners to the point at which a non-junior can use the facility. Basically, it is a stranded asset for up to 12 months or more if the ERA takes some time and recommends to the minister, and the minister can take it if he wishes. That is all in

the existing bill. We are now dealing with supplemental amendments that take it from the point that the ERA and the minister have approved a major miner to access the facility. That is what we are dealing with in the amendment. The amendment states that a long-term contract can be issued to the major miners for 50 per cent of the facility. Above 50 per cent, contracts can be issued to the major miners for the duration of 180 days only. The major miners can go into a long-term contract for 50 per cent of the facility; the other 50 per cent can have contracts of up to 180 days. These contracts must be relinquished after 180 days if a junior miner wants the facility. That is essentially what we did. It is complicated but that is what we have done.

There is another six-month period to negotiate a contract between the owner of the asset and the major miners. There is a 12-month waiting period. If the junior miner drops out, there is a waiting period of 12 months. During that time, a junior miner can come back in, and if they come back in, they get to use the capacity. If the junior miner is not there after that 12 months, the owner can look to the bid side but they can go into a long-term contract with the bid side for only 50 per cent capacity. The other 50 per cent of the capacity has to be made available to the junior miners.

Mr W.J. JOHNSTON: I understand that this provision is not separate from the bill. I appreciate that. I appreciate the regime that is in place before the port owner can grant access to the berth to a major producer. It seems to me that this clause defeats the purpose of building Utah Point. The Treasurer is saying that if the new owner of the port goes through the procedures that he has described and signs an agreement with a major miner—a prescribed user—only 50 per cent of the capacity of Utah Point will be available to the junior players. We should remember that this provision applies only if they have already been through the procedures that the Treasurer described in his access and pricing regime. They have been through the access and pricing regime and granted a large company access to the facility. Then the new owner is obliged to provide access to only 50 per cent of Utah Point, not 100 per cent of Utah Point. Given that Utah Point was created for the specific purpose of providing access to the junior miners, is that simply defeating what we intended?

I draw the Treasurer's attention to the media release of Friday, 13 March 2009 from Hon Norman Moore and Hon Simon O'Brien in which they state that the capacity was intended to support the junior miners. I do not understand why we are providing this guarantee of a minimum 50 per cent access to Utah Point—let us understand that that is what this is—to the prescribed users, being the large miners. This provision comes into effect after the access and pricing regime has been applied. If they get through the access and pricing regime, at least 50 per cent of Utah Point will be used by large producers and a maximum of 50 per cent of Utah Point will be used by the junior players. I understand that that will increase the value of the Utah Point sale because we will have better credit quality for the potential port users and therefore people will be prepared to pay more for the asset. The government is providing half of Utah Point's capacity; it is effectively guaranteed for large users if they pass the access and pricing regime. I do not understand why the government would choose the figure of 50 per cent. That was the question I asked this morning at the briefing. I appreciate the briefing that the Department of Treasury provided to me. The simple questions I asked were: What was the basis of determining that 50 per cent? Why is it not 40 per cent or 80 per cent? I appreciate the advice that has been sent through the Treasurer's office from Treasury. It states that there were three points in that decision-making process: first, commercially viable throughput to sustain efficient pricing; second, sufficient volume to attract the interest of non-juniors; and, third, logistical considerations of the facility. None of those issues rates the demands and needs of potential junior operators—that is, junior miners—as one of the considerations. That seems to totally turn everything on its head. Utah Point was created for the sole purpose of allowing the junior players to access export facilities. Instead, we are bringing in these other issues that are not related to those needs.

Mr C.J. TALLENTIRE: I am keen to hear more from the member for Cannington.

Mr W.J. JOHNSTON: I hope the Treasurer can understand the point that I am making. Why 50 per cent? Why do we not say that 100 per cent is exclusively available for the protected users? It would result in the proportion of the access capacity taken up by prescribed users exceeding zero per cent. The large companies could be totally excluded from Utah Point if this were to be done. The new port owner would be able to come to an arrangement through the access and pricing regime to provide access to the large players if no junior is taking up the capacity. Then, if a junior subsequently comes up with a financial plan that will deliver a project, it could return to Utah Point and use all of the facility. The efficiency would be maintained, because 100 per cent of the capacity of Utah Point would still be used. The commercially viable throughput would be there to sustain the investment of the new owner, and the logistical considerations would be taken into account. However, what would change is that the junior players would have the right to 100 per cent use of Utah Point. That is why Utah Point exists.

I acknowledge that that would reduce the sale price of Utah Point, but that is neither here nor there, because we cannot base the sale process on the need to maximise the price. It has to be to ensure the continuing access to the facility for the junior players. In the same way as a prescribed user—a large company—would have to have its rights set aside for its capacity in excess of 50 per cent of the capacity of Utah Point, all I am saying is that that

situation would apply to all of the capacity utilisation of Utah Point. Given that 180 days' notice is given for the company to give up its capacity, that would not be a great loss for the major users. We would instead be protecting the companies that we should be most interested in—that is, the junior players who are the sole reason that Utah Point was created. It was not created for the use of the large companies; it was created for the use of the junior companies. What I am suggesting would ensure that that overriding principle would be maintained.

Dr M.D. NAHAN: Let us go back to the history of this facility. First of all, it is part of the port of Port Hedland, which is operating the facility now. It was started on the watch of the previous government. The first business case, I have been told, is in the committee report, which outlines the history. It was initially envisaged that it would be a 15 million tonne port, of which 6 million tonnes would go to BHP. It then evolved as a port and expanded its capacity to over 20 million tonnes. At that time, BHP, in a very convoluted way, contributed to the building of the facility, as did other miners at the time, the largest one being Atlas. Those contributions have been paid back in full, with interest, so they were quasi-loans, but the port has a history of building the facility. Right from the start it was envisaged that BHP, which is one of the large miners by definition, would be a potential user, and it was used to facilitate the miners that demanded additional capacity at the time, including Atlas and FMG. FMG was another company that thought about using it; it has not, but it is described in the act as a major miner. There were a number of other firms, such as FMG, Consmin, Polaris and others that do not exist now.

Let us get this right. This was initially designed to facilitate the throughput of the people demanding additional capacity in the port at the time, including junior miners and some of the largest miners. The project evolved. BHP did not want to take up its capacity. FMG, I assume, got other access as things evolved, and so it came out to facilitate the junior miners at the time, the largest being Atlas. Mineral Resources has come up as a major user since then. It will remain that; that is the intention. As I say, the starting point for this is the contracts that exist now. The contracts from Atlas, which is by far the largest user, although Mineral Resources is growing, goes to 2025 with a five-year option for renewal, so the Atlas contract, as long as Atlas keeps going, is out to 2030. The issue we are trying to deal with, and it is a real issue, is that when the price dipped very low a year ago, Atlas ceased operations. The contract with Atlas and other junior miners is that they have rights to capacity but they do not have a minimum throughput.

The issue we are trying to address, and it is real whether it is owned by the port of Port Hedland or by another buyer, is that if the junior miners fell off and went away and no longer exported through the facility, would we have this stranded asset? I can tell the member that if it was owned by the port of Port Hedland, it would not. In fact, it would not be allowed under its act to push back other people from using the port. Under the relevant act, it is not allowed to do it. If the state owned it, and the junior miners, God forbid, fell off and did not want it, under this bill the potential purchaser would basically have to leave it stranded for 12 months. That is part of the legislation. I do not know what the port of Port Hedland would do, because it would be required to find some other use for that asset. That is what the government wants it to do. Whether it is a major miner, a junior miner or some other miner other than iron ore, it would try to utilise the asset. We are trying to deal with a situation that is real facing the port of Port Hedland or a potential buyer.

So what did we do? First of all, we put more stringent requirements on the purchaser of this asset than we would on the port of Port Hedland. If the junior miners fell over now, the port of Port Hedland would probably wait, and if there was a chance they would not come back, it would try to find somebody else to use it. There is no doubt. We have, essentially, a 12-month period of stranded assets before a major miner can use it. Then we had to make a rational decision on how long and how much of the asset could go to the big side of town, if you wish, and we decided on 50–50, a reasonable outcome.

Mr W.J. JOHNSTON: I understand what the Treasurer is doing. As he says, if all the juniors fell over and there was no throughput he would want to allow the new owner to allow the large companies to put volume over the wharf, so that it is not a stranded asset. I understand that, and I accept the Treasurer's argument there. However, that is not what this provision is about. This provision is actually about when the juniors get back into the situation in which they can regain export volumes. I accept what the Treasurer is doing; I am not even saying that he is wrong.

I am saying, okay, the juniors fall away, access is allowed for the major miners and everybody is happy. Then, subsequently, a junior gets into a position to either restart operations or commence operations for the first time. What happens to it? Because there has been a downturn, instead of having access to 23 million tonnes a year, it now has access to only 11.5 million tonnes a year. This is actually halving the volume that can be done by the juniors. The point I am making is that, if this figure was zero instead of 50, Utah Point would always be 100 per cent utilised because some would be from the majors and some would be from the juniors, but the juniors would have a right to use 23 million tonnes. Utah Point would still be 100 per cent utilised, but the juniors would have the right to use it. Otherwise, we would be giving away half the volume to the large operators. I make the point, as we discussed with the advisers this morning—I am not picking on BHP—that BHP is the biggest user up there. Let us say that in the future it produces 240 million tonnes. It would not be very

difficult for BHP to put five per cent of its product through the wharf at Utah Point. That would not significantly impact on the balance of its business. Once this provision goes through in the form that it is in, the major operators would be able to get control of half the volume at Utah Point to the exclusion of the junior operators. That cannot possibly be what we are trying to do, because the development at Utah Point, as the Treasurer said, started when Labor was in government. The media release of the two government ministers makes that point; it notes that the dredging was done in May 2007. This was always about the junior operators, yet now we are moving away from that. Let us understand that this is the world's largest bulk port. Apart from Utah Point and the public wharf, everything is controlled by the operators. FMG has its facilities, BHP has its facilities and Roy Hill has its facilities; everybody has their own facilities except for this one. This is the only port that the junior players can get access to, and that is why this is so critical. If we proceed down the path that the government is providing, the juniors will suffer. If we were to change the "exceeding 50 per cent" to "exceeding zero", that would fix the matter. It would still maximise the value of the sale, if that is what the government is trying to do, because the purchasers would know that they can keep the place running at 100 per cent capacity, but the juniors would know that if they got into financial difficulty and had to go into care and maintenance or shut-in, or whatever, they would still have access to the full 23 million tonne capacity. This matter is critical and I do not understand why we have to have this long debate; it is fundamental to the whole operation of the port. If the juniors are not given access, they will not have access anywhere else. The juniors are potentially losing 11.5 million tonnes of capacity. I do not understand why the Liberal and National Parties are supporting the large companies over the junior companies. It just does not make any sense.

Dr M.D. NAHAN: Let us go back to the history of the port again. It was built to supply panamax ships, which are the smaller ships. It has been dredged to a certain depth and there is a problem because there is an old BHP tunnel that limits the depth, and at that time the juniors were not restricted from using it. The government wanted to facilitate the juniors. There is no doubt that junior companies were growing at that time. FMG indicated that it had a desire to potentially use the new facility and develop a conveyer belt to the new berth. At its origin, it was not just about juniors; it evolved into that as FMG got its own facilities, was funded and probably grew in size. BHP had indicated no desire to use the facility. It then morphed into a port that was used solely by the juniors, and there are long-term contracts around that.

The issue we are facing is that if the juniors fall away, do not exist, or do not express any desire to use the facility for a minimum of 12 months, their access will not exist. We are allowing the port, just like the port of Port Hedland would do if it were publicly owned, to go out and look for customers. To my knowledge, BHP has expressed no interest in the port, but we never know what is going to happen in the future. Something that may happen is that intermittent shipments of ore in smaller ships may be made to India. That is probably one hypothetical case that one could think of. However, they would be periodic shipments. Who knows what is going to happen in the future? This bill covers use of the port only to 2030 to a large extent, so long as Atlas continues to operate.

If no junior miner wants to use the port for 12 months and if another firm, a new major or existing major, decides to use this port—although it is unlikely because of the type of ship that they use; all the majors do not use those smaller ships right now, but you never know—and if it wants to enter into short-term contracts, that would be great. It might, however, want a regular contract—let us say a shipment to India—with panamax ships, and then it might have to invest in infrastructure at the port to facilitate the loading and unloading of those ships. We decided that 50 per cent is a good figure, because we want this facility to be used. We have no desire to leave it vacant as a stranded asset, whether it is publicly or privately owned, but we will require that 50 per cent to be contestable in the longer term by juniors, noting that at that time the juniors will not exist or want to use the port, by definition.

Essentially, we have set up a system whereby half of the thing will be only for spot sales or shipments, which may never be taken up. There is no demand for that right now, but who knows what will happen a long time from now? We are basically locking in a system so that if the juniors fall away permanently—with today's prices that is not going to happen, but we never know—that will probably strand 50 per cent of the asset, which means lower prices. That is a big impact. I think it is a stronger commitment to the juniors than exists now and existed when the facility was first built. The juniors have no access, other than within the contracts they have with the port of Port Hedland. If those contracts with the port of Port Hedland fell over right now—that is, Atlas stopped producing and abandoned the facility—the port of Port Hedland would be required to go and get business. That is what it is required to do. If the business came from, let us say, the member's example of BHP, the port of Port Hedland would take it. This provides better long-term support and capacity for the juniors than exists now.

Mr W.J. JOHNSTON: I want to make sure that people realise that the argument that this amendment will provide greater protection is not true. At the moment the port is subject to direction by the minister. The only way large companies can use Utah Point is if the government wants that to happen. Let us get that straightaway off the table, because a publicly owned asset is subject to decisions of government. We are talking about

a situation in which the port will no longer be subject to decisions of government but rather will be subject to decisions of the private owner.

I repeat that I accept the argument that we need to ensure that the Utah facility continues to operate at an economically viable throughput if the juniors shut-in for whatever reason. The only way we could imagine that happening is through low prices. I accept that. That is not the issue we are discussing. The issue we are discussing is, having had the juniors shut-in but now coming back onstream—one would assume the only reason they would come back onstream would be that the price had gone up again and the projects were viable—we would need to provide them an opportunity to export. What the Treasurer is saying is that in those circumstances he is happy to provide an 11.5 million tonne per annum opportunity for the juniors to export. The Labor Party is saying that that capacity should be 23 million tonnes per annum. I think that is pretty damn fundamental. I do not understand why the Liberal and National Parties would want to limit the opportunities for a recovery—assuming that there is a problem in the future for the junior players—and limit the capacity for those junior players to only 11.5 million tonnes. As I say, I understand that this comes into play only if we go through the pretty picture on the access and pricing regime. It is not an automatic right for the majors to use it—all those other rules need to apply. Having been through that gateway, the situation in the end is that the operator of the port should be allowed to keep 11.5 million tonnes with the large players and 11.5 million tonnes with the junior players. I explained why this is such an important issue. The junior players are never going to be as good a counterparty as the major players. It is axiomatic to their operations. They are junior players. They have a smaller balance sheet and a smaller opportunity for funds. If we do not provide this additional protection to them, they will not get that capacity back at the port. They will probably not be able to export through any other mechanism either because they do not have the balance sheet to build a large facility.

The Treasurer referred to the fact that Fortescue Metals Group was once considered a user of Utah Point. Of course, once upon a time FMG exported no iron ore. As FMG itself says, it is the new force in iron ore. It is an amazing success story. Excluding these juniors from accessing 23 million tonnes makes it harder for us to have another success like FMG. How many times have we had the debate about getting the juniors onto rail infrastructure? How many times have we debated getting the juniors access to port infrastructure? These matters have been to the High Court on a number of occasions. There have been commercial negotiations—everything—for as long as people have been kicking rocks over in the Pilbara. The Labor Party says it accepts the government wants to allow the owner to get value for money out of their operations, but when the juniors recover we want to give them access as well. I do not understand why the Liberal and National Parties are opposed to helping the junior players.

Dr M.D. NAHAN: I will go through a couple of points. Firstly, FMG started out as a small operation. It had big dreams and fulfilled them. It is a great firm. It built its own facility. It was successful because it got to a certain scale. Just to go back, this facility was not initially planned just for the junior miners; it has evolved into that. We have a very rigorous process to ensure that it remains. We are dealing with the issue about what happens if the juniors fall away for at least 12 months. How much of that asset will we keep stranded? I go back to the issue that it is government owned. The member says that if it is government owned, the minister of the day can direct it to keep the asset unused—that is true.

Mr W.J. Johnston: No, I did not.

Dr M.D. NAHAN: The member did say that. One can say we have restricted the use only to junior miners, and maybe on spot sales to major miners. The minister can direct it but it would be uncommercial. The minister would be required to sign an edict—in electricity, it is a section 68; I am not sure what it is here—to direct the port of Port Hedland to act in an uncommercial way. He or she might be required to compensate it through the consolidated fund for the losses incurred in the direction. In other words, the port of Port Hedland will have to be subsidised to keep the asset stranded just in case a junior miner might come up again, but there is none there now, by definition. The government disagrees with that. The Labor Party can propose that, but we disagree with that.

The member for Cannington is right: we could go 100 per cent spot market or limited-term contracts for majors. It would be a long time out and pretty speculative. Under those conditions, it would probably be a stranded asset for long periods. There might be some spot market sales in the market, but taking the market now, if that was done and the juniors fell off, it would be a stranded asset. The $200 million loan would have to be repaid. The port of Port Hedland would not have any revenue to pay off that debt. Somehow it would have to be repaid. The government does not agree with that. We think we have a modicum. There are 12-month safeguards in place in going through and advertising to search out a junior miner to use the facility. We think keeping 50 per cent there to be used by the majors only on spot or limited-term contracts and 50 per cent for longer term contracts is a reasonable outcome. It is actually greater protection for the juniors than would exist in government ownership. The Labor Party disagrees—fair enough.

Mr W.J. JOHNSTON: I was not going to get back up again, but I cannot let this go past. I am holding in my hand a direction tabled today by the Minister for Energy entitled "Electricity Corporations Act 2005:

Ministerial Direction". It is a direction to Synergy to get rid of 380 megawatts of its generation capacity by 1 October 2018. It is not as though it is an unusual direction for a government trading enterprise to do these things. That is what happens. That is why we have ministers and that is the whole thing about a GTE. The idea that I am arguing that the facility should remain vacant if the juniors fall away is simply a fabrication; that is not what I am arguing. I am saying that the junior miners should be protected—not to an 11.5-million tonne capacity but to a 23-million tonne capacity. I recognise the elaborate access and pricing regime; I already said that. I do not understand why that has even been raised. I never said that the Labor Party would direct Utah Point to sit idle. I have never said that, and I am not saying that now. The Labor Party believes Utah Point should be for the use of junior miners if they are available to use the facility. I do not understand why the Liberal and National Parties do not want to support that. That is what industry wants and that is what the users of the port want. I do not understand why there is an argument. I imagine that this is actually an argument about the sale price. The Treasurer said there is $200 million—I am not quoting him, but I think this is what he said—of debt on the Utah Point facility. Is that what the Treasurer said?

Dr M.D. Nahan: Around.

Mr W.J. JOHNSTON: It is around $200 million. I understand that the minister suggested the state will get $300 million for the facility.

Dr M.D. Nahan: Did I say that?

Mr W.J. JOHNSTON: That is a $100 million net value of the facility. What does the Treasurer expect to get for the facility?

Dr M.D. Nahan: Ask me a question and I will give an answer. I have never said $350 million. I do not know where you're getting that figure from.

Mr W.J. JOHNSTON: I have read that.

Dr M.D. Nahan: I do not know.

Mr W.J. JOHNSTON: What does the Treasurer expect to get for that facility?

Dr M.D. Nahan: I will get up and answer.

Mr W.J. JOHNSTON: Fair enough. The Treasurer does not have to accept by way of interjection. I was happy to listen to him.

The Treasurer is suggesting this is nickels and dimes off the side of the budget—less than a week's borrowing by the government. It is not a major part of what we are doing in Western Australia. It will not provide any effective debt relief. It will not do any of those things. Surely, industry development should be what we are doing here rather than being worried about the nickels and dimes off the side of the table. Yes, what I am suggesting will reduce the value of the sale of Utah Point. That means it will increase the value of the junior mining sector. I made this point when this bill went through the first time: one person's profit is another person's loss. The total value of the export is the same because that is set by the international price. It is just about who shares that. I am saying the juniors should have to share that; not the purchasers of the port. Under the Treasurer's proposal, the purchasers of the port will be able to get 50 per cent of the capacity of the port, backed by the huge balance sheets of large companies like BHP Billiton and Rio Tinto, except for FMG, compared with the tiny balance sheets of the junior players. I am saying that that is not the right approach. This should be about industry development. Industry development is about giving the benefit to the junior players so they can make the smaller margin. Their costs are higher because of the structure of the industry. This is a volume industry. High volume means low cost. The juniors are low volume and therefore higher cost. It is just the way the system works. I am not making any of this stuff up. The Labor Party is saying they should have access to 23 million tonnes. Who will pay for that greater access? The government will, because in the sale of the proceeds, the sale proceeds will be lower.

Dr M.D. NAHAN: I will answer a bit of that. We disagree. I reiterate that the issue about the share will arise. The government has received advice from experts that if the port is kept available only after 12 months for majors on limited-term contracts, there would be next to no demand for it. That is the advice we have been given. Effectively, putting 100 per cent of contracts up to 180 days would strand the asset entirely. That is not a good idea and not even the Labor Party would instruct the port of Port Hedland to do that. Atlas was a beautiful Western-Australian based company. It was struggling and it did a great job of pulling its costs down; it was a great reform story. Its largest asset holder is Glencore, the largest commodity trading house in the world, which has a massive balance sheet. It is a complicated arrangement and I cannot describe it all, but Atlas has big backers with giant balance sheets that would probably be larger than Fortescue Metals Group or Roy Hill. Let me make it clear that junior miners are not necessarily owned by junior miners. The government made a decision after receiving recommendations from an upper house committee that went through this issue in great detail; it

comprised members from most parties in the upper house. The government had extensive negotiations on this and we said that, if it is the case that junior miners, as defined in the act, do not use the port for 12 months and do not demand or seek to use or are not exporting, at least through this port—they might have another port in the future—then we will allow the port company to go into long-term contracts for 50 per cent of port capacity, but restrict 50 per cent on up to 180 day contracts and keep the facilities there available for what we call junior miners. It is a reasonable compromise. As I said, it is a lot more than would have been allowed under the Port Hedland Port Authority Act. I might add that my view for a long time is that India is one of our greatest export potentials, but I can guarantee that a lot of the pieces of the puzzle still need to fit together, particularly for panamax exports. I understand Atlas and Roy Hill and somebody else were trying to explore spot market sales with very little luck so far. There might be potential for it, but that is all speculation for 15 years or so in the future. We came to a 50–50 compromise, which is a reasonable thing to do, and it sustains 50 per cent of the port facility forever for junior miners. It utilises the facility and pays off the $200 million debt, which is not chickenfeed. I think it is a reasonable compromise. Atlas is owned by a very large firm.

Mr P.C. TINLEY: Picking up on what the Treasurer said on repeated occasions that there was 50 per cent of capacity available for the spot market on 180-day short-term contracts, which therefore restricts 50 per cent for use by the protected miners—the junior mining sector of the Pilbara, which would access this facility. Does the Treasurer accept that when the Pilbara is operating in boom periods and the installed capacity of all those miners potentially in the boom when the capacity of all those miners is coming to book that this bill will restrict the growth of the junior mining sector? The port's capacity will have gone from 23 million tonnes to 11 million tonnes, which is the limitation for anyone to get up a bankable project. Does the Treasurer accept this would be a limitation on getting a bankable project up for a junior?

Dr M.D. NAHAN: The scenario to which the member refers is that a junior miner falls off and is not exporting for 12 months, and then something happens and they come back on—either old ones or new ones—and there is demand for throughput. That scenario assumes the port company has entered into long-term contracts with majors. Right now, if they tried to do that, they would get zip. The information I have is that none of the majors are interested in doing that, mainly because of the size of the ships. Hypothetically, the port company finds a major to use 50 per cent of its capacity and the industry booms again, and a whole range of new or existing old or new junior miners spring up, with demand exceeding 11 million tonnes. In that case, there are plenty of facilities to build another port.

Mr W.J. Johnston: Yes, but at a higher cost.

Dr M.D. NAHAN: Was Utah Point high cost? It has a debt of $200 million. They can always build another port facility; in fact, when we were looking at this asset to sell or to cap, we looked at packaging up other parcels of land that could have been used to expand facilities. The port of Port Hedland had identified land for multiple other ports. In the scenario the member painted in which the junior miners froze again, which would be a good outcome after a period of cessation, they came back and they demanded more than 11 million tonnes in the capacity of the port—I assume, and I do not know this, the capacity is fixed at 23 million tonnes and it is at full capacity; it is really pumping out exports. The port has land to expand its facilities. There is no limitation in this bill for Pilbara Ports or another party to build another port in Port Hedland. If the member's scenario worked out, we could address it, just as we did in the last boom.

Mr W.J. JOHNSTON: I want to clarify something that the Treasurer just said. I want to make it clear that the reason that is not a possibility and why we do not have lots of ports in the Pilbara is because to get a port built, somebody's balance sheet has to balance the risk of the port operator. That is the way it works. From what the Treasurer has said, we will end up with the same situation that occurred in Esperance. Let us understand what happened there. All these junior players wanted access to the port but nobody could come up with a plan that allocated the risk amongst the partners, so in the end nothing happened. If someone is in the game like I am as shadow Minister for State Development, people are constantly describing their wonderful plan to build a port; they are going to build a deep channel or do this barge exporting thing. They come to me all the time. The reason they do not actually build anything is because they cannot get anybody's balance sheet to take the risk. The Treasurer is proposing that we get the exact same problems into the future. That is why we built Utah Point, and the reason it was so important is that we de-risked all that. It was the state's balance sheet that took the risk. Juniors come and go, as these things happen, but the state is there to carry it forward. The government is going to sell it to some other private sector operator, and the opposition disagrees with that, but the government cannot then say it does not matter because they can always build a new port. That is why we ended up where we were before Utah Point: nobody could build a new port because there was nobody to take the balance sheet risk over 20 or 30 years on a port, because they only had a 10, eight or seven-year project, or some tiny operator had a 30-year project but no capital. This bill will make things worse and I do not understand why the government would do that.

Dr M.D. NAHAN: Let us go to this interesting scenario, which is all hypothetical. What would happen if Utah Point was being used to full capacity and prices were pretty good? What would happen if a new Atlas sprung up—a new junior miner—and there was no capacity? What would we do? We would do what we did in building Utah Point. We would find space in Port Hedland; it would not be a new port, but space for a new berth in Port Hedland and no doubt we would use the government's balance sheet to do it. That is what we would do, I am sure. We would have to have some confidence that the price would remain high for a while. We would probably enter into contracts. That would be the same in the scenario that the member for Willagee hypothesised in which juniors disappeared and 50 per cent of the capacity went in a long-term contract to the majors and 50 per cent remained for juniors, but there was a burgeoning of demand beyond the capacity at Utah Point. What we would do is use the balance sheet of the state to build a berth—not a port—in Port Hedland. There are many berths there. Port Hedland is the largest port in the world in terms of volume. It is a pretty well-run facility. We would build another berth at one of the various places that have been identified for these purposes. It would probably be a better facility—it might be deeper, because it would not have the problem underneath. That is what we would do. It would be lovely if we could do that to expand the throughput of the port and increase the exports of iron ore from this state.

Mr P.C. TINLEY: I want to move to a slightly different point. If a protected user with a long-term contract for access to Utah Point were to be acquired by a prescribed user, and if that prescribed user were to split its business units—as they do—would it keep its protected user status as a solely-held entity and not one that was operationally joined?

Dr M.D. NAHAN: That is a good question. This is essentially what happened when Atlas Iron went through the restructuring of its debt and whatnot. It was basically bought out by a number of overseas bodies, including Glencore, which I understand is the largest quasi-equity holder in Atlas. We start with Atlas as the entity, defined, owned by a number of bodies, and its contract will remain up to 2015, with an option for five more years. If, hypothetically, BHP were to buy Atlas, either from Glencore or otherwise, Atlas would become a prescribed user according to the ownership. The minister would also have the ability to amend the regulations to allow that to happen. It gives the minister flexibility.

Mr P.C. TINLEY: Just for clarity, and for the record, if a prescribed user were to acquire a protected user, at what percentage of ownership would they lose their protected ownership status?

Dr M.D. NAHAN: There is no set ownership structure. It is up to the government of the day to define when a protected user will become a prescribed user. If, hypothetically, BHP were to buy 100 per cent of the business of Atlas, I think the minister of the day would say it is no longer a protected user, potentially. It is up to the minister of the day. There could be complications. Let us say BHP gets into a business —

Mr P.C. Tinley: South32.

Dr M.D. NAHAN: Yes. That is a pretty big one, though. Let us say it buys Atlas, which has a contract with the existing user of the facility, and BHP buys a share into it. Let us say it even buys 100 per cent, but it operates as a standalone business, separately, filling a different niche than BHP senior. It would be up to the minister of the day to decide whether it would retain its protected user status.

Mr P.C. TINLEY: The Treasurer said that it is up to the minister of the day. There are many things on our statute book that are up to the minister of the day. Would the Treasurer agree that, by his own words, he has created further uncertainty about how a purchaser of this asset will see value in it? The Treasurer is creating uncertainty, because he cannot determine what a prescribed user is. I will give the Treasurer a further example, which is in and around competitive behaviours. What would happen for the purpose of Utah Point and the Pilbara Ports Authority if Rio were to buy Atlas? Would Rio be a prescribed user?

Dr M.D. NAHAN: Rio is a prescribed user, yes.

Mr P.C. TINLEY: It is not a user of that port.

Dr M.D. NAHAN: I know. We have defined the prescribed users as Rio, BHP, FMG, Roy Hill and Vale. However, they do not all use that facility or that port. We have defined them quite broadly. We never know what is going to happen. Rio might buy BHP.

Mr P.C. Tinley: It tried, and it cost it a motza!

Dr M.D. NAHAN: Yes, and there is surplus capacity in the building, too. There are a lot of risks in this business. We would describe this as flexibility to address an uncertainty. For instance, is Atlas a junior miner? It is in Australia. In Western Australia, it is a small miner, and we have defined it as a protected user for these purposes. The fact that it is owned by a big company is not relevant to this issue, but it would be relevant if Atlas were to be bought in part or in full by one of the prescribed users. In order to deal with that degree of uncertainty, we have built in flexibility to the access regime—reasonable, and transparent. Any buyer would

look at this. This is one of the risks that they would have. I cannot tell the member how they would rate it. I assure the member that they would like the minister of the day to have the flexibility to reasonably look at and make a legitimate choice about who is prescribed and who is protected, while still subject to the regulations. I cannot say whether it would significantly diminish the value of the asset, but I think this is a good way to approach the issue.

Mr W.J. JOHNSTON: I have already outlined, but I will repeat, the three criteria that were used to choose the figure of 50 per cent. I make the point that, as I understand it, that was informal modelling, if you like. I know the Treasurer has advisers and that he has not sought to work out the impact of this provision on the valuation of the facility. That is from the advice that I received this morning. I am just putting that on the record, basically. Can the Treasurer let us know which person or organisation will be responsible for monitoring compliance with the provisions of proposed section 46A?

Dr M.D. NAHAN: Two bodies—the Pilbara Ports Authority, and the Economic Regulation Authority. The Pilbara Ports authority is effectively the contractor. The ERA is the regulator of the access regime.

Mr W.J. JOHNSTON: Will the future owner be required to tell the ERA and the port authority the commercial arrangements it has entered into with these bodies? I will give an example. I understand the access and pricing regime. I appreciate it. They have gone through all that. They have left their facility idle for a year and they have their approvals. They let the facility out to the prescribed users. The protected users then come along and seek access to 11.5 million tonnes but they are given access to only nine million tonnes. How will the government know that 2.5 million tonnes is still with the prescribed user and not with the protected user?

Dr M.D. NAHAN: Those contracts are all published; they are publicly available. The ERA has a monitoring and reporting role. Let us say that the junior miners wanted 11 million tonnes and were allocated only nine million tonnes. The ERA has the power to rule on whether they were discriminated against on the basis of not being allocated their full request of 11 million tonnes—that is, capacity.

The regulator must publish an annual report on access and pricing of regulated services. The regulator will review the regime to ensure that it is still achieving its objectives every three years, initially, and then every five years. It will also make recommendations to the minister whether a different form of access and pricing regulation is required. Defined events will also trigger a requirement for the regulator to review the regime, which include the following: if the regulator grants approval for a terminal operator to negotiate with a non-junior miner; if the regulator considers the terminal operator has engaged in conduct that unreasonably prevents or hinders a person from accessing services, such as the situation the member just referred to; if the regulator considers that the terminal operator has unfairly differentiated between users in a way that has a materially adverse effect on the ability of one or more of the users to compete with other users; if a junior miner that uses the facility ceases to use the facility; or if the lease or port services agreement is amended.

In other words, if a junior miner gets less capacity than it wants and there is capacity there, the junior miner has the ability to go to the ERA and the ERA has the ability and powers to review that lack of full allocation.

Mr W.J. JOHNSTON: If the ERA discovers that the port operator has not complied with subsection (3) of the amendment, what penalty would be applied?

Dr M.D. NAHAN: It is a big answer! If the ERA finds a situation in which the operator has failed to meet its requirements to provide fair access to the facility, it is a breach of the lease and the port of Port Hedland has the power to threaten the removal of the lease. It has a pretty powerful influence. The penalties for some breaches will be prescribed in regulations, but I do not have the types of breaches yet.

Mr W.J. Johnston: Do you for this particular circumstance?

Dr M.D. NAHAN: We are still drafting those—my advisers cannot confirm.

Mr W.J. JOHNSTON: If the ERA finds that subsection (3) has been breached, of course, the ERA cannot enforce its own orders; it is not a judicial body. I imagine that the first thing the port operator would do is appeal the findings of the ERA to a competent authority. This is what happens every time there is a regulatory decision; they can all get appealed!

Dr M.D. Nahan: Member, I'm not arguing against you.

Mr W.J. JOHNSTON: The Treasurer can instantly see the point I am making here. If the only penalty is the underlying lease, it would be extraordinary for the government to exercise that provision, given that it will be so complicated to reach a conclusion on a breach of proposed section 46A(3). If the only penalty is the big stick, the big stick will not be used. Surely there should be some other arrangement that makes it easier to give a smaller penalty rather than using the big stick of cancelling the lease. We are not discussing the whole bill; we are discussing only proposed section 46A, and this becomes a moot point if no genuine penalty is available under the act.

Dr M.D. NAHAN: The member is right. If the breach is significant but not major, it is highly unlikely that a lease will be removed, but the provision does give significant powers to the port of Port Hedland. My advisers say that we are in furious agreement with the member and his questions will be addressed in the regulation of the penalties. That will be in the regulations.

Mr W.J. JOHNSTON: I will move onto a new topic. The ultimate restriction on the port, of course, is the channel. Has the government thought about reserving 23 million tonnes capacity in the channel, even though it is only reserving 11.5 million tonnes of capacity at Utah Point? In other words, even though a major user is taking 11.5 million tonnes out of this port, there will still be 23 million tonnes of capacity in the channel. The issue is that other users are expanding into the port and we might end up with the channel reaching capacity. If a second junior facility was to be created, it still could not get ore out because the channel would be full. Has the Treasurer given thought to effectively quarantining channel capacity as a compromise to the Labor Party's position of keeping the terminal facility for the juniors?

Dr M.D. NAHAN: Let us say that Utah Point is full no matter who uses it, but there is additional demand for junior miners beyond the capacity of the port of Port Hedland. Can the port of Port Hedland find that additional capacity? Right now it is at only 23 million tonnes of C-class capacity. Let us say that if we did build a different facility, we would get a larger, deeper port. Right now only 23 million tonnes of C-class capacity is allocated to the port of Port Hedland. The real question is: does the port of Port Hedland have the ability to find additional capacity for junior miners beyond the existing allocation? We are not the port of Port Hedland, but it has been able to expand the capacity of the port to meet increasing demand. I guess that is the best way that I can answer that question.

Mr W.J. JOHNSTON: I note the Treasurer's answer and I am going to move on to another issue. We are talking about one thing, which is the prescribed period. New clause 46A states —

> ***prescribed period*** for a request for access means 180 days, or such other period as is specified in regulations, after the day on which the request is made;

Is the Treasurer saying that 180 days could in fact be 365 days because in the regulation 365 rather than 180 days are specified?

Dr M.D. NAHAN: It is 180 days. There is some flexibility because a protected user might say that it will take them a year to get going. They want to get access, but they will not be ready in 180 days and it might take them a year, and they want the contract to be kept going until they are ready. That is the flexibility with that. It is envisaged that it will be 180 days unless a protected user asks that the berth be used while they get ready to access it when they can.

Mr W.J. JOHNSTON: I thank the Treasurer for that answer. I suppose the 180 days give the prescribed user a bit of time before they have to get out, because they have their own supply chain that they have to sort out themselves. The Treasurer described the example of a junior saying they do not want access in 180 days' time but 250 days' time, but equally, the large user could say that they cannot give it away in 180 days' time because they have all these other problems and they need 400 days. It seems to me that 400 days could be prescribed by regulation, which would be over a year. That would be a way of having the major user, the prescribed user, hold out the protected user and that would be a problem. I want to give the Treasurer a complete picture before he gets up so I do not have to get up again. The definition could be amended to read "prescribed period for a request for access means 180 days, or such other period as is specified in regulations, and with the consent of the protected user, after the day on which the request is made".

Dr M.D. NAHAN: The definition states —

> ***prescribed period*** for a request for access means 180 days, or such other period as is specified in regulations …

If there was a desire to go beyond 180 days, the regulations would have to be changed.

Mr W.J. Johnston: Yes, but you could do that instantly. You could walk down to the Governor's house and change the regulation right now.

Dr M.D. NAHAN: It would be subject to disallowance by Parliament. The regulations state 180 days, as does any regulation, and it is up to the government, subject to parliamentary recognition, to change those regulations, but the intent here is to have 180 days.

The SPEAKER: The question is that the amendment —

Mr W.J. JOHNSTON: Mr Speaker —

The SPEAKER: I live in hope, member for Cannington!

Mr W.J. JOHNSTON: I have plenty of questions; I am not going over the same ground each time, Mr Speaker, as you can see.

Prescribed users and protected users are prescribed in the regulations. Does the Treasurer have a draft of those regulations? I can understand why the government would want to have them prescribed in the regulations, but has the Treasurer given thought to providing just here in the chamber for the benefit of *Hansard* some sort of undertaking about how the prescribed and protected users will be arrived at?

Dr M.D. NAHAN: The protected users are not listed, just the prescribed users. Those five companies will be Rio Tinto, BHP Billiton, Fortescue Metals Group, Roy Hill and Vale.

Mr W.J. Johnston: Who are the protected users?

Dr M.D. NAHAN: They are not listed. We only define the prescribed and everybody else is protected. Of course, if another major crops up we would have to amend the regulations to add that new major miner in there. I can show the member the draft regulations if he wishes.

Mr W.J. Johnston: That would be great. Could you table them?

Dr M.D. NAHAN: Yes.

[See paper 4906.]

Mr P.C. TINLEY: Just to indulge me, Treasurer, how does a protected user graduate to prescribed user status?

Dr M.D. NAHAN: When they are added to that list! I think they will do so willingly. If Atlas becomes BHP, the owners of Atlas will smile brightly.

Mr W.J. JOHNSTON: Does the minister accept that, given the functions of the port authority to facilitate trade through the port, this clause 46A is really about increasing the value of the port? If he agrees, does he think that is consistent with the functions and powers of the authority under the act?

Dr M.D. NAHAN: As I mentioned, I think this strengthens the safeguards to junior miners using the facility more so than what currently exists for the operation of the public port. It prescribes quite clearly a whole raft of conditions put on non-protected users from accessing the port—more than exists now. Of course, it is government-owned; therefore the government can make all sorts of directions, but my own view is that the port of Port Hedland will push very hard to get maximum throughput through its facility and is not likely to be stranded. That is what it would do to repay the debt and recoup the capital on asset that is vested in it by the state. This additional clause 46A augments that to a greater extent than what exists now, so it very definitely is focused on the facilitation of trade and sustaining and expanding the junior mining industry.

Mr W.J. JOHNSTON: I thank the minister very much and appreciate his comments. We obviously disagree with him and I think many people in the industry would disagree with him. I want to draw the minister's attention to the advice I received this morning. I asked how much had been spent by the government on advisers as part of the process and the email I received said that as at 31 October 2016, total project expenditure on external consultants was $5.896 million as follows: $1.387 million for the lead financial adviser, which I think is Rothschild; and $4.509 million for secondary advisers, including legal. That is an enormous amount of money, let me tell the minister that. Secondly, could the minister tell me how much more he is expecting to spend prior to the sale proceeding?

Dr M.D. NAHAN: We have spent $5.9 million out of an allocation of $8.6 million for advisers. That is not necessarily what we will spend; it is the amount of money we are allocated for the purpose—$8.6 million. A lot of the work has been done. The next exercise, as I understand it, once we do this, is to go out and —

Mr W.J. Johnston interjected.

Dr M.D. NAHAN: Yes.

Mr P.C. TINLEY: Noting that the Treasurer does not intend to spend the full $8 million, it has obviously been allocated for a reason, because there is the potential for it to be expended. Has the Treasurer received any advice, either from the market or otherwise, about the impact of new clause 46A—this amendment—on the valuation and/or the discount to a valuation?

Dr M.D. NAHAN: That is a good question. No, we have not. We have not gone to the market since we brought this legislation into Parliament. We wanted to make sure it was a relevant asset to go to the market with, and also to know what we were going to bring to the market. Now we bring to the market the bill plus the amended clause, and we will go and see. I was told, before we brought this measure to Parliament and had the work done, that there was substantial interest in this facility. That was at a time when the prices were much lower than they are now. I will leave forecast iron ore prices to the iron ore gods, but there was a substantial interest. The member's question is, will this affect the value? It is definitely a risk, but it is a risk that we have decided to take.

Mr P.C. TINLEY: I just want to be clear. There is a sense amongst the Treasurer and the Treasury team that there is a risk that this amendment could put downward pressure or create a discount on the valuation of the asset. Given the Treasurer's comment about the price of iron ore and the interest that was shown previously, is it not better to delay the sale until we see a better outcome?

Dr M.D. NAHAN: I do not know what the member means by a better outcome.

Mr P.C. Tinley: Is this the right time to be selling an asset, at the bottom of the boom?

Dr M.D. NAHAN: It is not the bottom. I thought the price today was $72 a tonne, which is a pretty good price. In Australian dollars that is pushing it into the 90s; that is a pretty good price if members opposite want to know. If they tell me that this is the bottom of the market, and it is going way above $100, give me some guarantees; maybe they are right. Do the restrictions we place and the protections for junior miners in this amendment and in the bill restrict the value of the asset? They will probably reduce the value, but those are the choices we had to make to facilitate trade and protect junior miners.

Mr W.J. JOHNSTON: I think this will be the last time I stand up, Mr Speaker, and I am sure that that will bring joy to your face—and I am right! We oppose the sale of Utah Point because we do not think it makes any sense, and we are opposing this clause because we think that it does not work. This clause is subject to the access and pricing regime; I understand that. The new owner must go through all the steps before it can allow the majors in. This was one of the most important issues we discussed when we dealt with the principal legislation. We have been through a range of questions here. We have not repeated questions. We have been very good to the chamber, to make sure that we do not waste its valuable time, but I think we have highlighted and exposed a whole series of holes in this regime. I know, because they talk to me regularly, that the users of the port are very disappointed with the government's performance, and I make another point about that. At the moment, the junior players are receiving a discount of $2.50 or $3.50 on the operations at the port, and that discount will disappear. There is no effective protection of price or access for those junior players, and that is quite disappointing to us. We will end up with a situation in which there will be no guaranteed access for the junior players in the future. After all, that is why we built this facility.

We are disappointed that the Liberal Party and National Party are not prepared to provide these additional protections. All the government has to do is change the 50 per cent to zero per cent, which would guarantee that the Utah Point facility would be available for the juniors forever. I make the point that a future government of any persuasion could change that figure from 50 per cent to zero per cent by an act of Parliament without compensation to the purchasers of the port. It would have the effect of protecting the juniors in the way that we think they should be.

Dr M.D. NAHAN: I thank members opposite for all the questions. They were kept to the amendment. This government has done a lot for the junior miners. We built the facility. We gave them access roads. When they got in trouble, we gave them temporary royalty relief, reductions on the road charges and reduced costs of using the facility to help them restructure themselves and keep alive. That was successful in facilitating Atlas at least staying in business. It went out for a while and then came back. This regime gives the junior miners greater clarity and greater assurance and access than would exist under public ownership. I know that members opposite do not believe in asset recycling but this amendment allows the state to do it. We built a facility. It is operating. It allows us to take the money from it and put it into other capital. Whether that be another facility in Port Hedland or wherever, this is just a reasonable thing to do and it gives greater assurances to the junior miners than exist now.

Question put and passed; the Council's amendment agreed to.

The Council acquainted accordingly.