



**REPORT OF THE  
STANDING COMMITTEE ON  
CONSTITUTIONAL AFFAIRS**

**IN RELATION TO THE**

***Rural Business Development  
Corporation Bill 2000***

Presented by Hon Murray Nixon JP, MLC (Chairman)

Report 61

## STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

### **Date first appointed:**

December 21 1989

### **Terms of Reference:**

- 1 The functions of the committee are to inquire into and report on:
  - a) the constitutional law, customs and usages of Western Australia;
  - b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,  
and any related matter or issue;
  - c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
  - d) any petition.
- 2 A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

### **Members as at the time of this inquiry:**

Hon Murray Nixon JP, MLC (Chairman)  
Hon Ray Halligan MLC  
Hon Ken Travers MLC

### **Staff as at the time of this inquiry:**

Felicity Beattie, Advisory Officer  
Mr David Driscoll, Committee Clerk

### **Address:**

Parliament House, Perth WA 6000, Telephone (08) 9222 7222  
Website: <http://www.parliament.wa.gov.au>

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**REPORT OF THE STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS**

**IN RELATION TO THE**

***RURAL BUSINESS DEVELOPMENT CORPORATION BILL 2000***

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**1 REFERENCE AND PROCEDURE**

1.1 The *Rural Business Development Corporation Bill 2000* (the Bill) was referred to the Standing Committee on Constitutional Affairs (the Committee) by the Legislative Council under Standing Order 230(d) on November 7 2000. This required the Committee to report to the Legislative Council by December 7 2000.

1.2 On Thursday November 23 2000 the House passed the following motion:

“That despite any rule or order –

1. the Constitutional Affairs Committee is ordered to report the *Rural Business Development Corporation Bill 2000* back to the House at this day’s sitting, whether or not it has completed its deliberations on the bill, with any findings or recommendations it may care to make;
2. on report of the bill from the Committee, it pass through its remaining stages.”

1.3 In view of the above resolution the Committee has not been able to consider the Bill in as much detail as it would normally. However the Committee hopes that the observations and recommendations in this report will assist the Legislative Council when debating the Bill.

1.4 The Committee expresses its disappointment that the introduction of the Bill so late in the Parliamentary session has prevented it from fully carrying out its functions in accordance with Legislative Council Standing Orders.

**2 BACKGROUND TO THE BILL**

2.1 The Bill was initially proposed to amend the *Rural Adjustment and Finance Corporation Act 1993* (the 1993 Act). The drafting instructions contained extensive amendments to the 1993 Act to update the legislation in line with changes to Commonwealth legislation dealing with support to rural industry.

2.2 When drafting commenced, it was decided that a new Act would be the most effective way of achieving the amendments required.

### **3 CONTENTS AND PURPOSE OF THE *RURAL BUSINESS AND DEVELOPMENT CORPORATION BILL 2000***

3.1 The Bill provides for the operation of the Rural Business Development Corporation and for the administration of financial support to eligible rural businesses and persons.

3.2 The object of the Bill is to provide a continuing mechanism for providing financial assistance by Government as a means of fostering the development of rural businesses. There is provision for development of rural business, not only farm business as has been in the past.

3.3 The Bill replaces the 1993 Act which replaced a similar Act that had commenced in 1971 with the introduction of the Commonwealth Rural Reconstruction Scheme. The 1971 Act gave effect to an agreement between the Commonwealth and the State and provided for the establishment and the operation of a scheme of financial assistance to persons engaged in rural industry in Western Australia. There have been continuing Commonwealth-State agreements for financial support for rural industry since 1971 and administered by the Rural Adjustment and Finance Corporation.

3.4 The Bill provides for the continuation of a body corporate which will be called the Rural Business Development Corporation (the RBD Corporation). This body has previously been called the Rural Adjustment and Finance Corporation (the RAF Corporation) and the Rural Reconstruction Authority. Over the years there have been various amendments to the 1993 Act associated with these name changes and the addition of agreements between the Commonwealth and the State.

3.5 There has been a change in emphasis in recent Commonwealth assistance schemes. These previously provided assistance only to farmers directly involved in agricultural production. Commonwealth assistance schemes may now additionally provide support for groups of rural producers and for regional initiatives. This recognises the fact that many business people in the rural sector are just as susceptible to downturns in the rural industry as are farmers. The wider application of the new Act will cover people who supply goods such as farm machinery and those who provide professional support to the sector.

3.6 The eligibility criteria for new Commonwealth and/or State schemes are set out in the directions for the schemes. The Western Australian legislation has made it difficult to assist those intended to be assisted by the schemes as the eligibility criteria contained in the 1993 Act differs on occasions from the provisions within the various

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Commonwealth schemes. That is, the 1993 Act contained restrictions that conflicted with the directions for the new schemes. These conflicts included limiting the RAF Corporation to supporting persons engaged in rural industry only if the industries and operations involved production, and providing support only to individuals, incorporated groups or companies.

3.7 Some of the schemes currently administered by the RAF Corporation cannot be legally administered under the 1993 Act.

3.8 A further difficulty with the 1993 Act has been the requirement for new agreements to be scheduled to the Act. This meant that legislative amendment has been needed each time a new or amended Commonwealth scheme is implemented. Introduction of new schemes occurs regularly and the 1993 Act cannot be continually amended to keep up with changes.

3.9 The Bill overcomes the previous conflicts by:

- excluding from the legislation any reference to whom the RBD Corporation may provide assistance. The Bill contains no definition of ‘rural industry’ or ‘farmer’ nor does it contain eligibility criteria as to who may receive assistance from the RBD Corporation. Those persons and groups to be assisted by a scheme are determined only by the eligibility criteria laid out in each scheme. It is intended that this will provide flexibility to administer schemes for groups of businesses and for regional strategies and thus extend the ambit of the types of persons who can be assisted under the legislation;
- making provision for the RBD Corporation to administer an “approved assistance scheme”; and
- defining an “approved assistance scheme” to be a scheme that:
  - (a) states the purpose and nature of financial assistance that may be given under the scheme;
  - (b) identifies the categories of persons eligible to be given financial assistance under the scheme; and
  - (c) is approved by the Minister and the Treasurer.

3.10 An “approved assistance scheme” may be a scheme established by the State, a scheme established under an agreement between the Commonwealth and the State and includes a scheme that may be operated by a Government department, an agency or Crown instrumentality other than the RBD Corporation.

- 3.11 The powers and functions of the RBD Corporation under the Bill are similar to those of the RAF Corporation, including the power to acquire and dispose of property for the purposes of approved assistance schemes.
- 3.12 The Bill enables the RBD Corporation to direct funds to other agencies for approved assistance schemes administered by another agency. The 1993 Act restricts the use of RAF Corporation funds to schemes administered by the RAF Corporation.
- 3.13 The RBD Corporation will have a new board of directors, the members of which will be appointed by the Minister. The number of members on the board will be reduced from seven to five. The directors are to have qualifications and experience in financial management relevant to the functions of the RBD Corporation, or other qualifications relevant to those functions. A member of the RAF Corporation will go out of office on the commencement of the new Act. Subject to the new Act, however, they are eligible to be appointed as a director of the new board.
- 3.14 The Bill creates a single operating account for the RBD Corporation which provides for the rationalisation of multiple funds that existed under the 1993 Act. Separation of funds is maintained, however. Under the *Financial Administration and Audit Act 1985*, Commonwealth and State money and the money for individual assistance schemes is managed separately within the RBD Corporation's accounting system.
- 3.15 A number of current standard forms for administration and Ministerial relationships with the RBD Corporation have been adopted in the Bill. These include provision for the use of the common seal, the Minister's ability to give directions to the RBD Corporation, the Minister's right to access information and the handling of confidential information.
- 3.16 The Bill also includes the ability to delegate the functions of the RBD Corporation, authorisation for sub-delegation and provision for delegation of the functions of the chief executive officer.
- 3.17 Review of the Act is to be carried out after five years of operation.
- 3.18 There are extensive transitional provisions that cover the change of name of the corporation, the status of members, the transfer of funds, applications for assistance and the granting of assistance under the 1993 Act.

#### **4 INQUIRY PROCEDURE**

- 4.1 As part of its review, the Committee invited comment from a number of individuals and organisations who it considered might wish to make a submission. Those individuals and organisations were:



- Hon Murray Criddle MLC, Minister representing the Minister for Primary Industry;
- the Chamber of Commerce and Industry of Western Australia (Inc);
- Mr Philip Achurch, Executive Director, The West Australian Small Business and Enterprise Association Inc;
- Mr Nick Catania, Chief Executive Officer, Western Australian Council of Retail Associations;
- The Pastoralists and Graziers' Association of WA (Inc); and
- the Western Australian Farmers' Federation (Inc) (WAFF).

4.2 The Committee conducted a hearing into the Bill on November 15 2000. The witnesses who appeared before the Committee were:

- Mr Bryan Annen, Business Manager, Agwest Farm Business Development;
- Mr Bruce Thorpe, Director, Agwest Farm Business Development; and
- Mr Paul Carter, Executive Officer, WAFF.

4.3 Mr Carter told the Committee that WAFF supports the intent of the Bill in enhancing the existing role of the RAF Corporation. He submitted that the Bill will extend eligibility to include rural businesses and people, it will provide a new and more positive name for the corporation, it will reduce the size of the board and it will enhance the ability of the corporation to provide assistance to upstream and downstream industries and primary producers by providing assistance to groups of primary producers for regional initiatives. Mr Carter also submitted that it will improve the flexibility of the RAF Corporation so that it can engage in programs with the Commonwealth that the current legislation does not allow.

4.4 The Committee was also advised by Mr Carter that WAFF believed that the expansion of the eligibility criteria will assist in the development of positive strategies for rural businesses that the existing scheme cannot easily provide, while also maintaining the provisions of the existing scheme.

4.5 Mr Carter informed the Committee that WAFF was somewhat cautious about the definition of eligible businesses and persons. He submitted that WAFF wanted to ensure that the definition was broad enough to include Commonwealth programs that were beneficial to agriculture but that it would be concerned if the new Act was used to provide assistance to regional initiatives when funds from other agencies could be used to finance those initiatives.

- 4.6 Mr Carter advised that WAFF would prefer the money to be kept for rural businesses as much as possible. He stated that the funds should go firstly to rural businesses and secondly to those businesses which support rural businesses.
- 4.7 In his submission to the Committee Mr Thorpe stated that in developing its assistance programs, the Commonwealth Government considers issues of broad community support. It supports initiatives to help farmers, farming groups and people who work in the farming sector to ensure that rural communities are considered for assistance rather than just farmers.
- 4.8 Mr Thorpe advised that *“Our current Act limits us to provide funding to farmers, and that is a fairly narrow definition. It is determined by the percentage of time they spend on the farm and the percentage of income that they earn from the farm.”*
- 4.9 Mr Thorpe agreed with a statement put to him by the Chairman of the Committee that the Bill enables the RBD Corporation to extend assistance to a broader range of people than does the 1993 Act.
- 4.10 The Chairman queried whether it was the intention of the RBD Corporation to sustain existing businesses or put its efforts into things such as youth development, which is an indirect way of encouraging development. In answer to the Chairman’s query Mr Thorpe submitted that *“Our charter is to maintain a sustainable, profitable rural sector in agriculture.”* He stated that the specific area of youth investment would need to be considered and that it was an appropriate investment to consider providing support to ensure the new generation of farmers are better equipped to deal with what is a difficult environment for farming. He also stated that *“Our objective is to maintain the RBDC principally as a sustainable, profitable farming sector corporation.”*
- 4.11 In answer to the Committee’s question about the requirement for Parliamentary scrutiny of schemes, Mr Annen advised that the provisions for State schemes will remain the same as the current provisions; that is, where a State scheme is announced or provided, it must receive Cabinet endorsement. He advised that it is not general practice for individual schemes to go through the Parliament, other than through the budget process when Parliament appropriates funds for the schemes.
- 4.12 Mr Annen advised the Committee that in the past the Parliament had the ability to scrutinise individual Commonwealth-State agreements because those agreements, and any amendments, had to be appended to the 1993 Act by legislation. Mr Annen submitted that this was restrictive as there was quite a long time frame between a proposal to amend legislation and the amendment being passed. He stated that the difficulty was that the Commonwealth would announce new initiatives, or

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amendments to existing schemes, on a regular basis, to meet both long and short term needs, and the new and amended schemes would be administered ahead of the legislation.

- 4.13 Mr Annen told the Committee that the change to the legislation is about expediency. He submitted that *“It will also enable the schemes to be administered lawfully, because at the moment a lot of schemes are administered before the legislation comes into place; so technically we are in breach of the legislation.”*
- 4.14 Mr Annen advised the Committee that during the past eighteen months to two years a number of Commonwealth-State agreements have been administered without legislative authority. He gave as examples the FarmBis Scheme and the Gascoyne-Murchison and South Coast Regional Strategies.
- 4.15 The Committee was advised by Mr Annen that the Bill will provide a lot more flexibility in the way that support can be targeted.
- 4.16 Comments made by the witnesses concerning specific clauses of the Bill are considered in the commentary on those clauses in section 5 of this report.

## **5 SELECTED CLAUSES OF THE *RURAL BUSINESS DEVELOPMENT CORPORATION BILL 2000***

### **5.1 Clause 7 – Functions of Corporation**

5.1.1 Subclause 7(1) lists the functions of the RBD Corporation. These include:

- (a) administering approved assistance schemes and ensuring that such schemes are administered properly and fairly;
- (b) giving directly the financial assistance to be given under approved assistance schemes that are administered by the RBD Corporation;
- (c) providing moneys to a department, agency or instrumentality for the purpose of financial assistance to be given under an approved assistance scheme administered by that department, agency or instrumentality;
- (d) carrying out research into and developing policies on issues affecting persons likely to be given financial assistance under the Act;

- (e) reviewing and giving advice to the Minister on proposed assistance schemes, the implementation of approved assistance schemes and conditions in the rural sector;
- (f) performing other functions given to the RBD Corporation under this and other Acts; and
- (g) performing other functions that may be prescribed.

5.1.2 Subclause 7(2) clarifies that an approved assistance scheme administered by a department, agency or instrumentality is not administered on behalf of the RBD Corporation. This means that the RBD Corporation is not accountable for funds provided to another agency for an approved assistance scheme beyond the point of handing over the money.

5.1.3 The House might like to consider this clause in more detail. There may be concerns over lack of accountability.

## 5.2 **Clause 10 – Power to acquire and dispose of property for schemes**

5.2.1 This clause enables the RBD Corporation, for the purposes necessary to administer an approved assistance scheme, to acquire and hold real and personal property and to sell, lease, grant, exchange or otherwise deal with the property on terms and conditions considered appropriate by the RBD Corporation.

## 5.3 **Clause 12 – The board**

5.3.1 This clause provides for the RBD Corporation to have a board of directors consisting of five directors appointed by the Minister. Directors are to have, in the Minister's opinion, qualifications and experience in financial management relative to the functions of the RBD Corporation, or other qualifications and experience relevant to those functions.

5.3.2 One of the directors is to be appointed by the Minister as the chairman of the RBD Corporation.

5.3.3 Subclause (5) excludes the chief executive officer from being a director.

## 5.4 **Clause 15 – Constitution and proceedings**

5.4.1 The constitution and operations of the board are set out in Schedule 1 of the Bill. Refer to paragraphs 5.20.1 to 5.20.8 of this report for comment on Schedule 1.

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**5.5 Clause 16 – Minister may give directions**

- 5.5.1 Subclause 16(1) provides that the Minister may give written directions to the RBD Corporation in matters of administration and general performance of the RBD Corporation's functions. The RBD Corporation is required to take action on those directions.
- 5.5.2 Subclause 16(2) specifically excludes the Minister from giving directions to the RBD Corporation in relation to a particular person, a particular application for assistance or anything relating to a particular application under the Act.
- 5.5.3 The Minister is required by subclause 16(3) to have the written directions laid before each House of Parliament within 14 days of the directions being given.
- 5.5.4 Subclause 16(4) makes provision for the written directions to be transmitted to the Clerk of a House in circumstances where that House is not sitting within the 14 day period or the Minister is of the opinion that that House will not sit during that period.
- 5.5.5 Pursuant to subclause 16(5), written directions transmitted to the Clerk of a House are to be regarded as having been laid before that House and as being a document published by order or under the authority of that House.
- 5.5.6 Subclause 16(6) provides that the laying of the written directions before a House under subclause 16(5) is to be recorded in the Minutes or Votes and Proceedings of the House on the first sitting day of the House after the Clerk receives the directions.
- 5.5.7 The text of the Minister's written directions to the RBD Corporation is to be included in the annual report submitted by the RBD Corporation's accountable authority under section 66 of the *Financial Administration and Audit Act 1985*.

**5.6 Clause 17 – Minister to have access to information**

- 5.6.1 This clause entitles the Minister to have information in the RBD Corporation's possession and to retain copies of any document. The RBD Corporation must make its staff and facilities available to the Minister for the purposes of providing the information.

**5.7 Clause 18 – Confidential information**

5.7.1 Subclause 18(1) denies the Minister entitlement to information that the RBD Corporation considers to be confidential.

5.7.2 However subclause 18(2) provides that subclause 18(1) does not apply to information which may be disclosed under another law or if disclosure is made with the written consent of the person to whom the information relates.

**5.8 Clause 21 – Consultants etc**

5.8.1 This clause allows the Corporation, with the approval of the Minister, to engage a consultant under a contract for services to enable the RBD Corporation to perform its functions.

5.8.2 The clause does not specify whether or not the Minister's approval must be in writing. The Committee believes that the Minister's approval for the RBD Corporation to engage a consultant should be in writing.

**5.9 Clause 23 – Funds of the Corporation**

5.9.1 This clause lists the funds available to the RBD Corporation to perform its functions. These include moneys appropriated by Parliament, moneys provided by the Commonwealth for Commonwealth-State schemes, moneys received as contribution to, or in support of, an approved assistance scheme and moneys transferred from the trust funds held under the 1993 Act.

**5.10 Clause 24 – Rural Business Development Corporation Operating Account**

5.10.1 Subclause 24(1) establishes an operating account for the RBD Corporation at the Treasury or, with the approval of the Treasurer, at a bank.

5.10.2 Subclause 24(2) lists the costs that may be charged to the account. These include costs for administering the Act, money given by the RBD Corporation for financial assistance under an approved assistance scheme and payment of remuneration and allowances to directors.

**5.11 Clause 25 – Borrowing from Treasurer**

5.11.1 This clause enables the RBD Corporation to borrow from the Treasurer on terms and conditions imposed by the Treasurer.

5.11.2 Mr Annen advised the Committee at its hearing on November 15 2000 that the borrowings from the Treasurer come under the budget process and that

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any moneys that are borrowed must be borrowed through the capital works budget. A full budget submission must go through Treasury and then through a Cabinet subcommittee and be ratified by the Parliament.

5.11.3 The Committee was advised that the RAF Corporation has not borrowed money in at least 10 years. The provision was included in case it is ever needed.

5.11.4 Mr Annen advised that there is no limit to how much the RBD Corporation may borrow. The limit is set by Parliament in the budget process.

5.12 **Clause 26 – Other borrowing**

5.12.1 This clause enables the RBD Corporation to borrow from other sources for the purpose of performing its functions. Such borrowing must have the prior written approval of the Treasurer and be on terms and conditions that the Treasurer approves.

5.13 **Clause 27 – Guarantee by Treasurer**

5.13.1 This clause enables the Treasurer to guarantee the payment of money payable by the RBD Corporation. The Treasurer determines the terms and conditions and the security for a guarantee.

5.13.2 At the hearing on November 15 2000 the Committee queried whether there was a requirement for the Treasurer to inform Parliament that he or she had given a guarantee under clause 27. Mr Annen and Mr Thorpe agreed to take the question on notice. On November 20 2000 the Committee received a facsimile letter from Mr Thorpe advising that there is no requirement within the *Financial Administration and Audit Act 1985* for guarantees issued by the Treasurer to the RBD Corporation to be either ratified or tabled in Parliament.

5.13.3 Regulation 9(2)(h) of the *Financial Administration Regulations 1986* requires guarantees, indemnities and sureties to be disclosed in the Treasurer's Annual Statements. Mr Thorpe advised that Treasurer's Instruction 821 requires the RAF Corporation to maintain a register of any guarantees received and Treasurer's Instruction 952 requires it to disclose any such arrangement in its annual financial statements.

5.14 **Clause 28 – Effect of guarantee**

5.14.1 Subclause 28(1) provides that the payment of moneys payable by the Treasurer under a guarantee is guaranteed by the State.

5.14.2 Pursuant to subclause 28(2) any guarantee payment is to be made by the Treasurer and charged to the Consolidated Fund. This subclause appropriates that Fund.

**5.15 Clause 29 – Application of *Financial Administration and Audit Act 1985***

5.15.1 Subclause 29(1) applies the financial administration, audit and reporting requirements of the *Financial Administration and Audit Act 1985* to the RBD Corporation.

5.15.2 Subclause 29(2) provides that the RBD Corporation is to provide the Minister with a monthly written report on its operations.

**5.16 Clause 30 – Approved assistance schemes**

5.16.1 Subclause 30(1) defines an “approved assistance scheme” as a scheme that:

- (a) states the purpose and nature of financial assistance that may be given under the scheme;
- (b) identifies the categories of persons eligible for financial assistance under the scheme; and
- (c) is approved by the Minister and the Treasurer.

5.16.2 Subclause 30(2) allows for conditions on which financial assistance is to be given under a scheme.

5.16.3 Pursuant to subclause 30(3) the RBD Corporation may give financial assistance only under an approved assistance scheme or for an approved assistance scheme administered by another agency.

5.16.4 The Committee is concerned that this clause appears to be wide enough to allow the Minister administering the Act to direct the distribution of funds under an approved assistance scheme to him or herself as the body corporate known as the Minister for Primary Industry.

**5.17 Clause 31 – Schemes established under agreements between Commonwealth and State taken to be approved assistance schemes**

5.17.1 This clause establishes that a scheme established under a Commonwealth-State agreement that is approved by the Treasurer, provides for financial assistance and is administered, with the approval of the Minister, by the RBD



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Corporation or another public service agency, is an “approved assistance scheme”.

5.17.2 The Committee is concerned that this clause appears to be wide enough to allow the Minister administering the Act to direct the distribution of funds under an approved assistance scheme to him or herself as the body corporate known as the Minister for Primary Industry.

#### 5.18 **Clause 33 – Grants of financial assistance**

5.18.1 Subclause 33(1) provides for the RBD Corporation to set appropriate terms and conditions for granting financial assistance.

5.18.2 Subclause 33(2) requires that the terms and conditions set by the RBD Corporation are subject to any terms and conditions of the relevant approved assistance scheme.

5.18.3 Mr Annen advised the Committee that there are no requirements for the Treasurer or the RBD Corporation to report to Parliament that an application has been granted or to report the terms and conditions under which a grant is made. However he advised that copies of all scheme guidelines and policy guidelines are set out in an appendix to the RBD Corporation’s annual report which is required to be tabled in both Houses of Parliament.

#### 5.19 **Clause 43 – Transitional provisions**

5.19.1 This clause gives effect to transitional provisions set out in Schedule 2 of the Bill. Refer to paragraph 5.21.1 of this report for comment on Schedule 2.

#### 5.20 **Schedule 1 – The board**

5.20.1 Division 1 of Schedule 1 sets out the constitution and proceedings under which the board of the RBD Corporation operates. Included are matters such as terms of office for directors, requirements for meetings of the board and quorum and voting provisions.

5.20.2 The Committee notes that subclause 2(2) of Schedule 2 provides that the Minister may remove a director from office if the Minister is satisfied that the director has neglected his or her duty, has misbehaved, is incompetent or is suffering from mental or physical incapacity impairing the performance of his or her functions.

- 5.20.3 Division 2 of Schedule 2 deals with disclosure of directors' interests. Subclause 17(1) provides that a director who has a material personal interest in a matter being considered or about to be considered by the board must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the board. A failure to disclose attracts a penalty of \$5 000.
- 5.20.4 Subclause 17(2) provides that a disclosure under subclause 17(1) is to be recorded in the minutes of the meeting.
- 5.20.5 Clause 18 of Schedule 1 deals with voting by interested directors and provides that a director who has a material personal interest in a matter that is being considered by the board must not vote on the matter and must not be present while the matter is being considered at a meeting.
- 5.20.6 Clause 19 provides that clause 18 may be declared inapplicable if the other voting directors are satisfied that the interest should not disqualify the director from voting on the matter.
- 5.20.7 The Committee notes that subclause 21(1) of Schedule 1 allows the Minister to give a written declaration that clause 18 or 20 or both do not apply in relation to a specified matter either generally or in relation to voting on particular resolutions.
- 5.20.8 Subclause 21(2) provides that within 14 days after a declaration under subclause (1) is made, the Minister is to cause a copy of the declaration to be laid before each House of Parliament.

## 5.21 **Schedule 2 – Transitional provisions**

- 5.21.1 Schedule 2 sets out the transitional provisions that are to have effect. These include matters relating to:
- references to the corporation under its former name in laws and documents;
  - a requirement for RAF Corporation members to go out of office on the commencement of the Act and their eligibility to be appointed as a director of the RBD Corporation;
  - the continuation of office of the chief executive officer during the transition from the 1993 Act to the commencement of the new Act;
  - the transfer of funds from the accounts of the RAF Corporation to the credit of the RBD Corporation operating account and the subsequent closure of the RAF Corporation accounts;

- applications for assistance under the 1993 Act. Clause 7 of Schedule 2 provides that applications for assistance under the 1993 Act that have not been finalised are to be taken as applications under the new Act; and
- grants of assistance under the 1993 Act. Clause 8 of Schedule 2 provides that grants of assistance given under the 1993 Act are to be treated as having been given under an approved assistance scheme administered by the RBD Corporation.

## 6 CONCLUSIONS

6.1 The Committee notes that the Bill will enable schemes that provide assistance to the rural sector to be administered lawfully. The Bill will correct the current unsatisfactory situation, which is in breach of the legislation.

6.2 The Committee expresses its grave concern that the Bill gives authority to the Minister and the Treasurer to establish approved assistance schemes without providing for Parliamentary scrutiny by either subjecting them to the disallowance procedures of the *Interpretation Act 1984* or requiring the affirmative resolution of both Houses of Parliament approving schemes before such schemes can take effect. In this respect the Committee notes that:

- unlike regulations under an Act, which may be disallowed by Parliament pursuant to section 42 of the *Interpretation Act 1984*, approved assistance schemes are not subject to Parliamentary disallowance; and
- an affirmative resolution process would require approved assistance schemes proposed under the Bill to be tabled before both Houses of Parliament (as regulations are in the normal course pursuant to section 42(1) of the *Interpretation Act 1984*), with the additional requirement that the regulations be subject to a motion that they shall not come into operation unless affirmed by both Houses of Parliament. If either or both Houses of Parliament do not affirm the scheme within a specified number of sitting days, the scheme would lapse.

6.3 The Committee is concerned that neither method of Parliamentary scrutiny is satisfactory with regards to the Bill:

- an ability to disallow an approved assistance scheme in the same manner as regulations may be disallowed has the consequence of not being retrospective to the date of the scheme. Section 42(2) of the *Interpretation Act 1984* provides, in effect, that disallowance of a regulation does not affect the validity of anything done pursuant to that regulation prior to disallowance.

This may have the effect that some sectors of the rural community eligible for approved assistance schemes may be unfairly advantaged over other sectors eligible for assistance if the former group received assistance prior to disallowance. Furthermore if Parliament was not sitting at the time in which the Minister and the Treasurer approved the schemes, then there may be delays of some months before a scheme could be reviewed by Parliament.

- The requirement for an affirmative resolution procedure could limit the ability of the Minister and the Treasurer to act in an emergency situation.

6.4 On balance the Committee believes that, as an interim measure, the accountability mechanisms in the Bill would be significantly improved by amending the Bill to allow for the disallowance by Parliament of approved assistance schemes in the same manner as regulations may be disallowed pursuant to the provisions of the *Interpretation Act 1984*.

6.5 Despite the above concerns the Committee believes that, due to the extreme economic difficulties being experienced by the rural sector in Western Australia, the passage of the Bill during the current Parliamentary session would be beneficial.

## 7 RECOMMENDATIONS

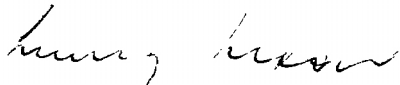
**Recommendation 1: The Committee recommends that all clauses of the *Rural Business Development Corporation Bill 2000* be passed in the current Parliamentary session.**

**Recommendation 2: If the Legislative Council adopts Recommendation 1 then the Committee recommends that, as soon as possible, the *Rural Business Development Corporation Bill 2000* be reviewed in view of the matters referred to in Recommendations 3, 4 and 5.**

**Recommendation 3: The Committee recommends that the Minister, before the House passes the *Rural Business Development Corporation Bill 2000*, provide an assurance to the House that it is not his intention to apply or distribute funds under an approved assistance scheme in that capacity.**

**Recommendation 4: The Committee recommends that the Legislative Council consider amending the *Rural Business Development Corporation Bill 2000* by inserting a provision to allow disallowance of approved assistance schemes in the same manner as regulations may be disallowed pursuant to the provisions of the *Interpretation Act 1984*.**

**Recommendation 5: The Committee recommends that Parliament develop a process by which subsidiary legislation can be reviewed without the disadvantages referred to in paragraphs 6.2 and 6.3 of this report.**



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**Hon Murray Nixon JP, MLC**

**Chairman**

**Date: November 23 2000**