

**COMPLIANCE WITH FINANCIAL MANAGEMENT ACT 2006 AND PORT AUTHORITIES ACT
1995**

Motion

HON KEN TRAVERS (North Metropolitan) [10.13 am]: — without notice: This motion is listed on the notice paper in the name of Hon Sue Ellery, but I intend to move it. I move —

That this Council calls on the Barnett government to ensure it complies with the requirements of legislation concerning the financial management of the state and in particular section 82 of the Financial Management Act 2006 and part 5, division 2 of the Port Authorities Act 1999.

The now Barnett government claimed, when it was running for office, that if it was elected to office it would be open and accountable to the people of Western Australia. What we have seen since that election is that the government's rhetoric prior to the election and the reality today are at completely opposite ends of the spectrum.

Section 82 was inserted into the Financial Management Act to provide clarity. A committee, of which I was a member, prepared a report on that. It was part of the original proposal for both a new Financial Management Act and a new Auditor General Act. Section 82 requires governments and ministers, if they do not provide information to the Parliament, to explain why they have not done that. That explanation must be provided to the Auditor General and the Parliament. The Auditor General Act includes a provision for the Auditor General to consider the reasons given by the government or the minister for not providing the information and determine whether the reasons were reasonable. The provision pertaining to the Auditor General Act was included in the legislation as a direct result of a review of that legislation by that committee and this house. In one of the pleasant ironies of life I dissented from voting for that clause to be included in the Auditor General Act. However, I probably accept now that I may have been wrong on that occasion.

We had our first example of the effectiveness of that provision of the Auditor General Act yesterday when a report was tabled by the Auditor General on whether a particular decision by a minister of this house, the Minister for Transport, to refuse to table a particular document was reasonable and appropriate. The Auditor General found that it was not reasonable to deny the information to this house and, therefore, it was inappropriate to deny it. The Auditor General clearly outlined in his report the processes by which he arrived at that decision.

If members look at the audit practice statement on the Office of the Auditor General's website they will find that it gives them a clear understanding of how the Auditor General had always indicated to this house and ministers of the Crown that his office would deal with this matter. The process that office followed on this occasion complies with that audit practice statement, which gives ministers of the Crown a complete explanation about how it would operate.

Interestingly, I recall in November last year that I gave notice of a question, which I asked as a question without notice of which some notice had been given, and subsequently it was put on notice. Ironically, that occurred on the same day that the minister gave notice under section 82 of the Financial Management Act of three questions that he had not provided answers to. My question to the minister was —

Does your office have any systems in place, to ensure that it has ongoing compliance with the requirements of this Act and if not, why not?

I have referred to section 82 of the Financial Management Act. Section 82 relates also to section 81, which refers to when and where ministers should withhold information from the Parliament. It was clear that the minister understood his obligations; and we received a report yesterday outlining that it was unreasonable and inappropriate for him to have withheld that information. What was the response by the Minister for Transport at the time? The minister refused to accept responsibility and, instead, tried to put the blame on his department. In the report yesterday, the Auditor General made a comment that the advice provided by the department was lacking and of a poor nature. For that, the minister's department stands condemned.

A minister of the Crown has obligations and that is why we have a minister. If it is a simple case of whether the department gets it right, why would we bother to have ministers of the Crown? Ministers of the Crown have an obligation and, in this instance, ultimately, it was the Minister for Transport's decision. If the advice that was provided by the department was inadequate, this minister of the Crown should have said to the department, "Get me better advice. This advice is woefully inadequate. Go back, do it again and give me better advice." That is not what this minister did. If he had been on top of his job, if he had been following the debates in this chamber when he was a member and if he had looked at the audit practice statement, he would have known that the information being provided by those two agencies was inadequate for him to make the decision that he ultimately made. For that this minister stands condemned. To try to hide behind his department rather than accept responsibility for his own decision is appalling. This is a minister who attacked me by claiming that I

once called into question the integrity of officers of one of these agencies, yet now, when it suits him, he is prepared to push them out there, hide behind them and refuse to accept responsibility.

The other question we must ask is whether these are the only times that this minister has refused to provide information to the Parliament. Has he, on all occasions when he has done that, provided notification under section 82? The simple answer to that question is no, he has not. Prior to 26 November last year, when I put him on notice with a question, he failed to address that issue. He claims that he had the systems in place, but prior to 26 November, I asked numerous questions of this minister—I will not go through all of them today—detailing those areas in which we are asking for information and he has refused to provide it.

I want to focus a little on one area, because it relates to the information that the minister eventually tabled yesterday. It is the Alexander Drive transit study, or the north-east transit study, because various names have been applied to the study over the years. It becomes a little confusing because, depending on how and when we talk to people, it seems to be that there are either one or two studies, but the bottom line is that the company doing this study on the north east transit was also contracted to expand it to look at issues with what would appear to be the Ellenbrook railway line. This is why this issue is so important. Members will recall that at the time these questions were being asked the Ellenbrook railway line was one of the hot topics of debate in the community. The government was going back on its word and withdrawing the funding it had promised during the election campaign to get the construction of our railway line underway during this term of government. It was trying to weasel its way out of it.

One of the documents that I was very keen to obtain would appear to have been an addendum to this contract, or it may have been a stand-alone contract—I am not sure which one it is. I asked for very specific documents to be tabled by the minister about that, and the minister refused. To this day he has never put forward a section 82 certificate. Interestingly, one of the questions that the Auditor General made reference to yesterday was question on notice 1200 in this place, in which the minister was asked to provide a copy of the Alexander Drive transit study by the state government and Parsons Brinckerhoff. Yesterday the minister finally tabled that document. Interestingly, the second part of that question was —

Will the Minister table a copy of the Inception Report and original proposal referred to in the letter signed by Mark Burges to Parsons Brinckerhoff dated 9 February 2009?

The minister replied —

See paper 1567.

I appreciate the minister tabling a copy of the final report for the central north east corridor public transport strategy, but it is not the document I had asked for. Unless the minister can show me somewhere else where he has tabled that, to this day we still have not received that information from the minister. A number of other questions were leading up to this. Over the foreseeable future I intend to pursue the question of whether he received advice from the company and whether that information was confidential.

The second issue is with the documents that the minister tabled yesterday. Again, I might add that the Auditor General's report very clearly specifies that within these documents there are issues to do with rates of pay and contract amounts. The Auditor General does not anywhere in his report, as far as I can see, say that it is appropriate to delete those rates of pay from the documents. A number of the documents that were tabled yesterday had information deleted from them. Interestingly, in some instances rates of pay are deleted and in other instances rates of pay and costs are not deleted. When I spoke to the Auditor General at the briefing yesterday, he said that there are times when it would be appropriate to delete rates of pay prior to the issuing of contracts. He said that he would need to look at specific cases. I say this with some hesitation, because one of my concerns about inserting a section relating to tabling of documents into the Auditor General Act was that the Auditor General would be brought into political debate. As I say, I do this with some hesitation. I would have thought that, had the Auditor General thought it appropriate to blank out information, he would have included that in his report. Documents were tabled yesterday that have information blanked out. I assume that the department has had a copy of a draft of this for some time. One of the questions that I want specifically answered by the Minister for Transport today is: before he blanked out that information yesterday, did he follow the correct process, as outlined by the Auditor General in his report, to arrive at the decision to blank that information out? Has the minister followed it specifically, and has his department followed it specifically? Was he provided with advice by his department that it had completely followed the exact advice of the Auditor General in respect of these documents before the minister deleted that information in the document provided to the Parliament yesterday? This minister, on numerous occasions prior to 26 November last year, refused to provide information to this house by not answering questions, by not providing the information requested, by blanking information out and by various other ways and means. To this day he has still not issued section 82 certificates to this Parliament and, I suspect, to the Auditor General. The second issue is that even though he has now been told by the Auditor General what he should be doing, did he do it yesterday before he blanked that

information out of the reports? Will he now provide information and get his office to go through and review all the information that he has previously denied to this Parliament and provide it to this Parliament?

In the time I have left, the other issue I want to turn to is the statement of corporate intent. I am very pleased that Hon Max Trenorden is in the house for this debate, because I know this is an issue that Hon Max Trenorden has followed with great interest in the past. At the outset I put on record that I do not think the past Labor government's performance on this matter was up to scratch. I knew this would keep the member in the house! For many years the Auditor General has been placing in his reports a requirement that organisations that are required to table statements of corporate intent get them in before the end of the financial year. There was a trend towards getting them in before the end of the financial year during the past Labor government, but I accept that it was still not good enough.

Hon Max Trenorden: May I just say —

Hon KEN TRAVERS: No, the member can say it in his time because I have only five minutes. Hon Max Trenorden will have his time. Mr President, in short debates I do not want to take interjections today.

Several members interjected.

Hon KEN TRAVERS: It is a short debate as I have only five minutes.

Several members interjected.

The PRESIDENT: Order! That is a perfectly reasonable request, which I hope the member himself will abide by.

Hon KEN TRAVERS: Thank you, Mr President. I will certainly seek to abide by your rulings!

I must say that the previous government put in place mechanisms in 2007 to make sure that departments were complying. It brought forward the date. In fact, the minister, in one of the answers to questions on notice that I put to him, made comment that the date for submitting a statement of corporate intent for port authorities is 14 December, to get them through the Parliament and through the processes of government so that they can be out there prior to the commencement of the financial year. What are we now faced with in this state under this government? We have no statements of corporate intent tabled at all for the 2008-09 financial year. I know that the Minister for Transport will try and argue that is the fault of the last Labor government.

Hon Simon O'Brien: And, indeed, it is!

Hon KEN TRAVERS: Up until 6 August 2008, when the writs were issued, the minister is correct, but after 23 September 2008, it was the minister's responsibility and he should have completed that process in accordance with the act. Putting that to one side, let us move on to what happened in 2009-10, which there can be no doubt is the responsibility of the current Minister for Transport and the current Treasurer. Did they get their reports in before the commencement of this financial year? No! Have they got them in yet? For two port authorities, yes; for six port authorities, no. We are now 10 months into the financial year and we still do not have those reports tabled in this Parliament. We do not have them for last year, and 10 months into this financial year, we do not have them. I have acknowledged that the Labor government did not meet the high standards that I would have expected of it when we were in government. But I can tell members opposite that the statements in our time were never, ever as late as they are now.

I will give the Minister for Transport his dues on this matter, because one of the things that he is required to do is to get the concurrence of the Treasurer on these matters. Once the minister has sorted it out with the port authority, he sends it to the Treasurer; he gets the Treasurer's concurrence and then he tables it in the house. When did the Minister for Transport send these documents to the Treasurer to get his concurrence? It was on 21 April for the Albany Port Authority; 7 April for the Bunbury Port Authority, 27 July for Dampier Port Authority; 1 September for the Esperance Port Authority; 16 February for the Geraldton Port Authority; and 8 September for the Port Hedland Port Authority. Members may have noticed, if they were working on 2010 documents, that some of those dates are yet to arrive. Members would be absolutely right assuming this was in 2009. From 16 February 2009 through to today, the Treasurer has been sitting on that statement of corporate intent and has not given his concurrence. What has the former Treasurer been doing? This is a man they tell us was a competent officer and a competent Treasurer. He has held onto the majority of these statements of corporate intent for over 12 months and he has not given his concurrence. I know why he has not given his concurrence on the statement of corporate intent of the Geraldton Port Authority; it is because he would have had to change the budget! One of the things the Geraldton Port Authority does is downgrade its dividend because of the decision that this government took on Oakajee. The government would have had to change its midyear financial review documents if the Treasurer had given his concurrence on that would it not? In fact, on 16 February, it would probably have had to change a whole range of other documentation!

This government stands condemned. What has the former Treasurer been doing with these documents for the past 12 months in most cases? It is not the only area in which the former Treasurer failed to fulfil his responsibilities. I do not know whether one of my other colleagues will raise some of the other areas with respect to financial management of this Treasurer. When I say "Treasurer", I mean, of course, the former Treasurer. It is an absolute disgrace that we are sitting here and we still do not have the those statements of corporate intent 12 months after the former Treasurer received them. The Treasurer has been sitting on them. There are numerous other areas in which this government is failing to meet its obligations under the Financial Management Act and the financial legislation of this state. The opposition has outlined two today: one for which the Minister for Transport stands condemned; and the other for which the Treasurer stands condemned.

HON SIMON O'BRIEN (South Metropolitan — Minister for Transport) [10.33 am]: The motion before the Legislative Council calls on the Barnett government to ensure it complies with the requirements of legislation concerning the financial management of the state, in particular section 82 of the Financial Management Act 2006 and part 5, division 2, of the Port Authorities Act 1999. Despite the claims from the mover of this motion, and the many claims made in a cavalier fashion by members opposite that the government is failing in this or that way, we find that there is a lack of example or demonstration in support of the claims that are so carelessly made.

It is part of a pattern of behaviour that I think is regrettable. It shows an opposition that simply —
Several members interjected.

The PRESIDENT: Order, members! We heard a request a little while ago from a member on his feet to make his speech without interjections. That is perfectly reasonable. Every member is entitled to that opportunity in this debate.

Hon SIMON O'BRIEN: It is the responsibility of oppositions to oppose, but they should put a bit more effort into their research rather than simply relying on blind attacks and reckless statements. We had a beauty reported in this morning's newspaper and repeated just now by Hon Ken Travers. I will come to that in just a moment. I wish, first of all, that members opposite would address the motion. The mover's arguments quickly subsumed into some sort of desperate personal attack on former Treasurers, and so on. Looking at the actual motion, of which we received very late notice, I assert that the government does comply, first of all, with the requirements of section 82 of the Financial Management Act. Section 82 of the Financial Management Act generally requires that when information is withheld a statement be made by the minister—the member was referring to me, so I will use my example to the house. That was done. The act also requires that when the minister declines to provide information, that is reported in writing to the Office of the Auditor General. We know that there are some arrangements in place for the Office of the Auditor General to consider that matter; in effect, to act as an independent umpire providing advice to the Parliament. That is what happened in the cases that have been referred to. That is in compliance with section 82 of the Financial Management Act. In the cases cited, that is what I did. In due course, the Auditor General released a report, which was produced yesterday, and I responded to that by brief ministerial statement in this house yesterday. I also tabled documents, because the Auditor General found that in the examples that have been quoted it was not reasonable for all those documents to be withheld. The Auditor General had reviewed it and made some recommendations generally; he made recommendations directed at some of my agencies' and he gave some advice for my benefit and the benefit of other ministers. Those documents have been tabled. Section 82 is observed and complied with by this government. What is more, we see that the system works, and the documents have been tabled. Furthermore, the agencies involved have taken note of the other comments that the Auditor General made as, indeed, have I.

Hon Ken Travers claimed in a newspaper story published this morning, in which he is quoted, and has restated today in moving this motion, that I have tried to hide behind my agencies and deflect blame, if any is to be apportioned in this game, on them. You, Sir, have no basis for making that wild accusation—none whatsoever! It is a big fat lie to say that I have tried to hide behind my agencies. I was invited to do that, I think by persistent questioning by a member of the television media yesterday, where it was repeatedly put to me in terms that invited me to suggest that somehow the agencies were all at fault or had some fault in this matter for misadvising me. I declined to make any such comment. The comment that I did make, which I think was broadcast yesterday, was that, in my view, my agencies, in advising me, had erred on the side of caution and they had done so with the motive of protecting the relationship between government generally and its contractors and past and future tenderers. I think that is a worthy consideration, and the Auditor General would recognise that as well. I certainly have not tried to apportion any blame. Indeed, I have not objected to the Auditor General's report. As I have said, it just shows that the system regarding section 82 of the Financial Management Act actually works.

With regard to the reports that have been tabled, the mover of the motion is desperately trying to indicate that there is some sort of culture of secrecy and some sort of hidden material waiting to be exposed on my part. On the contrary, my only motive in considering whether the document should be tabled is to preserve the

commercial confidentiality and sensitivities of the government's contractors and past and future tenderers. That is where the sensitivity is. I have no particular personal interest in these matters. There is no Burke or Grill, or some other Labor hack, trying to get me involved in some shady deal that I am trying to cover up. As far as I am concerned, if it were not for the consideration that I must have for government relationships, these documents could be put up on a public notice board in Forrest Place. It is of no personal concern to me and I have no interest in the secrecy with a capital "S" that this opposition seems to be trying to lay at our feet. Hon Ken Travers is wrong when he accuses me of trying to hide behind my agencies and he should apologise because he made a mischievous and baseless suggestion both yesterday and today.

In many cases, the documents in question date back to the time of the previous government. Again, what do I have to be secretive about? The document on the maintenance of the Northbridge tunnel actually dates back to the Court government. The whole time that the Labor Party was in power, it had access to this document. Hon Ken Travers was a sometime parliamentary secretary to my ministerial predecessor. Access has been there the whole time. I do not know why he ceased to be a parliamentary secretary and I do not care, but the fact of the matter is that that document has been around for a long time. As the Auditor General states in his audit practice statement, which we have been lectured about attending to, a minister is not required to provide a notice under section 82 of the FM act when the minister has advised that information will be provided at a later date. In the case of that document, that is the advice that Main Roads gave me and that is the advice that I gave to the house—that is, that the document would in fact be tabled in May 2010, which, coincidentally, it now has been.

The several documents that relate to the Alexander Drive matter owe their creation to the previous government. They are that government's documents, not this government's documents; we just inherited them. There is nothing to be secretive about in that case either. I do not know how the Labor Party seems to be able to muster up such an amount of umbrage, but clearly we have been complying with section 82 not only in its letter, but also in its spirit, and we will continue to do so. As I say, the report shows that the system actually works and is evolving over time with the attention of the Auditor General.

In relation to blacking out certain information, that advice has been given to me directly by the Auditor General. Recently, through a formal briefing—it is repeated on page 16 of the report that was tabled—he said that when a document, which might be a large contract document, contains some information that could be sensitive or requires discretion about, for instance, the hourly rates that a tenderer proposes to charge, it would be sufficient for the information that is sensitive to be blacked out, but that the balance of the document, the vast majority of it, could be tabled. That is indeed what happened yesterday. That has been reiterated several times by the Auditor General, and it is advice that no doubt government agencies will further employ in the future.

I have even less time to speak under this temporary order than the mover of the motion has and no opportunity to respond, so I have limited time. In relation to division 2 of part 5 of the Port Authorities Act 1992, which relates to statements of corporate intent, members who are familiar with the legislation will see that a statement of corporate intent is about ensuring that a government has oversight of the corporate direction of ports, but also, more pertinently, the capacity to intervene in the corporate direction of its port authorities. Hon Ken Travers, as the mover of this motion, seems to think that the purpose of this part and division of the Port Authorities Act is just to provide some form of additional bureaucracy and some boxes to be ticked so that inadequate opposition members can turn around and say, "Aha! This box has been ticked outside the boundaries" or something like that. He has made this personal attack on me, but, again, as has been pointed out—if we need to revisit it, we can—the provisions of the Port Authorities Act in relation to a statement of corporate intent have been complied with. It is as simple as that. Were any draft statements of corporate intent not provided by the due date? No. Were there any at all? No, there was not one. Were any draft statements of corporate intent not dealt with as they should have been by the Department of Transport or by my ministerial office—that is, by me? No, there was not one. I might add that it is a colossal amount of work, given the backlog that was left by the previous government. We heard from the member that the statements of corporate intent for the Labor government's last, admittedly interrupted, year had not been attended to at all. That is why there are provisions in the legislation for the minister to vary days fixed for port authorities to comply with, and all the other provisions. The prerogative remains with the government and the minister of the day.

I am quickly running out of time, but quite clearly no case has been advanced, much less demonstrated, to suggest that the Barnett government—or I in particular—is not complying with the provisions that are reported in the motion, and there is room for an apology for misleading the house and for the very misleading statement made by Hon Ken Travers to the newspaper.

HON LJILJANNA RAVLICH (East Metropolitan) [10.50 am]: What I have just heard from the Minister for Transport is absolutely breathtaking! In his response he demonstrated an arrogance of the highest order. He is a minister who clearly believes that he is above the law; that the law should not apply to him. How dare anybody, even the Auditor General, make a finding against him! As far as the minister is concerned, the statements made

by the Auditor General are in some way reckless. I have to catch my breath. The minister claimed that people are relying on reckless statements. The Auditor General made statements about the minister's behaviour; about his decision not to table those documents even though there was a requirement to do so. The Auditor General, Colin Murphy, said that the minister's decision to delay tabling or to not table the documents previously was not reasonable and was therefore inappropriate. That is what the Auditor General of this state said. The Auditor General has a very responsible job; namely, to provide advice to this Parliament and to do so independently. He advised Parliament that the minister's decision was not reasonable and that it was inappropriate. I do not know how the minister was able to imply that there are no examples of him being cavalier.

Hon Simon O'Brien: I did no such thing.

Hon LJILJANNA RAVLICH: The minister did; he will have to read his speech tomorrow. I have taken notes.

This minister accepts no responsibility. He has the gall to stand in this place and say the system now works because those documents have been tabled. I wonder whether those documents would have been tabled in the absence of the pressure that came about because of the Auditor General's report. Why were those documents not tabled as per the requirements of section 82 of the Financial Management Act? We have gone through a process. The minister has egg all over his face. He is not man enough to apologise to those who put their concerns on the public record for the implied criticisms or to the Auditor General, who also demonstrated his concern in his report to this place and to the people of the state.

I will go through a number of things that were reported in an article in this morning's *The West Australian*. I find a number of things in the article, which was written by Natasha Boddy, very interesting. The article reads —

Mr O'Brien was forced to table the details of contracts for the Northbridge Tunnel maintenance, bus security services and the Alexander Driver transit study in Parliament yesterday after previously failing to do so based on advice from Main Roads and the Public Transport Authority that the information was "commercially sensitive".

The minister should explain his understanding of "commercially sensitive". Did the minister read all those documents and make his own judgement about whether or not they were commercially sensitive? I am disappointed that the minister has already contributed to this debate, because he should explain what he considered commercially sensitive in those documents and whether his department had exactly the same view. That is a very important question that he should answer.

If the minister is going to use the excuses of acting on advice from his department and that some of the reports were commissioned by the previous government for not adhering to section 82 of the Financial Management Act, he has a poor understanding of the requirements and workings of the Westminster system and our system of accountability. I understand that the minister acted under the advice of his department. Did he seek any further advice from, for example, the State Solicitor, or was it a case of his department telling him that the documents were commercially sensitive and the minister accepting that that was the case because his department told him so? There is a requirement under the act and it is an important requirement that the minister must meet. Did the minister seek a second opinion? Did he seek the advice of the State Solicitor or any other colleague about this matter?

I again refer to the article in today's *The West Australian*. It reads —

Mr Murphy said information about commercial sensitivity and advice given to Mr O'Brien was "flawed", "inadequate and inaccurate".

The minister has a duty of care to the public to check the advice that is given to him by his department to ensure that he is making the right decision for the right reasons. Given the body of evidence, including the findings of the Auditor General, it was most arrogant of the minister to say that he no case to answer.

Point of Order

Hon SIMON O'BRIEN: A number of quite outrageous statements that are blatantly untrue have been attributed to me by the member on her feet. My point of order is this: do I have any recourse to respond to some of the blatant lies and falsehoods that have just been said or have I lost any further opportunity to participate in this debate?

Several members interjected.

The PRESIDENT: Order, members! A point of order has been raised. Any member is entitled to rise at the end of a particular contribution by another member if they feel that they have been misrepresented. They can seek leave to make a personal statement to that effect. That is the process that allows members to address an issue if they feel they have been maligned.

Debate Resumed

Hon LJILJANNA RAVLICH: I will demonstrate how cavalier and arrogant this government has been. I refer to the annual reports for 2008-09 and to the issue of Hon Troy Buswell, who was then Treasurer, and his lack of compliance with tabling annual reports. In accordance with section 65 of the Financial Management Act there is a requirement that this be done in a timely way. When he was Treasurer, Hon Troy Buswell wrote to the Standing Committee on Estimates and Financial Operations on numerous occasions to advise that he could not get his annual reports in on time. I refer to a letter he wrote to the Chair of the Standing Committee on Estimates and Financial Operations, which reads —

In accordance with section 65 of the Financial Management Act 2006 I would like to advise that the Western Australian Technology and Industry Advisory Council Annual Activity Report 2008/09 will be tabled outside the prescribed timeframe. The reason for the delay for the Reports not being tabled within the prescribed timeframe is due to the Council making final amendments to the reports before they could be tabled.

He then sent in another letter, dated 22 October, to the Chair of the Standing Committee on Estimates and Financial Operations, stating that he could confirm that the annual reports for the Country Housing Authority, the Department of Housing and the Housing Authority were not tabled within the prescribed time frame due to agencies making final amendments before the reports could be tabled. He then sent in another letter to advise that the Building Management Authority annual report also would not be in on time. He then sent in another letter to advise that the annual reports of the Department of Commerce, the Real Estate and Business Agents Supervisory Board, the Settlement Agents Supervisory Board, the Small Business Development Corporation, the State Supply Commission and WorkCover WA would not be in on time. He then sent in another letter to say that the Plumbers Licensing Board annual report would not be in on time. He then sent in another letter —

Hon Norman Moore: What does that have to do with the motion?

Hon LJILJANNA RAVLICH: I will tell the Leader of the House what that has to do with the motion. What that has to do with the motion is that it shows that this government is very arrogant, and does not think that the law applies to it.

Personal Explanation

HON SIMON O'BRIEN (South Metropolitan — Minister for Transport) [11.02 am] — by leave: Mr President, I thank you for your advice that standing order 87 does indeed apply to this procedure of the house, which is taking place under the sessional order. I would like to take advantage of this opportunity to briefly explain myself with regard to a material part of the proceedings that has been misquoted. I want to make it clear that despite the comments that have just been made, there has been nothing in my remarks about this matter, either in this place today or at any other time, or outside this place, that could be construed in any way as holding the opinion of the Auditor General in disregard, or as disagreeing with the views of the Auditor General or his capacity to make reports to this house. I was offended by the remarks, and I thank the house for indulging me under standing order 87 to make it explicit that I did no such thing.

Debate Resumed

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [11.03 am]: In the past two days we have had two debates in this place that I have to say have been very one-sided. Yesterday's debate was the most one-sided debate that I have ever seen. During that debate, Hon Sally Talbot was completely demolished by the Minister for Environment, to the point where she had to leave the chamber because she could not cope with being told that she was wrong. Today, Hon Ken Travers has somehow or other tried to suggest that the Minister for Transport had not done what he is required to do under law.

Hon Ken Travers: And he hasn't!

Hon NORMAN MOORE: The Minister for Transport has clearly pointed out that he has done exactly what he is required to do; and, indeed, as a consequence of having done that, he has now tabled documents—which he did not actually have to do, as Hon Ken Travers would know if he had had a good look at the law. It is interesting that when members opposite were in government, they did not support this particular provision in the legislation. This provision was actually brought in by Hon George Cash, if my memory serves me correctly, as a requirement from this house that we have this aspect of scrutiny of decisions by ministers not to table particular documents.

This motion moved by Hon Ken Travers calls on the Barnett government to ensure that it complies with the requirements of legislation concerning the financial management of the state and in particular section 82 of the Financial Management Act 2006. Well, that is what we have exactly done. I do not know why the Leader of the Opposition needs to call on us to do something that we have already done. The honourable Minister for Transport made a decision, based on advice from his agency, that some information contained in some

documents that relate to contracts may be commercially confidential. As has been the case on many, many occasions since I have been a member of this place—including when the Labor Party was in government—ministers have claimed commercial confidentiality to avoid the need to have documents tabled. In most cases that has been done for very, very good reasons. We can clearly jeopardise contractual arrangements, or future contractual arrangements, by making public information in certain circumstances. I suspect there have been times in the past when governments have tried to use this particular provision to avoid scrutiny by the Parliament.

What section 82 of the Financial Management Act requires now is that if a minister claims that commercially confidential information should not be tabled, the minister's decision must go to the Auditor General, who will give an independent view on whether the minister has taken the right action. That is what has happened on this occasion. What has happened on this occasion has been exactly in accordance with the law. The minister provided the information to the Auditor General. The Auditor General then gave his opinion. If we were to assume that the Auditor General will always rule in favour of the government, why would we need this provision in the first place? There will be times when the Auditor General will have a different view. On this occasion, the Auditor General had a different view. He found that the documents could be made public, with some provisions blacked out.

Hon Ken Travers: No, he never found that, Mr Moore. Show me in his report where he says those documents should be deleted.

Hon NORMAN MOORE: I will tell the member what he said. He said, under the heading "Key Findings" —

1. The decisions to not table the three contracts were not reasonable and therefore were inappropriate. Specifically we found that:
 - There was no statutory requirement to keep the information private.
 - The contracts included no confidentiality clauses prohibiting making the contents public.
 - There was no clear legal basis to support a case that there was an 'equitable obligation of confidence' preventing the tabling of the contracts.

He then he goes on in finding 2 to advise that one of his findings was that —

- Neither Main Roads nor PTA considered the possibility of tabling the contracts with any commercial-in-confidence sections 'blacked out'. The practice of 'blacking out' is common and accepted as it enables the disclosure of information that is not confidential.

That is what he said in his findings. The Minister for Transport quite rightly, having received this report, has had those parts that are believed to be commercially-in-confidence blacked out, and the report has then been tabled.

Hon Ken Travers: How do you know that? I asked that question of the minister, and he did not answer! Did he go through a process?

Hon NORMAN MOORE: Under the rules that relate to this debate, Hon Ken Travers gets 20 minutes; the minister gets 15 minutes, and I get 10 minutes. Hon Ken Travers then gets another 15 minutes at the finish, I think, or 10 minutes, or something. So Hon Ken Travers should just keep his mouth shut for five seconds and let someone else have a say. He is as bad as Hon Ljiljana Ravlich, whose mouth is constantly open, and regrettably does not say much of any consequence. The bottom line is simply this. The minister does not have to table a document even if the Auditor General says that it should have been tabled. The minister does not have to do that. But what did the minister do? He tabled the documents.

Several members interjected.

Hon NORMAN MOORE: I guess if there is one downside to having these types of seats, it is that!

Hon Sue Ellery: What? The seats can go back, but we should not make them go back! Is that what we are arguing about now? Let us focus on the real issue. Is it how we sit, or is it how we manage the finances of the state? Let us talk about the real issue!

Hon Ken Travers: Just remember how tall I am! Then you might understand why I am sitting in this way!

The PRESIDENT: Order! I am seeking some relevance. We have made some comments about the departure from the tradition of bench seating and how we use the individual seats. I am sure that members would not like to place to become untidy.

Hon NORMAN MOORE: I have just gone through the circumstances surrounding this matter. Basically, and fundamentally, the Minister for Transport has done exactly what the law required. He has referred the matter to the Auditor General. The Auditor General has found that it was inappropriate and has made recommendations as to what should happen. He has suggested that the minister black out the parts that are commercial-in-confidence. That is what the minister has done. The minister did not have to table the documents, but he has done that. As he clearly asked the house: why would he want to keep them secret anyway because they are documents that fundamentally related to the previous government? For the second time in two days we have heard a completely one-sided debate in this house where the arguments of the opposition have been demolished when the facts of the matter have been disclosed.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [11.09 am]: I want to make a couple of comments, particularly on the issuing of the statements of corporate intent. We have just heard from the Leader of the House, who said that this has been a one-sided debate, but I have heard no satisfactory response to the request for statements of corporate intent. The proposition was put that there have been two rounds of statements of corporate intent. The first related to the period within which we were in government. My colleague Hon Ken Travers made the point that in fact, come 23 September 2008, the obligation then moved to the new government. The Leader of the House can sustain the argument that this is all about what we did in government, notwithstanding, of course what happened in the second round of statements of corporate intent for the full period that members opposite have been in government. That argument can be sustained for the first round but not when the government looks at its own practice on the second round.

Statements of corporate intent are statements that are required to be prepared each year by agencies which are trading enterprises and which are at arm's length from government in the exercise of some of their core functions. Statements of corporate intent are required to be tabled so that there is a degree of public accountability of how those agencies conduct their business on behalf of the government of the day. They are a key measure by which the Auditor General and the rest of Western Australia can determine whether those agencies, and therefore the government, are held to proper account.

There are a couple of steps within the process — by which statements of corporate intent are signed off. The first step requires the relevant minister to sign off on them. It appears there have been some delays in that. The second step requires the Treasurer to sign off on them. Hon Ken Travers indicated by identifying a series of dates that, in some cases, there has been almost a year and, I think for at least one case, more than a year when that information, once transferred from the relevant minister's office, appears to have become stuck somewhere in the Treasurer's office.

The Minister for Transport used the word "cavalier" in his comments. He was referring to the debate from this side of the house when he said—I am paraphrasing—"You shouldn't be so cavalier about throwing accusations around the place." But with respect to the statements of corporate intent, it is clear where the cavalier behaviour sits. It is not on this side; it is between the minister's office and the Treasurer's office, and inside the Treasurer's office, where obligations to meet those dates have not been met.

Hon Simon O'Brien: On the matter of concurrence of the Treasurer, I believe the act is silent and does not prescribe any date by which the Treasurer must concur. If you can tell me something different, please do so.

Hon SUE ELLERY: If that is what is holding up the statements and causing them to be tabled in this house so late, that is what needs to be fixed. That is the point I am making.

Hon Simon O'Brien: You acknowledged also that the act provides for what happens if an updated statement of corporate intent is not tabled; the previous one simply endures.

Hon SUE ELLERY: That is correct. But how are we to know whether there is something that should have been made perfectly clear to the citizens of Western Australia or to the Auditor General in particular? How are we to know that if the statement is not lodged in a timely fashion? That is my point.

I want to juxtapose what I think is cavalier behaviour and the lack of financial accountability on what the Western Australian government is doing to the people of Western Australia, who do not get the same choice of how they account for their financial affairs and the increases, for example, in household fees and charges that they are required to meet. They do not have the choice the government has in determining whether it will meet its obligations to make financial information available to the public in a timely fashion. They do not get to choose what constitutes timely when it comes to paying the increased fees and charges that the government has imposed on them. That is the reason Western Australians will be concerned about time lines—not because they feel some great groundswell of anger about whether a financial report or statement of corporate intent from Verve or the Water Corporation is tabled by date X or date X plus 12 months. The issue that will be of concern to the people of Western Australia is the signal the government is sending to them about what government can do with its financial management: it is not obligated and feels under no pressure to meet the requirements to

make information publicly available so that it can be scrutinised by the Auditor General and others. The signal it is sending Western Australians is: "You must pay the extra \$150 on your water bill or the extra on top of your electricity bill on time. You must pay all the additional fees and charges. You do not get a choice whether you meet your obligations. That is the cost of it and you have to pay that." It is no small amount of money. Now Western Australian families with two kids are being asked to pay around \$1 100 a year in additional fees and charges. That is the issue here. To use the expression of the former Prime Minister, it is not a barbecue stopper whether the Water Corporation's statement of corporate intent was tabled on date X or 12 months after it should have been tabled. The issue which is stopping barbecues, and about which I think Western Australians will be concerned, is the additional costs they are being asked to pay in big chunks—not small incremental changes over time, which people expect to pay. That is why houses cost hundreds of thousands of dollars more now than they cost when my parents bought their first house. Western Australians see that they are being held to a different standard from what the government is adhering to. That is the issue and why Western Australians are concerned about this kind of issue.

The other thing that is causing, particularly seniors in Western Australia, some considerable concern is the government's decision to push past 1 July the payment of the cost-of-living rebate for 2010. We can add the additional fees and charges and the cost it takes to live everyday in Western Australia to the fact that seniors genuinely believed the government would provide that rebate. That was not because of anything the Labor Party said but because of the language the new government used to describe how it would implement its policy. It was a very good policy, which was welcomed by seniors in Western Australia and which I am happy to support. A number of seniors either have come into my electorate office or are increasingly—this surprised me given the demographic—emailing me about how they feel ripped off and that it was a bit tricky to first tell them they would get a payment every year with the first payment between March and May 2009 and then tell them that, "By the way, in 2010 we will not make the payment until after July and that will save us \$26 million." That is tricky. The reason I link these two things is, as I said before, because Western Australians say that it is not reasonable that the government appears to be reckless and cavalier on how it is held to account on managing the state's finances at the same time as it is imposing additional costs on them, pushing out the payment time for the cost-of-living rebate and expecting them to meet their obligations on time.

HON KEN TRAVERS (North Metropolitan) [11.19 am] — in reply: I want to commence with the port authorities and then I will move back to section 82 of the Financial Management Act.

A number of comments were made by the Minister for Transport suggesting that I regarded the need to have these statements of corporate intent tabled as only a process-driven outcome. That is not the case at all. I actually acknowledged that these statements are an important part of the internal operations of government, that they are an important accountability mechanism, that they are an important mechanism for ensuring that this Parliament is informed about what is going on in port authorities, and that it is even more important that the public of Western Australia is able to know what is going on in port authorities. That is why we have statements of corporate intent. They are the equivalent of the budget in many respects for these organisations. That is the accountability mechanism to the Parliament and to the people. That is why it is important.

Hon Simon O'Brien: That's why they are tabled.

Hon KEN TRAVERS: But we have not had them tabled; that is the problem. The financial year is almost over, minister, and we have not got them.

The other comment in the debate that we have just had that I thought was enlightening was when the Minister for Transport said by interjection that there is no time limit on the Treasurer to reach concurrence. One of the things we all know in this place is that we need to read an act in its entirety and to understand it. That comment by the Minister for Transport showed to me the ignorance of this minister about how this act is written. The first thing that section 61 of the Port Authorities Act states is —

A board and the Minister must try to reach agreement on a statement of corporate intent as soon as possible and, in any event not later than the start of the next financial year.

Therefore, this year's statement of corporate intent should have been agreed to by 30 June last year. Section 64 of the act refers to the process by which the minister is to reach agreement on the draft statement of corporate content and to table it in this house. Then section 66 states —

The Minister is not to —

- (a) agree to a draft statement of corporate intent under section 64; or
- (b) agree to or direct any modification of a statement of corporate intent under section 65, except with the Treasurer's concurrence.

By any reading of that, it puts an obligation on the Treasurer to reach concurrence with the minister before that date, for the minister to reach agreement and for that document to be tabled. The Treasurer and minister are in the same cabinet. If the minister was a National Party member we might understand why they could not get agreement, but they are in the same party and in the same government. The minister's obligation and the Treasurer's obligation under the same act are clearly to have it done before the start of the financial year.

Hon Simon O'Brien: Before the start of the financial year?

Hon KEN TRAVERS: To suggest anything else just shows the ignorance and contempt of this government, and particularly the former Treasurer. I actually acknowledge that the Minister for Transport was not the primary culprit in this matter and that it was the Treasurer who had been slack on this matter. The Treasurer has had one of these statements of corporate intent since 16 February 2009 and he did not give the Minister for Transport his concurrence until the day he was relieved of his duties. Now it will be up to the new Treasurer to do that.

Hon Simon O'Brien: Just to clarify a point, because you might have said something you didn't intend to say, you said that the statement of corporate intent has to be finalised, put away and agreed to before the start of the financial year. I think you meant to say before the end of the financial year.

Hon KEN TRAVERS: No, the start of the next financial year. That is how it is written in the act.

Hon Simon O'Brien: That's right, but you said before the start of the next financial year.

Hon KEN TRAVERS: I said that it needed to be done before the start of the next financial year. Another way of describing it is that it needed to be completed before the end of last financial year. We can split hairs about whether that is one minute to midnight on the 30 June or one minute past midnight on 1 July, but in effect it is about getting it done before the end of one year and the start of the next year.

Hon Simon O'Brien: I know what you meant to say but it didn't come out that way. I'm just here to help.

Hon KEN TRAVERS: The minister can pick up that as a minor point, but the bottom line is —

Hon Simon O'Brien: You are talking about timing being critical and you are out by one year; it is a point.

Hon KEN TRAVERS: The bottom line is that the minister did not understand his act because he has an obligation to get it done before the start of the next financial year.

Hon Simon O'Brien: Not the end of the previous financial year.

Hon KEN TRAVERS: The minister cannot do it without the concurrence of the Treasurer; ipso facto that means the Treasurer needs to give his concurrence before the end of the financial year for the government to be able to comply with the act—unless the Treasurer is sitting there trying to hang the Minister for Transport out to dry.

Now I want to move to section 82 of the Financial Management Act. Again, the Leader of the House suggested that there was a lack of demonstration or clear examples. I gave a clear example. I said that there were many more, but in the time limit for the debate I could not go through all of them. However, if the Leader of the House wants to bring on this matter at another time, I will be happy to go through and detail all those instances when this minister has deleted information and has not provided information to the Parliament and a certificate under section 82 has not been given.

The example I gave related to question on notice 1200, which was one of the questions reported on by the Auditor General yesterday. Two documents were asked for in that question, which reads —

Will the Minister table a copy of the Inception Report and original proposal referred to in the letter signed by Mark Burges to Parsons Brinkerhoff dated 9 February 2009?

I can go back to the other questions in which I asked for the letter of 9 February to be tabled, and I invite the minister and the Leader of the House to show me in *Hansard* where they have been tabled.

Hon Simon O'Brien: You bring on questions with no notice.

Hon KEN TRAVERS: The Minister for Transport and the Leader of the House say there is a lack of clear examples. There is an example straight away.

Hon Simon O'Brien: I do not think it is a clear example.

Hon KEN TRAVERS: I am more than happy to go through the other examples at a later stage, but I do not have time today, unfortunately.

Hon Simon O'Brien: Well, why didn't you refer to them?

Hon KEN TRAVERS: If the minister is so confident, he should guarantee to this house that there is no item that he has failed to provide to this Parliament, when requested, for which he has not issued a certification under section 82 of the Financial Management Act. I invite the minister to give me that interjection that he is absolutely confident that I will not be able to find any document, material or information that he has not provided to the Parliament and for which he has not provided a section 82 certificate. Can the minister give that commitment now? Can the minister guarantee it?

Hon Simon O'Brien: You are asking me to say whether I have failed to provide a section 82 notice when required to do so.

Hon KEN TRAVERS: Yes, when you have not provided any information to the Parliament.

Hon Simon O'Brien: In a situation where we are required to do so?

Hon KEN TRAVERS: Yes.

Hon Simon O'Brien: Yes, I do give that undertaking.

Hon KEN TRAVERS: Will you absolutely guarantee it? Will you resign if I can find an example?

Hon Simon O'Brien: Don't be absurd!

Hon KEN TRAVERS: No, of course the minister will not resign. He has told me in an answer to this place that he has systems in place in his office to ensure that he is complying with section 82. The minister has systems in place.

Hon Simon O'Brien: Indeed I do.

Hon KEN TRAVERS: I tell the minister that I will find the examples. I have given one today. I will get the others and I will bring them into the Parliament on a regular basis and we will humiliate this minister.

Hon Simon O'Brien: You are embarrassing your colleagues.

Hon KEN TRAVERS: There are a number of other ministers on the other side who are probably smiling at the moment, but they too will be humiliated because they have not provided their section 82 certificates.

Hon Simon O'Brien interjected.

Hon KEN TRAVERS: Another issue needs to be taken on board here. I accept that information can be blacked out. Any reading of this report yesterday says that information can be blacked out. But what the report also says is that before it is blacked out the minister has to go through a process to determine whether it is commercial-in-confidence information. Just because someone says it is commercial-in-confidence does not make it commercial-in-confidence information. Information that might be commercial-in-confidence today might not be commercial-in-confidence tomorrow, depending upon the timing of that information. Again the Auditor General makes that very clear in his report. One of the questions that I specifically put to the minister today and asked him to give us an answer on was whether, before blacking out that information yesterday, he went through a process to determine whether it was commercial-in-confidence. The minister did not answer that. Does he want to answer it now?

Hon Simon O'Brien: That process was gone through. I am satisfied that that went through. The specific documents, I think, all related to the second incident on the schedule of three in relation to the security contract for —

Hon KEN TRAVERS: The minister actually blacked out information in a number of documents that were tabled yesterday. I thought the minister might have been aware of that.

Hon Simon O'Brien: I am well aware of it.

Hon KEN TRAVERS: Nonetheless, there is a process and I invited the minister to indicate whether he had gone back through that process.

Hon Simon O'Brien interjected.

Hon KEN TRAVERS: It is not simply a matter of —

Hon Simon O'Brien: Trying to hang me by selective interjection, are you?

Hon KEN TRAVERS: No, I am not hanging the minister by selective interjection, but there is a process.

Hon Simon O'Brien: You give no notice of these questions.

Hon KEN TRAVERS: I look forward when the minister tables the section 82 certificate in relationship to the information he blocked out yesterday. We will wait and see whether the Auditor General finds that it was reasonable and appropriate for the minister to have blacked out that information yesterday. Here is a little clue

Extract from *Hansard*
[COUNCIL - Thursday, 6 May 2010]
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Hon Ken Travers; Hon Simon O'Brien; Hon Ljiljana Ravlich; Hon Norman Moore; Hon Sue Ellery

for the minister. He needs to do another section 82 certificate as a result of deleting that information from those documents that he tabled yesterday, because he still has not tabled the full set of documents in this house, and he still has not tabled all the documents that I have asked for in this house. On that basis, he still has an obligation under section 82 of the Financial Management Act to put that before this house again.

I think the opposition has clearly demonstrated that this government does not even understand the act, let alone comply with it, so we win on points.

Motion lapsed, pursuant to temporary orders.