PORTS LEGISLATION AMENDMENT BILL 2013

Consideration in Detail

Resumed from 28 November.

Debate was adjourned after clause 15 had been agreed to.

Clause 16: Section 35 amended —

Ms R. SAFFIOTI: As I understand it, clause 16 relates to the fact that these amendments will allow for 24/7 operations of all the ports that are governed under this legislation. However, the operations will be subject to the Environmental Protection Act. I ask the minister: what ports are currently operating 24/7? What ports are likely to increase their activities to 24/7, and what likely impact will that have on the community?

Mr T.R. BUSWELL: I cannot give advice at the moment as to which ports currently operate 24/7. It is our anticipation that the passage of this clause will not mean any change in current operating practices of ports. All ports currently, subject to EPA approval, can operate 24/7. What we are doing here is simply codifying or placing in the legislation the fact that ports can, if operations and customers need the opportunity or require it, operate 24 hours a day, seven days a week.

Mr B.S. WYATT: Again, the minister is codifying previous practices that already take place in respect of this bill. Section 35(1) of the act states —

> A port authority has all the powers it needs to perform its functions under this Act or any other written law.

That section already gives the port authorities significant powers to do whatever they need to do to perform their functions under the act. Clause 16 specifically introduces the provision —

> (9A) Subject to the *Environmental Protection Act 1986*, port operations may take place on any day and at any time.

Has the provision referred to in clause 16 proven to be a limiting factor in the preparation of port strategic plans or statements of corporate intent? Is there anything that has driven this provision?

Mr T.R. BUSWELL: That is a fair question. The answer to that is, not that I am aware of through advice received. However, that is not to say that it may not happen at some stage down the track. I suppose this provision is giving certainty when a port authority's right to operate 24/7 is questioned. I suspect that questioning may come more from community-based opposition than other opposition or other quarters. It gives the port authority the legislative backing to support the argument that ports are there to work and operate 24/7.

Mr B.S. WYATT: Have there been any approaches to the minister, as minister, from private users of ports around the state suggesting that the ports need to go 24/7? I am minded of Port Hedland, in particular, where BHP—given the outer harbour is not now being done—needs to maximise the use of the current Port Hedland harbour. Are private operators suggesting to the minister that, to maximise their use, they will need to go 24/7?

Mr T.R. BUSWELL: No, for the record I have not had any conversations of that nature. My recollection is that Port Hedland, like a lot of those big iron ore ports, operates around the clock anyway. The answer to the question is no.

Mr P.B. WATSON: It concerns me that this clause has been put in the bill. One of the big issues when we built the entertainment centre was the flow-through from the entertainment centre into the port. The farmers were concerned about not having access 24 hours a day. There was a huge issue about that. Is this the sort of pressure that has resulted in the minister inserting this clause in the bill?

Mr T.R. BUSWELL: No, not really, although the member for Albany raises a good point. We had a discussion last week about the economic significance of ports to communities and, more broadly, to the hinterlands they serve, generally, as an export facilitator. One of the areas of concern and interest is the maintenance of suitable buffers around ports, and the management of expectations of people who may come to live close to those buffers. I have a strong view that through good planning processes we need to make sure that the operations of the ports can proceed within EPA approvals. That is very important; it covers not just dust, but also noise. Within those guidelines, port operators can progress relatively unhindered. It is not meant to be a sledgehammer to knock local communities around the ears with, but I certainly think this provision adds strength to the arguments that ports may raise when faced with questions about their legitimacy to operate 24 hours a day, seven days a week.

Mr D.J. KELLY: The amendment specifically refers to the Environmental Protection Act. I am wondering why the minister would not also specifically refer to, for example, the Occupational Safety and Health Act? Given the

nature of a port operating 24 hours, it is a dangerous business. Operating 24/7 increases the likelihood that accidents may occur. It is well known that shift work, especially around-the-clock shift work, raises additional safety issues. I am wondering why the minister has specifically mentioned one act; however, why would he not also care for the staff in the ports by referring to the Occupational Safety and Health Act?

Mr T.R. BUSWELL: It is a fair question. I think there is probably a range of legislation, including occupational health and safety and industrial relations legislation and a range of different state and federal legislative frameworks within which we expect all government businesses to operate. The issue that we are predominantly attempting to address here is broader pressure brought externally that affects the operation of a port around this 24/7 issue. Again, I am not saying that this has been a big issue in the past, but potentially it could be. That then cuts to the issue of the interaction of the port with the community that surrounds it and the buffer between them. Predominantly, the mechanism to manage that interaction is the control that is put in place by the Environmental Protection Act 1986. That deals with issues such as noise and dust, which are amenity-based issues that I imagine would be of concern to the local community. The act says that it is fine to operate 24/7. We assume, as would anyone, that any government entity would comply with all the regulatory requirements, be they state or commonwealth, as part of their normal course of operations. Certainly, the EP act is the important act concerning the interaction between the community and the port, because that act deals with some of the issues of amenity.

Mr D.J. KELLY: I understand what the minister is saying because his main focus in dealing with this clause is to try to ensure that the amenity issues that are raised by the ports operating 24/7 are dealt with. I wonder whether the minister has turned his mind to caring for the workforce in those ports. Quite often, we care about the community and the complaints it raises regarding noise, dust or whatever, but operating facilities such as 24/7 ports raises additional safety issues that do not necessarily arise when facilities operate during more standard hours. By elevating one act in the legislation by specifically referring to it, is the minister saying that the safety aspects are not as important?

Mr T.R. BUSWELL: No.

Dr G.G. JACOBS: I do not want to frustrate this process. I congratulate the minister for putting into this clause a requirement to subject ports to the Environmental Protection Act because, as the minister would know, which way the wind blows is very critical for port operations, particularly in the port of Esperance. I will explain what I mean. When loading a nickel ship, for instance, there are days when the wind blows onshore towards the part of the town that nestles around the port. It is well known—in fact, an operational regime is in place at present—that on certain days, when the wind is blowing onshore across the town, the loading of the ship is temporarily terminated for that particular time. That is an environmental consideration. As the minister would know, we have had issues with lead pollution and the town is obviously very cognisant of, and rather sensitive towards, this issue. The Environmental Protection Act does not want to frustrate the operations of the port, but in some circumstances, on some days, the loading of a nickel ship will not take place because of the prevailing winds.

Mr T.R. BUSWELL: It is the same circumstance at Geraldton. To the best of my knowledge, the bulk nickel concentrate loader at Esperance—I think it is called a circuit—has not been used for a couple of years. In fact, the BHP nickel that was going out of Esperance is currently going out of Geraldton in Rotainers. There have been some issues around the maintenance of the nickel concentrate circuit at Esperance, largely related to the corrosive nature of the nickel that is exported. However, the member raised a good point, so I will refer to the port of Geraldton as we have good experience there with the lead sulfide issues that arose in late 2010 and early 2011. After the issues at Esperance, some significant enhancements were made to air-monitoring equipment around our ports. As I understand it, much larger capacity air-monitoring units were put in and the parameters within which the ports had to operate were changed. Ports with bulk loaders have to be very, very mindful of wind conditions. Esperance has an iron ore bulk loader and the nickel bulk loader will soon start up, and Geraldton has a heavy metals concentrate loader. It is not an excuse for a port to comply with its environmental conditions to say that the dust is there because it is windy. The ports have to predict that and adjust their operations accordingly. The member is correct that some of those ports' operations of the bulk loading facilities must be suspended when the wind is anticipated to be at or near a certain maximum. I cannot remember what the maximum is and I am not aware that there has been an exceedence of any of the air-quality measures at either Geraldton or Esperance following the issues that occurred in late 2010. This is an important issue that highlights the importance of this particular reference in this legislation.

Mr B.S. WYATT: I have a quick question that may relate to the port of Geraldton. Is the minister aware of how many days are lost each year as a result of wind?

Mr T.R. BUSWELL: I have not lost any.

Mr B.S. WYATT: I am referring to days lost as a result of the prevailing winds.

Mr T.R. BUSWELL: It is more complicated at Geraldton because Geraldton also suffers a wave surge event. This event is related to not only the size of the swell, but also the wind wave. I do not have the information off the top of my head, but there will definitely be days when the ships cannot be loaded because of the wind. With all due respect to the member for Geraldton, he knows that it can be a very, very windy place. The port has made some improvements to the bulk concentrate loader circuit at Geraldton, but there are still windy days. The other issue is that sometimes when there are certain wind and swell conditions—not always the biggest surf breaks—there is a wave surge in the harbour, which can have an impact on the ships by breaking their lines. When the port believes that is about to happen, the harbour has to be vacated. Sometimes it is quite an odd sight because lots of ships are tied up at anchorage but none are in Geraldton harbour. That happens when there are issues, but we are doing some work around that. The Karara Mining joint venture looked at a different berthing technique that used big suckers—if I can be technical!—or pneumatic devices that sat against a ship to hold it against the berth. I am not entirely sure that that has worked successfully. In the long run, that issue will have to be looked at. A day's operation at Geraldton could be impacted upon because of wind or it could be because of the concentrate loader or the effects of the wave surge in the harbour.

Clause put and passed.

Clause 17: Section 51 amended —

Ms R. SAFFIOTI: As I understand, section 51 requires that matters relating to the participation of suppliers be included in the strategic development plan. How will this work? The strategic development plan is a five-year plan that is tabled and it identifies the strategic direction of the ports. What will this amendment mean? Will it require the plan to identify any goals or aims that encourage local purchasing? The amendment appears to be aimed at encouraging local participation, but I would like the minister to clarify the intent of the change.

Mr T.R. BUSWELL: My understanding is that a commonwealth competition policy review was conducted, which recommended the insertion of words to this effect. From our point of view, the reason it is in the bill is not so much around suppliers and who provides consumables, but suppliers of port services and/or infrastructure with imports. When we announced the results of the port review, one of the things that we talked about—it was not widely reported—was the policy decision of government for our port authorities to encourage private sector capital and private sector service provision into ports under the landlord model that I outlined last week. This happens already in a range of ports. There are opportunities for it to happen in other ports.

Mr B.S. WYATT: Perhaps the minister could clarify this for me. Is the minister saying that the inclusion of "participation of potential suppliers" was aimed at increasing competition? Was it the result of a competitive review?

Mr T.R. Buswell: That is right.

Mr B.S. WYATT: Is there competition amongst suppliers to port authorities?

Mr T.R. Buswell: Part of the strategy is to encourage engagement with alternate suppliers, when "suppliers" is taken to be providers of port services.

Mr B.S. WYATT: I need to broaden in my own mind what I understand suppliers to be. They are suppliers of port services, hence the minister's comment about the attractiveness of private capital in ports.

Mr T.R. Buswell: That is correct.

Mr B.S. WYATT: It is really a port authority using a private sector partner to do what otherwise the port authorities are currently doing. It is not the supplier of goods and services to a port authority.

Mr T.R. Buswell: Correct.

Ms R. SAFFIOTI: I think the meaning is a bit different from what we all read when we initially read the bill. Would it not have been better to say "participation of port providers" or "service providers"?

Mr T.R. Buswell: It has just been drawn to my attention that if you go back to page 3 of the bill, you will see additional and refined definitions. "Potential supplier", which is what we are referring to here, means —

(a) a person who might become a supplier of port services; or

(b) a person who might become a supplier of port services and, for that purpose, provide related port facilities;

Ms R. SAFFIOTI: That explains the meaning. The intent of this clause is that the board, when developing its five-year strategic direction for the port, has to consider privatising or outsourcing part of its operations.

Mr T.R. BUSWELL: It needs to consider the opportunities for that to happen. That is already happening in the vast majority of ports, largely driven at the moment by the need to access alternate capital. It is reflective of what has happened, for example, at Port Hedland for a long time and at other ports, including Albany, up and down the coast. This is entirely consistent with the policy position that I have stated publicly many times. There would be plenty of documentation on the back of our announcements following the public discussion around the ports review. I expect that port authorities will look for opportunities to engage with private capital and private service providers if and when those opportunities present. That does not mean that every aspect of the port authority is going to go down that path but we would expect that that would be something that they would have a mind to.

Ms R. SAFFIOTI: Just to absolutely clarify that, I understand that this amendment requires the board to consider the outsourcing or privatisation of part of its operations.

Mr T.R. Buswell: The answer is yes, but if the member is seeking additional clarification, I am happy to provide that clarification to the maximum of my capacity to do so.

Ms R. SAFFIOTI: I have a further question. I know there is the private sector comparator, although I question how it is prepared for a number of contracts that have been developed. Is there any requirement for the port sector to carry out some private process that compares the provision of port services by itself with the privatisation or outsourcing of those services?

Mr T.R. BUSWELL: That is a decision for the board of the port authority. I think the member will find that one of the drivers in this particular area for the boards of port authorities will be access to capital. There is not a particular requirement, as I understand it; I would have to check on that because, as we discussed last week, we expect the ports would operate under the policy framework of the strategic asset management framework. My recollection is that that may well require that of them. Ultimately, these would be decisions of the board, but acknowledging that in many of those cases, particularly when it involves the leasing of a footprint of port land over a certain period—five years—that also requires the concurrence of the minister. I do not think that has changed. Again, the driver of this, based on my couple of years in this portfolio, will be access to capital to enable the ports to continue to expand.

Mr D.J. KELLY: I am a little concerned about that last answer. We are considering an amendment that will provide a statutory requirement that boards of ports consider privatising all or part of their services. It will not be just a matter for the board to determine or consider when they determine what is best for the business that they are in charge of running; it will be a statutory requirement. When the minister was asked whether there is a requirement for that board to make that decision in the full knowledge of what its own costs are through some sort of public sector comparator, his response was that that would be just a matter for the board or it may be a requirement under some other statute. I do not think that is good enough. Too much of this outsourcing and privatisation is going on in a way that I think is quite sloppy. The public sector comparators, where they exist, often stack the deck in favour of the private operator. One of the key components in those private sector comparators, which often tips the balance in favour of the private operator, is risk change. If we privatise the board of the Geraldton Port Authority and the proverbial hits the fan, the public will hold the government of the day responsible for the proper running of the port. When the minister does the public sector comparator, he might think he has transferred the risk to the private operator, but if the port ceases to operate, the person most likely to be held accountable in the eyes of the public is the minister or the Premier as the highest office-bearer in the state. Those sorts of things often tip the balance. The minister is saying that he will even require that a public sector comparator be produced as part of this process. These are important assets and there certainly is an argument that the push to have them outsourced or privatised is driven by concerns about state debt, not concerns about the best way to deliver port services for the state of Western Australia.

It is unsatisfactory that this amendment points the boards in one clear direction, even if clause 3 needs to be checked to find out exactly what a port supplier is, and that the minister expects that those decisions would not be made unless there is a full and comprehensive transparent assessment. Another complaint about these processes is that they are put in train behind closed doors and important information that the public could be interested in is considered commercial-in-confidence, which means that the public will never know the true basis upon which these decisions are made. It seems to be wholly unsatisfactory to put what one might consider to be an innocuous amendment into a bill such as this when it is really a part of a push by the government to privatise services to fix up its debt situation. Can we be assured that the minister will give more clarity and rigour to this process and give a more detailed answer than basically saying there may or may not be a public sector comparator?

Mr T.R. BUSWELL: Firstly, I would say—we had this discussion last week—there is absolutely no suggestion that the port of Geraldton, or any other port authority, will be privatised. I am not sure how that has entered the debate. We have to be careful. We have never talked about that and it is not our policy position.

A good example of that for the member for Bassendean is Geraldton. Karara Mining has built an iron ore exporting facility at Geraldton. It has a train tipper, storage shed and loader and there are one or two berths. That is funded and, I assume, operated by a private operator. That is a good outcome for the port of Geraldton and the iron ore industry. That is a private piece of infrastructure in the port of Geraldton, and the Geraldton Port Authority is owned by the state. The tenure over that footprint is by way of long-term lease. There is no discussion about the privatisation of port authorities. The government has made a clear policy decision around that, and this is not about that.

Another example would be the port of Broome, where a larger crane is needed. There are plenty of private providers who will buy that crane, stick it out on the wharf and operate it. That is what we are talking about here. There is a potential opportunity for Bunbury to get a Rotainer device set up. Again, that is what we are talking about; it is not about selling the port of Bunbury. The new 10-million-tonne iron ore expansion at Esperance will be done with privately funded capital in a publicly owned port authority. This is not new; this has been happening for decades in ports in WA. All that means is that authorities, as they prepare their strategic development plans, need to be mindful of the opportunities provided by potential suppliers. It does not bind them to that; it just says that they need to consider it. It is an entirely sensible proposition in any environment because in many ways it is reflective of what has been happening. From a government policy point of view, it is definitely the direction the government has on many occasions publicly encouraged port authorities to take. That is why it is in there. It is not about a wholesale privatisation of port authorities; it is about getting the best outcomes within those port authorities for all potential users and the economic benefits that flow from that.

Mr D.J. KELLY: So that I can get it right, because quite often there are semantics around what is privatisation and what is not, the minister is not talking about selling, for example, the port of Geraldton, but he could see a circumstance where bits of infrastructure within that port footprint are sold or leased to the private sector.

Mr T.R. Buswell: Sure.

Mr D.J. KELLY: Conceivably, every asset at the port of Geraldton could be owned and operated by the private sector and the minister would still not consider that that port has been privatised. How far does it go? How many of the assets that the port of Geraldton operates could be sold or leased to the private sector? For example, could the port of Geraldton just be a legal entity with a board that employed no-one directly and owned no assets and that would still be consistent with government policy, but in the minister's view it would not have been privatised? In effect, it would become a legal shell, with a letterhead and a board, but no employees and owning and operating no assets. In the minister's view, is that the future and is that not privatisation?

Mr T.R. Buswell: No.

Mr D.J. KELLY: Can the minister tell me where he draws the line? In his previous answer he said that the government is not privatising because it is not selling—that is not what this amendment is about—but individual assets at a port could be sold or leased to the private sector. The minister nods his head to that, but I am asking whether it is conceivable that in five or 10 years, all the assets at a particular port, either collectively or individually, could have been sold off to the private sector but the port would be still managing them in some sort of contractual arrangement—or gets the benefit of them—but the port would not employ anyone anymore, except maybe the chief executive officer and the chief executive officer's personal assistant; everybody else would be employed by a private company in some sort of contractual arrangement. It cannot be said that, no, we are not going to privatise it because we are not selling the whole thing, but, yes, we can have little bits of it. At some point one is possible.

Mr T.R. BUSWELL: All I can tell the member for Bassendean is about this government's policy intent. I cannot tell the member what a government will do in 10 years, because who knows? I can tell the member that the policy intent that has driven this bill is based around the landlord model that is in Albany and/or in other ports to varying degrees. My view and the government's policy position is that the ports would effectively remain owners of the land and would remain owners of the common-user infrastructure. Generally, common-user infrastructure is the channels, navigation aids and maybe some breakwaters, and other stuff like that. Here we are talking about what happens with the mix of the working or operational assets of the port that get stuff in and out of ships. That is certainly this government's policy position. Does that preclude a government of either political persuasion down the track deciding that that policy position should change? No, it does not. I could never, and no-one in this place could ever, give that guarantee. Our policy position, which has been often-stated publicly and is not secret, is that we will not be privatising the port authorities as entities; they will remain. The

port authorities will retain ownership of and responsibility for the channels, the navigation aids and the common infrastructure—except that those navigational aids may be owned by current entities in some of the southern port authorities that may come over to us. That is not the purpose of the Ports Legislation Amendment Bill 2013; that will be dealt with later. We have not worked through what happens with those common-user assets. Certainly I would anticipate that the port would maintain ownership of those common-user assets, but the assets that drive the operation of the port may well be provided and operated, as currently happens. Another good example would be Broome, which has the jetty. The jetty, the channels and the common-user navigational aids in Broome would be common-user infrastructure, as is probably where the port authority's base is and all the things done there.

Dr G.G. Jacobs: Minister, the CBH has infrastructure along the Esperance —

Mr T.R. BUSWELL: Yes.

The ACTING SPEAKER (Mr P. Abetz): Member, you are supposed to be on your feet if you want to ask a question.

Mr D.J. KELLY: I thank the minister for that clarification about which assets he would see remaining in the ownership of the port authorities and which may —

Mr T.R. Buswell: Can I just say, other assets may remain. You can stay standing up.

Mr D.J. KELLY: Sorry, is this an interjection?

Mr T.R. Buswell: Yes.

Mr D.J. KELLY: Okay; I am just learning the ropes.

Mr T.R. Buswell: That does not mean that other assets will not remain in ownership of the port authorities, but I suppose in its purest form, if I could use that term, that would be the landlord model.

Mr D.J. KELLY: The minister made it clear then about which physical assets would be potentially sold and which would remain in the ownership of the port authorities. Can I ask the minister about employment? It seems to me that in the model the minister has outlined, it is conceivable that potentially nobody would be employed by the —

Mr T.R. Buswell: Operational, yes.

Mr D.J. KELLY: Would no-one involved in the operational side of the port be an employee of the port authority?

Mr T.R. Buswell: They would still have harbourmasters and safety people and people with environmental responsibilities, but in terms of getting stuff on and off, I could not say who they would be employed by. There is a pretty established market of stevedores in Australia, all well covered by the Maritime Union of Australia, as I understand it, but that is —

Mr D.J. KELLY: Capably covered?

Mr T.R. Buswell: Covered.

Mr D.J. KELLY: Covered? I thought the minister almost got to the point of saying something positive about the MUA, which is a challenge I put to him the other day. Capably covered, I think.

Mr T.R. Buswell: Covered.

Mr D.J. KELLY: I am just wondering whether the minister can give us some more clarity, rather than doing it sort of on the run, about who the minister thinks would remain in the employment of the government through the port authority, and which areas of employment the minister would see as being outsourced to the private sector?

Mr T.R. BUSWELL: I suspect—again in its purest form—that the non–port authority employees would generally be those associated with the operation of the port and getting things over the wharf one way or the other. The port authority per se will still employ the harbourmaster and the people responsible for environmental matters in and around the port. It would still, I assume, employ the business development–type people because they actually have to go out and work on new projects within the port precinct, be it leasing or land management. It will involve financial-type people not so much on the operational side, but more on the side of running the business. Again, the port of Albany has very few direct employees. There is quite a small workforce, and a lot of employees there are employed by a variety of different private sector service providers; I refer to stevedores and the like.

Mr D.J. KELLY: Can I can absolutely rule out those administrative-type functions currently done by directly employed staff of the port authorities, such as environmental services or business development or those sorts of

things—or general administration? The minister can absolutely rule out those services being privatised by port authorities.

Mr T.R. BUSWELL: I cannot imagine they would —

Mr D.J. Kelly: That is not the same as ruling it out.

Mr T.R. BUSWELL: I cannot imagine that that would happen, but, for example, if a port is about to work on a major expansion, it might have to bring external expertise in to assist. This would be for environmental approvals or engineering or what have you; I do not know—maybe even some financial expertise. The port of Esperance is currently —

Mr D.J. Kelly: We are not talking about the old projects.

Mr T.R. BUSWELL: I understand that. The answer is that I would not anticipate that that would be the result of this.

Clause put and passed.

Clause 18: Section 57 amended —

Ms R. SAFFIOTI: As I understand it, this clause relates to ensuring that any strategic development plan will be consistent with the new requirement for the port authorities to operate within approved expenditure and capital expenditure limits. Will the minister clarify the impact of and necessity for this change, because I would think the insertion of proposed new section 34A would be sufficient in directing the ports to comply with cabinet and approved expenditure limits?

Mr T.R. Buswell: Sorry, I was just conversing. Can I just ask the member to put that question again in a nutshell?

The ACTING SPEAKER: Member for West Swan.

Mr T.R. BUSWELL: Sorry, member. I appreciate the opportunity to answer that more fully. As I had one ear distracted during some of the member's question, if she could just put that to me again.

Ms R. SAFFIOTI: Basically, the question related to the purpose of the amendment. I am not a lawyer, but I understand that in relation to the preparation of the SDP—strategic development plan—the authority has to take into consideration proposed new section 34A(2), which is all about ensuring that the agency has to work within cabinet-approved limits and expenditure limits. Why is this clause necessary, and what impact will it have given that the minister has already strengthened the act by saying that the port authority must comply with cabinet instructions and budget-approved expense limits?

Mr T.R. BUSWELL: My advice is that it is simply trying to ensure that we have consistency between the approved SDP and the budgetary requirements under proposed new section 34A.

Ms R. SAFFIOTI: Will any SDP's forward estimates of capital expenditure now be required to be consistent with what will be shown in the budget papers' forward estimates, for example?

Mr T.R. Buswell: Yes; correct.

Mr B.S. WYATT: It would seem that even if the minister did not include this amendment, sections 55 and 56 set out that the agreed draft becomes the strategic development plan—and then there is modification of the strategic development plan. It would seem that proposed new section 34A would apply regardless of this amendment. Is this is simply again to make clear and codify the process?

Mr T.R. Buswell: Correct.

Clause put and passed.

Clause 19: Section 60 amended —

Ms R. SAFFIOTI: This is another interesting clause concerning the participation of potential suppliers. This clause will amend the act so that the role of potential suppliers is considered in the development of the five-year strategic development plan. This provision seems a little stronger than reporting on this in the annual report that is presented to Parliament. The amendment requires the port authority to report on proposed potential suppliers and, if there are none, the authority has to explain why not. The onus is on the authority to contract out and outsource, and if it does not, it has to justify why it has not done that. This seems slightly over the top, in particular because there is no requirement to prove that outsourcing will provide value for money.

Mr T.R. BUSWELL: I understand what the member is saying. The government has a strong policy position that ports are required to examine opportunities to participate with potential suppliers. I am very keen that on an

annual basis, through the statement of corporate intent, ports report on what they have done in that space and why they may or may not be making progress in that space. There are a range of legitimate reasons that a port may decide to not go down a particular path; for example, it is not a value proposition for the port, which is a perfectly legitimate reason. I know of examples of that from my discussions with ports. But the government has an expectation that ports will exercise some consideration in this manner, and this is a mechanism to require them to publicly and formally outline what activity has occurred in that space.

Mr B.S. WYATT: The member for West Swan is right that this is a slightly more aggressive amendment than the previous reference to potential suppliers. I am always curious about this type of amendment. Has this amendment been driven by any recalcitrant port that has been reluctant to consider the participation of potential suppliers in the provision of port services? Is it correct that the statement of corporate intent is submitted yearly and the strategic development plan is submitted five-yearly?

Mr T.R. Buswell: That is correct.

Mr B.S. WYATT: So each year, each port authority will be required to submit to the minister the reasons and justifications for the absence of private potential suppliers in the provision of port services. Presumably, now that we have passed clause 15 to insert new section 34A so that port authorities must comply with approved requirements as to capital works expenditure limits and associated funding, the minister is effectively in a position to reduce the number of approved capital works projects for any particular port and the responsibility will then pass not to the government but to the private sector via other potential suppliers to pick up that absence of approved capital works. If that is not the case, the ports, effectively, have to explain themselves. I think this question has been asked by the member for Bassendean: does the minister expect to receive each year a detailed financial analysis of the provision of port services by potential suppliers versus the cost of the current provision of those services by government-owned assets?

Mr T.R. BUSWELL: I may have been a bit prescriptive in my original answer. It has been pointed out to me that the important words in this clause are "proposed arrangements". For example, those arrangements might include being in a position to licence a towage operator, a pilot operator, or a stevedore. It relates to a whole lot of different arrangements that ports need to go through to facilitate the participation of potential suppliers. There is that aspect. It may be that there are other circumstances in which the port is of a view to attract potential suppliers, and some of that may be for some of the capital items the member for Victoria Park talked about. However, it is a little broader than just infrastructure. A good example would be the decision at Port Hedland to provide a sole towage licence—I think BHP has the towage licence, or someone drives the towboat and they contract out the operation—and the port had to go to the Australian Competition and Consumer Commission to get a range of rulings around exclusivity. It is not just about whether they are getting the private sector to provide infrastructure or capital; it is about a range of operations that the ports may be engaged in to try to facilitate services by potential suppliers.

Ms R. SAFFIOTI: Basically, the government is putting the onus on the port authority to show its proposed arrangements and, if it has none, to provide justification for their absence. These port authorities boards have been appointed, and they will be bigger boards with more expertise and skills. Surely the minister would trust these boards to make decisions about these operations without directing them, in essence, to prove why they have not engaged with the private sector on particular activities. In relation to the example the minister just gave, this whole issue of third party access and common use is of particular importance in relation to railways and ports because of the high cost of the infrastructure and the barriers to entry, such as inadequate access, for smaller or new participants. This amendment seems to ignore those two key facts. If the whole purpose of the bill is to strengthen the commercialisation of these ports and improve the skills and abilities of these ports, surely this clause is not required because the ports would have the expertise and skills to make judgements about the fair and commercial operations of the port on an annual basis.

Mr T.R. BUSWELL: Again, it is an entirely justifiable outcome for a port to decide not to proceed with a potential supplier on the basis that it does not make commercial sense. That is entirely the domain of the port. If that was the circumstance that needed to be reported, in my view, that would be a justifiable position for the port to take; there was no commercial imperative to participate or progress.

Mr B.S. WYATT: Presumably, if the port had no access to publicly provided capital or limited capital that would also be a justifiable reason not to go with potential private suppliers. For example, the government has made the decision to grant no more capital to Geraldton port.

Mr T.R. Buswell: Sure.

Ms R. SAFFIOTI: I think the onus is completely reversed here. It would be like a private company standing up in its annual general meeting and reporting on why it did not do something, instead of reporting on what it had

done. The minister is asking port authorities to justify why they did not outsource. It is quite unusual, because the onus on them is not to justify their actions, but to justify why they have not done something. Like I said, it is rare that any private sector company or company at the big end of town would stand up and say why it did not sell off this part or why it did not outsource. This provision does not require the port authorities to justify their actions; rather, it asks them to justify why they did not do something.

Clause put and passed.

Clause 20: Section 66 amended —

Ms R. SAFFIOTI: As I understand it, clause 20 is very similar in scope to clause 18, in that the statement of corporate intent must be consistent with the budget or published financial estimates of the government. Can the minister confirm that?

Mr T.R. Buswell: That is correct.

Clause put and passed.

Clause 21: Section 84 amended —

Ms R. SAFFIOTI: This clause relates to dividends. It is an area in which both the shadow Treasurer and I are very interested. Basically, this provides the new requirement for interim dividends. I think I asked a question about the midyear review.

Mr T.R. BUSWELL: I am writing to the member for West Swan. I have received advice that an interim dividend will be assumed in the midyear review. I will formally write to the member for West Swan, as I indicated I would, to confirm that. I anticipate the member will have that ahead of the public release of the midyear review.

Mr B.S. Wyatt: Which will be when?

Mr T.R. BUSWELL: It will be before the middle of the year! If it was post the middle of the year, it would be the post-midyear review! It will be at some stage in December.

Mr B.S. WYATT: I thank the minister for that clarification.

I refer to the inclusion of proposed subsection (2A), which reads —

> In calculating a dividend under this section no account is to be taken of a payment made to the port authority by another person for application towards the capital cost of providing port facilities if the Minister, with the concurrence of the Treasurer, has declared the payment to be an exempt payment for the purposes of this section.

Will the minister outline what this proposed new section will attempt to achieve? Will the minister also provide examples of the payments that will be made as an exempt payment "for the purposes of this section" and how they will be made exempt payments "for the purposes of this section"?

Mr T.R. BUSWELL: That is a good question. It is a provision that is designed to exempt contributions by, let us say, private parties to port infrastructure from being subject to the dividend; that is, counted as profit. The explanatory memorandum reads —

> The new subsection (2A) will exempt payments to port authorities from inclusion within the calculation of State dividend payments that is profit when those payments are made towards the capital cost of providing port facilities. Exemptions will need to be approved by the Minister, with concurrence from the Treasurer.
>
> This reform will provide a port with an incentive to seek contributions to infrastructure costs, as these funds will not form part of their dividend calculation. Port users are more likely to contribute to the capital cost of local port infrastructure, knowing that their entire contribution will remain at the port rather than being absorbed into other State projects.

A good example of that, which I refer to often, is the port enhancement charge, which is charged at Geraldton. The PEC is effectively less the interest costs of the borrowings. The PEC was introduced when the former government decided to improve the channel. The PEC is levied on a per tonne basis for all the tonnage that goes out of the port. In theory, the PEC is designed to enable the port to pay down the debt. However, effectively the only operational costs of the PEC is the interest of the loan that sits against it. Most of the PEC is pure profit. A big chunk of the PEC is paid back to the state as a dividend payment, something that the users of the port—that is, the people who pay the PEC—remind me of frequently.

Ms R. Saffioti: So you have not stopped it.

Mr T.R. BUSWELL: No, I have not—not yet. I have had discussions with the Geraldton Port Authority about it. The port enhancement charge model or the port improvement levy—or whatever we want to call it—provides capital to assist in the development of the common user infrastructure, and it is a model that has worked for the Geraldton Port Authority. It is a model we can look to use at other places. Clearly the issue that will be raised is that it is not entirely fair that for every dollar they pay for the provision of that infrastructure that a percentage goes to consolidated revenue via the dividend payment. Clause 20 indicates that this will be dealt with effectively on a case-by-case basis and that is why it requires the concurrence of the Treasurer.

Mr B.S. WYATT: Does the minister anticipate that the PEC will become an exempt payment?

Mr T.R. Buswell: Potentially.

Mr B.S. WYATT: Will the port authority make that application or will it be the people who pay the PEC? What is the legislative process to get to an exempt payment?

Mr T.R. BUSWELL: This provides clarity about the process.

Mr B.S. Wyatt: That is just it. Is there other legislation dealing with exempt payments that I am not aware of?

Mr T.R. BUSWELL: I am not sure that it is directly canvassed in the Port Authorities Act. However, the advice I have is that government can make a policy decision about it. Effectively—we have had discussions about dividends before—section 84(1)(a)(ii) of the Port Authorities Act 1999 states —

> Any formula for calculation agreed between the Minister and the Treasurer;

I assume that will give some flexibility, but I am not entirely sure of Treasury's view. That is just one example. I am sure there are others in which there may well be a requirement or an opportunity for someone to contribute capital, but effectively that capital contribution often flows through the profit and loss and, despite some small operating costs, effectively becomes pure profit. What we are saying is that in that arrangement there is the discrete capacity, still with the concurrence of the Treasurer, for those payments to be excluded from the calculated dividends.

Mr B.S. Wyatt: Is that an application that the authority —

Mr T.R. BUSWELL: It would be the port authority because the port authority is the dividend paying body. In fact, my reading of this clause is that the minister responsible for the port, the Minister for Transport, would make an application to the Treasurer. One would assume that it would be driven by the potential payer.

Mr B.S. Wyatt: They will want to get that clarified.

Mr T.R. BUSWELL: Too right, they will. It is case specific, but I think it is a valid argument. Geraldton is a good case in point. I am not being critical of the regime that is in place—everyone agreed to it at the time—but one can understand why the users see it as being little unfair that X per cent of whatever they pay effectively goes straight through to consolidated revenue as a dividend.

Mr B.S. WYATT: The question I asked about wanting to get clarification about the private sector partner, whoever it is, or investor, is probably dealt with in proposed subsection (2B), which states —

> A declaration under subsection (2A) can be made before or after the payment is received by the port authority.

Clause put and passed.

Clause 22: Section 87 amended —

Mr B.S. WYATT: This amendment deals with hedging arrangements, which is always of interest. Can the Treasurer briefly outline to the chamber the purpose of proposed new subsection (2)?

Mr T.R. BUSWELL: My understanding is that this amendment will require port authorities to seek advice from Western Australian Treasury Corporation if they wish to enter into hedging arrangements.

Mr B.S. WYATT: The current section 87(1)(a) lists 12 different forms of transactions, most of which would require a fairly high degree of financial sophistication to execute, considering that the best interests of taxpayers' money need to be kept in mind. Is this something that port authorities are engaged in regularly? If that is the case, I would have thought they would be able to do that already without the involvement of WA Treasury Corporation.

Mr T.R. BUSWELL: That is a good question, given that if it involves borrowings, then of course WATC will be involved on the borrowing side. In relation to whether this is a common practice, I cannot give the member

that advice, but I can find out and provide that information to the member. That would be a useful piece of information. It is not in any of the notes that I have, and I am not going to try to guess something. I am happy to give an undertaking that I will obtain that advice and provide it to the member.

Mr B.S. Wyatt: That would be useful, because I find that unusual, even though I know that it is in the current act.

Mr T.R. BUSWELL: There may be a piling contract or a significant requirement to commit to importing pieces of basic equipment. I suspect that as we become more focused on getting alternative capital sources, this will become less of an issue. But I will get some advice around the frequency and the nature of the transactions that are subject to hedging—so, quantity and description—to the extent that I can.

Clause put and passed

Clause 23 put and passed.

Clause 24: Section 100 amended —

Ms R. SAFFIOTI: Have there been any specific cases that have necessitated this amendment in relation to immunity from liability for negligent provision of pilotage services?

Mr T.R. BUSWELL: The answer I have is no.

Mr B.S. WYATT: The words that are proposed to be removed are —

> (1) Neither the State nor the port authority is liable for any loss or damage resulting from an act or omission by a person approved as a pilot by a port authority in the conduct or navigation of a vessel of which the person is the pilot.

Why is that not considered to be an appropriate immunity, and why is new subsection (1) proposed to be introduced? What is inadequate about the existing subsection (1)?

Mr T.R. BUSWELL: The explanatory memorandum states —

> This new subsection 100(1) will ensure that the State and the port authority are indemnified from any liability, loss or damage in connection to the provision of pilotage services. This indemnity is being included on the advice of the State Solicitor, because pilotage is compulsory in most ports.
>
> Existing subsections 100(2) and 100(3) provide similar indemnity for a pilot and the employer of a pilot. This is an international practice to ensure the provision of pilotage services despite the substantial financial risks, with such risks being left to insurance coverage.

Mr B.S. WYATT: Basically the State Solicitor has considered that the subsection that is proposed to be deleted is no longer adequate to protect the state.

Mr T.R. BUSWELL: Correct.

Clause put and passed.

Clause 25: Section 113 amended —

Ms R. SAFFIOTI: My understanding is that this proposed new subsection will expand the definition of a "prescribed thing" that may cause damage to a port authority's assets. Are there any recent examples that have necessitated this change? Is it due to the port authorities expanding their operations?

Mr T.R. BUSWELL: I have been advised that there are not any recent examples. Effectively, this will tighten or broaden the existing provisions to include damage from any material, product or substance, whether solid, liquid or gas, or any vehicle, plant, machinery, equipment or infrastructure.

Clause put and passed.

Clause 26: Section 114EA inserted —

Ms R. SAFFIOTI: This again relates to immunity from liability for an act or omission of a port user. If more port suppliers will be operating on behalf of a port authority, will they also be afforded immunity from liability for any act or omission?

Mr T.R. BUSWELL: No. My advice is that the new provision will protect port authorities against losses or damages caused by port users or their agents. It has not happened, but, for example, at Bunbury when some consideration was given to using the woodchip loader for coal, there was a real concern that the use of the woodchip loader would lead to contamination of the woodchip stockpile and/or woodchips on the loader. I suppose the argument here is that such an issue should not be the port authority's liability; it should be the responsibility of the user of the port infrastructure or its agent.

Clause put and passed.

Clause 27 put and passed.

Clause 28: Section 138 replaced —

Mr B.S. WYATT: The Government Agreements Act 1979 is not affected, so why does this provision need to be inserted? Again, we have had a similar discussion around the Environmental Protection Act. Why would this provision be inserted? I dare say the minister's answer will be that it is State Solicitor's advice to do so, but are there suggestions that the Government Agreements Act 1979 may otherwise be impliedly amended as a result of the changes being made to the Port Authorities Act?

Mr T.R. BUSWELL: The advice I have is that this clause deals with schedule 8, which is the provision for merging into the merged entities. Therefore, this clause will give comfort to holders of existing state agreements that the creation of those merged entities will not be detrimental.

Clause put and passed.

Clauses 29 to 31 put and passed.

Clause 32: Schedule 2 amended —

Ms R. SAFFIOTI: My question relates to the new requirement about the number of directors who are required for a quorum. As I understand, it used to be that three directors were required for a quorum. Now that the boards will range from five to seven directors, this provision looks to ensure that at least half of them will be needed for a quorum. Has there been an issue with the current port authorities' ability to reach a quorum; and, if so, has it had any impact on their ability to make decisions and to function?

Mr T.R. BUSWELL: The answer is no. I am not aware that there has been an issue about port authorities having a quorum present to conduct the business of the meeting. It is just reflective of the fact, as the member pointed out, that we are moving from five to seven directors, so a minimum of half the directors are needed as opposed to in the previous provision, which was for three directors.

Clause put and passed.

Clauses 33 and 34 put and passed.

Clause 35: Schedule 8 inserted —

Ms R. SAFFIOTI: This clause relates to the transitional provisions and in particular to the Southern Ports Authority. On behalf of the member for Albany, when is the Albany Port Authority expected to no longer exist and when will the new signage and the Southern Ports Authority be created?

Mr T.R. BUSWELL: Our estimation at this stage is 1 July.

Mr P.B. WATSON: I think the minister is aware of which changes will be happening, such as the final changes.

Mr T.R. BUSWELL: I cannot give an answer to that at this stage, but on the basis of my conversation last week with the member for Eyre and the member for Albany around the composition of the board I am hopeful to be in a position to make some announcements around, let us call it an interim board, probably at the end of February next year. I will be in touch with both those members and the member for Bunbury ahead of that time to have the conversations that last week I gave an undertaking to have. I expect that one of the objectives of that board, one of the issues that it will have to deal with pretty early on, and the interim chair is already looking at this, is the likely organisational structure. I do not think it would be appropriate for me to pre-empt that—in fact, I cannot.

Mr P. PAPALIA: Does the minister anticipate that by 1 July not only the board but also the new structure within the ports will be bedded down and operating as a combined entity? Is that in all three ports? Is that the anticipated date?

Mr T.R. BUSWELL: The board will be appointed ahead of the merger. As to how long it then takes to bed down the changes around employment, I do not think it will be a short time. As I indicated last week, there are good people, especially in the southern ports, across all the different ports. It is going to be a job of work. That is why I want to consult with the local members and we will be working with the interim chair and the interim board to make sure that we handle that transition. I am sure that there will be some delicate matters that we will have to deal with through that process.

Mr P. Papalia: So there's no deadline?

Mr T.R. BUSWELL: No.

Mr P. Papalia: You're going to work, you know you're going to consider —

Mr T.R. BUSWELL: Yes, and I think that the boards will be sensitive to circumstances as they work through that.

Clause put and passed.

Clauses 36 to 45 put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MR T.R. BUSWELL (Vasse — Minister for Transport) [1.58 pm]: I move —

That the bill be now read a third time.

MS R. SAFFIOTI (West Swan) [1.58 pm]: I will make some brief comments at the third reading stage of the Ports Legislation Amendment Bill 2013. My colleague, the member for Kimberley, wants to make a contribution, which I expect will be after question time. I put on the record that we are not opposing this bill. I think that through consideration in detail more worrying aspects of the bill came through in the discussion, particularly the pressure and onus on the port authorities to contract out and privatise some of these activities that came out in relation to the statement of corporate intent and the annual report tabled by the port authorities. The port authorities are now going to be required to justify and explain when they are not outsourcing and privatising. That certainly came out in that detail.

I am upset that the member for Victoria Park's amendments he moved the other day were not accepted by this government. As I recall, although I was not in the chamber at the time, those amendments were that should the government make a decision to lease or sell any part of its property worth more than $5 million that it would go through an open process, actually test the market and go through a proper tender process, which does not seem to be occurring.

Debate interrupted, pursuant to standing orders.

[Continued on page 7247.]