

Mr Max Trenorden; Mr Tony McRae; Mr John D'Orazio; Mr Brendon Grylls; Mr Colin Barnett; Mr Eric Ripper;
Mr Terry Waldron; Deputy Speaker; Mr Mark McGowan; Mr Larry Graham; Ms Sue Walker; Leave Was
Granted To Proceed Forthwith To The Third reading.

ECONOMIC REGULATION AUTHORITY BILL 2002

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 64: Review of Act -

Debate was interrupted after Mr B.J. Grylls had moved the following amendment -

Page 34, after line 25 - To insert the following -

- (1) The Public Accounts Committee of the Legislative Assembly is to carry out an annual review of the operations and expenditure of the Economic Regulation Authority in each of the first 5 years of its operation.

Mr M.W. TRENORDEN: I was in the process of describing events that occurred a week or two ago with the Economics and Industry Standing Committee. I do not want to have a go at the chairman and the members of the committee. I understand the committee has been in place for two years. However, I am concerned that when I wrote to the committee asking for matters to be considered, my letter was sent to the minister. That is not in the best interests of the operation of committees. The minister was immediately involved in a political aspect of the debate. In the case of Western Power, in which the regulator will be asked for opinions, the committee could have written back to the corporation and asked whether my letter had some substance. I do not want to pick on members as I know how hard committee work is, but I think it was an inappropriate mechanism.

The Treasurer has failed to outline any logical reason for not sending the review to a committee. We have an acting minister at the table.

Mr J.C. Kobelke: I was here for the earlier debate.

Mr M.W. TRENORDEN: The Treasurer's argument is that the process would impinge on the impartiality of the organisation. If that were the case, oversight of the Anti-Corruption Commission would not take place. I am sure the minister will want oversight of the new crime commission. The oversight is a current procedure within the two Houses of this Parliament; it is a very formal and natural procedure.

As I also said prior to the interruption of the debate, it is very common for the Public Accounts Committee to undertake low-level inquiries, which would be the case with the regulator; that is, it would require a half-day's committee hearing and the staff would proceed. I do not disagree with the Chairman of the Economics and Industry Standing Committee, and I have no objection to his committee doing the job. I suggest that in future the Public Accounts Committee will inquire into umbrella financial activities in Western Australia whereas the Economics and Industry Standing Committee will be more finite in its inquiries; that is, its role will be to inquire into the detail of those answers.

I was a member of the group that set up the committee system and I recall the debate that occurred in establishing that system. I would not debate this issue if we were talking about the committee of which the member for Riverton is the chairperson. I am saying that because this Bill will create a brand new regime with a brand new regulator, and there must be a formal process that is accountable to the House until that regulator is bedded down.

The minister, as usual, said that annual reports will be presented to the House. However, annual reports to not only this Parliament but also other Australian Parliaments and Parliaments throughout the western world are very quickly losing value for parliamentarians. They are tabled in the Parliament sometime after the end of the financial year on 30 June. I have a stack of reports on country hospitals with me that, to my amazement, were tabled only yesterday. This is March 2003; the end of the financial year was June 2002. I make the point that important as annual reports are, they do not give members of Parliament the currency that they need. I believe in future annual reports will be available instantly online. However, it is important for members of Parliament to have currency in annual reports and that committees, such as the Public Accounts Committee, are able to deliver that currency to the Parliament.

Mr A.D. McRAE: I did not intend to engage in much debate on this amendment to the clause before the House. The Treasurer has made his position clear. However, the House is considering the proposition by the member for Merredin that committees undertake annual reviews. If we are to understand properly the role of the standing committees of this House, whether they be the Public Accounts Committee or the Economics and Industry Standing Committee, we must clearly support the role and authority they have to examine complaints or requests for inquiries put to them by members of the Chamber or members of the public, or to initiate those inquiries in their own right.

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I have placed on the record today my intention to cause an examination of the need for a review of the economic regulator 12 months after the Act comes into operation. I believe I have in-principle support from opposition members of the committee for that action. I reject absolutely the suggestion by the Leader of the National Party that there is something wrong with committees receiving a complaint or a request for an inquiry and then seeking the advice of either the minister or the agency about which a correspondent seeks that inquiry.

Mr M.W. Trenorden: There is a great difficulty.

Mr A.D. McRAE: The Leader of the National Party said that he was a member of the committee in a previous Parliament that established the guidelines for the new standing committee process. I was not a member of the Parliament when those guidelines were established. I rely only on the practice manual that was developed as a result of that committee's recommendations. Those guidelines state that in many inquiries committees must obtain information from departments and other public agencies. If that is true, the chairman must write to the relevant minister or agency head to seek their cooperation in the inquiry and the nomination of officers with whom the secretary can liaise. My reading of the guidelines, established by a committee of which the Leader of the National Party was a member in a former Parliament, indicate that my obligation as chairman of a committee is to seek a response from either the responsible minister or the chief executive officer of the agency or agencies involved in the complaint or request for inquiry. It is not correct, under the guidelines that were presented to this Parliament, for my committee or me to instigate an inquiry simply on the basis of an allegation by a member of Parliament or a member of the public. That would be wrong and improper. It is not politicising the whole process of inquiry and accountability if a committee chooses to write to the responsible minister or agency as part of that process. It would be wrong to do otherwise. To respond to a complaint or a request for an inquiry without giving an opportunity to either an agency or a minister to provide their perspective on an issue raised would, in my view, be a breach of due process. That is an important issue and a matter of practice that the House must understand when it debates the amendment to clause 64 to insert a new subclause.

I support the minister's opposition to legislating for an inquiry in this form. I have said before, and I will say again, that I will cause my committee to examine the appropriateness of commencing an inquiry into the economic regulator. I am sure the member for Eyre, as a member of the Economics and Industry Standing Committee, would support that.

Mr M.W. Trenorden: You can't do that.

Mr A.D. McRAE: I give that undertaking now.

Mr M.W. Trenorden: You can't do that; that is part of the problem.

Mr A.D. McRAE: I am aware of the debate in the Parliament. I say to the Leader of the National Party that it is within the guidelines for committees set by him. We will examine the need for an inquiry after this Bill has been in force for a year.

Mr M.W. TRENORDEN: Three options are available to the House for a review. One is the provision in the Bill that in five years the Act be reviewed. It is important to note that the review would be carried out by the Executive, not by members of this Parliament. Although the review by the Executive would be tabled in this place, it would not have had input from the 57 members of this place or the 34 members in the other place. Another option is a sunset clause. We have debated sunset clauses in the past in this place. A sunset clause would give the Chamber an opportunity to debate the Act's continuation after the Bill had been in force for five years. We have not proposed a sunset clause, which is often proposed in legislation in this place. I am not opposed to a sunset clause; it is a very good mechanism for involving every one of the 57 members of this Chamber in the question of the continuation of an agency or the reason for an Act. Another option is one that I suggested; that is, a committee of the House be set up to go forth and examine the Bill.

I was amazed to hear the Chairman of the Economics and Industry Standing Committee say that he has the power to call an inquiry. That means either he has the power to do so or he caucuses with the Labor Party members of the committee who, in turn, run the committee. Either way, that is an appalling position and an outrageous statement for the chairperson of that committee to make.

Where are we going with committees in this place? If we want a bipartisan and level attitude taken to committee work and hearings, that must be done with cooperation. Issues must be brought before the other members of the committee and voted on. In every committee in which I have been involved, all members were present and participated in the initiation of a new inquiry. In this case the member for Riverton, as Chairman of the Economics and Industry Standing Committee, has just said that he has the power to do it. I find that outrageous. The point that he missed - I should not have to say this but I will say it - is that the most important point in committee work in this or any other Chamber that operates under a Westminster-type system is not to involve

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the minister. A committee should get the job done without involving the minister. The job of a committee is not to bring down ministers or Governments; that is not the intention. Its job is to be cooperative and to get the job done. That is why a committee should not write to the minister. I agree with the chairman of the committee that it is not in the committee's papers. However, that is a fundamental, known process of a committee. If an Opposition wants to involve ministers, that is fine; however, the reality is that good committee work is not about bringing down ministers or, alternatively, praising them. That is not the role of a committee. A committee's role is to deal with the matters put before it. In this case, it would be the role of the Public Accounts Committee. I see the Chairman of the Public Accounts Committee in the Chamber. No doubt he will say a few words. It is a good, well-known process, as the chairman knows. It is a well-trodden track for the Public Accounts Committee, and there is no reason in the world that it should not happen.

Mr J.B. D'ORAZIO: I have listened to the Leader of the National Party talk about the role of a committee, in particular the Public Accounts Committee. I recognise the previous chairman, whose work is quite well known. I compliment my predecessor, the Leader of the National Party. I think we are getting tied up in knots. Anybody in this Parliament, including the Leader of the National Party, can write to any of our committees and request that consideration be given to conducting an inquiry. There is nothing sacrosanct about it. A number of members of the Opposition and other people have written to the Public Accounts Committee requesting inquiries, and the committee has carried out some sort of inquiry. That is nothing new.

The previous speaker - he is now an Acting Speaker - who is the Chairman of the Economics and Industry Standing Committee, did not say that he would conduct an inquiry. He said that he would consider conducting an inquiry at the end of 12 months, and that would be put to the committee. I believe that is the right process. From the perspective of the Public Accounts Committee, I inform the House that in relation to everyone who has written to the committee, the committee has made at least preliminary inquiries into the issues and then decided whether it would conduct a full, in-depth inquiry. That process should be adopted in this instance as well. I give an undertaking that if the Leader of the National Party writes to the Public Accounts Committee, the matter will be put to the committee and it will decide whether to take action. I believe it is the role of the Public Accounts Committee, rather than the Economics and Industry Standing Committee, to review this matter, because financial considerations are involved. Rather than being specific, there are bigger-picture issues. It would be the role of the Public Accounts Committee to conduct an inquiry, just as the committee said today that it would look at the Office of the Auditor General. I believe a letter to that effect has been sent to the Speaker, the Acting Speaker (Mr A.D. McRae) now in the Chair and others. The committee will do that through the normal processes and report back to this Parliament. Hopefully, the committee will make some positive recommendations. However, I believe we are getting tied up in knots.

Mr M.W. Trenorden interjected.

Mr J.B. D'ORAZIO: We have resolved to look at the process of the recommendations and the follow-up of the Auditor General; that is, what happens to those recommendations. Currently, as the Leader of the National Party would be well aware, the Auditor General releases a report, but he does not go back two years later to ascertain whether the recommendations have been complied with, which I think is unacceptable.

Mr M.W. Trenorden: Can I suggest you look at what the Victorian Public Accounts and Estimates Committee is doing.

Mr J.B. D'ORAZIO: We have. That is why we have done this. In the end, it is about any member of this Parliament being able to access the committee system. It is quite proper for a matter raised by a member to be put before a committee, and even the chairman can take a matter to the committee if he sees fit - I have done it before. The committee will make a decision. I believe the Public Accounts Committee is the appropriate committee to deal with this matter.

Mr B.J. GRYLLS: This amendment was moved in my name. It is a simple amendment that allows for an annual review of the operations and expenditure of the Economic Regulation Authority. We have had contributions from many members who hold positions on committees, as well as from the Chairman of the Public Accounts Committee and the Treasurer. They have all said that they would be happy to see an annual review of the ERA, and they feel that the Public Accounts Committee could do that. My amendment will cause this to take place in each of the first five years of the operation of the ERA. It seems from the debate that everybody wants this to happen. The way to make it happen is to support this amendment.

Amendment put and a division taken with the following result -

Extract from Hansard
[ASSEMBLY - Thursday, 13 March 2003]
p5374c-5393a

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Mr Terry Waldron; Deputy Speaker; Mr Mark McGowan; Mr Larry Graham; Ms Sue Walker; Leave Was
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Ayes (20)

Mr C.J. Barnett	Mrs C.L. Edwardes	Mr W.J. McNee	Mr M.W. Trenorden
Mr M.J. Birney	Mr J.P.D. Edwards	Mr A.D. Marshall	Mr T.K. Waldron
Mr M.F. Board	Mr B.J. Grylls	Mr B.K. Masters	Ms S.E. Walker
Dr E. Constable	Ms K. Hodson-Thomas	Mr P.D. Omodei	Dr J.M. Woollard
Mr J.H.D. Day	Mr R.F. Johnson	Mr P.G. Pandal	Mr J.L. Bradshaw (<i>Teller</i>)

Noes (26)

Mr P.W. Andrews	Mr S.R. Hill	Ms S.M. McHale	Mrs M.H. Roberts
Mr A.J. Carpenter	Mr J.N. Hyde	Mr N.R. Marlborough	Mr D.A. Templeman
Mr A.J. Dean	Mr R.C. Kucera	Mr M.P. Murray	Mr P.B. Watson
Mr J.B. D'Orazio	Mr F.M. Logan	Mr A.P. O'Gorman	Mr M.P. Whitely
Dr J.M. Edwards	Ms A.J. MacTiernan	Mr J.R. Quigley	Ms M.M. Quirk (<i>Teller</i>)
Dr G.I. Gallop	Mr J.A. McGinty	Ms J.A. Radisich	
Mrs D.J. Guise	Mr M. McGowan	Mr E.S. Ripper	

Pairs

Mr R.N. Sweetman	Mr J.C. Kobelke
Mr R.A. Ainsworth	Mr C.M. Brown

Amendment thus negatived.

Clause put and passed.

Schedule 1 put and passed.

Schedule 2 -

Mr C.J. BARNETT: Schedule 2, which is a very long schedule, lists amendments to a raft of legislation. I wish to ask a few questions about the four major components; that is, electricity, gas, rail and water. I am seeking this information because, while there is a single regulator, there are quite separate responsibilities for each of those utility services. That in part reflects the original Acts and the way that the amendments have been applied. In many respects, this schedule is the substance of the Bill, but I do not anticipate that we will need to debate this schedule for a long period.

I will start with the example of water. In each of the utility areas is the function of regulation. If regulation is considered more carefully, we find the issues of access regulation and the issuing of licences. There is also the issue of to whom the regulator reports in each of those areas, as well as who has the policy role and who has or how many ministers have responsibility for that area. That might sound complicated, but it is not. One of my major issues with this Bill is that it has complex reporting arrangements. I will work through that scenario of water bit by bit so that I do not get confused. Who now has the standard regulatory role on matters of access?

Mr E.S. Ripper: There is no access regime for water.

Mr C.J. BARNETT: There is, I am sorry. Who then issues the licences?

Mr E.S. Ripper: That is a licensing regime.

Mr C.J. BARNETT: So the access regime is the licensing regime?

Mr E.S. Ripper: No; there is no access regime, but there is a licensing regime.

Mr C.J. BARNETT: I am sorry, but there is.

Mr E.S. RIPPER: There are two licences that a water supplier might require. The first is the licence to get access to a resource, which licence would be issued by the Water and Rivers Commission. Once the water supplier has access to that resource and wants to supply customers, the supplier needs a licence from the Economic Regulation Authority, which is the licensing authority. However, there is no third party access to the water infrastructure regime.

Mr C.J. BARNETT: The licence to access a water resource is administered by the Water and Rivers Commission, and the licence to sell water is obtained from the Economic Regulation Authority. Which minister is responsible for the Water and Rivers Commission and which minister is responsible for the Economic Regulation Authority?

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Mr E.S. RIPPER: The industry minister is responsible for both the legislation governing the licensing regime for water service operators and the legislation governing the licensing regime for access to water resources.

Mr C.J. BARNETT: I accept that. Who is currently the industry minister with responsibility for the Water and Rivers Commission?

Mr E.S. RIPPER: Under the present arrangements, it is the Minister for the Environment and Heritage.

Mr C.J. Barnett: Who is the minister with responsibility for the licence to sell water?

Mr E.S. RIPPER: The Minister for the Environment and Heritage.

Mr P.D. Omodei: No, that is not correct; it is the minister responsible for the Water Corporation.

Mr E.S. RIPPER: No, it is the Minister for the Environment and Heritage.

Mr C.J. BARNETT: There seems to be some dispute about this, and I am conscious of a former water resources minister, who has some knowledge of the area. I thought that the licence to sell water would be the responsibility of the minister responsible for water resources. I want some clarification. The licence to access a water resource is handled by the Water and Rivers Commission, which reports to the industry minister - in this case, the Minister for the Environment and Heritage. The licence to sell water, however acquired, is handled by the Economic Regulation Authority. On those matters, it reports to the industry minister, who, the Treasurer has said, is also the Minister for the Environment and Heritage.

Mr E.S. Ripper: That is right.

Mr C.J. BARNETT: What role then does Hon Nick Griffiths play?

Mr E.S. RIPPER: He is the Minister for Government Enterprises and is responsible for the Water Corporation, which is a participant in the industry. In its machinery of government changes, the Government has separated, in general, the responsibility for the operation of government enterprises from industry minister responsibilities in the same industry; hence, the Minister for the Environment and Heritage is responsible for the water industry, but the Minister for Government Enterprises is responsible for the Water Corporation. There is one exception to that rule; that is, the Minister for Energy is also currently the minister responsible for Western Power. The reason for that is that an electricity reform process is under way, and it did not seem to be a wise move to have two ministers involved in the supervision of the electricity reform process. Once electricity reform is concluded, it will be the intention of the Government that the Minister for Energy will be responsible for energy industry and energy policy matters and, presumably, the Minister for Government Enterprises will be responsible for the government enterprises involved in the electricity industry.

Mr C.J. BARNETT: Who is responsible, therefore, for water policy in Western Australia?

Mr E.S. RIPPER: Water policy is the responsibility of the Minister for the Environment and Heritage, although, in an informal arrangement, the Premier has established a water task force comprising ministers and representatives from all the government agencies that have involvement.

Mr C.J. Barnett: What does Hon Nick Griffiths do, if he is not responsible for licensing, resource access or policy?

Mr E.S. RIPPER: The Minister for Government Enterprises is responsible for effective operation of the Water Corporation, along with other government corporations such as Gold Corporation and the WA Treasury Corporation.

Mr C.J. Barnett: I am referring to his role in water issues.

Mr E.S. RIPPER: He is a government enterprise minister and he has assumed administrative responsibility for the Water Corporation, Gold Corporation and the WA Treasury Corporation. In his capacity as Minister for Racing and Gaming he also has responsibility for the Totalisator Agency Board and the Lotteries Commission. He has quite a stable of government enterprises for which he is responsible. However, he is not responsible for industry policy in those areas. In other words, there has been a split in responsibility for government participation in industries and industry policy making in those areas.

Mr C.J. BARNETT: What role does the Premier play in water policy?

Mr E.S. RIPPER: Like all Premiers, the Premier is an important figure in the Government. He has a coordinating role and he has determined that water policy is a very significant issue in which he would like to play a coordinating role. He has convened a task force of all those involved and interested people in government. The task force is developing responses to the water supply crisis we face.

Mr C.J. BARNETT: What happens concerning the conditions attached to a licence, such as water quality; the charter for services; consumer protection and call-out times; complaints; and recovery of moneys if accounts are

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overpaid? Who has the whole responsibility for the interests of the consumers attached to the Water Corporation?

Mr E.S. RIPPER: Schedule 1 of the Water Services Coordination Act sets out the matters that can be covered by licence terms and conditions. That schedule can be clarified by the regulations under the Water Services Coordination Act, which specify the standards that must be met by licensees. It is then up to the economic regulator to apply those rules when issuing licences to individual entities. If the industry minister, in this case the Minister for the Environment and Heritage, wanted to include different matters in licence conditions such as improved water quality standards, she could introduce regulations that required those standards to be in licence conditions. However, the economic regulator will decide whether an entity can receive a licence.

Mr C.J. BARNETT: Under the existing legislation the Water Corporation has provision for a customer charter, which includes criteria for resolving disputes, call-outs, general problems, recovery of moneys etc. The minister just said that the industry minister, in this case Hon Nick Griffiths, has responsibility -

Mr E.S. Ripper: The industry minister is Hon Judy Edwards.

Mr C.J. BARNETT: Hon Nick Griffiths has responsibility for the Water Corporation. Surely he should be responsible for policy and determining standards for rectifying breakages, customer service etc. It seems that he now has no role and that the role of that lies with the Minister for the Environment and Heritage. The Minister for the Environment and Heritage has no jurisdiction over the Water Corporation. She has no statutory power to put conditions in the licence.

Mr E.S. RIPPER: The Water Corporation must get a licence from the Minister for the Environment and Heritage under the Water Services Coordination Act. The Water Corporation is only one participant in the water industry. Others include the Rottnest Island Authority, the Bunbury Water Board, the Busselton Water Board, Hamersley Iron Pty Ltd and South West Irrigation. We are moving away from circumstances in which industries were run by government-owned enterprises and the minister who was responsible for that enterprise was responsible for the industry. A split has been established in government administrative arrangements so that the industry minister deals with all participants in the industry on an equal footing.

Mr C.J. BARNETT: The minister has completely missed the point. I know there are other providers. Ninety-nine per cent of consumers use the Water Corporation, except for those in the south west. Hon Nick Griffiths is the minister responsible for the Water Corporation. He does not have any role with the regulator. The regulator will issue the licence. It is only the licence that can include conditions such as a customer charter, but it is not the regulator's brief. The Minister for the Environment and Heritage also oversees the issue of the licence. She can advise and comment. The minister should point to me where the Bill provides that the Minister for the Environment and Heritage has statutory authority to impose any form of consumer protection or customer charter within this Bill.

Mr E.S. RIPPER: The legislative authority is not contained within this Bill; it is contained within the Water Services Coordination Act.

Mr C.J. Barnett: Sections of which you are just repealing.

Mr E.S. RIPPER: But not the sections that give the minister the power to do that. The current Water Services Coordination Act provides in section 33 -

- (1) Subject to section 34, regulations made under section 61 may -
 - (a) prescribe standards of performance that are to be achieved in individual cases in the provision of water services; and
 - (b) provide that if a licensee fails to meet such a standard, the licensee is to pay a prescribed amount to any person affected by the failure who comes within a prescribed description.
- (2) The regulations may -
 - (a) include a requirement for a licensee, in prescribed circumstances, to inform a person of his or her rights under the regulations;
 - (b) provide for any dispute under the regulations to be referred to the Coordinator for determination;
 - (c) make provision for the procedure to be followed in connection with any such reference and for the enforcement of the Coordinator's determination; and

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- (d) provide for exemptions from the requirements of the regulations.
- (3) Regulations referred to in subsection (1) are to have effect despite section 27(5) of the *Water Corporation Act 1995*.

The minister has the power - the industry minister in this case - to specify the circumstance.

Mr C.J. Barnett: Who?

Mr E.S. RIPPER: The Minister for the Environment and Heritage. The industry minister is responsible for the industry; the government enterprises minister is responsible for the corporation.

Mr C.J. BARNETT: The Treasurer is becoming shrill. I invite the Treasurer to come back into this Chamber and tell me that as of 1 July the consumer protection issues have effectively been abolished, because they have. The Treasurer should go away and look at this Bill very carefully and get some advice. I am happy to be proved wrong, but I suspect that as of 1 July all consumer standards in the water industry in this State will lapse.

Mr E.S. RIPPER: This schedule is quite mechanical. References to the coordinator are changed to references to the Economic Regulation Authority. We are not doing anything apart from replacing the functions performed by the coordinator with functions performed by the ERA. I absolutely refute the comment that consumer protection is being abolished by this legislation. That is a complete misunderstanding. Perhaps the Leader of the Opposition should have paid more attention during his briefing.

Mr C.J. BARNETT: The Treasurer was saying before that it was the Minister for the Environment and Heritage; now the ERA looks after consumer protection.

Mr E.S. Ripper: No.

Mr C.J. BARNETT: Now it is the ERA. I will accept that. Let us say the ERA sets the conditions. From a Government point of view, who will tell the ERA what the service standard conditions should be? Who tells the Economic Regulation Authority what standards of consumer protection are to apply to water consumers in this State? Anyone?

Mr E.S. RIPPER: The minister has the power to make regulations to prescribe the service standards. I have read out the section of the Water Services Coordination Act that allows that to happen, and I am advised that these amendments replace the word "coordinator" wherever it appears in that Act with the words "Economic Regulation Authority". We have the same scheme as we had before. It is the same scheme for consumer protection, the same service standards scheme, the same responsibilities for the ministers involved, except that in our Government one minister will be responsible for the Water Corporation and another for the Water Services Coordination Act. We are following the scheme introduced by the previous Government. What is the change? The change is that instead of a public servant, the Coordinator of Water Services, being the person who is responsible for issuing a licence under this scheme, the body responsible for issuing a licence will be the ERA. I understand why people might be concerned, because consumer protection is an important issue. It is the same licensing and regulatory scheme. There has been no policy change, with the exception that what was previously done by the water services coordinator with regard to licensing will now be done by the ERA.

Mr C.J. BARNETT: I suspect the minister is wrong. I think he will find there is a deficiency in the way this legislation has been drafted and in the way other Bills have provided for repeals. I am happy to be proved wrong, but the minister would be well advised to leave this Bill, go away, have someone carefully look at it and then reassure me that there is not a crack in this legislation. I know it is not intended.

Mr E.S. Ripper: Where do you think the crack is?

Mr C.J. BARNETT: The crack is there because the minister is splitting the responsibilities. The regulator sets all the conditions and the like. There is no clear reporting. There are no means of effecting government policy. The regulator is out there doing his thing; the industry minister responsible for the Water Corporation is out there looking at the balance sheet and does not seem to have anything else to do; the Minister for the Environment and Heritage is meant to be setting standards of service for the Water Corporation's customers. We also have the regulator reporting to the Treasurer, and the Premier taking some responsibility for water policy. I remember when the Water Summit was on in this Chamber, the first question asked by a member of the public was, "Who is in charge of water? Is Hon Judy Edwards, the Minister for the Environment and Heritage, in charge of water, or is Hon Nick Griffiths in charge of water?" The minister could not answer the question. We now have a Premier handling water policy, a Treasurer overseeing the ERA, Hon Nick Griffiths overseeing the Water Corporation, Hon Judy Edwards overseeing environment and licensing, and the regulator himself probably having more power than the lot of them put together. There are now five principal people overseeing water

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policy in this State. It is a recipe for inefficiency and confusion. I am confused. I think I know more about legislation than the average punter, but I am confused by this. The Treasurer is looking somewhat confused. Five principal players are involved in water policy in Western Australia. It is just dopey. I have good reason to believe that the consumer protection role will be the casualty and will fall between the cracks. As of 1 July consumers will lose their protection to recover funds, receive service standards and the like. I am sure that will be patched up down the track, but I am saying the Treasurer should not rely on that; he should get this legislation right, even if it takes another day or so.

Mr E.S. RIPPER: The Leader of the Opposition makes an interesting and alarming assertion, but there is no evidence that he is right. It is all very well to make an assertion like that, but if he really thinks that consumer protection is being abolished he should say that under section 65 we are abolishing clause 34, which previously contained the consumer protection powers, and he is not doing that. He is simply making an assertion.

I will go through it again. The Water Services Coordination Act provides all the powers relating to licences. It specifically includes a section allowing the minister to make regulations and to prescribe standards of performance that are to be achieved in individual cases in the provision of water services. Matters have to be taken into account in the issuing of licences, and the minister can make regulations regarding those matters. The authority, in exercising its licensing powers, must be satisfied that it would not be contrary to the public interest to grant the licence and, where it is required to determine whether something would not be contrary to the public interest, it must take account of a list of factors. They include environmental considerations; social welfare and equity considerations, including community service obligations; economic and regional development, including employment and investment growth; the interests of water services customers generally or of a class of water services customers; the interests of any licensee, or applicant for a licence, in respect of the controlled area or part of a controlled area to which the order, if made, would apply; the importance of competition in water services industry markets; the policy objectives of government in relation to water services; and any other matter that he or she considers relevant. One can see that there is a scheme that protects the public interest and, in particular, protects the consumers of water services.

Mr C.J. BARNETT: Whose responsibility is it for water bores in Perth?

Mr E.S. RIPPER: Although I am becoming an expert on bores, I do not know much about water bores. However, I understand that it is the responsibility of the Minister for the Environment and Heritage.

Mr C.J. BARNETT: Is the Treasurer quite sure about that; is it not the responsibility of the Water Corporation?

Mr E.S. RIPPER: The industry policy minister is responsible for the question of water bores, whether licensed or unlicensed. The industry policy minister in this case is the Minister for the Environment and Heritage. That minister is responsible for the policy for unlicensed bores and for the policy and operation of licensed bores. It is a question of access to water supply. A bore is an access to a water supply and is a matter handled by the Water and Rivers Commission, which is responsible to the Minister for the Environment and Heritage. The Minister for Government Enterprises is responsible for the Water Corporation which, as a participant in the water industry, has its own bores as an operational matter for which it obtains licences from the Water and Rivers Commission, which is responsible to the Minister for the Environment and Heritage.

Mr C.J. BARNETT: I do not want to labour the point, but I want to follow one scenario through. Let us take, for example, the Perth metropolitan area and a public issue with the Water Corporation. Let us say that too many pipes are bursting, too much water is being wasted and there is public outrage - the sort of thing that makes the front page of newspapers - and that the call-out time and repair times are too slow. Who acts on that?

Mr E.S. RIPPER: If Water Corporation pipes are bursting, and a response to their repair is not timely, that is an issue in the first instance for the Water Corporation and its board and in the second instance for the minister who is responsible for the Water Corporation. It may be that in its lack of attention to these matters, the Water Corporation is breaching licence standards. If that is so, it will be a matter for the Economic Regulation Authority to enforce the licence conditions. However, if it were the case that the Water Corporation was in fact adhering to its licence conditions but the licence conditions were inadequate in that they did not provide for the exact circumstances that consumers were complaining about, there would be power for the Minister for the Environment and Heritage to make regulations raising the standards. The Water Corporation would then be bound by those raised standards and the matter would be enforced by the Economic Regulation Authority. It depends on the scenario. If it is simply an operational matter and the Water Corporation needs to improve its performance, it is a matter for the Water Corporation and the Minister for Government Enterprises. If it is a breach of licensing conditions, it is a matter for the Economic Regulation Authority. If the licence conditions should be stricter, it is a matter for the industry minister, the Minister for the Environment and Heritage.

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Mr C.J. BARNETT: With regard to the financial scenario from the customer's point of view, if the Water Corporation has a bad track record on billing and we find that customers are over-billed and that refunding or crediting of accounts is too slow and there is a public outcry about that, who deals with it?

Mr E.S. RIPPER: In the first instance it would be a matter for the Water Corporation and the minister responsible for it. Again, whether there is a need for anybody else to be involved would depend on the licence conditions. If the Water Corporation were in breach of licence conditions, the Economic Regulation Authority has the power to enforce those conditions. If the licence conditions are inadequate - in other words, the public are not happy with the situation but the Water Corporation is able to say that it has acted in accordance with its licence - the industry minister, the Minister for the Environment and Heritage, could by regulation raise the standards that are applied in the licence conditions. Pricing matters are determined by by-laws under the Water Agencies (Powers) Act and are the responsibility of the Minister for the Environment and Heritage. It may be the case that the Water Corporation was overcharging and breaching a by-law under that Act.

Mr C.J. BARNETT: Debt recovery is the opposite side of consumer protection. If there are unpaid water bills, the Water Corporation sets about recovering debt. If it were to adopt an aggressive approach and there were an outcry from the social welfare lobby that unemployed persons, pensioners and whoever else were being treated harshly by the Water Corporation, who deals with that?

Mr E.S. RIPPER: In the first instance it would again be a matter to be dealt with by the Minister for Government Enterprises and the Water Corporation. The Minister for Government Enterprises has the capacity to insist on certain matters being included in the strategic development plan of the corporation. He also has the capacity to direct the corporation. In the first instance, it is therefore the responsibility of the Water Corporation to establish its own debt recovery policy, but it is a matter that can be dealt with, if necessary, by direction by the minister or by inclusion in the strategic development plan. The Minister for the Environment and Heritage is the industry minister. I would need to clarify the matter and determine whether one could tackle the matter through licence conditions, by-laws governing charges and other related issues. In the first instance, one expects government-owned entities to be leaders in their fields, and not poor performers. However, if it is a poor performer, it can be dealt with either by one minister, or by one minister improving its performance and another minister establishing standards in the industry with which all entities in the industries must conform.

Mr C.J. BARNETT: I think the minister sees my point. A consumer with a problem with water supply can go to the Water Corporation, or complain publicly and the media may pick up the issue. The Water Corporation and the government enterprise minister may do something, and the regulator may do something if a condition applies. Also, the industry minister may do something if she can agree with the minister responsible for the corporation.

Mr E.S. RIPPER: They do not have to agree.

Mr C.J. BARNETT: There must be a licence agreement. It is too cumbersome a structure. It remains to be seen whether things have fallen through the cracks. It is hopelessly cumbersome. The idea of the Bill is to provide certainty, but too many players are involved. Everybody has a finger in the water resources pie. It will be easy for one minister or agency to blame another. The Treasurer will not achieve certainty or timeliness. The Government has followed a principle that is nice, but its application is too complex.

The most asked question throughout the water summit was who is in charge of water. At that stage there were two bodies - there will be five following the passage of the Bill. It is a recipe for confusion, and not only with government: think of consumers who will be confused by the structure. Poor regulation and misregulation will take place, and consumers will not enjoy the rights and quality of service they deserve. That is a major flaw in the way the Bill is designed. It may appear nice and neat on the desk, but its practical application in the community will fail because of the cumbersome reporting and administrative structures.

Mr E.S. RIPPER: This is the existing regulatory regime for water introduced by the coalition.

Mr C.J. Barnett: No, it's not.

Mr E.S. RIPPER: It is the existing regime. I make that statement subject to two qualifications. First, under this Bill, the Economic Regulation Authority will play the role that the Coordinator of Water Services currently plays in issuing licences and the minister currently plays in enforcing licences under the existing regulatory scheme. Instead of the minister enforcing, the ERA will do both jobs. My second qualification is that under the previous Government, the minister responsible for the Water Corporation was also the minister responsible for the water industry. The Gallop Government made a decision two years ago to separate the role of responsibility for a government enterprise from the role of responsibility for the overall industry in which that enterprise operates. It was a conflict of interest and perspective to be responsible for a participant as well as the overall industry. The

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Leader of the Opposition when Minister for Energy suffered from the conflict. He confused what was in the interests of Western Power and the interests of the electricity supply industry. That is why he took such a strong stand against the disaggregation of Western Power. It was in the best interests of the electricity industry, but not the corporation. It is a classic case of two responsibilities.

What should happen in ideal circumstances? The two sets of responsibilities should be exercised by two ministers. If there is a conflict, it should be expressed in debate in government rather than resolved in the privacy of one minister's mind. The Leader of the Opposition asked to whom one takes a complaint. When minister, the Leader of the Opposition privatised AlintaGas. If one has a complaint about AlintaGas, one can go to AlintaGas. Secondly, maybe the Coordinator of Energy could be approached, as she issues licences for AlintaGas. One could ask whether it is abiding by its licences.

Toward the end of this year, the Government is moving to practical, full retail contestability in the gas industry. We currently have it legally, but not practically. One feature of the practical arrangement will be a customer services charter by which all participants retailing gas will have to abide, and a gas industry ombudsman to whom all participants will subject themselves. We are trying to treat government enterprises as participants in an industry alongside the potential participation of private entities, and treat them in a fair and non-discriminatory way.

Mr C.J. BARNETT: The public will see this arrangement as a shambles, as will much of industry, particularly as it operates with water and, to a lesser extent, other areas.

Mr E.S. Ripper: It is the Leader of the Opposition's scheme! If it is a shambles now, it was a shambles two or three years ago under the coalition Government. I do not think it is a shambles, but if the member thinks so, he is criticising the scheme put in place by his mob.

Mr C.J. BARNETT: This measure introduces another layer.

Mr E.S. Ripper: No. We have replaced the coordinator with the ERA.

Mr C.J. BARNETT: And a new minister - the Treasurer - to have responsibility for the regulator.

Mr E.S. Ripper: The industry minister is responsible for the regulator with regard to the licensing matters.

Mr C.J. BARNETT: The Government has too many players. Human nature as it is, the regulator will essentially report to one minister - the Treasurer. The industry ministers will have virtually no say in this at all. That is the reality.

Mr E.S. Ripper: You can't get your head around, it would appear, with respect, the idea of the independence of the regulator. You say "The regulator will report," and you have in mind a supervisory role. I can see that in all the comment you make.

Mr C.J. BARNETT: Time will tell. I see absolute confusion in the administration of water in the State. Let us go through them quickly. Who has responsibility for access regimes for gas?

Mr E.S. Ripper: For pipelines?

Mr C.J. BARNETT: Yes.

Mr E.S. Ripper: The ERA.

Mr C.J. BARNETT: Which minister is responsible?

Mr E.S. Ripper: The regulator is independent.

Mr C.J. BARNETT: Who is the responsible minister?

Mr E.S. Ripper: The Act is allocated to the energy minister.

Mr C.J. BARNETT: What about licensing?

Mr E.S. Ripper: It is the responsibility now of the coordinator, but it will become the responsibility of the ERA.

Mr C.J. BARNETT: Who is the responsible minister?

Mr E.S. Ripper: The Minister for Energy.

Mr C.J. BARNETT: Who is responsible for energy policy?

Mr E.S. Ripper: The Minister for Energy.

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Mr C.J. BARNETT: Hang on - that is the same minister. The arrangement is the same as that for which the Treasurer criticised me three minutes ago. The same minister is responsible for policy and regulation. The Treasurer criticised me for that when I was energy minister.

Mr E.S. Ripper: No.

Mr C.J. BARNETT: The energy minister is responsible for policy and regulation. The Treasurer criticised me for that when I was energy minister.

Mr E.S. Ripper: The Minister for the Environment and Heritage is responsible for water industry policy and the regulator reports to her on the licensing function.

Mr C.J. BARNETT: Who does the Treasurer say is responsible for access to electricity?

Mr E.S. Ripper: That matter will be determined by the electricity reform and implementation process. However, I imagine the regulator will deal with access issues.

Mr C.J. BARNETT: Does the Treasurer expect the same will apply to gas?

Mr E.S. Ripper: Yes.

Mr C.J. BARNETT: Finally, who is responsible for access to rail?

Mr E.S. Ripper: Currently it is the rail access regulator and that job will be done by the Economic Regulation Authority.

Mr C.J. BARNETT: Who will be responsible for licensing?

Mr E.S. Ripper: There is no industry licensing regime in rail.

Mr C.J. BARNETT: What about the Pilbara rail system?

Mr E.S. Ripper: The Minister for Planning and Infrastructure is responsible for the Rail Safety Act. People who want to operate a rail system must have approval under the Rail Safety Act.

Mr C.J. BARNETT: What about agreement Acts?

Mr E.S. Ripper: Agreement Acts are allocated to the Minister for State Development.

Mr C.J. BARNETT: What do those Acts say about rail?

Mr E.S. Ripper: Whatever they say about rail.

Mr C.J. BARNETT: Who has responsibility at government level for issues pertaining to the Pilbara rail system?

Mr E.S. Ripper: If they are covered by agreement Acts, it is the Minister for State Development. As the Leader of the Opposition knows, state agreements and state agreement Acts override other legislation. However, responsibility for them depends on the contents of those state agreement Acts. State agreement Acts often vary from each other and from legislative regimes that apply in other places or to other instances.

Schedule put and passed.

Schedules 3 and 4 put and passed.

Postponed clause 26: Authority to have regard to certain matters -

Resumed from 12 March. The clause was postponed after Mr C.J. Barnett had moved the following amendment -

Page 15, after line 21 - To insert the following -

(b) the need to encourage both state and regional economic development;

Mr E.S. RIPPER: The Government will not support this amendment because we do not want to import into the scheme the degree of regulatory risk that we believe would flow from having very subjective and non-commercial elements in the matters of which the authority must take account. The Government's view is that the best encouragement we can offer for investment and thus for economic development is if the settings are correct and investors can have confidence in the rules that apply and the way in which they will be applied. I am concerned in particular about the qualification "regional" before "economic development" in the proposed amendment. That could only imply that investors might be compelled by regulatory decisions to put infrastructure into areas in which they would not be able to get an appropriate return on their investment or be compelled to operate infrastructure in regional areas at less than an appropriate rate of return. This is a matter

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that would give concern to investors if they thought these sorts of political considerations would be imported into the regulatory scheme.

There is a case for giving special consideration to regional economic development. It should receive that special consideration by politicians, who are elected to consider matters such as the allocation of resources contrary to market outcomes. That is the job of politicians; they are accountable to the electorate for those sorts of things. It is not the job of a regulator to produce an uncommercial outcome because the regulator wants something to happen in a region that the market would not necessarily produce.

The job of the regulator is to produce a market-like outcome, bearing in mind that we are dealing in these circumstances with a natural monopoly infrastructure. We should not put state and regional economic development into the criteria for the authority to consider because I believe it would import into the authority's deliberations political and subjective considerations that would increase the perception of regulatory risk for investors.

I strongly support both state and regional economic development. However, the best way to get state and regional economic development is to have independent, open, transparent, consistent and efficient regulation, insofar as regulation has a contribution to make to economic development. The best contribution we can make to economic development is to get the settings in regulation right. It would be counterproductive to place on developers a specific requirement to consider state and regional economic development in their deliberations. Therefore, to avoid regulatory risk and to have political and subjective decisions made where they should be - that is, in politics - I oppose the amendment.

I point out that in the major gas access regime with which the regulator will deal, we are bound by a national agreement or a code that covers the regulator's considerations. This clause of the legislation relates to those activities of the authority that do not involve regulating access under national codes.

Mr C.J. BARNETT: I find that not only disappointing but also an indication of the Treasurer's failure in his responsibility to this State. Surely of all the things that a regulator of basic utility services should have - I am talking about essential services such as electricity, gas, water and transport - is a requirement to give consideration to the development of Western Australia and to the development of regional areas. We will divide on this issue. The Government will vote against the regulator's having a responsibility for the regions and a responsibility for the development of the State. The reason the Treasurer gives for that opposition is that it is subjective. He should look at the other criteria in the Bill. The interests of consumers are taken into account on price, quality and reliability of goods and services, and I do not object to that. The regulator should consider the interests of the consumer. One of the interests of the consumer is to have the service - a water supply, power supply, gas supply, transport service or whatever else might be included in this regulatory function in the future. There may be communications services or requirements for underground cabling.

Paragraph (b) refers to the need to encourage investment. Investment is not the broader state development issue; it is the narrow investment of presumably the proponent who is seeking an access regime, a licence to build a pipeline or to do whatever else. That should be considered too. In other words, the regulator must be conscious of interest rates, costs of capital, financing realities and all those sorts of things. Therefore, the supplier and the customer should be considered.

Paragraph (c) refers to the legitimate business interests of investors and service providers in relevant markets. What the hell does "legitimate business interests" mean? If that is not subjective, what is? "Legitimate business interests" could mean almost anything. Laurie Connell's version of a legitimate business interest was different from mine. What does it mean?

Paragraph (d) refers to the need to promote competitive and fair market conduct. The code deals with fair market conduct. It gives the right to access a resource. It probably does not do much about the pricing requirement.

Paragraph (e) refers to the need to prevent the abuse of monopoly or market power. If the Treasurer thinks that is not subjective, what is the difference between monopoly power and market power? Will the Treasurer enlighten me on that?

Mr E.S. Ripper: You make your speech and I'll make mine.

Mr C.J. BARNETT: I have a simple question: if it is not subjective, what is monopoly power and what is market power?

Mr E.S. Ripper: You're an economist.

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Mr C.J. BARNETT: Paragraph (f) refers to the need to promote transparent decision-making processes that involve public consultation. I do not disagree with that. Paragraph (g) refers to the need to promote regulatory outcomes that are in the public interest. How broad and subjective is a term such as "public interest"? There is already a series of broadly related guides - things that the regulator should have at the back of his or her mind - and I do not disagree with them. They are vague. They really mean this: that the spirit of the Parliament is to be fair to the consumer - the customer; do not be unreasonable in restricting the ability of the proponent to undertake the investment; look at market power and make sure things do not go over the top so that a person becomes so entrenched that he can take advantage of the situation; have a sense of competition - presumably that relates to the right of others to come into the market in the future; and think about broad public interest issues, whatever they might be. They might be conflicts with planning or streetscapes. People do not want gas pipelines around beachfronts. There might be a lot of safety issues or other matters. That is all commonsense.

The one thing I would add to it - it is the criticism I raised when we started debating this Bill on Tuesday night - is that what matters at the end of the day is that there is some development. The greatest problem of a regulator is that he will smother development. If there is over-regulation, there is under-development economically. It is the knack of a good regulator and a good minister to find that balance. It is not always done easily. However, if it is not put in this legislation that the regulator must give some consideration to state and regional development, he will not consider it. He will have no basis for even thinking about whether something is good for the State, the wheatbelt, the goldfields or the south west of Western Australia. He will not even be conscious of it. He will not consider it. It is the most minimal change, but it will send a message to the regulator that this Parliament cares about the development of Western Australia. I hope that all country members in particular would want the regulator to be conscious of the needs of regional Western Australia. It is not telling him that he must do anything; it is not telling him that he must subsidise services. It is just saying that he must be conscious of regional needs. That is all I am saying. I hope the Treasurer reconsiders his position. He is saying that the Government will not accept that. That is crazy stuff.

Mr T.K. WALDRON: I will add to those comments. The National Party certainly supports this amendment and the comments of the Leader of the Opposition. As he pointed out, we are talking about essential services. We must have those services in regional WA. The Treasurer commented that politicians should decide what happens and how services are delivered.

Mr E.S. RIPPER: No. If it is a question of subsidies, that is for politicians to decide, not regulators.

Mr T.K. WALDRON: If the Attorney General has his way, there will not be many left to do that, will there? I make that point as well. I certainly support the Leader of the Opposition because I believe that we need to encourage both state economic development and, in particular, regional economic development. I cannot see a problem with this paragraph going into the legislation. I know what the Treasurer said before; however, I cannot see how that could be used in the way he said it could be used.

Mr E.S. RIPPER: State and regional economic development is code for uncommercial outcomes.

Mr C.J. Barnett: No, it is not.

Mr E.S. RIPPER: It is. The Leader of the Opposition wants to do what he did with the Windimurra pipeline, when he persuaded Western Power to borrow \$20 million. He got a state subsidy for Western Power on the interest, which we are still paying. The State put in \$30 million, and a pipeline was built that would not have been built but for the state assistance and the state subsidy. The only trouble is that the mine has closed, and now \$30 million is invested there in a largely unused asset. It is a waste of taxpayers' money. That \$30 million could have been used to construct a road in the member for Wagin's electorate, or Western Power could have spent that amount on maintenance of the distribution system in the north east wheatbelt. That is the sort of decision that the Leader of the Opposition wants the Government to make. It must be remembered that we are talking about regulating private industry. The Leader of the Opposition wants private industry to have its arm twisted by the regulator and the regulator to be involved in enforcing cross-subsidy arrangements or uncompetitive investments; or, worse still, the private investor would make the investment, and then the Leader of the Opposition would have the regulator go along and say to the private investor that it cannot get the return that it expected on that investment because it must charge the people in this sparsely populated area the same price as people in the metropolitan area. Basically, the regulator would be twisting the arms of private investors to have uncommercial outcomes.

I am not opposed to supporting the regions, but the regions should not be supported by the operations of the regulator. If there are to be uncommercial measures to support the regions, those measures must be taken explicitly by the Government through the budget process, not through the operations of the regulator. The

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regulator is there to replicate market-like outcomes. If we start importing subjective and political considerations and implied subsidy demands into the regulation scheme, investors will be scared away from investing in Western Australia. They will say that it is not determined on the normal economic rules; these people in this little jurisdiction, in one of the most isolated parts of the world, have their own subjective state and regional development things that they will put on investors. What does that mean? We know what it means if a person is a National Party politician or the Leader of the Opposition; that is, that people are persuaded or forced to make an uncommercial investment. It is not the right way to go about it. I am not saying that we should not support the regions with subsidies.

Mr C.J. Barnett: You are.

Mr E.S. RIPPER: No, I am not saying that. When we support the regions, as we do, we should do so through explicit on-budget arrangements. Those arrangements are embodied in our regional investment fund, for example. The way to support the regions is through the regional investment fund. Alternatively, it is to do what the Government has done with its publicly owned utility, whereby it has reinstated the uniform tariff that the Leader of the Opposition got rid of.

Mr C.J. BARNETT: Does the Treasurer know that gas licences impose service obligations and that AlintaGas, albeit now privatised, would have uneconomic customers because it is required under its licence to provide the service? In other words, the licensing requirement implies a cross-subsidy, just as electricity licences, telecommunications licences at a federal level and licences for the maintenance of some rail tracks require cross-subsidies. I put it to the Treasurer that there is not a utility licence in this State, or probably even in Australia, that does not carry with it cross-subsidies in support of regional areas. That is the very nature of the beast. It is absolute nonsense for the Treasurer to say that they will be explicit and will be done through community service obligation funding. It does not happen today, it did not happen in the past and it will not happen in the future. By implication - I know he did not mean it - the Treasurer is relieving every utility, whether private or public, of any obligation to service less than fully economic customers.

Mr E.S. Ripper: That is what you did with the Western Power legislation.

Mr C.J. BARNETT: Sorry, I did not do that.

Mr E.S. Ripper: That is exactly what you did with the energy legislation governing Western Power.

Mr C.J. BARNETT: In what way? Explain; tell me what I did.

Mr E.S. RIPPER: The Leader of the Opposition has accused me of absolving utilities of any service requirements to supply. One policy issue with which we are currently dealing is that the laws introduced into this State by the Leader of the Opposition do not require Western Power to supply electricity in the regions. Under the legislation brought into this Parliament by the Leader of the Opposition, Western Power has a requirement to operate fully commercially. It is quite capable of saying from time to time that that means that it does not have to supply a loss-making customer, and that all its regional customers are loss-making customers; therefore, if it must expand the system, it will be acting against the legislation that the Leader of the Opposition put through the Parliament. That is Western Power's position, and that is the position the Leader of the Opposition left this Government in.

Mr C.J. BARNETT: The Treasurer is extraordinarily weak if, after two years, he is still listening to that sort of nonsense. Western Power tried that on me in the first week, but it did not try it on me in the second week.

Mr E.S. Ripper: That is the law.

Mr C.J. BARNETT: The Treasurer is extraordinarily weak.

Mr E.S. Ripper: I am telling you that that is the law.

Mr C.J. BARNETT: I have never met such a weak Treasurer. Western Power says that it is not its job to supply electricity. Hang on, Chairman of Western Power, what is its job? Its job is to meet the requirements of a utility that is government owned. I made that clear on day one.

Mr E.S. Ripper: Why didn't you put it in the legislation? It is a bit of a problem that you did not make it a legal requirement.

Mr C.J. BARNETT: Yes, there are examples, such as Windy Harbour in the electorate of the member for Warren-Blackwood. There is an issue there because -

Mr E.S. Ripper: You did not make it service Windy Harbour, did you?

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Mr C.J. BARNETT: No, because most of the accommodation in Windy Harbour is holiday accommodation, not permanent residences; that is true.

Mr E.S. Ripper: Would it be the Opposition's policy not to service Windy Harbour?

Mr C.J. BARNETT: Most of the accommodation there is holiday accommodation. However, I had a similar request from another community around Frankland. Western Power said that it was not economic, but those residents got their power supply because I did what a minister should do. A minister brings policy to utilities and gets things done.

Mr E.S. Ripper: Did you issue a written direction? Did you abide by the Act?

Mr C.J. BARNETT: I always abided by the Act, but I did not abrogate my responsibility as a minister. The Treasurer and most of this Government's ministers do not do anything. That is why there will be problems on the Burrup Peninsula. The ministers do not do anything; they stand back and think that things will happen, but they do not happen. How does the Treasurer think Busselton got its gas supply? It did not get its gas supply because AlintaGas initially said that it had a great idea to supply gas to Busselton. I will tell members what happened. The member for Busselton at the time came to me about it. I said that it was a good idea and AlintaGas said that it was not a good idea. I told it to keep working on it until it became a good idea, and it was a good idea. There are lots of things that we need to do around this State. That is the job of ministers and of this Parliament.

There are not too many country members in the Chamber. The member for Cockburn is almost a country member. Some areas in his electorate could do with the reticulation of natural gas; that is true. Many outer metropolitan and country areas in this State need expanded and better utility services. The Treasurer's approach is to not do it because it is the responsibility of the regulator. If that is the Treasurer's approach, he is absolutely hopeless. The job of a minister is to get things done under his portfolio. As I said to a couple of ministers the other day, they should not go to cocktail parties and then walk into this Chamber with press releases about presenting awards or a prize of \$50 to some student; they should do the job of a minister. Their popularity is falling in the polls because they blame everyone else.

Mr R.C. Kucera: If you want to talk about going to cocktail parties, let us talk about going to cocktail parties down at North Fremantle, shall we?

Mr C.J. BARNETT: If the minister likes. Carry on, please.

Mr R.C. Kucera: Why don't you talk about that cocktail party? You gave one explanation of it; try giving another one.

Mr C.J. BARNETT: Perhaps the member for Kimberley will join us and tell us about her role; that would be good. In any case, this is not related to the Bill. I invite the member for Kimberley to give an account of her role; I would be delighted with that. I would be more delighted if she did it outside the Parliament, and so would a few other people.

Several members interjected.

The DEPUTY SPEAKER: Order, members!

Mr R.C. Kucera: Hide behind coward's castle again.

Mr C.J. BARNETT: Never, ever.

Mr R.C. Kucera: Don't forget, people in glasshouses. My apologies, Madam Deputy Speaker.

Withdrawal of Remark

Mr C.J. BARNETT: I ask that the Minister for Health withdraw that remark.

The DEPUTY SPEAKER: I did not hear the comment, but if the minister has breached standing orders, I ask him to withdraw.

Mr R.C. Kucera: I'm sorry, I am not sure what the issue is about.

The DEPUTY SPEAKER: The issue relates to a comment that was made.

Mr M. McGOWAN: The phrase "coward's castle" has been used in this Parliament on numerous occasions, in particular by a former colleague of the member for Cottesloe, the previous member for Alfred Cove. As far as I am aware, it has never been ruled unparliamentary at any time in the history of the Parliament. The former member for Alfred Cove Hon Doug Shave, a good friend of the member for Cottesloe, used the phrase on numerous occasions in this Parliament. It was never objected to and was never ruled unparliamentary.

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The DEPUTY SPEAKER: There will be no withdrawal or remark. The comment was part of robust debate.

Debate Resumed

Mr C.J. BARNETT: I do not expect standards from the Minister for Health, so I will carry on. The issue is simply this: which way will the Treasurer vote on the issue of this Parliament allowing the authority to consider economic or state development and regional development, because it must consider the investor, the consumer, competition and monopoly or market power? This is the Treasurer's Bill. Can he now explain the difference between monopoly power and market power? They are the words in his Bill.

Mr E.S. RIPPER: The issue before us is not whether we want the State to be developed, or whether we want the regions to be developed; the issue before us is what is appropriate for the Economic Regulation Authority to consider. It is appropriate for the Economic Regulation Authority, when considering access matters, to consider an outcome that would replicate a market outcome were it not for the monopoly infrastructure. If we ask the regulator, who is independent of politicians, to start making political decisions, we will do two things. First, we will take out of the hands of politicians the political power that should be in the hands of politicians; and, secondly, we will create regulatory risk. When we create regulatory risk, we create a climate that does not encourage investment, and we think that we are doing something for state and regional economic development, but, in fact, we are acting counterproductively.

On the one hand, it will take away from politicians their power to create development in the regions and, on the other hand, it will give to the regulator matters that he must take into account, which will deter investment in the State. If we want the State to develop economically and people to invest in the State's infrastructure, we need independent, open, transparent, certain and consistent regulation of those industries. If that is free of cost for subsidies, cross-subsidies or uncommercial outcomes, that is the best circumstance for the promotion of regional and economic development. If we twist the regulatory scheme and try to get a little regional preference in here or a little uncommercial outcome there, we will end up with something that is not conducive to investment. We will end up with the Windimurra situation, which is a wasted investment. Let us say that had not been done by Western Power and - based on the device members opposite want to include in the legislation - a regulator had not twisted the arm of the private sector to provide the Windimurra pipeline, and the mine closed and the pipeline became uneconomic, as has occurred. What effect would that have on future investors in this State?

Mr L. Graham interjected.

Mr E.S. RIPPER: I will deal with the member for Pilbara in a minute. The State of Western Australia made a conscious decision to support the Windimurra pipeline. It turned out to be a wrong decision, which cost the taxpayer about \$30 million, and much more if we take into account the other infrastructure. It was a political decision and the politicians who made it should be accountable for it. If we want to support the regions with that sort of arrangement, we can. However, it should be done through the Government as a political decision rather than by perverting the regulatory process.

The member for Pilbara has been waiting patiently. What does he want to ask me?

Mr L. GRAHAM: I am a very tolerant man.

I refer to the Treasurer's rhetorical question about twisting the arm of developers. He referred to Windimurra and said it would be anti-investment. What about when the State twisted the arm of BHP to put in a pipeline to Port Hedland and it had to build a power station? That was extraordinarily attractive and has produced a very competent economic model that has been on-sold and is attracting further development.

Mr E.S. RIPPER: That occurred outside the regulatory framework.

Mr L. Graham: There was no framework.

Mr E.S. RIPPER: That is right. Under this Bill, that could occur outside this framework. For example, the gas access code provides for some pipelines to be covered by the codes and some not to be covered. The Parmelia pipeline would not be covered by the code and therefore would not be covered by the Economic Regulation Authority. There is provision and we could probably get better provision under the gas access code for those arrangements. I am saying that we should not pervert the regulation of regulated assets when we can have other mechanisms.

Mr L. GRAHAM: I was listening to this debate over the speakers because it intrigues me. The risk I see for regional Western Australia is the definition and the inclusion. By that I mean that we could set up a regulatory regime that excludes things from happening unless a minister says it must be put back into the regulatory regime or taken into account. That is exactly the battle that practitioners of regional development have spent most of their lives fighting to overcome. There is a principle of automatic exclusion - the regulatory regime cannot take

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account of those matters - but if someone wants to talk to a politician he can and then it becomes a political decision. In regional Western Australia we very rarely have the regional clout to deliver a political decision, for exactly the reasons the minister is arguing the regulatory regime should not have the power; namely, it is seen as undue political interference in a regulatory regime. Does the minister understand what I am saying? He is looking confused.

Mr E.S. Ripper: I am not certain of the member's argument. Perhaps it is because he is so far away!

Mr L. GRAHAM: There are two legs to it. Firstly, it seems to me that the Treasurer is saying that the regulatory regime should set up these controls and consider them purely on a regulatory basis. That, by definition, includes things. The example I gave was the Port Headland pipeline. Although the regulatory regime did not exist, in effect, the State Government tweaked BHP until it built that pipeline, which would not have been included under this legislation. It was built and it is a great business. BHP has now flogged it and the businesses attached to it. However, the argument against that at the time would have been that it was not covered by the regulations or the regulatory regime, so it should not be dealt with. The argument is reversed. Once a set of regulations is in place, it excludes things.

Mr C.J. BARNETT: I will not debate Windimurra, but projects like that are fantastic for Western Australia. If the price of vanadium falls by 90 per cent, the project reverts to care and maintenance. We are a resource economy State.

Mr E.S. Ripper: What advice did you get at the time?

Mr C.J. BARNETT: I received good advice.

Mr E.S. Ripper: What advice did you get about the risks? Why don't you come clean about that?

Mr C.J. BARNETT: I have nothing to be unclean about. It was not a political decision.

Mr R.C. Kucera: Was it a personal decision?

Mr C.J. BARNETT: As a minister I do not apologise for doing things.

Mr E.S. Ripper: Did you get advice about the risks of that investment?

Mr C.J. BARNETT: I have no idea. I have not looked at the records; they are probably around somewhere.

Mr E.S. Ripper: Would you let us look at the relevant cabinet papers?

Mr C.J. BARNETT: This Government does not even have a cabinet secretary. As if we would let the grubby lot opposite look at our cabinet records. You were named in the Royal Commission into Commercial Activities of Government and Other Matters for changing cabinet records. That is what happened; they altered cabinet records.

Point of Order

Mr E.S. RIPPER: The Leader of the Opposition is alleging that I was named in the royal commission.

Mr C.J. Barnett: Not you personally, the Labor Party.

Ms S.E. WALKER: The Leader of the Opposition was not suggesting that at all. He was talking about the former Burke Government.

The DEPUTY SPEAKER: Order! There is no point of order; there was no direct accusation.

Debate Resumed

Mr C.J. BARNETT: The comment was directed at the former Labor Government, not the current Administration. However, I remind the Treasurer that he was a minister at the time. There will be all sorts of scenarios. To follow on from the member for Pilbara's remarks, sometimes to establish a utility service in a country area or more remote location, particularly a privately provided one, as will be the case increasingly in future, some of the usual conditions can be relaxed. There might be a requirement to do it. Even price could be changed a little; for example, the price of gas in Albany is different from the price in Perth. Some of those variations will apply. That is what the regulator should be able to take into account at the minimum level. He should be able to roll with the dice a little and recognise that in remote, underpopulated areas conditions will be different. I am sure that, technically, the regulator can do that, because Albany is an example. This Parliament must place firmly in the legislation that the regulator must consider economic and regional development. It is not prescriptive. Just as he must consider monopoly power, consumer interest and public interest, he must also consider the development of the State, particularly the regions. If regional members vote against this amendment, they are fools and they are being disloyal to their electorates.

Mr Max Trenorden; Mr Tony McRae; Mr John D'Orazio; Mr Brendon Grylls; Mr Colin Barnett; Mr Eric Ripper;
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Mr B.J. GRYLLS: I also support the amendment; it worries me considerably that when we deferred this debate yesterday the Treasurer said that he could see no problem with this amendment. The encouragement of both regional and economic development under the new economic regulator seems to be a fairly basic premise, which most people, even with little understanding of the legislation we are debating, would be more than happy to support. It concerns me that the Treasurer is now ranting and raving about the fact that any regional development will be uneconomic; he has said that about 15 times. That is the problem all members from the regions have - it is continuously rammed down their throats when they talk about government sectors that everything is uneconomic. The Treasurer is happy to remind us of that continuously as though we are some sort of second-rate citizens who should not have access to the basic services that all Western Australians deserve. I am appalled, and I look forward to sharing the *Hansard* report of the Treasurer's rantings with the people in my electorate to point out exactly what he thinks. This is a simple amendment - it asks the regulator to encourage both state and regional economic development - and the Treasurer and the Government should accept it.

Mr E.S. RIPPER: I will provide the member for Merredin with an example of what the Government is doing about basic services. Many regional towns do not have access to reticulated gas. We are about to go through an expressions of interest process to try to get reticulated gas into more regional towns. One of the ways in which we might do that, for example, is to award exclusive licences to provide that service. That is available as an option under competition and regulatory law. Mechanisms are available under current arrangements to promote the provision of services to the regions. I am not arguing that services to the regions should not be promoted, but I am suggesting that the mechanisms outside those of the regulator are the mechanisms that should be used. I do not want to see the regulatory process corrupted by the regulator being required to take into account uneconomic considerations. The best economic and regional development is achieved if we have a regulatory system that is free of any suggestion of subsidy or preference to one area over another. That is the best way to get investment prospects for the State and therefore the best economic development. If we import all of these considerations into the operations of the regulator, we potentially worsen the regulatory outcomes and the perceptions of regulatory risk.

Mr L. Graham: How?

Mr E.S. RIPPER: The regulator is really charged with producing a market-like outcome in a circumstance where it is difficult for a market to operate because there is a monopoly infrastructure. We want to avoid unnecessary investment -

Mr L. Graham: Do not get off the point -

The DEPUTY SPEAKER: Members, we are having some difficulty hearing what is being said. Member for Pilbara, you may have to stand at the microphone and we may have to shut a couple of extra doors. Things are difficult, and I know the *Hansard* reporter is struggling to hear. It would be helpful if every member tried to speak above the delightful music that is drifting into the Chamber.

Mr L. Graham: I know what the Treasurer would like to do, but why can we not include a regional and state concern as one matter that must be taken into account by the regulator? It is not the sole criterion. It should not act to the exclusion of all other considerations. Why will a requirement that the regulator take into account a regional concern lead to a regulatory risk? The Treasurer has made a brave jump and I am not convinced.

Mr E.S. RIPPER: I am of the view that inserting the words proposed by the Leader of the Opposition will lead to the possibility of commercial and uneconomic outcomes being included or decided upon by the regulator.

Mr L. Graham: How do you arrive at that conclusion? That would lead to a much greater distortion of a regulatory regime.

Mr E.S. RIPPER: In fact, that clause - the requirement to encourage investment in relevant markets - might well cover the need to encourage investment in a particular region, but it does so in a way that does not discriminate between that region and another region.

Mr L. Graham: That is a clever argument, but I would like to see you present it in a court and get away with it, and have the judge and jury agree with you. It is an innovative interpretation. The history of this State is that those sorts of clauses cause corruption of all our systems. That is the Western Australian Development Corporation's experience. It is a similar clause. Why has the Treasurer not arrived at the view that it will corrupt the regulatory regime? He has come to the view that it will not, but that a simple clause that refers to accessing and encouraging regional development will lead to corruption of the regime.

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Mr E.S. RIPPER: The legislation has a pretty standard set of objectives in the operation of any regulator. For example, I will quote from the Leader of the Opposition's legislation, the Gas Pipelines Access (Western Australia) Act 1998, schedule 2 at section 2.24 -

In assessing a proposed Access Arrangement, the Relevant Regulator must take the following into account:

- (a) the Service Provider's legitimate business interests and investment in the Covered Pipeline;
- (b) firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;
- (c) the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;
- (d) the economically efficient operation of the Covered Pipeline;
- (e) the public interest, including the public interest in having competition in markets (whether or not in Australia);
- (f) the interests of Users and Prospective Users;
- (g) any other matters that the Relevant Regulator considers are relevant.

There was no mention of state and regional economic development in the legislation introduced to this House in 1998. The Leader of the Opposition had a set of principles in section 2.24 of schedule 2 of the Gas Pipelines Access (Western Australia) 1998 Act that did not mention state and regional economic development. When the Labor Government comes along and says that it wants one regulator performing all of these regulatory functions instead of having four others, and let us not make a policy change but an institutional change, suddenly the Leader of the Opposition wants to include in the legislation matters that he did not want to include in 1998. He did not want to include them in 1998 for good reason, because he had reached a national agreement on the matters that were to be covered under the gas access legislation. Perhaps the member for Pilbara blamed the Commonwealth for these outcomes, and perhaps he still does. We are not voting for or against regional development. The Leader of the Opposition would love to have us think that. We are voting only on whether the regulator or politicians should consider those issues.

Mr L. GRAHAM: I badly want to agree with the Treasurer and I am looking for ways in which I can agree with him, but the argument he is putting is that these matters belong to the regulator except when they belong to politicians. If the Treasurer skips forward a little in the legislation, he will find that clause 28 excludes the very actions that he is talking about other than by direction from the minister in writing. The Treasurer and I know that directions by ministers to independent authorities do not happen routinely. I suggest that as the Treasurer is responsible for this legislation, he should put himself forward a little in time to when this regulatory regime could be in place. He could give an independent authority a direction to consider regional development and to put a pipeline into an area under a regulatory regime to deliver into an area, contrary to the advice given and actions taken already by the independent authority. I know that the Treasurer is a brave man, but he is not that brave. In fact, it is exactly the same as the argument he was putting against the previous minister for an action that he took. The Treasurer might try to convince me, but he cannot run both arguments that say, on the one hand, not to have it in the Bill because politicians can do it later and, on the other hand, an hour later talk about circumstances that restrict politicians from doing the very things that a regulatory regime can and should be doing.

Mr E.S. RIPPER: The regulatory regime is there to replicate a market outcome. In order to do that it should not be subject to political direction and it should operate not according to political consideration but according to economic consideration. What is the situation in other States? The Essential Services Commission of Victoria has the following objectives -

- (a) to facilitate efficiency in regulated industries and the incentive for efficient long-term investment;
- (b) to facilitate the financial viability of regulated industries;
- (c) to ensure that the misuse of monopoly or non-transitory market power is prevented;
- (d) to facilitate effective competition and promote competitive market conduct;

Mr Max Trenorden; Mr Tony McRae; Mr John D'Orazio; Mr Brendon Grylls; Mr Colin Barnett; Mr Eric Ripper;
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-
- (e) to ensure that regulatory decision making has regard to the relevant health, safety, environmental and social legislation applying to the regulated industry;
 - (f) to ensure that users and consumers (including low income or vulnerable customers) benefit from the gains from competition and efficiency;
 - (g) to promote consistency in regulation between States and on a national basis.

The South Australian regulator must have regard to the need to -

- (a) promote competitive and fair market conduct;
- (b) prevent misuse of monopoly or market power;
- (c) facilitate entry into relevant markets;
- (d) promote economic efficiency;
- (e) ensure consumers benefit from competition and efficiency;
- (f) protect the interests of consumers with respect to reliability, quality and safety of services and supply in regulated industries; and
- (g) facilitate maintenance of the financial viability of regulated industries.

I have read out the objectives of the Victorian and the South Australian bodies. I could read a similar set of objectives from New South Wales. I have read the principles that cover the gas access regulator and the matters that he takes into account. What we are doing is very similar to all those other activities, and nowhere do they have reference to state and regional economic development.

Mr L. Graham: So what?

Mr E.S. RIPPER: It has some persuasiveness, at least in my mind, particularly when I look at whether the Opposition is genuine about this. One of the examples I quoted was the Opposition's own legislation, which was supported by the National Party when the Opposition was in power. We will have a body conducting similar functions to the gas access regulator that was established when the Opposition was in power, and the coalition's objectives for the gas access regulator do not include state and regional economic development. Why is it that the Labor Government is given a higher standard for regional and state development and held to account on that issue when the coalition Government was not?

Amendment put and a division taken with the following result -

Ayes (17)

Mr C.J. Barnett	Mr L. Graham	Mr P.D. Omodei	Dr J.M. Woollard
Mr M.F. Board	Mr B.J. Grylls	Mr P.G. Pandal	Mr J.L. Bradshaw (<i>Teller</i>)
Mr J.H.D. Day	Ms K. Hodson-Thomas	Mr M.W. Trenorden	
Mrs C.L. Edwardes	Mr R.F. Johnson	Mr T.K. Waldron	
Mr J.P.D. Edwards	Mr W.J. McNee	Ms S.E. Walker	

Noes (25)

Mr P.W. Andrews	Mr R.C. Kucera	Mr N.R. Marlborough	Mrs M.H. Roberts
Mr A.J. Carpenter	Mr F.M. Logan	Mrs C.A. Martin	Mr P.B. Watson
Mr A.J. Dean	Ms A.J. MacTiernan	Mr M.P. Murray	Mr M.P. Whitely
Mr J.B. D'Orazio	Mr J.A. McGinty	Mr A.P. O'Gorman	Ms M.M. Quirk (<i>Teller</i>)
Dr J.M. Edwards	Mr M. McGowan	Mr J.R. Quigley	
Dr G.I. Gallop	Ms S.M. McHale	Ms J.A. Radisich	
Mr J.N. Hyde	Mr A.D. McRae	Mr E.S. Ripper	

Pairs

Mr R.N. Sweetman	Mr J.C. Kobelke
Mr A.D. Marshall	Mr S.R. Hill
Mr M.J. Birney	Mr J.J.M. Bowler

Amendment thus negatived.

Mr Max Trenorden; Mr Tony McRae; Mr John D'Orazio; Mr Brendon Grylls; Mr Colin Barnett; Mr Eric Ripper;
Mr Terry Waldron; Deputy Speaker; Mr Mark McGowan; Mr Larry Graham; Ms Sue Walker; Leave Was
Granted To Proceed Forthwith To The Third reading.

Postponed clause put and passed.

Title put and passed.

Third Reading

Leave was granted to proceed forthwith to the third reading.

MR E.S. RIPPER (Belmont - Treasurer) [5.21 pm]: I move -

That the Bill be now read a third time.

MR C.J. BARNETT (Cottesloe - Leader of the Opposition) [5.21 pm]: My speech on the third reading will be shorter than my earlier contributions. I do not want to repeat debate. The Opposition supports the legislation because it has a logic in bringing regulatory functions together. However, it is premature for the consolidation; we need more experience, particularly in the area of water regulation, before this is done. I have a general concern that this will prove to be an immensely bureaucratic structure. Too many ministers have overlapping responsibilities. It will not give certainty, timeliness or cost-effective services in regulation. This will be proved in time.

I am very disappointed that the Labor Party did not support regional Western Australia in this measure. In a State the size of Europe, with problems with service supplies in country areas, to not provide that the regulator must give consideration to state and regional development, among a host of other things, is a deficient approach.

An inherent conflict exists between regulation and development. They are not mutually exclusive. As I did when minister, and as I did today, I placed more importance on the development objective than the regulation objective. The Government is making regulation pre-eminent over development. A bureaucratic and prescriptive regulatory process will mean that development will be stifled. This process should allow private sector and privatised and government-owned utilities to do their job and expand services across the State. The Treasurer's regime is bureaucratic and prescriptive and will smother enterprise by both private and publicly owned institutions.

I support the Bill, despite its flaws. The earlier debate about water regulation in the State proved my point: four ministers and one regulator, with another minister on the side occasionally, will be involved in this area.

Question put and passed.

Bill read a third time and transmitted to the Council.