

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH,
WEDNESDAY, 29 AUGUST 2001**

Members

Ms Margaret Quirk (Chairman)
Hon Ray Halligan (Deputy Chairman)
Hon Ljiljana Ravlich
Hon Robin Chapple
Hon Simon O'Brien
Mr Rod Sweetman
Mr Peter Watson
Mr Terry Waldron

Committee met at 10.05 am

BUNBURY, MS JENNY,
Director Maritime Policy, Department for Planning and Infrastructure,
1 Essex Street,
Fremantle, examined:

CALCUTT, MR GREG,
Parliamentary Counsel,
11th Floor, 141 St Georges Terrace,
Perth, examined:

DREW, MR CHRIS,
Assistant Parliamentary Counsel,
11th Floor, 141 St Georges Terrace,
Perth, examined:

SAMNAKAY, MR IQBAL,
Acting Manager Planning and Policy Marine Safety,
Maritime Division, Department for Planning and Infrastructure,
1 Essex Street,
Fremantle, examined:

The CHAIRMAN: Good morning. Thank you very much for attending. The committee has made a decision that to streamline the process, we will not be too adversarial. We just want to resolve how the regulations came about in this format, what instructions were made and what the process was in arriving at the current regulations. I welcome you to the meeting. Can you please state the capacity in which you appear before the committee?

Ms Bunbury: I appear before the committee in the capacity of the director who was responsible for the Act and the drafting of the regulations at the time this was done. I was not the instructing officer. Mr Samnakay has the detail of that and he will provide that information.

The CHAIRMAN: You were given a document entitled "Information for Witnesses". Have you completed that form?

Ms Bunbury: Yes.

The CHAIRMAN: Have you read and understood its contents?

Ms Bunbury: Yes.

Mr Samnakay: Currently, I am the Acting Manager of Planning and Policy within the marine safety directorate of the maritime division. In relation to these regulations I was the instructing officer for the maritime division.

The CHAIRMAN: How long have you held that position?

Mr Samnakay: I have been in my current position for just over two months.

The CHAIRMAN: And prior to that?

Mr Samnakay: Prior to that I was in the maritime policy directorate and I was there for approximately two years.

The CHAIRMAN: Have you read the document entitled “Information for Witnesses”?

Mr Samnakay: Yes, I have.

The CHAIRMAN: Do you understand the information contained in that document?

Mr Samnakay: Yes, I do.

The CHAIRMAN: Have you signed and acknowledged it today?

Mr Samnakay: Yes.

The CHAIRMAN: Mr Calcutt, your business address is 11/141 St Georges Terrace, Perth.

Mr Calcutt: Yes.

The CHAIRMAN: You hold the position of parliamentary counsel.

Mr Calcutt: Yes.

The CHAIRMAN: Have you read the “Information for Witnesses” document?

Mr Calcutt: Yes, I have.

The CHAIRMAN: Have you signed and acknowledged that you have read and understood its contents?

Mr Calcutt: Yes.

The CHAIRMAN: Mr Drew, you are assistant parliamentary counsel.

Mr Drew: Yes, I am.

The CHAIRMAN: You are also on the 11th Floor of the Hartley Poynton building at 141 St Georges Terrace, Perth.

Mr Drew: Yes.

The CHAIRMAN: Have you read the “Information for Witnesses” document?

Mr Drew: Yes, I have.

The CHAIRMAN: Have you signed and acknowledged that you have understood that material?

Mr Drew: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. In the course of your evidence, to assist Hansard, if you quote any document, please quote its full title. I also remind you that the transcript will become a matter of the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Ms Bunbury, would you like to make an opening statement to the committee?

Ms Bunbury: Yes, and it will be a brief statement. For the committee’s reference, I will put these regulations into context. The Port Authorities Regulations were developed to support the Port Authorities Act, which came into effect in 1999. The Port Authorities Act brought, for the first time, all the Western Australian port authorities - I am sure you are aware of all of them, but I can give you all the names if you wish - under one Act. The intent of the Act was to allow the port authorities to operate as commercial entities but within a government framework. Previously, each port had operated under its own legislation and had its own set of regulations. The ports had some

common regulations, as well as some that were different. In drafting these regulations, we have attempted to bring together the important parts of the previous regulations and also to introduce some new ones that were needed to support the Act. That probably puts it into context. Mr Samnakay will talk about the particular regulations that you have asked about. The majority of those regulations existed in the previous regulations of one or more of the port authorities.

The CHAIRMAN: What was your personal role in relation to the preparation of these regulations?

Ms Bunbury: My personal role was not very great at all. When the process began, I was not in this position; I was working in a different area of transport. I went to transport in November last year. At that time, the regulation drafting was fairly well progressed and almost finalised, so I was not directly involved with the actual drafting. I was supervising Mr Samnakay and the other staff who were involved with the preparation.

The CHAIRMAN: When did you start there?

Ms Bunbury: I went to this position in Fremantle in November last year.

The CHAIRMAN: At that time the drafting was fairly well under way.

Ms Bunbury: It was fairly well under way; it was certainly in the latter stages of the preparation of the documentation and the competition review. I saw the documentation that went through and I made some comments, amendments and so on. However, I was not party to the detail or to the detailed consultations that went on with the port authorities. I stress that these regulations were developed in close consultation with the various port authorities to ensure they were drafted in a way that would best meet the port authorities' requirements consistent with government policy.

The CHAIRMAN: You say that you had an oversight role. Did you need to look at whether the regulations were in some way consistent with state and government policy?

Ms Bunbury: Again, I looked at it not in detail, but in a general sense. I cannot be specific about it.

The CHAIRMAN: I will ask Mr Samnakay about that. Do you recall when the regulations were finalised?

Ms Bunbury: They were finalised about the time of the election. A few minor changes were made in February-March, then they went to the new minister and so on. They were ready around the time of the election.

The CHAIRMAN: Were any subsequent changes made following the election of the new Government, or did they go ahead unchanged?

Ms Bunbury: I think one change, which did not relate to the political situation, was made after the election. It related simply to the situation with the Fremantle Port Authority and towage requirements.

The CHAIRMAN: In the preparation of the regulations, was there any consultation with stakeholders other than port authority personnel?

Ms Bunbury: You will have to ask Mr Samnakay to answer that question.

The CHAIRMAN: Are you aware of whether similar regulations exist in other States?

Ms Bunbury: Similar regulations will exist for similar legislation in other States.

The CHAIRMAN: Are you aware of any specific departures that were taken in these regulations from those that cover other ports in other States?

Ms Bunbury: No, not specifically.

The CHAIRMAN: As a matter of policy, do you have any views on when something should be more properly enshrined in an Act rather than in regulations?

Ms Bunbury: This is a personal view borne out of experience. It is important that we put into regulations matters that may need to be changed for operational reasons, so we are not required to change the Act for something that is not a major policy issue.

The CHAIRMAN: The Act is already in force.

Ms Bunbury: The Act has been in force since 1999.

The CHAIRMAN: Do the pre-existing regulations effectively cover the Act, or are there no regulations at all other than these ones?

Ms Bunbury: There are regulations for most of the ports, but they are not as comprehensive as this set of regulations. I will give you an example of obstructing port facilities. Regulation 81 is headed "Obstructing port facilities and causing nuisance prohibited". The Fremantle Port Authority had a regulation that related to this, but the Bunbury Port Authority did not. Late last year or early this year, there was a problem in Bunbury with people boarding ships and causing disturbances. The Bunbury Port Authority believed that it did not have that regulation in place and was very concerned to ensure that one was put in place.

The CHAIRMAN: I understand that a substantive provision in the Act would have covered that.

Ms Bunbury: Not in quite the amount of detail as this regulation.

The CHAIRMAN: Mr Samnakay, you were involved in drafting the substantive provisions. Can you provide some greater detail on why particular provisions were drafted the way they were or details of the instructions you gave in relation to that? When did you commence the role in relation to these regulations?

Mr Samnakay: Approximately two years ago.

The CHAIRMAN: Did you have sole charge of giving instructions on these regulations?

Mr Samnakay: I took over from another gentleman, because we basically moved roles. After the first draft was produced, essentially I was the instructing officer from that point onwards.

The CHAIRMAN: When you came on board, was a first draft already in existence?

Mr Samnakay: Pretty much so.

The CHAIRMAN: Who was that gentleman?

Mr Samnakay: Bryant Roberts.

The CHAIRMAN: How long ago was that?

Mr Samnakay: Approximately two years.

The CHAIRMAN: Did the first draft bear much resemblance to what was finally produced?

Mr Samnakay: Yes.

The CHAIRMAN: What changes were made in the interim?

Mr Samnakay: Between the first draft and the final draft?

The CHAIRMAN: Yes.

Mr Samnakay: All up we looked at approximately 1 500 regulations from the various port authorities. We amalgamated all of them. We were trying to get a core set of regulations that could be consistently applied across all ports. When there was a particular requirement in a regulation, different ports would have made different inferences from it, because the principle legislation was different and the regulations would have been applied differently. We were looking at the safety requirements that we would need which would be applicable to all port authorities and which could be consistently applied across the Esperance, Broome or Fremantle Port Authority. In addition to that, we were looking at regulations that are required to be prescribed because of the Act. There

were also particular nuances of specific ports that we needed to allow for. Essentially, it was a case of trying to gel the whole thing together. That was the intent of producing the amount of regulations.

The CHAIRMAN: When you say “we”, was someone else working on it with you?

Mr Samnakay: As Jenny mentioned, it was done through a consultative process in which there was continual involvement with the port authorities. The committee involved key players from port authorities who were asked to be on the committee to develop the regulations. I would have taken notes at committee meetings and then provided instruction to parliamentary counsel from the recommendations of the committee.

The CHAIRMAN: Other than the port authorities, what other stakeholders were consulted?

Mr Samnakay: From our perspective, and given that these are principally safety regulations, the only other stakeholders that we consulted were within the Department of Transport. There are a lot of safety-based regulations, so we wanted to ensure they were consistent with the requirements that would be imposed on those ports that were not essentially port authorities, and there are a lot of them in the State. We wanted to ensure that there was not much difference. Beyond that, we were relying on the consultative structures that the port authorities would have had in the development of these regulations to ensure that, as we developed them, they were fairly consistent with the port authorities’ needs and their stakeholders’ needs.

The CHAIRMAN: Who was your immediate supervisor?

Mr Samnakay: Bryant Roberts was my immediate supervisor, and then we answered to Jenny Bunbury and her predecessor.

The CHAIRMAN: When you consulted parliamentary counsel and if, for example, they made a suggestion, with whom would you need to clear it or discuss it?

Mr Samnakay: If parliamentary counsel made a suggestion, I would bounce it off a number of port authorities. It would depend on the content. If it were a case of our wording it this way or that way, because that is what the inference meant, we might make the decision internally. However, we would definitely bounce it off other port authorities before we went back to parliamentary counsel.

The CHAIRMAN: How closely involved was the minister’s office in any of these matters?

Mr Samnakay: Not a great deal at all, other than the fact that when the Act was being passed through Parliament, we had the okay to develop the regulations. The minister would not have seen a draft set of regulations until probably the second last draft.

The CHAIRMAN: Did you deal with anyone from the minister’s office; for example, a policy officer?

Mr Samnakay: In the current minister’s office or the previous minister’s office?

The CHAIRMAN: The previous minister’s office.

Mr Samnakay: Stephanie Calder was the lady with whom we would discuss any issues. However, I do not think we would have bounced anything off her in that regard anyway.

The CHAIRMAN: Why do you say that?

Mr Samnakay: I presumed there was nothing in there that we considered to be of a contentious nature. It was a case of amalgamating or merging regulations that existed.

The CHAIRMAN: Ms Bunbury said that the regulations in their current form were mostly completed prior to the state election.

Mr Samnakay: Yes. The fact is that regulations will always need to be amended because circumstances change due to the way they are structured.

The CHAIRMAN: In giving your instructions about the legislation, were you mindful of the kinds of matters that needed to be dealt with in the regulations as opposed to in substantive legislation? Did you make any specific distinction?

Mr Samnakay: As Jenny has already indicated, my view is that the principles are outlined in the Act and the regulations are much more prescriptive. That is what we tried to do with the regulations.

The CHAIRMAN: That is, to effectively fill in the detail where you perceived the Act did not have enough substance?

Mr Samnakay: To fill in the prescriptive detail essentially. One would not expect the Act to be that prescriptive on, for example, how a ship should tie up to a wharf.

The CHAIRMAN: You should have in front of you the Port Authorities Act and the Port Authorities Regulations. Regulation 6 states that the vessel in port is not to exceed the maximum safe speed. I understand that you have had some correspondence with the committee and you are aware of certain concerns. What can you say in relation to this provision?

Mr Samnakay: It is not a new regulation; it existed in the previous regulations. It may be cast in a different term. Previously we looked at minimum speeds. We then went to a maximum speed with the view that some changes have occurred in the technology and so on at ports and port authorities and in how ships come into and go out of ports. We framed it in that sense.

The CHAIRMAN: What is the maximum speed?

Mr Samnakay: The difficulty is to stipulate a maximum speed of 10, 15 or 20 knots. We cannot do that because a ship has different characteristics, and we must be aware of how a ship will respond in different conditions. A ship going out against the tide in a storm will travel at a speed different from one experiencing no tide factor on a calm day.

The CHAIRMAN: How would the master of a vessel know what his liabilities or responsibilities were in relation to this regulation?

Mr Samnakay: It is within the jurisdiction of the harbourmaster. The harbourmaster will determine the date and time the ship leaves and he will take into account the weight on board. He will then inform the ship that it will leave during these dates and, if it were an oil tanker, and given certain conditions, it will not exceed, say, nine knots.

The CHAIRMAN: Is it the speed in excess of what the harbourmaster directs?

Mr Samnakay: If a ship exceeds nine knots, it is basically exceeding the safe speed limit that is designated by the harbourmaster as safe passage.

Hon SIMON O'BRIEN: If that is the case, why not state explicitly in this regulation or somewhere else in the regulations that the maximum speed is as determined or directed by the harbourmaster? I ask that question because, as it stands at the moment, it begs the question: in whose opinion is the maximum safe speed determined?

Mr Calcutt: It is the court's opinion. It is quite simple. It is a matter of evidence. What the harbourmaster may have indicated would be of relevance, but in the end it is the master's responsibility to navigate at a safe speed, and the court can make a judgment of what that is. That is no different from the Road Traffic Act provisions concerning dangerous driving, which include driving at a speed that is dangerous in the circumstances. That is a matter for the court to determine.

The CHAIRMAN: The difficulty is that this is illusory. How do people determine what are their obligations? Dangerous driving is a bit different.

Mr Calcutt: I do not see any difference at all. It is probably easier here, because we are talking about experienced mariners who will know what the proper speed is at a certain time.

The CHAIRMAN: Where in the regulations or the Act does it outline that one's general obligations are to navigate in a way that is appropriate for the conditions and the length, weight, etc of the vessel?

Mr Calcutt: I do not think it is needed; it goes without saying.

The CHAIRMAN: What does maximum speed mean? Is it defined anywhere?

Mr Calcutt: It does not need to be.

Hon LJILJANNA RAVLICH: What happens in the event of a harbourmaster defining a maximum speed to be X knots, which is too high for the weather conditions, and then an accident with the vessel results? Regulation 14 says that the port authority is not liable for any damage to the vessel. In a sense, you are saying that it boils down to the harbourmaster's judgment.

Mr Calcutt: I am not saying that.

Hon LJILJANNA RAVLICH: If that judgment is wrong, or the instruction by the harbourmaster is such that it causes damage to the vessel, there is no comeback for the person who has suffered the damage. Under these regulations, it appears that that person can seek redress at law. Did you not see an inconsistency with regulation 14 while you were drafting this regulation?

Mr Samnakay: No, I do not. Although these regulations and the Act basically apply to port waters, we must realise that in the maritime world there are a number of other pieces of legislation that tie in with them. At the end of the day, the master of the ship is always the master of the ship. If the master of the ship thinks that the nine-knot speed limit is too fast and he wants to go slower, that is his prerogative. At the end of the day, the master of the ship is fully in control of the ship in all circumstances. The harbourmaster tries to manage the safety of the port, and we must take that into account as well.

Mr WATSON: We are talking about experienced mariners. However, if the skipper goes into a strange port about which he knows nothing, and there are no regulations and it is up to the harbourmaster, how does he convey that to the skipper?

Mr Samnakay: For example, if a ship comes into almost any of the port authorities, one assumes that the master of the ship would not have an in-depth knowledge of the port; therefore he is required to take on board a pilot. The requirement under the Act and the regulations is that a pilot be taken on board. Although the master is still in charge of the vessel, the pilot is there to assist with the passage and to make it safe.

Mr WATSON: Does the pilot gauge the speed limit?

Mr Samnakay: No. The master of the ship is still under the instruction or guidance of the harbourmaster who says that the ship will travel at this speed. The pilot will make a judgment on the characteristics of the vessel and so on. As was mentioned previously, a master class 1 is in charge of vessels that come into our ports. The master of the ship must have a fair bit of competency and experience before he can take on that responsibility. That is internationally accepted. A person does not take on a ship unless he has these mechanisms and controls in place. A fairly strict protocol must be followed before a person can take charge of a ship. We must account for that requirement as well.

Hon ROBIN CHAPPLE: Mr Calcutt, you said that the master of the vessel was in charge of the vessel and that he or she should know the safe limitations. Clearly, things occur in which the master of the vessel might determine a safe limitation, which might not actually be safe in practice. You said that there was no need for a prescription and you related that to the Road Traffic Act. The Road Traffic Act has two determinations: first, there is a speed limit and it should not be exceeded; and, secondly, if the conditions are particularly bad, and a person drives at, say, 10 or 20 kilometres above that speed limit, he or she would then be charged with dangerous driving because the person was not driving to the conditions. It comes back to the point that a limit is prescribed in law. We

are saying that the master may determine a speed limit which he or she thinks is acceptable. That is the parameter in which a person may or may not be fined. If I were the master of the ship, I would then turn around in court and say that I had identified quite clearly that 20 knots was capable of being sustained in the port. We are actually putting in place a fine, or whatever, which is purely relevant to what the master of the vessel determined was safe. You also said that the harbourmaster has some role to play in this, but how does he interrelate?

Mr Calcutt: I do not understand what you are saying at all.

The CHAIRMAN: Perhaps I will put it another way. I will circumvent Hon Robin Chapple's point a bit. Would there be any difficulty with indicating a speed in this regulation?

Mr Samnakay: Yes, there would.

The CHAIRMAN: Why?

Mr Samnakay: Let us take an example that is within our neighbourhood, and I will make up the numbers. A Rottneest ferry can safely come into the Fremantle port at 20 knots and can stop within two boat lengths. There will be big problems with an oil tanker coming in at 20 knots; in fact, there would be big problems with an oil tanker coming in at 10 knots. We must be quite clear in the speed limits that are set. We take into account how the vessel will behave in those conditions. We know quite well that the Rottneest ferry has a certain capacity for stopping distance and weight, etc. It has different characteristics from an oil tanker.

The CHAIRMAN: Can that not be specified in the schedule?

Mr Samnakay: No. A vessel can vary in size, draught weight and gross weight. It depends on whether it is carrying empty boxes or full boxes. The principles of weight, weather conditions and temperature have a bearing on the speed limit that can be established for a vessel to come into and go out of a port.

Mr WATSON: So, it is open slather then?

The CHAIRMAN: Hon Robin Chapple is saying that there is an objective standard, but then the subjective factors come into play; for example, whether it is wet or dark or there are roadworks or whatever. There is a point at which a person will be guilty of travelling at excess speed as a matter of course. However, if, for example, something happens and the person is driving within the speed limit, but it is inappropriate for a number of other circumstances, the subjective criteria come into force. Other regulations in other States specify these criteria. Why is it not possible to have both subjective and objective criteria in this regulation?

Hon ROBIN CHAPPLE: It really comes back to the master of the vessel. It is not the port authority harbourmaster who is making that determination. If a person goes into a court of law, the master of the vessel will say that he hit the wharf at 11 knots even though he determined that he was capable of travelling at 12 knots within the port.

Mr Drew: That would be answered by the prosecution, because the prosecution bears the onus of proving the case. Therefore, if the allegation is that a vessel was travelling at an unsafe speed, the obligation would be on the prosecution to prove, by expert evidence if necessary, that, given that vessel and those conditions, the vessel was exceeding the safe maximum speed.

The CHAIRMAN: Why must we leave things for the courts? People want to conduct themselves in an orderly and law-abiding manner. Why can there not be some level of certainty so they know what their obligations are, rather than people throwing their hands in the air and saying that it is up to the courts.

Hon RAY HALLIGAN: I accept what you have said about the courts determining this issue, but where does the prosecution obtain its evidence from? When does this penalty come into play? You have said that the master is in control and I accept that. He should be competent and efficient, and that is fine. However, the penalty of \$12 000 must come into play at some stage. Someone

somewhere has to say that a person has contravened the laws and this penalty will now come into play. That is being imposed by the courts, but they must obtain their evidence from somewhere. Will they obtain that from the harbourmaster who will say, "I said eight knots was sufficient; the ship went at 10 knots and an accident occurred", or "Because the ship went above the speed that I set, I will impose the penalty and take the master to court and have that penalty imposed"? The evidence must come from somewhere and it must be from some competent authority. Where does that come from?

Mr Drew: It could come from the harbourmaster. It would depend on the circumstance.

Hon RAY HALLIGAN: Who else? You have just said that, given all of the circumstances, the harbourmaster determines on the day what would be a safe limit.

Mr Calcutt: Mr Drew has not said that.

Hon RAY HALLIGAN: That is what it amounts to.

Mr Drew: The point has been made that the obligation is always on the master of the vessel to make that determination. That is the master's responsibility.

Hon RAY HALLIGAN: When does the penalty come into play? Who decides that the master of the ship or the owner will be subjected to that penalty?

Mr Drew: As a matter of law, the magistrate hearing the case on being convinced beyond reasonable doubt that the prosecution has proved its allegation.

Hon RAY HALLIGAN: Who brings it to court?

Mr Drew: The port authority.

Hon RAY HALLIGAN: The port authority would rely on what evidence to take that to court?

Mr Drew: Evidence that it would consider sufficient in the circumstances.

Hon RAY HALLIGAN: From whom?

Mr Drew: The harbourmaster or from whomever it selected. If we think of all the possible prosecution cases, we will find that there are always avenues to obtain expert evidence. This is just another example.

Hon RAY HALLIGAN: That is exactly what we are asking now. Because of the lack of information within that regulation, where would that evidence come from? We need to be convinced that what requires a penalty to be imposed on a master is fair and reasonable.

Ms Bunbury: One point that has not been brought out in the discussion - Mr Samnakay may enlarge on the issue - is that maximum speeds generally comply with the Permanent International Association of Navigational Congresses. That group defines safety margins under different operational conditions. When the harbourmaster gives his advice, and the master of the ship considers whether he will accept that advice, both of those people would be well aware of the guidelines put out by the Permanent International Association of Navigational Congresses. I do not know whether that helps, but it gives the committee something behind it.

Mr Samnakay: Besides its being a guideline that is utilised, the Fremantle Port Authority runs a similar program given the conditions and so on, which then determines the speed limit.

Mr WATSON: Are you saying that the harbourmaster advises the ship of the speed limit as it is coming into the harbour?

Ms Bunbury: That is my understanding.

Mr WALDRON: Is that done via the pilot?

Mr Samnakay: There is a requirement for communication between the ship and the port authority. It is like being within an airport. The same thing happens in a port. A ship basically travels in a port as determined by the harbourmaster. The harbourmaster controls safety within the port.

Hon LJILJANNA RAVLICH: On how many occasions has damage been caused to vessels as a result of maximum speed issues?

Mr Samnakay: I am not aware of how many.

Hon LJILJANNA RAVLICH: In the past 10 years, on how many occasions has damage been caused to vessels as a result of inaccurate speeds being given?

Mr Samnakay: I am not aware of any details.

Hon LJILJANNA RAVLICH: Are you not aware of any cases?

Mr Samnakay: No, I am not aware of any cases to which I could attribute speed as the critical issue.

Ms Bunbury: We can take the question on notice.

Hon LJILJANNA RAVLICH: Yes, thank you. Also, in the past 10 years, on how many occasions has damage been caused to vessels while they are in port authorities? Is it possible to get a figure of how frequently the issue arises of damage being caused to vessels. If there have been no occurrences over the past 10 years, obviously our concerns as a committee would be diminished; whereas, if it is a regular occurrence and there is constant damage caused to vessels, we have a problem with the regulation.

The CHAIRMAN: Technically, there does not need to be any damage; it is merely the speed. The \$12 000 penalty seems to be reasonably substantial. Why did you strike that figure? Is there any particular reason?

Mr Samnakay: Yes, there is a very good reason for it. If a ship is travelling at a speed that is too dangerous to travel in a port -

The CHAIRMAN: Where is the word "dangerous"?

Mr Samnakay: I am talking about an example in which a ship is exceeding the speed limit and causes damage to a port.

The CHAIRMAN: It does not say "cause damage"; it says only "maximum speed". That might be quite safe in all circumstances. It is just exceeding the speed that the ship is directed. It has nothing to do with damage and nothing to do with being dangerous.

Mr Drew: That is the maximum penalty. The sorts of circumstances that are relevant to each prosecution would enable a magistrate to make a determination.

The CHAIRMAN: I appreciate that, and I understand the difference between maximum and minimum penalties. The equivalent South Australian regulations have penalties in the vicinity of \$1 250, with the capacity for an expiation fee of \$160. That is a different ballgame.

Mr Drew: When were those regulations put in place?

The CHAIRMAN: In 1994. We are also a bit perplexed about the quantum. The greater the quantum of penalty, the more certainty there needs to be in the regulations.

I turn now to regulation 14, which Hon Ljiljanna Ravlich has already mentioned. Clause 34 of schedule 7 in the Act deals with the limitation of liability and refers to the regulations permitting the limitation of liability in specified circumstances. However, it does not talk about limiting liability generally. The impression of this committee is that the regulations seek to oust liability generally. How can you say that there is power to do that?

Mr Calcutt: Are you talking about limitation of liability?

The CHAIRMAN: Yes, or exclusion of liability.

Mr Calcutt: They are two different things.

The CHAIRMAN: That is why we are making the distinction. Clause 34 of schedule 7 permits regulations relating to the exemption of a port authority from liability for damage or loss in circumstances specified in the regulations. Do you accept that regulations are permitted when certain circumstances are specified as being appropriate to exempt the port authority from liability?

Mr Drew: Yes.

The CHAIRMAN: Regulation 14(1) states that a port authority is not liable for any damage or loss caused to a vessel in its port. Would you say that that is somewhat more general in character?

Mr Calcutt: No. Paragraphs (a) and (b) specify the circumstances.

The CHAIRMAN: What is left that is excluded?

Mr Calcutt: I am sorry. Are you talking about regulation 14(1)?

The CHAIRMAN: Yes. Clauses 2 and 3 of regulation 14 state that they do not intend to read down regulation 14(1). Basically, this regulation seeks to exempt the port authority from any loss or damage. I think another regulation has the same impact. You might also want to look at regulations 63, 64 and 65. Can you think of any circumstances in which a port authority would be liable for loss, damage or negligence?

Hon LJILJANNA RAVLICH: Is this consistent with what happens in other jurisdictions?

The CHAIRMAN: No. I understand that some of the other States' liability is limited to circumstances in which the port authority has not been negligent. It seems to the committee that the port authorities are purporting to exempt themselves from liability even when they have been negligent.

Mr Calcutt: Regulation 14 had some of its origins in regulation 81 of the Fremantle Port Authority regulations. However, without having the Fremantle Port Authority Act here, I do not know what the equivalent regulation-making power was. It may be that it had a wider regulation-making power than has been transposed into the Port Authorities Act. You could argue that regulation 14(1) certainly would have to be read down.

The CHAIRMAN: You can see that there might be an issue.

Mr Calcutt: Yes.

The CHAIRMAN: We will move on and come back to that if we have time. We have a couple of issues with regulation 20, which purports to permit a police officer, an authorised member of staff, etc to enter a vessel to determine whether a person is committing or has committed an offence under the Act or regulations. First, schedule 7(37) is limited to members of staff and police officers and does not extend to other persons who are authorised in writing. Secondly, that seems to require a reasonable belief that an offence has been committed as opposed to the regulations, which require that someone need not have a belief; a person can enter to determine whether an offence has been committed. Do you accept that there is a distinction between the two?

Mr Drew: If you are referring specifically to paragraph (c) of regulation 20, there may be circumstances in which it is necessary for the port to perhaps authorise a security officer or someone with some kind of specialist knowledge.

The CHAIRMAN: That is fine; but where does the schedule permit that occurring?

Mr Drew: The specific heads of powers do not limit others. For example, clause 3 of schedule 7 refers to all matters relating to the protection of life and property and safe navigation in the port. It might be incident to that head of power.

The CHAIRMAN: That is a good point. Powers of entry are interpreted very strictly by the courts, especially powers of entry without a warrant. There would be provision in clause 37 to specifically say that. It is my contention that the courts would read that down and interpret it quite restrictively for that reason.

Mr Drew: It is possible, but not necessarily the case.

The CHAIRMAN: Can you explain to us the difference between having a belief that an offence is being committed and being able to enter to determine? Do you appreciate the distinction?

Mr Drew: There is no reference in regulation 20(c).

The CHAIRMAN: The point is that it is wider than it is in schedule 7. Schedule 7 requires that for the person to enter, he must have some kind of belief that an offence may have been committed or is being committed.

Mr Drew: That is not correct. In part, clause 37 says -

. . . who are committing or have committed or are believed to be committing . . .

The CHAIRMAN: There must be facts on which we think a person has committed, are committing or are believed to be committing an offence. There is some basis for having a belief. Under regulation 20, a person need have no belief whatsoever. A person could have no view one way or the other, but he could go on board the vessel to determine whether he had a belief. It is two different things.

Mr Drew: Those are powers in relation to those matters. I think you are giving clause 37 a very restricted interpretation.

The CHAIRMAN: I hear what you are saying, but I do not agree with it whatsoever. Most other people in these circumstances must have a warrant. We are talking about entry without a warrant.

Mr Drew: A police officer may have that power anyway in these circumstances.

The CHAIRMAN: We are not talking about that; we are talking about what is empowered under the legislation.

Mr Calcutt: Regulation 86 of the Fremantle Port Authority regulations provides that a member of the police force or any officer duly authorised by the port authority have access to any vessel at any time for any purpose.

The CHAIRMAN: Although the intention was to consolidate the original regulations, we are talking about a new Act and new regulations. We are effectively starting from scratch. We are also drafting regulations in a climate in which there is far more focus on civil liberties, powers, rights and obligations. One cannot just infer or imply these sorts of powers.

Mr Calcutt: I do not think we can add anything.

The CHAIRMAN: Mr Samnakay, is the power of entry restricted in relation to the particular flag of the vessel? Does that need to be considered? Is there some issue of jurisdiction in that context?

Mr Samnakay: No. Once the vessel is in the port -

The CHAIRMAN: Do you contend that there is no difficulty whatsoever in entry?

Mr Samnakay: I would say that that would not be an issue.

The CHAIRMAN: The jurisdiction would be there in any event.

Mr Samnakay: Yes, it would.

The CHAIRMAN: Regulation 58 provides the power of appeal from a harbourmaster's decision. What was the intent behind this provision?

Mr Samnakay: We are saying that the harbourmaster has significant powers under the Act. The regulations allow a harbourmaster to take away and exempt a pilot's ticket. The person who has had the ticket taken away has no grounds of arguing against the harbourmaster. On the principle of natural justice, there is an avenue for that person to go to the port authority.

The CHAIRMAN: I am glad you raised the issue of natural justice, because that is our concern. We understand that the right of appeal is to the port authority. We also understand that the harbourmaster is a member of that port authority.

Mr Samnakay: No. The port authority is essentially the board that makes up the port authority, so the person would go to the board of the port authority. The harbourmaster is an employee of the port authority.

The CHAIRMAN: He has no role on the board, so he would not have any role to play at all in that determination.

Mr Samnakay: I presume that he, like the exempt master, would have to provide evidence to the port authority.

The CHAIRMAN: That resolves that issue. It is probably a bit more subtle than that. We are saying that the board's decision might be influenced because the harbourmaster is employed by the board. Is it a truly independent decision? By definition, it will probably take the employee's side.

Mr Samnakay: I suppose it allows it to do that. It gives the harbourmaster an opportunity to go to the board and say that these are the conditions under which I took the person's ticket away. Equally, it allows the person who has been aggrieved to put his case. We did not want a case in which the harbourmaster could say, "Your hair is too short today, so I will take away your ticket." He would have to give the reasons for that. It is a different matter if it were done on safety grounds, and that is the reason the mechanism is in there.

Hon ROBIN CHAPPLE: Quite often, the harbourmaster of, say, the Port Hedland Port Authority has been there for a long time and is the principal adviser to the board on all matters. Therefore, somebody to whom the board looks for all advice would be providing all information to the board, and the board, without particular experience in these matters, would take at face value exactly what the harbourmaster said, and the appellant would have no recourse.

Mr Samnakay: Initially they do have recourse to the board.

Hon ROBIN CHAPPLE: However, the board is being advised by the harbourmaster.

Mr Samnakay: If the board is functioning in its proper manner, it should take on that advice and deal with that issue on its merits.

Hon ROBIN CHAPPLE: Are the boards fully aware of all maritime law and those sorts of issues, or are they merely members of the wider community, whether they be members of the local mining corporation or whomever else, who sit on the board without maritime experience and accept the advice of the harbourmaster against an appeal from a ship's captain or whomever?

Mr Samnakay: Yes; the board may be a cross-section of the community. However, at the end of the day, it has the responsibility to ensure that the functions and procedural obligations of the port are part and parcel of its operations.

Hon ROBIN CHAPPLE: However, its adviser is the very person who is bringing the action.

Mr Samnakay: That may be the case. It may also depend on legal advice and advice from the Department for Planning and Infrastructure, which has the marine safety authority in it, and anybody else. There is a protocol for taking away a pilot master's ticket in the first place. We are saying that there are mechanisms for taking away that ticket, but there should be some mechanism to protect its being taken away.

The CHAIRMAN: Earlier we talked about regulations 63, 64 and 65 which effectively exclude liability. Do you agree that the exclusion of all liability, and possibly trying to oust the jurisdiction of the courts, is a significant matter?

Mr Calcutt: Certainly.

The CHAIRMAN: Is that something that would be more properly contained in the substantive Act rather than in subsidiary delegated legislation?

Mr Calcutt: No.

The CHAIRMAN: Why do you say that?

Mr Calcutt: My views on this matter are already on record in evidence to another committee of the House.

The CHAIRMAN: Would you mind indulging us as we have not had access to that?

Mr Calcutt: It is a matter for Parliament.

The CHAIRMAN: Whether or not it should be included in either?

Mr Calcutt: That is right. If Parliament wants to delegate the power to do something, that is fine. Each House must agree to that. There is no problem with that.

The CHAIRMAN: Do you agree that it is certainly not clear that the extent to which -

Mr Calcutt: There is an issue about whether the particular delegation extends as far as has been used. I agree with that entirely. However, the question of whether something should be in the regulations or in the Act is not a matter for the drafter.

The CHAIRMAN: You have a very good reputation as parliamentary counsel and you are obviously very experienced in these matters. Are there occasions when people ask for your advice on whether something should go into the regulations or into the substantive Act and would you provide it if you were asked?

Mr Calcutt: No, I would not. The only circumstances - again this is on record - in which I think it is entirely inappropriate for matters to be dealt with in regulations are when any regulations could affect the penalty that is applicable to an offence that is committed under an Act.

The CHAIRMAN: Good. That is the cue for the next question about regulation 81 and section 131 of the Act. I think Ms Bunbury mentioned this earlier. Regulation 81 refers to the obstruction of port facilities and causing nuisance, and it has a penalty of \$2 000. Under the Act there is an offence of hindering, obstructing, impeding or interfering with the doing of a thing required or authorised to be done by or under the Act and using threatening language to the chief executive officer or staff. That has a penalty of \$5 000. Obviously, section 131 is broader than regulation 81. What is covered by regulation 81 that is not covered by section 131? Ms Bunbury you might be able to answer this, because I think you said earlier that there was an instance.

Ms Bunbury: It is my understanding that the regulation is more specific about the obstruction and interference than is the Act. I have not had the benefit of looking at the Act closely in relation to this issue. It appears that the regulation talks specifically about port facilities and property, but it is not stated quite so clearly in the Act.

Hon ROBIN CHAPPLE: It is the same words. The Act says "obstruction".

Mr Drew: It is picking up the words from clause 39 of schedule 7 to the Act.

The CHAIRMAN: I will give an example. Let us say that you did something at the port authority and someone waved his finger at you and said that you will be charged. You then go to your lawyer and tell him that you think you will be charged with obstruction, hindering or swearing at a member of staff, but you are not quite sure what. Your lawyer would be in a quandary. Would he go to the regulations or to the Act? Even if he had some instructions about what conduct you were alleged to

have done, he would be unlikely to advise you whether it would come under the regulations or the Act? They are effectively two different regimes.

Mr Drew: If it were your example of using certain language, the specific provisions of the Act would be applicable.

The CHAIRMAN: Except it may well be interfering or obstructing.

Ms Bunbury: Under the Act.

The CHAIRMAN: By no means do I think that is clear.

Hon SIMON O'BRIEN: Section 131 of the Act indicates a penalty of \$5 000; yet, similar offences under regulation 81 impose a penalty of up to \$12 000. Can you comment on that?

Ms Bunbury: I read them as being different. Section 131 refers to a person who hinders the operation of the Act. Regulation 81 is talking about people obstructing or interfering with port facilities and the operation of port facilities. That is different from the Act. I welcome the comments from our legal friends, but I see it as quite different.

Mr Samnakay: I support Jenny. One is hindering the Act itself; whereas this one is about the operation of the port.

The CHAIRMAN: Accepting that they are different, why would you not include all of them in the same place, so a person could see the range of offences in one section. For example, either this regulation could be incorporated into the Act or the section of the Act could be repealed and they could all be put into the regulations. Is it not unsatisfactory that some offences are in the Act and some are in the regulations? The quantum of \$12 000 seems excessive, given the offences under the Act.

Mr Drew: More general statements, as in section 131(1), seem to be entirely appropriate for the Act. Schedule 7 allows a whole range of things to be dealt with by regulation, and this is just an example.

The CHAIRMAN: What about the quantum? Would that have some influence?

Mr Calcutt: You have perhaps identified a problem with the Act more so than with the regulations.

Hon SIMON O'BRIEN: I take your point about the difference between the two. Does the power for regulation 81 rely on clause 39 of schedule 7?

Mr Drew: I would say that it largely does, but not necessarily exhaustively. There still remains the general, necessary and convenient power which is not detracted from by the specific heads of power. It largely relies on clause 39, but we are able to draft regulations using all of the regulation-making powers conferred by the Act. There may be other ways of arguing the source of the power for regulation 81.

Hon RAY HALLIGAN: I will go back to the comparison with section 131 of the Act. In part, that section states "hinders the operation of this Act"; whereas regulation 81 talks about port facilities, the operation of port facilities and the like. The long title of the Act states -

An Act about port authorities, their functions, the areas that they are to control and manage, the way in which they are to operate, and related matters.

To me that reads the same as the operation of the port facilities. There appears to be some ambiguity as far as the powers are concerned. Although we may talk about the operation of the Act when we look at the long title, to my mind it fits very closely with the words in regulation 81.

Mr Calcutt: A possible distinction is that section 131(2)(a) is directed specifically at particular provisions in the Act or in the regulations that say that the port authority must or can do something or the harbourmaster must or can do something. When a particular duty or function is imposed on a

person or body under the Act, it is talking about obstructing or impeding that; whereas regulation 81(1)(b) is a more general provision. We would not necessarily be able to point to any particular section of the Act. With respect, I do not think that the long title can be used in a general way to feed into section 131. That is setting a scene more for the Act than for a specific provision.

Hon RAY HALLIGAN: Do you see a reasonably clear distinction between the two?

Mr Calcutt: There is some overlap.

Hon RAY HALLIGAN: I said “reasonably”.

The CHAIRMAN: I know you have views about this and I do not want to trespass on ground that we have already covered, but would it not be neater if all of the offences were in either the Act or the regulations and were all together?

Mr Calcutt: That would be right. What needs to be borne in mind is that clause 39 of schedule 7 is not just a power to make regulations prescribing offences. It could well give a power to do things to prevent damage or protect property, so it probably has two aspects to it.

The CHAIRMAN: How is regulation 82 authorised under schedule 7? Regulation 82 refers to taking part in a procession or demonstration or speaking to an assembly of people, given that there need not be a nexus between doing that and in any way interfering with a port authority’s operations or the administration of the Act.

Mr Samnakay: To some extent we have homed in on schedule 7. There are broader powers to make a regulation than just those in schedule 7 and section 139. What we are saying is very much like the one above; that is, a person is on an industrial site and might be impacting on what happens on an industrial site.

The CHAIRMAN: No, it does not say that. If it said “taking part in a demonstration which interferes with the operations of the port authority”, obviously it would be authorised. It says that a person must not take part in a procession or demonstration or speak to an assembly of people. There is no requirement under that regulation for there to be any interference with or any hindering of the operation of the Act. I am in a bit of a quandary about how that is authorised. What are the powers for putting that in there? Do you agree that this would have been a somewhat contentious clause, given the recent background in industrial action on various port sites?

Mr Samnakay: I am not sure whether that is another of those historical regulations that has been there for years and has now been picked up.

The CHAIRMAN: Even if that were the case, obviously the sensitivities of it would be such that you would have been aware of it at the time you were giving instructions about drafting the new regulations.

Mr Samnakay: I am not sure about the sensitivity of it. We were aware of that, but at the end of the day, a port still has to run a port.

The CHAIRMAN: I am not disputing that. If that were the case, would your instructions not include “participating in those activities which were likely to or did interfere with the operations”? My difficulty with that section is that there is no nexus between doing those activities and in any way hindering or obstructing the port from doing its daily business. Do you understand what I am saying?

Ms Bunbury: I understand what you are saying. In a port it is assumed that -

The CHAIRMAN: Looking at schedule 7, I am curious about the basis on which that regulation can be made.

Mr Drew: As I referred to earlier, there does not need to be a specific head of power in schedule 7. If it can be considered necessary or convenient to make that regulation to assist the port in its activities under the Act, that would seem to be quite appropriate.

The CHAIRMAN: That goes back to my earlier point that this does not relate to the operation of the port. Nothing in section 82 links it with any port activity or suggests that that is there to facilitate the free and unimpeded business of the port.

Mr Drew: The Act confers the exclusive control of a port in its port authority. This may well be an aspect of that.

The CHAIRMAN: Are you saying that there is a general implication somewhere in schedule 7 that the port authority would be empowered to make such a regulation?

Mr Drew: I would not refer it specifically to schedule 7, but if we consider the Act as a whole and what it is attempting to do in relation to ports and port authorities, we could come to the conclusion that that kind of provision is authorised.

Ms Bunbury: It would be in section 139.

Mr Calcutt: The habit of providing these lengthy lists of regulation-making powers is of reasonably recent origin.

The CHAIRMAN: Obviously it is fraught with difficulty.

Mr Calcutt: We are caught between two stools. In trying to help ourselves and others, we sometimes get caught - as you have already identified on a couple of occasions - and we may have unwittingly restricted the power that we previously had. We can keep saying for as long as we want that the general power we have to make regulations is not restricted by the particular things we have set out; however, inevitably, as you know, a court will look at that and say "If they meant to say that, they would have said so."

The CHAIRMAN: Regulation 116 is about the exemption from liability. This is interesting in two respects. Earlier we talked about a broader exemption from liability, which is not limited; yet, here it has quite a specific one. One wonders what the need for regulation 116 is in view of the earlier provisions. Can you explain that?

Mr Samnakay: This is what we call force majeure provisions, which generally apply in relation to ports.

The CHAIRMAN: The earlier provisions in the Act are broader and you have managed to exempt everything, however caused.

Mr Drew: I do not think that is a fair statement. The previous provisions that we have looked at have been in relation to certain matters, such as damage to a vessel in a port. This is more general in relation to the specific matters referred to.

The CHAIRMAN: I turn now to the regulation that deals with the pollution of waters by oil and noxious substances. As we understand it, this regulation will abrogate sections 27 and 28 of the Act.

Mr Drew: No, that is not true. Those two sections allow a port to take action to clean up spills of oil or other liquids. The exemption applies to whatever the port needs to do when it does those activities.

Ms Bunbury: And wherever it does it.

The CHAIRMAN: It is my understanding that the general philosophy is to make port authorities viable commercial activities and to free them from the yoke of being government instrumentalities. Is that true?

Ms Bunbury: It depends on what you mean by freedom from being a government instrumentality. The Government is still the shareholder. The ports are not private in any sense. The intent in allowing them to compete and to operate in a commercial manner for the facilitation of trade and

the development of regions within Australia is that they are not unnecessarily shackled and cannot perform as previously occurred.

The CHAIRMAN: Effectively, it is putting the port authority on a level playing field in terms of commercial activity, so they can participate fully and are not unreasonably impeded by bureaucratic red tape. How does the general tenor of the Act, in which a lot of liability is exempted from the port authority for a range of activities it might do, sit with things like national competition policy? It seems to us that there might be a bit of featherbedding going on, which might not be consistent when those general policy outcomes are expected.

Ms Bunbury: That certainly was not the intent. When the competition review was done for the Act and the regulations, those provisions were not seen as anti-competitive.

Mr Samnakay: Reviews were done for both pieces of legislation.

The CHAIRMAN: Do you consider that it does not in any way give them an unfair advantage?

Ms Bunbury: No.

The CHAIRMAN: I return to the Pollution of Waters by Oil and Noxious Substances Act. Given that the regulations modify the obligations under the Act -

Mr Drew: I do not think they do modify the obligations. The regulations are saying that if the port authority acts under those two provisions, there will be no liability on the port.

The CHAIRMAN: Do you think that is something that should be in the body of the Act rather than in the regulations, given the nature of that provision?

Mr Drew: It could be in the Act, but it need not be.

Mr Calcutt: It may not be necessary at all.

Hon RAY HALLIGAN: Regulation 119 is a change of direction. It refers to the rate of interest on overdue accounts. I note that you are authorised under this regulation to charge three per cent greater than the Bank of Western Australia Ltd. Was that three per cent figure arbitrary or was it calculated? It is more a matter of interest.

Mr Samnakay: I am not sure whether it was arbitrary or whether we had advice from the likes of Treasury. I am stretching my memory in that regard. These things had to be prescribed by the Act. I am sure that we would have sought advice other than just the port authorities' view on it.

Hon RAY HALLIGAN: It says that the interest on the amount outstanding will be at the rate prescribed by the regulations. You have determined that it will be three per cent over and above what BankWest charges on its overdraft loans.

Mr Samnakay: I am not sure whether we got advice from the likes of Treasury or from anybody else on that matter.

Hon LJILJANNA RAVLICH: To what extent were you advised by the minister or his officers about what goes into the Act and what goes into the regulations? Was there a view that the more that is put into the regulations, the easier will be the passage of the legislation, which could just be tinkered around with afterwards?

Mr Calcutt: Do you mean when the Bill was being drafted?

Hon LJILJANNA RAVLICH: Yes.

Mr Calcutt: I do not recall. I would not necessarily know about it, but I do not recall any involvement from the minister's office at all.

Hon LJILJANNA RAVLICH: Was it the parliamentary draftspersons who judged what went into the Bill?

Mr Calcutt: No. We draft on instructions from the department. What it wanted put in, we put in, subject to some very basic principles that we have. Basically we draft to instructions.

The CHAIRMAN: Is it possible to get a copy of the NCP review that was undertaken in relation to the Act and the regulations?

Mr Samnakay: Yes, it is. In fact, it has already been provided to a similar select or standing committee.

The CHAIRMAN: From the evidence you have given, I gather that the instructing process was a kind of fluid one, or was there one bulk of instructions and then you just tinkered around the edges?

Mr Samnakay: The instructions went on for about two years. It was a new process. Initially, we did it in bulk with the view that port authorities considered that certain regulations from previous sets of regulations were still critical to their operations. We did not want to have 350 regulations as the Fremantle Port Authority had, so we tried to reduce the number of core regulations that were essential to the needs of port authorities. It meant that we needed to broaden the regulations to take into account the nuances of all the ports, so we did that.

The CHAIRMAN: Was there one document that was the initial drafting instructions and then just the correspondence to and from the department?

Mr Samnakay: From what I can recall, we would have said that, for example, we want to keep Fremantle Port Authority regulation 57 and Bunbury Port Authority regulation 37, so parliamentary counsel needs to draft a new regulation for the Port Authorities Regulations which is consistent with the Act. We would have done that for all of the regulations; we would have looked at all 350 regulations of the Fremantle Port Authority and the 280-odd regulations of the Bunbury Port Authority and then deleted some, because, in a modern world, we do not care whether a person lights a fire on the jetty, because that is not pertinent or particular, but some of the other regulations are.

The CHAIRMAN: Can we have a copy of those drafting instructions?

Mr Samnakay: I presume they are on file. If they are on file, I do not see any reason that we cannot provide them.

Ms Bunbury: It would have been an interesting process. The first draft would have been done and then consultations would have been conducted. It would have gone on over time. Are you looking for the very first set of drafting instructions or all the drafting instructions?

The CHAIRMAN: Preferably all.

Mr Samnakay: We can give you all the drafting instructions.

Ms Bunbury: All the correspondence and all the questions.

Hon SIMON O'BRIEN: Mr Calcutt, is there any provision for the alteration of schedule 7 of the Act apart from by Act of Parliament ?

Mr Calcutt: No.

Hon SIMON O'BRIEN: There are no Henry VIII clauses lurking?

Mr Calcutt: We would not put one of those in there!

Hon SIMON O'BRIEN: No aspersions were being cast. We were not able to find one; I just wanted to check that for the record.

Mr Calcutt: It can be altered only by Parliament.

The CHAIRMAN: That concludes our inquiry today. Thank you for your patience and forbearance and for attending today.

Committee adjourned at 11.43 am