

**ELECTRICITY LEGISLATION (AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2003**

*Council's Amendments*

Amendments made by the Council now considered.

*Consideration in Detail*

The amendments made by the Council were as follows -

No 1

Clause 1, page 2, line 4 - To delete “(*Amendments and Transitional Provisions*)” and insert instead -  
*Amendment*

No 2

Clause 2, page 2, lines 6 and 7 - To delete the lines.

No 3

Clause 2, page 2, line 8 - To insert after “of” -  
this Act

No 4

Clause 2, page 2, lines 9 to 13 - To delete the lines.

No 5

Clause 2, page 2, line 16 - To delete “but”.

No 6

Clause 2, page 2, lines 17 to 22 - To delete the lines.

No 7

Clause 3, page 3, lines 2 to 7 - To delete the clause.

No 8

Clause 4, page 3, lines 8 to 15 - To delete the clause.

No 9

Clause 5, page 3, lines 16 to 19 - To delete the clause.

No 10

Clause 6, page 3, line 20 to page 4, line 20 - To delete the clause.

No 11

Clause 7, page 4, lines 21 and 22 - To delete the clause.

No 12

Clause 8, page 4, lines 23 to 29 - To delete the clause.

No 13

Clause 9, page 5, line 1 to page 6, line 17 - To delete the clause.

No 14

Clause 10, page 6, lines 18 and 19 - To delete the clause.

No 15

Clause 11, page 6, line 20 to page 7, line 3 - To delete the clause.

No 16

Clause 12, page 7, lines 4 to 7 - To delete the clause.

No 17

Clause 13, page 7, lines 8 to 16 - To delete the clause.

No 18

- Clause 14, page 7, lines 17 and 18 - To delete the clause.
- No 19
- Clause 15, page 7, line 19 to page 12, line 14 - To delete the clause.
- No 20
- Clause 16, page 12, line 15 to page 16, line 10 - To delete the clause.
- No 21
- Clause 17, page 16, lines 11 to 26 - To delete the clause.
- No 22
- Clause 18, page 17, lines 4 to 11 - To delete the lines.
- No 23
- Clause 19, page 17, line 12 to page 19, line 6 - To delete the clause.
- No 24
- Clause 20, page 19, lines 7 to 22 - To delete the clause.
- No 25
- Clause 21, page 19, line 24 to page 20, line 18 - To delete the clause.
- No 26
- Clause 22, page 20, line 19 to page 21, line 4 - To delete the clause.
- No 27
- Clause 23, page 21, lines 5 to 11 - To delete the clause.
- No 28
- Clause 24, page 21, line 15 to page 22, line 28 - To delete the clause.
- No 29
- Clause 25, page 23, lines 1 to 12 - To delete the clause.
- No 30
- Clause 26, page 23, lines 13 to 19 - To delete the clause.
- No 31
- Clause 27, page 23, line 20 to page 24, line 2 - To delete the clause.
- No 32
- Clause 28, page 24, lines 3 to 17 - To delete the clause.
- No 33
- Clause 29, page 24, line 18 to page 25, line 5 - To delete the clause.
- No 34
- Clause 30, page 25, lines 6 to 25 - To delete the clause.
- No 35
- Clause 31, page 25, line 27 to page 27, line 13 - To delete the clause.
- No 36
- Clause 32, page 27, line 14 to page 28, line 4 - To delete the clause.
- No 37
- Clause 33, page 28, line 5 to page 29, line 28 - To delete the clause.
- No 38
- Clause 34, page 30, lines 1 to 19 - To delete the clause.
- No 39

- Clause 35, page 30, line 20 to page 31, line 4 - To delete the clause.  
No 40
- Clause 36, page 31, lines 5 to 14 - To delete the clause.  
No 41
- Clause 37, page 31, line 16 to page 32, line 15 - To delete the clause.  
No 42
- Clause 38, page 32, line 16 to page 33, line 27 - To delete the clause.  
No 43
- Clause 39, page 34, lines 1 to 9 - To delete the clause.  
No 44
- Clause 40, page 34, line 12 to page 35, line 2 - To delete the clause.  
No 45
- Clause 41, page 35, line 3 to page 36, line 9 - To delete the clause.  
No 46
- Clause 42, page 36, lines 10 to 14 - To delete the clause.  
No 47
- Clause 43, page 36, lines 16 to 28 - To delete the clause.  
No 48
- Clause 44, page 37, lines 1 to 14 - To delete the clause.  
No 49
- Clause 45, page 37, lines 15 to 21 - To delete the clause.  
No 50
- Clause 46, page 37, line 24 to page 38, line 22 - To delete the clause.  
No 51
- Clause 47, page 38, line 23 to page 39, line 25 - To delete the clause.  
No 52
- Clause 48, page 39, line 26 to page 40, line 15 - To delete the clause.  
No 53
- Clause 49, page 40, lines 16 to 22 - To delete the clause.  
No 54
- Clause 50, page 40, line 25 to page 42, line 4 - To delete the clause.  
No 55
- Clause 51, page 42, lines 5 to 18 - To delete the clause.  
No 56
- Clause 52, page 42, lines 19 to 31 - To delete the clause.  
No 57
- Clause 53, page 43, lines 1 to 23 - To delete the clause.  
No 58
- Clause 54, page 43, line 24 to page 44, line 19 - To delete the clause.  
No 59
- Clause 55, page 44, line 20 to page 45, line 17 - To delete the clause.

No 60

Clause 56, page 45, line 19 to page 46, line 6 - To delete the clause.

No 61

Clause 57, page 46, lines 7 to 14 - To delete the clause.

No 62

Clause 58, page 46, line 16 to page 47, line 9 - To delete the clause.

No 63

Clause 59, page 47, lines 11 to 27 - To delete the clause.

No 64

Clause 60, page 47, line 28 to page 48, line 5 - To delete the clause.

No 65

Clause 61, page 48, lines 6 to 15 - To delete the clause.

No 66

Clause 62, page 48, lines 16 to 21 - To delete the clause.

No 67

Clause 63, page 48, line 22 to page 49, line 12 - To delete the clause.

No 68

Clause 64, page 49, line 13 to page 50, line 10 - To delete the clause.

No 69

Clause 65, page 50, line 12 to page 51, line 2 - To delete the clause.

No 70

Clause 66, page 51, lines 3 to 16 - To delete the clause.

No 71

Clause 67, page 51, lines 17 to 28 - To delete the clause.

No 72

Clause 68, page 52, lines 2 to 24 - To delete the clause.

No 73

Clause 69, page 53, lines 3 to 7 - To delete the clause.

No 74

Clause 70, page 53, lines 8 to 14 - To delete the clause.

No 75

Clause 71, page 53, line 15 to page 54, line 28 - To delete the clause.

No 76

Clause 72, page 55, lines 1 to 11 - To delete the clause.

No 77

Clause 73, page 55, lines 12 to 17 - To delete the clause.

No 78

Clause 74, page 55, line 18 to page 56, line 14 - To delete the clause.

No 79

Clause 75, page 56, line 16 to page 57, line 10 - To delete the clause.

No 80

- Clause 76, page 57, lines 11 to 15 - To delete the clause.
- No 81
- Clause 77, page 57, line 16 to page 58, line 8 - To delete the clause.
- No 82
- Clause 78, page 58, lines 9 to 25 - To delete the clause.
- No 83
- Clause 79, page 59, lines 1 to 16 - To delete the clause.
- No 84
- Clause 80, page 59, line 17 to page 60, line 27 - To delete the clause.
- No 85
- Clause 81, page 61, lines 1 to 19 - To delete the clause.
- No 86
- Clause 82, page 61, lines 20 to 29 - To delete the clause.
- No 87
- Clause 83, page 62, lines 1 to 18 - To delete the clause.
- No 88
- Clause 84, page 62, line 19 to page 63, line 13 - To delete the clause.
- No 89
- Clause 85, page 63, lines 14 to 27 - To delete the clause.
- No 90
- Clause 86, page 64, lines 1 to 18 - To delete the clause.
- No 91
- Clause 89, page 65, line 14 - To delete “deleting” and insert instead -  
inserting after
- No 92
- Clause 89, page 65, line 15 - To delete “and inserting instead”.
- No 93
- Clause 89, page 65, line 16 - To insert before “network” -  
or
- No 94
- Clause 89, page 65, lines 17 to 19 - To delete the lines.
- No 95
- Clause 89, page 65, after line 19 - To insert -
- (2) Section 5(1) is amended in the definition of “electric installation” by deleting  
“electric” and by relocating the definition in the appropriate alphabetical position.
- (3) Section 5(1) is amended by deleting the definition of “supply authority” and inserting  
instead -
- “
- “supply authority”** means an entity that, immediately before the coming  
into operation of section 89 of the *Electricity Legislation  
Amendment Act 2004*, was a supply authority as defined in this  
section, but does not include the Western Power Corporation;
- ”.
- No 96

Clause 89, page 65, line 25 - To delete “2003” and insert instead -  
2004

No 97

Clause 89, page 65, line 27 - To delete “2003” and insert instead -  
2004

No 98

Clause 89, page 66, line 7 - To delete “2003” and insert instead -  
2004

No 99

Clause 89, page 66, line 21 - To delete “2003” and insert instead -  
2004

No 100

Clause 89, page 66, line 23 - To delete “2003” and insert instead -  
2004

No 101

Clause 89, page 66, line 28 - To delete ““Coordinator”, ”.

No 102

Clause 89, page 66, line 29 - To delete “, “electric installation”, ” and insert instead -  
and

No 103

Clause 89, page 66, line 29 - To delete “, “public authority” and “supply authority””.

No 104

Clause 90, page 66, line 32 - To insert after “repealed” -  
and the following section is inserted instead —  
“

**6. Application of Act to supply authorities**

- (1) The Minister may, by instrument published in the *Government Gazette*, declare that on and after a specified day a specified relevant provision does not apply to a specified supply authority, and a declaration so made has effect accordingly.
- (2) A declaration is not to be made in respect of a relevant provision unless the Minister is of the opinion that on and after the specified day the specified supply authority will have powers, rights and obligations under the *Electricity Industry Act 2004* that are substantially equivalent to those conferred or imposed by the relevant provision.
- (3) A declaration is not to be made after the expiration of the period of 2 years beginning on the day of the insertion of subsection (1) into this Act by the *Electricity Legislation Act 2004*.
- (4) In this section —  
“**declaration**” means a declaration made under subsection (1);  
“**relevant provision**” means any of sections 11 to 24, 34 to 41 or 43 to 51, or any portion of any of those sections, or section 32 (a), (b), (d) or (l);  
“**specified**” means specified in the declaration.

”.

No 105

Clause 91, page 67, line 5 - To delete “**Network operators**” and insert instead -  
**Powers, rights and**

No 106

Clause 92, page 67, lines 6 and 7 - To delete the clause and insert the following new clauses instead -

**92. Part II Division 1 heading deleted**

The heading to Part II Division 1 is deleted.

**93. Sections 7, 8, 9 and 10 repealed**

Sections 7 to 10 are repealed.

**94. Section 13 repealed**

Section 13 is repealed.

**95. Sections 15, 16 and 17 repealed**

Sections 15 to 17 are repealed.

**96. Part II Division 2 heading deleted**

The heading to Part II Division 2 is deleted.

No 107

Clause 95, page 68, line 4 - To delete “(a), (b), (d),”

No 108

Clause 95, page 68, line 4 - To delete “and (l)”.

No 109

Clause 96, page 68, lines 11 and 12 - To delete the clause.

No 110

Clause 97, page 68, line 19 - To delete “or electric”.

No 111

Clause 97, page 68, lines 22 and 23 - To delete “or electric”.

No 112

Clause 98, page 69, lines 1 and 2 - To delete the clause.

No 113

Clause 100, page 69, line 8 - To delete “to 51 are” and insert instead -  
is

No 114

Clause 103, page 69, lines 19 to 21 - To delete the clause.

No 115

Clause 109, page 76, line 24 - To delete “2003” and insert instead -  
2004

No. 116

New clauses 101A to 101O, page 69, after line 12 - To insert the following new clauses -

**Division 2 — *Electricity Corporation Act 1994* amended**

**101A. The Act amended**

The amendments in this Division are to the *Electricity Corporation Act 1994*\*.

[\* *Reprint 2 as at 3 January 2003.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 118. ].*

**101B. Section 3 amended**

- (1) Section 3 is amended as follows:
  - (a) by inserting before “In this Act” the subsection designation “(1)”;
  - (b) in the definition of “subsidiary” by deleting paragraph (a) and “and” after it and inserting instead —  
“
    - (a) a body determined to be a subsidiary of the corporation under subsection (2); or”.
- (2) At the end of section 3 the following subsection is inserted —  
“
  - (2) Part 1.2 Division 6 of the Corporations Act applies for the purpose of determining whether a body is a subsidiary of the corporation.”.

**101C. Section 28 amended**

- (1) Section 28(3) is amended by deleting “The” and inserting instead -  
“ Subject to subsection (3a), the ”.
- (2) After section 28(3) the following subsections are inserted -  
“
  - (3a) Without limiting section 66, the Minister may under that section direct the corporation -
    - (a) not to perform a function specified in the direction;
    - (b) not to perform a function specified in the direction to an extent, or except to an extent, specified in the direction; or
    - (c) not to perform a function specified in the direction in or in relation to an area, or except in or in relation to an area, specified in the direction.
  - (3b) Subsection (3a) does not authorise a direction of a kind mentioned in section 38A(1).”.

**101D. Section 31A inserted**

After section 31 the following section is inserted -

“

**31A. Segregation of functions**

- (1) Regulations under section 100 may provide for, and in relation to -
  - (a) the segregation of any segment of the corporation’s operations mentioned in section 62(2) from the other functions or operations of the corporation; or
  - (b) the segregation from the corporation of any subsidiary of the corporation that has any functions or operations of a specified kind.
- (2) Regulations referred to in subsection (1) may make provision for, or in relation to -



- (a) the keeping of accounts and records;
- (b) financial reporting;
- (c) the apportionment of income, expenditure, assets and liabilities;
- (d) the protection of information;
- (e) the conduct of officers of the corporation; and
- (f) controls and procedures, and the conferral of functions on a specified person, to ensure that any required segregation is effective.

”.

**101E. Section 62 amended**

(1) Section 62(2)(a) is amended as follows:

- (a) in subparagraph (i) by inserting after “electricity” -  
“ within the South West interconnected system ”.
- (b) by deleting subparagraphs (ii) and (iii) and inserting instead -  
“
  - (ii) the transmission and distribution of electricity within the South West interconnected system;
  - (iii) the sale of electricity within the South West interconnected system;”.

”.

(2) After section 62(2) the following subsection is inserted -

- “
- (2a) In subsection (2) -  
“**South West interconnected system**” has the meaning given to that term in section 3 of the *Electricity Industry Act 2004*.

”.

**101F. Section 66 amended**

Section 66(1) is amended as follows -

- (a) by deleting “generally”;
- (b) by inserting after “functions” -  
“ , either generally or in relation to a particular matter, ”.

**101G. Section 95A inserted**

After section 95 the following section is inserted -

“

**95A. Phasing-out of operation of access and procurement provisions**

- (1) The Minister may, by instrument published in the *Government Gazette*, declare that a specified relevant provision does not have effect on and after a specified day, and a declaration so made has effect accordingly.
- (2) A declaration is not to be made in respect of a relevant provision unless the Minister is of the opinion that the matters to which the relevant provision relates are adequately dealt with, or will be adequately dealt with on and after the specified day, under -

- (a) Part 8 of the *Electricity Industry Act 2004* and the Code established under that Part; or
- (b) Part 9 of the *Electricity Industry Act 2004* and the regulations made and market rules established under that Part.
- (3) A declaration is not to be made after the expiration of the period of 2 years beginning on the day of the insertion of subsection (1) into this Act by the *Electricity Legislation Amendment Act 2004*.
- (4) Regulations made under section 100 may -
  - (a) repeal any specified provision that has ceased to have effect because of a declaration;
  - (b) effect any repeal of or amendment to any other provision of this Part or Schedule 5, 6 or 7 that is consequential on a repeal referred to in paragraph (a); and
  - (c) prescribe any matter that it is necessary or convenient to prescribe for transitional or savings purposes in relation to a declaration or in relation to a repeal or amendment referred to in paragraph (a) or (b).
- (5) In this section -
  - “**declaration**” means a declaration made under subsection (1);
  - “**relevant provision**” means any of section 90, 91, 92 or 93 or Schedule 5, 6 or 7, or any portion of any of those sections or Schedules;
  - “**specified**” means specified in the declaration.

”.

### **Division 3 — *Electricity Industry Act 2004* amended**

#### **101H. The Act amended**

The amendments in this Division are to the *Electricity Industry Act 2004*\*.

[\* *Act No. 5 of 2004.*]

#### **101I. Part 2 Division 7 heading amended**

- (1) The heading to Part 2 *Division 7* is amended by deleting “Other functions of the Authority” and inserting instead -

“

**Administration and monitoring of licensing scheme and issue of codes**

”.

#### **101J. Section 39 amended**

- (1) Section 39(1) is amended by deleting “The” and inserting instead -
  - “ Subject to subsection (2b), the ”.
- (2) After section 39(2) the following subsections are inserted -
  - “
  - (2a) If the Authority has not prepared and issued a code in respect of a code matter the Minister may -
    - (a) prepare and issue a code in respect of that code matter; or
    - (b) by notice published in the *Government Gazette*, declare that the Minister proposes to prepare and issue a code in respect of that code matter.
  - (2b) If -

- (a) a code prepared and issued by the Minister; or
- (b) a declaration under subsection (2a)(b),  
is in force in respect of a code matter, the Authority cannot issue a  
code in respect of that code matter.
- (2c) In subsections (2a) and (2b) -  
“code matter” means -
  - (a) the matter mentioned in subsection (2)(a);
  - (b) the matter mentioned in subsection (2)(b);
  - (c) the matter mentioned in subsection (2)(d); or
  - (d) a matter referred to in subsection (2)(e).

”.

**101JA. Section 79 amended**

Section 79(2)(c) is amended by deleting “customers; and” and inserting instead -

“

customers and providing for compensation payments to be made to  
customers when standards of conduct are not met; and

”.

**101JB. Section 89A inserted**

After section 89 the following section is inserted -

“

**89A. Regulations may modify application or operation of enactments to facilitate operation of code**

The regulations may provide that a prescribed enactment -

- (a) does not apply in relation to the supply and marketing of electricity to customers;
- (b) does not apply in relation to the supply and marketing of electricity to customers to the extent prescribed;
- (c) does not apply in relation to the supply and marketing of electricity to customers to the extent that the enactment is inconsistent with the code; or
- (d) applies in relation to the supply and marketing of electricity to customers with such modifications as are prescribed.

”.

**101K. Section 103 amended**

Section 103 is amended by deleting the definition of “access” and inserting instead -

“

“access”, in relation to services, has a meaning corresponding with the  
meaning that it has when used in that context in the *Trade Practices  
Act 1974* of the Commonwealth;

”.

**101L. Section 104 amended**

Section 104(2) is amended as follows:

- (a) in paragraph (l), by deleting “metering and other”;
- (b) by deleting paragraph (m).

**101M. Section 106 amended**

Section 106(2) is amended by inserting after “agreement” -  
“ or an enactment ”.

**101N. Section 115 amended**

(1) Section 115(1) is amended as follows:

(a) by inserting before “must” -

“ , or an associate of the network service provider, ”.

(b) by deleting “aimed at” and inserting instead -

“ for the purpose of ”.

(c) after paragraph (c), by inserting -

“

Penalty: \$100 000.

Daily penalty: \$20 000.

”.

(2) Section 115(2) is amended as follows:

(a) by inserting before “must” -

“ , or an associate of the person, ”.

(b) by deleting “aimed at” and inserting instead -

“ for the purpose of ”.

(3) Section 115(3) is repealed (but not the penalties after it).

(4) At the end of section 115 the following subsections are inserted -

“

(3) Without limiting subsection (1) or (2) -

(a) a person is taken to engage in conduct for a particular purpose if -

(i) the conduct is or was engaged in for purposes that include, or included, that purpose; and

(ii) that purpose is or was a substantial purpose;

(b) a person may be taken to have engaged in conduct for a particular purpose even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or of any other person or from other relevant circumstances.

(4) In this section -

(a) a reference to engaging in conduct is a reference to doing or refusing to do any act and includes a reference to -

(i) making a contract or arrangement or giving effect to a provision of a contract or arrangement;

(ii) arriving at an understanding or giving effect to a provision of an understanding; or

(iii) requiring a covenant to be given or giving a covenant;

(b) a reference to refusing to do an act includes a reference to -

(i) refraining (otherwise than inadvertently) from doing the act; or

(ii) making it known that the act will not be done.

- (5) Subsection (1) or (2) does not apply to conduct in which a person engaged in accordance with an agreement, if the agreement was in force on 30 March 1995.

- (6) In this section -

“**associate**”, in relation to a person, has the meaning it would have under Part 1.2 Division 2 of the *Corporations Act 2001* of the Commonwealth if sections 13, 14, 16(2) and 17 of that Act were repealed.

”.

**101O. Schedule 1 amended**

Schedule 1 item (k) is amended as follows:

- (a) by inserting before “under” -

“ or the Minister ”.

- (b) by deleting “Authority;” and inserting instead -

“ Authority or the Minister, as the case may be; ”.

”.

No 117

New clause 102A, page 69, after line 18 - To insert the following new clause -

“

**102A. Long title amended**

The long title is amended by deleting “the Western Power Corporation and certain other” and inserting instead -

“ **energy** ”.

No 118

New clause 102B, page 69, after line 18 - To insert the following new clause -

**102B. Section 4 amended**

- (1) In section 4(1) the following definitions are inserted in the appropriate alphabetical positions -

“

“**electricity corporation**” means Western Power Corporation or a body corporate that is a subsidiary, as defined in section 3 of the *Electricity Corporation Act 1994*, of Western Power Corporation;

”.

- (2) In section 4(1) the definition of “energy operator” is deleted and the following definition is inserted instead -

“

“**energy operator**” means an electricity corporation or -

- (a) in a prescribed provision as defined in section 45(1) of the *Electricity Industry Act 2004*, a person referred to in that section includes in a reference in that prescribed provision to an energy operator;
- (b) in a provision of this Act referred to in Schedule 2 Part 1 or 2 of the *Energy Coordination Act 1994*, a person referred to in section 11ZO of that Act includes in a reference in that provision to an energy operator; and
- (c) in a provision to which paragraphs (a) and (b) both apply, a person referred to in either of those paragraphs;

”.

- (3) In section 4(1) the definitions of “concessionaire” and “linking-up scheme” are deleted.

”.

No 119

New clause 106A, page 70, after line 28 - To insert the following new clause -

“

**106A. Section 46 amended**

Section 46(12) is amended as follows:

- (a) by inserting after “energy operator” where it first occurs -  
“ responsible for the operation of existing distribution works ”;
- (b) by deleting “existing distribution” and inserting instead -  
“ those ”.

”.

No 120

New clause 107A, page 75, after line 27 - To insert the following new clause -

“

**107A. Section 123 amended**

- (1) Section 123(1) is amended by deleting “or to facilitate the operation of the Electricity Corporation”.
- (2) Section 123(3)(a) is amended by deleting “the Electricity Corporation” and inserting instead -  
“ an electricity corporation ”.

”.

No 121

New clause 107B, page 75, after line 27 - To insert the following new clause -

“

**107B. Section 124 amended**

- (1) Section 124(1) is amended as follows:
- (a) by deleting “Electricity” and inserting instead -  
“ Western Power ”.
- (b) by deleting “its functions” and inserting instead -  
“ the functions of an electricity corporation ”.
- (2) Section 124(1a) is amended by deleting “energy, or the supply of energy, of a kind which is within the corporation’s functions” and inserting instead -  
“ electricity ”.
- (3) Section 124(4) is amended:
- (a) by deleting “the corporation” in paragraphs (a), (b), (d)(i), (d)(ia), (d)(vii), (d)(xi), (e), (k), (n) and (p) and in the first place where it occurs in paragraphs (d)(iaa), (h), (j) and (o) and inserting instead -  
“ an electricity corporation ”.
- (b) in paragraph (d)(iaa) by deleting “the corporation” in the second and third places where it occurs and inserting instead -  
“ the electricity corporation ”.

- (c) in paragraphs (h), (j) and (o) by deleting “the corporation” in the second place where it occurs and inserting instead -  
“ the electricity corporation ”.
- (4) Section 124(5) is amended by deleting “corporation” in both places where it occurs and inserting instead -  
“ Western Power Corporation ”.
- ”.

No 122

Long title, page 1 - To delete all words after “An Act” and insert instead -  
“

**to amend the -**

- **Electricity Act 1945;**
  - **Electricity Corporation Act 1994;**
  - **Electricity Industry Act 2004;**
  - **Energy Operators (Powers) Act 1979; and**
  - **Parliamentary Commissioner Act 1971.**
- ”.

Mr E.S. RIPPER: I will seek leave to deal with some of these amendments in groups. In order to facilitate the possibility of the Opposition agreeing to that, I will outline the proposed groupings. I propose to seek leave to deal with amendments 1 to 6 together. They relate to the commencement provisions of the Bill. I propose to seek leave to deal with amendments 7 to 90. They relate to the deletion of matters to do with the restructure of Western Power. I propose to seek leave to deal with amendments 91 to 113 together because they relate to changes to the Electricity Act. The next block would be amendments 114 and 115, which relate to minor changes to the Energy Operators (Powers) Act and the Parliamentary Commissioner Act. Amendment 116 would be dealt with on its own. It relates to changes to the Electricity Corporation Act and the Electricity Industry Act. Amendments 117 to 121 would be dealt with together. They relate to the Energy Operators (Powers) Act. Amendment 122 relates to the long title.

For the purposes of where we are at the moment, given that the shadow minister, as I understand it, is still on his way to the House, I seek leave to deal with amendments 1 to 6 together and pass my list of proposals to the Opposition for it to consider when I might seek leave to deal with the others as proposed.

Mrs C.L. EDWARDES: I thank the minister for that. I do not believe that the first two groupings will be a problem. I believe the first group that will be an issue is that dealing with amendments 91 to 113. Although they are all dealing with the same Bill, they are not all consequential. We do not mind debating en bloc amendments that are consequential, but at first glance this block does not look like that, so we will have a look at it when the minister hands across his list of proposed groupings. I merely alert him to that.

Leave granted for the following amendments to be moved together.

Mr E.S. RIPPER: I move -

That amendments Nos 1 to 6 made by the Council be agreed to.

With the indulgence of the House, I will read an introductory statement that will explain the whole package of amendments and I think better inform the House for the proper conduct of the debate as members will be able to see how this package relates together rather than try to deal with 122 separate amendments.

The Electricity Legislation (Amendments and Transitional Provisions) Bill 2003 was one of three Bills introduced by the Government in November 2003 to restructure the Western Australian electricity industry. The first Bill, the Electricity Industry Bill, received royal assent in April 2004. The second Bill, the Electricity Corporations Bill 2003, has been suspended following the Opposition's lack of support for the restructure of Western Power. The third Bill, the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003, currently before this place, provides for a number of transitional provisions and amendments to several Acts as a result of the previously proposed restructure of Western Power as well as providing for the transition to the new market arrangements, previously agreed to by Parliament, following the passage of the Electricity Industry Act 2004.

The Government moved to introduce amendments in committee in the Legislative Council in July 2004 to amend the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003. The Bill and the Government's amendments successfully passed the Legislative Council last month. The amendments made in the Council are now before this House with the Government's support. I thank the Opposition and the Independents in the upper House for their support of these amendments, specifically Hon George Cash and Hon Robin Chapple. I also note that Hon George Cash moved two amendments relating to the exercise of ministerial power, which the Government was pleased to support. The amendments to the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003 agreed to by the Legislative Council principally relate to three areas. Firstly, given that the restructure of Western Power will not proceed at the present time, the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003 needs to be amended to delete those provisions relating to the restructure. This will involve the deletion of a large portion of the Bill. Secondly, in view of the restructure of Western Power not proceeding, the Government seeks to introduce increased governance arrangements to provide for more control over the corporation than is currently permitted under the Electricity Corporation Act 1994. These enhanced governance provisions are to be effected through amendments to that Act and were previously provided for under the Electricity Corporations Bill 2003. Thirdly, the amendments provide for mechanisms to enable the transition of market participants to the new electricity market arrangements provided for under the Electricity Industry Act 2004 to avoid duplication of regulatory regimes under various statutes.

In addition to the changes I have just outlined, the amendments before this House retitle the Bill the Electricity Legislation Amendment Bill 2004. The Electricity Legislation Amendment Bill is a mechanical Bill necessary to support the Electricity Industry Act 2004. In this regard, the Bill amends the Electricity Act 1945, the Electricity Corporation Act 1994, the Electricity Industry Act 2004, the Energy Operators (Powers) Act 1979 and the Parliamentary Commissioner Act 1971.

I will now address the specific nature of the amendments agreed to by the Legislative Council. The original Bill introduced into this House on 30 October 2003 provided for amendments to the Electricity Corporation Act 1994 to repeal all provisions except those relating to access to Western Power's transmission and distribution systems. The Bill sought to amend the title of the Electricity Corporation Act 1994 to the Electricity Transmission and Distribution Systems (Access) Act 1994. This Act provided for the continuation of Western Power's obligations to provide third party access to its transmission and distribution capacity until such time as the access arrangements for the Networks Corporation and the Regional Power Corporation, as appropriate, were approved by the Economic Regulation Authority under a new electricity access code. In view of the restructure of Western Power not proceeding at the present time, the amendments before this House now delete these provisions.

There is a fair amount more of this explanation, and perhaps by arrangement with the Opposition it might be completed.

Mrs C.L. EDWARDES: We would obviously like to allow the minister to complete his statement.

Mr E.S. RIPPER: The Bill provided for the making of a transfer order by the Minister for Energy, specifying how the assets, rights and liabilities of Western Power were to be allocated to the proposed four new corporations. The transfer order was to give effect to the legal establishment of the new entities. The Bill also included provision for unallocated assets or liabilities. In view of the restructure of Western Power not proceeding at the present time, the amendments before this House now delete these provisions.

The Bill ensured that the restructure of Western Power would not affect an employee's remuneration, existing or accruing rights or interrupt continuity of service. In view of the restructure of Western Power not proceeding at the present time, the amendments before this House now delete these provisions.

The Bill made consequential amendments to a number of other Acts to replace the term "Western Power Corporation" with reference to one or more of the four successor entities. In view of the restructure of Western Power not proceeding at the present time, the amendments before this House now delete these provisions.

The Bill proposed to make several amendments to the Energy Operators (Powers) Act 1979. These relate to, first, the insertion of the reference to the successor entities to Western Power. In view of the restructure of Western Power not proceeding at the present time, the amendments before this House now delete these provisions. Second, the amendments extend the definition of "energy operator" to include the holder of an electricity generation, transmission, distribution and retail licence. Gas licensees are presently afforded this right. With the establishment of the electricity licence framework under the Electricity Industry Act 2004, similar rights need to be extended to electricity licensees. The amendments now before the House, for the main part, do not amend these provisions. However, under the restructure model it was proposed to delete reference to Western Power in the definition of energy operator. In view of the restructure not proceeding, reference to



Western Power in this definition is to be retained. Third, the amendments to the Act clarify which powers are to apply to network operators, as distinct from energy operators, in a small number of instances. In view of the restructure of Western Power not proceeding at the present time, the amendments before this House now delete some but not all of these provisions.

The establishment of an independent licensing regime under the Electricity Industry Bill gives rise to a number of amendments to the Electricity Act 1945. The Bill sought to repeal a number of provisions from the Electricity Act relating to supply authorities, given that supply authorities are required to be licensed under part 2 of the Electricity Industry Act 2004. The remaining provisions of the Electricity Act 1945 relate to certain technical and safety matters that are administered by the Director of Energy Safety. Under the original Bill, it was proposed to delete these provisions outright.

The amendments before this House now propose a sunset mechanism to be inserted within the Electricity Act 1945, which enables the various rights and obligations related to supply authorities to be progressively suspended over time in recognition of the transition from a supply authority regime under the Electricity Act 1945 to an electricity licensing regime under part 2 of the Electricity Industry Act 2004. The amendments before the House introduce a small number of new amendments to the Electricity Industry Act 2004 and the Electricity Corporation Act 1994. I will first outline the amendments to the Electricity Industry Act 2004.

Industry codes: Section 39 of the Electricity Industry Act 2004 provides the ability for the Economic Regulation Authority to determine industry codes on specific matters including metering, transfer of customers, methods or principle to be applied by licensees in the preparation of accounts between licensees, standards relating to the quality and reliability of supply and any other matter prescribed in regulations. The Government also requires the ability to implement such codes. Amendments to section 39 provide the mechanism to enable this. In the event that the minister determines an industry code, the Economic Regulation Authority may not issue a code on the same matter. This will avoid duplication of industry codes.

Electricity access: Section 115(1) prohibits a network service provider from preventing or hindering a person from obtaining access to services provided by a network. This provision has been amended to make clearer the circumstances and the conduct to be prohibited. There is an equivalent provision within section 4F of the commonwealth Trade Practices Act 1974.

Mr J.C. KOBELKE: I simply rise to give the Minister for Energy the opportunity to continue his contribution on the amendments.

Mr E.S. RIPPER: I thank the Leader of the House for his enthusiastic support.

I now outline the amendments to the Electricity Corporation Act 1994.

Annual reports: Section 62 of the Electricity Corporation Act 1994 states that in preparing annual reports for the corporation on a segmented basis, the operations of the corporation are to be divided into the following segments or such other segments as may be agreed between the corporation and the minister -

- (i) the generation of electricity;
- (ii) the transmission of electricity;
- (iii) the interconnected distribution and sale of electricity;
- (iv) the Pilbara interconnected system; and
- (v) the remote power systems;

Separate profit and loss accounts and balance sheets are to be prepared in respect of each of those segments.

It is proposed that section 62 be amended to reflect the following operational segments as these more closely align to current business operations and provide for greater transparency in terms of reporting requirements -

- (i) the generation of electricity within the south west interconnected system;
- (ii) the transmission and distribution of electricity within the SWIS;
- (iii) the sale of electricity within the SWIS;
- (iv) the Pilbara interconnected system; and
- (v) the remote power systems.

The above will also require a definition of SWIS. The definition contained within clause 3 of the former Electricity Corporations Bill 2003 is proposed in this regard.

Ring fencing of operational segments: Reporting obligations under section 62 of the ECA for the revised segments that are proposed above relate solely to financial performance, and will not in themselves result in

increased security and/or confidentiality of information between the segments. Consequently, it is proposed that section 62 be further amended to reflect the wording of clause 64(2) of the former Electricity Corporations Bill 2003, which provided for security of information between Western Power's businesses and broader ring-fencing arrangements. These arrangements are to apply to the operation of segments listed in the first item above, as amended. In essence, the Government will possess the ability to make regulations in relation to the keeping of accounts and records; financial reporting; the apportionment of income, expenditure, assets and liabilities; the protection of information; the conduct of the officers of the corporation; and controls and procedures, and the conferral of functions on a specified person to ensure that any required segregation is effective.

Minister may give directions: Section 66 of the Electricity Corporation Act enables the minister to give direction to the corporation generally. Section 66 is to be amended consistent with clause 115 of the Electricity Corporations Bill 2003 to provide for directions to be given with respect to the performance of functions either generally or in relation to a particular matter. This will overcome a material problem in the existing legislation regarding the minister's ability to effectively direct the corporation. Furthermore, it is proposed that the minister possess the ability to give a direction, which has the effect of limiting the corporation from performing functions under section 28 of the Act.

Procurement of new generation and electricity access: The amendments before the House provide for the phasing out of operation of access and procurement provisions under the Act in recognition that both those matters are to be dealt with under the Electricity Industry Act 2004. Sections 90, 91, 92 or 93, schedules 5, 6 or 7 or any portions of those sections or schedules may be repealed by the Minister for Energy following the enactment of regulations, provided the minister is of the opinion that the matters to which those sections and schedules relate are adequately dealt with or will be adequately dealt with on or after a specified day under parts 8 and 9 of the Electricity Industry Act 2004.

Part 8 of the Electricity Industry Act 2004 provides for the establishment of a Western Australian access code. The new section 95A provides for the insertion of a sunset provision in relation to obligatory access to Western Power's transmission and distribution capacity. The sunset provisions are necessary to ensure that there is no duplication of generation procurement processes and electricity access and arrangements within the SWIS.

The amendments before the House are arrangements necessary to provide for the transition from the various regulatory arrangements under a range of statutes to the new market arrangements approved by Parliament, as part of its endorsement of the Electricity Industry Act 2004 earlier this year. Although these amendments are of a mechanical nature, they are nonetheless important to establish the new market arrangements undertaken with the full consultation of the industry.

I thank you, Madam Acting Speaker (Ms J.A. Radisich), and the Opposition for your cooperation in allowing that introductory statement to be made, which really sets the scene for a more effective debate on the individual amendments with which we are dealing. The whole matter has to be seen as a package in response to the developments in the electricity reform agenda that have occurred inside and outside the Parliament, following consultation with industry. We were able to achieve opposition support in the other House for this package of amendments, and I hope we will also achieve that support in this House.

Mr M.W. TRENORDEN: I ask for some leniency in the same process. I want to speak generally for a few minutes. This is a matter of cooperation; it is essential cooperation, given the history of the past six months. I hope that the minister takes that on board. We could have debated a range of issues in this legislation, but we have not done so in the interests of making sure that there is continuity leading up to the state election. We will move beyond that position after the state election, whether Labor or the coalition wins the election. It is very important that Western Australians understand that there will be a period in which this whole matter will be held on an even keel until some further action is taken.

I will go over some of the history of this matter. We in this Chamber know what happened. A range of Bills came through this place; they were passed after debate and went to the other place but some of them could not get passage. Therefore, Western Power is now in crisis. Recently, its chairman made statements about a lack of direction, and the legal framework is clearly without definition. These amendments make quite remarkable changes to the process and operations of a core government agency such as Western Power. The last thing we need to do is add more uncertainty in that process. Although we would like to do that in the political process, we should not do that to the people of Western Australia, because it is important that there be continuity.

I understand that the minister wants to handle a fair number of the amendments cognately.

Mr E.S. Ripper: I put forward a proposed breakdown of consideration of the 122 amendments, and I began that by seeking leave to deal with amendments Nos 1 to 6 together. I do not know whether the Leader of the National Party has had a chance to reflect on the proposed way of dealing with the grouping. In any case, I will seek leave stage by stage, and the Opposition can either grant it or not.

Mr M.W. TRENORDEN: The minister can do it stage by stage. I certainly will agree with the first part. Eighty per cent of the amendments are in fact deletions of the process. We have a rather unusual circumstance in that we have pages and pages of amendments. However, they are mostly deletions from the previous Bill. I do not wish to be obstructionist, but I want to make sure that I have an opportunity to raise matters as we go through the process.

Western Power, and the state of power in this great State of ours, is under an extreme amount of pressure. That pressure has been created by the minister. It has been an ordinary process, and it has collapsed on the minister. The reality is that we are in the lead-up to an election. The process that the Government is putting forward today will not be the process. Either the Labor Party will win the election and bring in a new process, or we will win the election and bring in a new process. Therefore, the process that is before us now is very much an interim one. Because it is very much an interim process, the Opposition will allow the passage of the amendments. I say that up front. Although we have concerns about a number of the amendments, we are well aware that if we do too much to the Bill so late in the process, we will cause uncertainty in the market. However, as I said, these are only interim arrangements.

**Question put and passed; the Council's amendments agreed to.**

Leave granted for the following amendments to be moved together.

Mr E.S. RIPPER: I move -

That amendments Nos 7 to 90 made by the Council be agreed to.

I do so, of course, with a measure of regret, because the Government had a reform program for the electricity industry that involved the restructure of Western Power. It was a comprehensive reform program, with expert professional advice available to the Government and substantial participation by and consultation with industry. However, the program, insofar as it involved the split-up of Western Power, did not receive parliamentary support from the opposition parties in the other House. As such, a key part of the program cannot be proceeded with. It has been necessary for the Government to reassess how electricity reform might nevertheless be progressed on a more modest basis. These amendments provide for the necessary parliamentary response to the circumstances that the Government faced in the upper House.

I do not want to go into an extensive debate with the Leader of the National Party on concepts such as direction and crisis regarding Western Power. However, I will say that when the Chairman of Western Power called for more direction, he was referring to a resolution of the parliamentary impasse that has occurred with the Parliament not supporting the Government's reform program. The Government's direction is clear. Unfortunately, the Government has not been able to get parliamentary support for that direction, and that has caused the uncertainty and the need for a rethink on the part of the Government of the best way forward, at least in the interim period.

The Leader of the National Party is right when he says that the election will determine this matter. If the Government is re-elected - I expect it to be re-elected - we will proceed with the split-up of Western Power, and the reform program as originally conceived will be fully back on track. If the Opposition is elected, we do not know quite what will happen. However, presumably it will then have to grapple with the same challenges of competition, security of supply, reliability and private sector investment in the power system that the Government has had to respond to.

Mr M.W. TRENORDEN: The breaking up of Western Power into four sections was a core part of the minister's Bill. In the consultation process, the minister picked on me the other day when I said something along the lines that, in keeping the status quo, we would privatise. However, I can tell the minister that I was actually agreeing with him that the status quo cannot be kept. There is no intention on this side to privatise, but there is an intention to change the status quo. That is what those references were about. I consider that the jump to privatisation is a quantum leap.

Mr E.S. Ripper: I just trust the ABC's reporting.

Mr M.W. TRENORDEN: I notice that the minister trusts it on some occasions and not on other occasions. We all tend to have a double-sided sword.

Mr E.S. Ripper: On this occasion I thought it was uncommonly perceptive.

Mr M.W. TRENORDEN: Okay. The minister is allowed to have his view. In this process, the intention of the State was to have four sections; that is, generation, retail, distribution and a non-south west interconnected system agency. Those were some of the matters on which the ship foundered in the upper House, obviously. These provisions pull out those matters. There is page after page of those provisions. I could debate those issues with the minister now. However, I believe we will have that debate in a broader context at another time. The

Leader of the House is in the Chamber. I hope he hears that I am trying to be very compliant. We could have this debate today. It would not be against the Opposition's interest to have that debate today.

Mr J.C. Kobelke: I really appreciate it when you are compliant, Leader of the National Party.

Mr E.S. Ripper: I would not own up to being compliant if I were you, Leader of the National Party.

Mr M.W. TRENORDEN: I know that those two ministers have an interest in proceeding with the matters of this House. There is always a balance between making a point and making sure the House functions. As I said earlier, the important part of this process is to leave a situation in the market, as a result of the Government's Bills and other matters, in which Western Power can work. If I were bringing in a Bill, even an interim Bill, I would not have introduced it in the way in which the minister did. However, I am prepared to wear that, as is the total Opposition, both Liberal and National Parties, because it is an arrangement that is reasonable in the context that something must be in place. I will have something to say later about direction and those issues. I am trying to get my act together. I have just flown into Perth from Newman, where things are going pretty well. What is the next amendment the minister wishes to deal with?

Mr E.S. Ripper: Amendments Nos 91 to 93. The member for Kingsley has suggested that some of those amendments are not appropriately grouped. Therefore, I am happy to break them up in a different way if that is the member's preferred course of action.

Mr M.W. TRENORDEN: I wish I were more prepared.

Mr E.S. Ripper: We could deal with amendments Nos 7 to 90, because we have both stated our position on the break up of Western Power, and I will begin by providing the Government's explanation on amendment No 91, which will allow the member time to reflect on the break up of the amendments.

Mr M.W. TRENORDEN: That is an excellent idea. The break up of Western Power is at the core of the Government's intentions in this Bill, and that is now happening. It is important that this Bill provide an opportunity for Western Power to continue, but the new marketing arrangements that were put in place through an earlier Bill must be able to interact also.

Mr E.S. RIPPER: I appreciate the response of the Leader of the National Party. We disagree on the splitting up of Western Power. However, the Government has accepted that it does not have the numbers in Parliament to split up Western Power. Therefore, we need to support at least an interim arrangement for that parliamentary reality so that the industry and Western Power can function effectively and we can continue to make progress on those reform matters for which there is parliamentary agreement. I appreciate that there are probably a variety of ways of achieving that. The Government has put one proposition before Parliament, which achieved support in the upper House. Of course, there might be other ways it could be done. The Leader of the National Party has adopted a correct and pragmatic approach. This is a way of acceptably and pragmatically responding to the needs of the electricity reform agenda, the industry and the parliamentary position. Although we might have quibbles here and there, we can all agree that this is an appropriate interim process for progressing all those agendas. I appreciate the approach Hon George Cash took in the other place. The Government responded by accepting some of his proposed amendments.

**Question put and passed; the Council's amendments agreed to.**

Mr E.S. RIPPER: I move -

That amendment No 91 made by the Council be agreed to.

Amendments Nos 91 to 103 relate to clause 89 of the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003. That clause originally sought to amend various definitions contained within section 5 of the Electricity Act 1945. The amendment proposed by clause 89, which amends the definition of "transition works" by inserting a full stop and deleting a semicolon in section 5, is no longer required as the definition of "Western Power" is retained. Reference to the word "electric" in the definition of "electric installation" in section 5 of the Electricity Act 1945 is to be deleted and the amended definition is to be relocated to the appropriate alphabetical position.

The definition of "supply authority" is to be deleted and replaced with the following -

**"supply authority"** means an entity that, immediately before the coming into operation of section 89 of the *Electricity Legislation Amendment Act 2004*, was a supply authority as defined in this section, but does not include the Western Power Corporation;

This provision is necessary in recognition of the transition over time for a supply authority to become a licensed operator under part 2 of the Electricity Industry Act 2004.

Subject to the new section 6, until such time as a supply authority has comparable obligations conferred upon it under the Electricity Industry Act 2004 as a licence holder, it will continue to operate as a supply authority under the Electricity Act 1945. Under the existing section 6 of the Act, Western Power is also deemed to be a supply authority, albeit in a limited number of circumstances. A number of these circumstances will continue to apply to Western Power but as a licensed network operator rather than as a designated supply authority. On that basis it is no longer necessary to retain reference to Western Power in the definition of "supply authority". The date "2003" has been deleted and replaced with "2004" in the five references that it occurs under clause 89(2) of the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003. References to "coordinator" and "public authority" have been retained in recognition of the sunset mechanism contained within proposed new section 6 of the Electricity Act 1945.

Mr M.W. TRENORDEN: As the minister pointed out, it is a matter of the definition of "supply authority". Obviously that definition needs to change in the transition. It is necessary for a licensing system to have continuity and an interim process is required during the transition. Upon examination of this matter and after speaking to people from the industry, I have no objection to the amendment.

**Question put and passed; the Council's amendment agreed to.**

Leave granted for the following amendments to be moved together.

Mr E.S. RIPPER: I move -

That amendments Nos 92 to 103 made by the Council be agreed to.

Essentially, the explanation I gave in speaking to amendment No 91 applies to this group of amendments. The existing electricity regulatory framework was to be totally replaced as a result of the electricity reform process. However, the electricity reform process is not proceeding entirely as originally envisaged, due to the parliamentary position. Therefore, the Government is proceeding with a modified regulatory arrangement. To avoid any unintended consequences or inconveniences to industry, it is important that we get the transition between the old framework and the interim framework right, avoid duplication and avoid industry having to respond to contradictory elements of legislation. Essentially, we are tidying up the regulatory framework so that we can effectively implement at least the modified electricity reform process upon which we are embarking as a result of the parliamentary position.

Mr M.W. TRENORDEN: The people to whom I have spoken over the months have expressed a great deal of concern about the arrangements under the old Bill. Whatever we do, as I said earlier, we want to make those changes also. We are talking about an interim arrangement. I do not believe it will do this House any good for me to speak further on the amendments.

**Question put and passed; the Council's amendments agreed to.**

Mr E.S. RIPPER: I would like to deal with amendments Nos 104 to 113 en bloc, but I am not sure whether the Leader of the National Party is happy to do that. If he prefers, I will start with amendment No 104.

Mr M.W. Trenorden: If you would do that, I will look at the others.

Mr E.S. RIPPER: I move -

That amendment No 104 made by the Council be agreed to.

I will perhaps be granted the indulgence of the Leader of the National Party for a subsequent request to move amendments en bloc.

I will give a general explanation of what is proposed in this amendment. Amendment No 104 relates to clause 90 of the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003. Clause 90 seeks to repeal section 6 of the Electricity Act. Amendment No 104 inserts a new section 6 into the Electricity Act 1945 in place of the repealed section, which provides for the minister by instrument in the *Government Gazette* to declare on a specified date that a relevant provision does not apply to a specified supply authority. Presently, there are five supply authorities - BHP Billiton Iron Ore Pty Ltd, Hamersley Iron Pty Ltd, Robe River Iron Associates, Western Mining Corporation Pty Ltd and the Rottnest Island Authority. Western Power is also a supply authority, but not in the limited context of proposed new section 6 of the Act. The minister is not to make such a declaration about a relevant provision unless the minister is satisfied that the supply authority will have powers, rights and obligations substantially equivalent to those conferred by the relevant provision. Such powers must be exercised by the minister within two years of the commencement of the provision. That is as a result of the amendment moved by Hon George Cash and supported by the Government. "Relevant provision" means any of the following sections: section 11, "Supply authority to pay compensation for damage done"; section 12, "Crossing the district of a local government with transmission works"; section 14, "Method of metering bulk supplies"; section 18, "General powers"; section 19, "Supply authority to reinstate works of a public authority";

section 20, “Interference with works of public authorities and vice versa”; section 21, “Supply authority may let meters and apparatus”; section 22, “Power to contract to supply electricity”; section 23, “Power to cut off supply in case of illegal or fraudulent interference with works”; and section 24, “Power of officer of supply authority to enter premises”. The definition also includes section 32(1)(a), (b), (d) or (l). Section 32(1) states that the Governor may make regulations -

- (a) the limit within which and the conditions under which a supply of electricity by a supply authority shall be compulsory or permissive;
- (b) securing a regular and sufficient supply of electricity by supply authorities;  
...
- (d) subject to existing contracts the limitation of the prices which may be charged by supply authorities in respect of the supply of electricity and the rent and sale of service apparatus and electric fittings;  
...
- (l) prescribing the form and basis of charging for electricity by a supply authority, and the methods to be adopted in fixing such charges, and prescribing times for revising the same;

In the interest of efficiency, I will simply refer to the other affected sections, rather than give a description of each of them. Therefore, the definition of “relevant provision” also includes sections 34 to 41 and sections 43 to 51 of the Electricity Act. Proposed new section 6 is necessary to reflect the new electricity licensing arrangements to be established under the Electricity Industry Act 2004, as without this provision duplication would occur through the regulatory arrangements that would exist under that Act and also under the Electricity Act 1945. What does all that mean in layman’s language? As I understand the scheme, originally all these sections of the Electricity Act 1945 were to be deleted and replaced by the comparable provisions of the Electricity Industry Act. What is proposed here is a more flexible way of effecting the transition from the old regulatory arrangement to the new. When the minister is satisfied that the new regulatory arrangements are in place and impose the right obligations on the participants in the industry, the minister can declare an end to the old regulatory arrangements and the implementation of the new. This gives the minister significant power, which is why Hon George Cash moved in the upper House that this be limited to a period of two years. That limitation has the effect of putting a constraint on the minister’s power and also requiring the minister to get on with it. Otherwise, a situation could develop in which what the Parliament intended to do dragged on and did not occur. If the minister wants to do these things, he has two years in which to do them, otherwise the power expires and Parliament will have to revisit the issue.

Mr M.W. TRENORDEN: It is a little more than that, because it sends a clear signal to industry in Western Australia that the minister will get on with it. The amendments put forward by Hon George Cash were good and the Government was wise to accept them. It signposts a rather difficult road for Western Power and a range of people in a transitional sense; that is, the licensing provisions and the regulations that lead to the acceptance of those licences and the provisions within them.

I note with some interest section 11, headed “Supply authority to pay compensation for damage done”. I understand that will relate to only small consumers. Nevertheless, that will be received with a fair amount of glee by the general population and certainly by my constituents and regional Western Australians, because over the past 12 months various small consumers have suffered a considerable amount of damage. One person rings me regularly to let me know that the freezer cabinet has had to be emptied yet again because the contents were not fit for human consumption. I am not sure how that will be managed. However, the message is of some use to Western Australians. The Opposition does not object to this amendment. I am also happy to move on past amendment No 113.

**Question put and passed; the Council’s amendment agreed to.**

Leave granted for the following amendments to be moved together.

Mr E.S. RIPPER: I move -

That amendments Nos 105 to 113 made by the Council be agreed to.

I thank the Leader of the National Party for his agreement.

**Question put and passed; the Council’s amendments agreed to.**

Mr E.S. RIPPER: I move -

That amendment No 114 made by the Council be agreed to.

This amendment relates to clause 103 of the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003. Clause 103 of the Bill relates to section 4 of the Energy Operators (Powers) Act 1979. Amendment No 114 deletes the proposal to delete reference to “concessionaire” and “linking-up scheme”, as the matter is now dealt with by amendment No 118 to the Bill.

**Question put and passed; the Council’s amendment agreed to.**

Mr E.S. RIPPER: I move -

That amendment No 115 made by the Council be agreed to.

This is a very trivial amendment that replaces “2003” with “2004”.

**Question put and passed; the Council’s amendment agreed to.**

Mr E.S. RIPPER: I move -

That amendment No 116 made by the Council be agreed to.

This amendment is to the Electricity Corporation Act 1994. As a result of parliamentary opposition to the proposal to split Western Power, we are left with a vertically integrated electricity corporation in Western Power. It is important that we improve and make more relevant the ring-fencing requirements within Western Power if the rest of the electricity reform process and the electricity market, in particular, are to work properly. Although we are amending the Electricity Corporation Act in that regard, it is also important to deal with an accountability problem that has existed for some time. The Burt Commission on Accountability recommended, and Governments since that time have accepted, that ministers should have a power of direction over government agencies in order to preserve proper accountability to Parliament. The Electricity Corporation Act does provide the Minister for Energy with a power to direct the corporation generally concerning its functions. However, lawyers have interpreted the word “generally” in a surprising way. Rather than interpreting it as providing a liberal power of direction, they have interpreted “generally” to mean “not specifically”. That severely limits the minister’s power to direct the electricity corporation on any particular matter. This matter was proposed to be dealt with in the split of Western Power by inserting a more adequate power of direction in the legislation governing each of the successor entities to Western Power. However, as we will not create those successor entities to Western Power at present, I think it is important nevertheless to fix this matter affecting Western Power. Therefore it is proposed to insert into the Electricity Corporation Act essentially the same provisions that would have applied to the successor entities of Western Power. From the point of view of accountability, the Minister for Energy, who is responsible to the Parliament and the public, needs to be able to effectively direct the corporation. If the minister has that power, he can be held accountable for a particular direction or the lack of a particular direction, as the case may be. Of course, the corporation retains its legislative obligation to act in a commercial manner. In view of the requirements of the corporatisation of a government trading enterprise, the power of direction should be used sparingly and in a very open and accountable fashion. Consequently, the requirement for the direction to be in writing, to be included in the annual report, and to be tabled in the Parliament will be retained. In addition, the board of the corporation is entitled, and will continue to be entitled, to object to a direction as imposing a non-commercial obligation on the corporation. Should that happen and the board views the direction as being non-commercial and not one that it wishes to accede to, it can refer the matter back to the Minister for Energy who is then required to consult with the Treasurer. If the Minister for Energy and the Treasurer agree, the direction can be enforced. In this particular case the Minister for Energy and the Treasurer happen to be the same person. That will not necessarily always be the case. In any case, I make it clear that if such a circumstance were to occur, as Treasurer, I would seek explicit advice from the Department of Treasury and Finance before I decided that the direction ought to be confirmed. In other words, I would perform my roles as Minister for Energy and Treasurer as separately as the fact that the one person performs them would allow.

Mr M.W. TRENORDEN: As far as I am concerned, this is the most interesting amendment. It is a question of the ability of ministers to direct. Arguments have been prevailing since 1990 on the question of ministers and ministerial responsibility. I have a personal view that we have allowed a range of circumstances to slip by in this Chamber, which has been unfortunate. They have been a consequence of the royal commission into the matters arising in the late 1980s and early 1990s. With all good intent, the commissioners looked at what happened during that time when a range of activities occurred outside the House in private and corporate arenas. Western Power has been affected by those circumstances. We have taken the pressure off ministers since the 1980s, and placed much of the pressure on the agencies. I think that is unfortunate for the functioning of the Chamber. I understand the intent of the Commission on Government but it is important that a minister in the Legislative Assembly be accountable to it. Part of the accountability to the House is the ability to reach into an agency and make some changes.

Mr E.S. Ripper: The member might not be aware that, even with standard government departments, the minister does not have the capacity to reach in and direct that, for example, a particular public servant undertake a particular role.

Mr M.W. TRENORDEN: I am saying that that is an unfortunate consequence of the 1980s. Ministers should have that capacity. We have seen ministers in this Government duck responsibility. Ministers are able to duck responsibility because responsibility has been shuffled down the chain in a lot of cases. I think that is wrong. These provisions allow the minister to make arrangements for directions to change some of the activities within Western Power. Page 13 of the explanatory memorandum contains a number of matters that any member of Parliament would be interested in.

Clause 101D refers to the keeping of accounts and records; financial reporting; the apportionment of income, expenditure, assets and liabilities; and the protection of information etc. The provisions in this amendment will open some of those aspects to members of Parliament. I think it is a good thing. I cannot stand and say that I am not in favour of that, because I am definitely in favour of the process so that people outside can, at least once a year, get a glimpse of what is happening in electricity generation, distribution and retail instead of looking at a global aspect. It is not the way I would have gone about the process if I had been in the minister's position. However, as I said at the beginning of my contribution, I understand why he has done that. I also understand that the minister is reluctant to act on some of these matters. Even given a win by his side at the next election, he may not be the Minister for Energy. Therefore, the minister of the day also may have some reluctance to act on these matters, but the minister should not. The point is that a member should have some courage when he or she takes on the role of minister in any Cabinet and be prepared to act on any matter.

Mr E.S. RIPPER: I think a degree of courage is required to undertake the role of Minister for Energy in any circumstance and also to engage in an electricity reform process. These are not easy processes. They are very complex. I am fortunate that I have an excellent electricity reform implementation unit within the Office of Energy. It is doing a tremendous job. The engagement of industry in the process, the willingness of industry to contribute on a voluntary basis, the private sector expertise in all the working groups that have been established, and their persistence with engagement in the electricity reform process despite the difficulties that have occurred also are very welcome and to be commended. Although ministers need a degree of courage to undertake reform processes, these reform processes can be undertaken only with the strong professional support of the public servants involved and, in this case, with the strong support and willingness of the industry to engage in extensive consultation and advisory processes.

The ACTING SPEAKER (Mr P.W. Andrews): Let us have the courage to address the amendment!

Mr M.W. TRENORDEN: The important part is the two-year provision, which relates to the capacity of the minister to direct. The provisions in the Bill are interim provisions, even though the minister outlined that he hopes that further legislation will deal with other matters. One thing that a coalition Government will do is change the description of the function of Western Power. No longer will we put up with the description that it must operate in a corporate manner.

Mr E.S. Ripper: Correct me if I am wrong, but are you proposing to decorporatise Western Power should you be elected?

Mr M.W. TRENORDEN: No, we will change the description of the performance mantle of Western Power. I am not saying that we will decorporatise it; I am saying that we will change its charter and the way it operates. We are constantly told that it needs to operate in a commercial manner.

Mr E.S. Ripper: This was the scheme that was established by your colleague the Leader of the Opposition. It is his framework, essentially.

Mr M.W. TRENORDEN: Exactly, and we have agreed that it is a failed provision. We did it with good intent. As the minister said earlier, it is a matter of interpretation. It is a question of what is interpreted to be commercial. It also means risk to any commercial operation listed on the stock market pages in *The West Australian* today. Since that provision has been inserted into the legislation, Western Power's definition makes no mention of risk. It makes no mention of anything other than making a profit. It has taken the view that to be commercial is only to make a profit. That is its only definition of "commercial", and we will change that. I guarantee that that will appear in a new coalition Bill. The minister will see that in the not too distant future and he will have the pleasure of seeing what he should have done. He will then find that service will be put back in the charter of Western Power; there will be a requirement for Western Power to give due consideration to service. I do not think too many Western Australians would argue that Western Power believes it has a requirement to do that.

This provision has a sunset clause. It will expire after two years. The minister can give direction on a range of issues. In reality, it could have happened anyhow. It is amazing that directions are required to be put in the



annual report. That is like nominating who won the Brownlow Medal two years ago. It is so far behind the actual game that they should be in the annual report only for recording mechanisms, not for any other purpose. Since the Commission on Government inquiry, directions given by ministers must be in writing. The real requirement is to put them before this House and to ensure that whatever the minister of the day has decided is made public. This House can then decide what to do about it. Once the House knows, all of Western Australia knows and therefore the Press, the public, consumers, advocates and a range of other people can take that information and act on it. It is not the way we would have introduced it, but it is hard to argue that it will not function, so we will agree to this amendment.

Mr E.S. RIPPER: I gently point out that since I have been energy minister the Government has been criticised on two contradictory bases. One line of criticism has been that the Government has inappropriately interfered in Western Power and has compromised its corporatised nature. I have heard that line of criticism from the Leader of the Opposition. I have also heard the line of criticism from the Opposition that, as Minister for Energy, I should have interfered more. I think there is essentially some confusion by the Opposition about whether it supports a corporatised model for a government trading enterprise -

Mr M.W. Trenorden: I have been very friendly until now and I am happy to get into that debate if the minister wants me to.

Mr E.S. RIPPER: I take the Leader of the National Party's point. I do not propose to engage in that debate at length. However, I make the point because I think it is worth making. There is another side to this argument and that is transparency and accountability. Nothing in the current legislative framework prevents Western Power engaging in a non-commercial provision of a service. I am of the view that in certain circumstances Western Power must engage in the non-commercial provision of a service. The view I have, though, is that when Western Power engages in the non-commercial provision of a service, the fact that it does so should be transparent and open to examination by the public and by the Parliament. Sometimes there is a misunderstanding of what the corporatised government trading enterprise model requires. It does not place a prohibition on non-commercial service. It establishes a set of mechanisms whereby if there is non-commercial provision of a service, it is open and people can see that. It is always open to the Government to say to Western Power, as we have done, that we would like it to offer the uniform tariff and pensioner concessions to people living permanently in caravan parks right across the State and that we are prepared to pay it a community service obligation for doing so. That is an example of non-commercial service provision. Western Power will lose money by providing the uniform tariff to permanent residents of caravan parks in Broome, Derby and other places. Western Power will lose money by providing pensioner concessions to permanent residents of caravan parks, but it could still happen under the existing framework if the Government said that it would make an explicit allocation and it was published in the budget papers. It will be a community service obligation. Everyone will be able to see that it is a non-commercial service, but it is still being provided and it will set out how it is being paid for.

I would be quite interested in the debate that would occur if the Leader of the National Party were to go ahead with the proposition that he is outlining. However, I want to assure him that even under the current framework, it is quite possible for him to say that the Government should be arranging for this non-commercial service, because mechanisms within the existing legislative framework enable the Government to achieve non-commercial provision of service by Western Power, principally through the community service obligation budgetary mechanism that I have outlined. I should probably take the Leader of the National Party's point that we need not have an extensive debate on this issue, but I wanted to indicate to him that he can hold me accountable right now for non-commercial services, particularly because I am Treasurer as well as Minister for Energy, because mechanisms allow that to happen.

Mr M.W. TRENORDEN: The board has taken a view. Like all boards in all corporations it has done so under its charter. As the minister has quite rightly pointed out, some years ago we put in place a charter for Western Power with which we no longer agree. The reason we do not agree with it is that the charter we put in place has been interpreted differently by successive boards. We are not happy with the process. I am not arguing about the minister's role. We are concerned that when board members meet they do so under a charter and an agreement on their purpose. We will be changing the description of that purpose. We are very adamant about that. We think that there has been a very strong belief in Western Power that its prime purpose for existing is to pump dividends into State Treasury, whereas its prime purpose should be to supply continuity of service and to make sure that lights do not go out on a black Wednesday. I will be getting into a bit of this fight because I believe that the minister has made some very serious mistakes over the past two years. He has often debated with me, as the member for Avon, his refusal to become involved in an argument over the regulator and tariff arrangements, but he quickly jumped in and said that he was happy to throw away \$100 million to American banks when the situation suited him. Had he been involved with the regulator and the gas pipeline, many of the instances we are now debating would not have occurred.

Mr E.S. Ripper: Yes, but such involvement would have been contrary to the law.

Mr M.W. TRENORDEN: It would not have been contrary to the law.

Mr E.S. Ripper: The Supreme Court found it would have been contrary to law.

Mr M.W. TRENORDEN: It is not true. The minister has a responsibility to represent the people of Western Australia. The regulator is an independent authority. That means the authority needs to be robust enough to take on board all views, including that of the minister of the day.

Mr E.S. Ripper: Absolutely.

Mr M.W. TRENORDEN: The minister is surely the first person who should be involved in the argument because he represents the people of Western Australia.

Mr E.S. Ripper: Nevertheless, the law does say that the regulator is independent of ministerial direction. That was confirmed by the relevant Supreme Court judgment. If you want the minister to be able to direct the regulator, we need to change the law.

Mr R.F. Johnson: You could have brought in a very small Bill to do that.

Mr E.S. Ripper: I could have.

Mr R.F. Johnson: It would have addressed that problem and saved \$100 million immediately for the people of Western Australia.

Mr E.S. Ripper: Perhaps I will respond to that in my remarks when I am on my feet.

Mr M.W. TRENORDEN: I am not even talking about directing the regulator; I am talking about the minister speaking to the people of Western Australia and telling this Chamber what he thought the outcome should be. That would not be a direction. The current Act provides that the minister cannot direct the regulator, but the minister having a view is not a direction. Of all the people in Western Australia who should have expressed a view during the debate, it should have been the minister, but he refused to express a view. We could have many little debates during the next few hours, but my intention is to allow the minister to get an interim Bill through the House without a lot of debate.

Mr E.S. Ripper: That is, rather than a debate on any number of energy issues that we could debate.

Mr M.W. TRENORDEN: That argument should be to our benefit. The Opposition could be debating it right now. I am trying to let the House function properly and allow the Bill to pass with a reasonable amount of discourse.

The ACTING SPEAKER (Mr P.W. Andrews): I allowed some leeway in that exchange under the segregation of functions, but we need to come back to the amendment, which is No 116.

Mr E.S. RIPPER: The amendment allows for strengthened ring-fencing provisions within Western Power. I regard ring fencing as very much a second-best option when compared with structural reform and the separation of the respective functions into separate organisations. There is a lot of scepticism about the capacity of ring-fencing arrangements to bring about the commercial separation that is required to give confidence to other participants in the market. Nevertheless, we have not been able to get the parliamentary support for the structural reform and split-up of Western Power. Consequently, it is necessary for the Government to go with what is, from the Government's point of view, a second-best option, which is strengthening the ring fencing, but we will do that. I am pleased that the Opposition is supporting that.

I am also pleased that the Opposition is supporting the direction powers for Western Power. The current framework, particularly with the augmentation of strengthened direction powers, does allow the social mandate of Western Power, which is the community service mandate of Western Power, to properly occur. As the framework exists, and as it will be strengthened by the direction of power proposed, it is not a restriction on Western Power's non-commercial mandate; it is a framework for proper accountability and transparency for the operation of the mandate. I could talk about the pipeline, and I have talked about the pipeline on many occasions. All ministers are required to abide by law. That is how they exercise their power. They are not dictators, but are required to abide by law.

Mr R.F. Johnson: Ministers make the law as well. That is part of their function.

Mr E.S. RIPPER: Yes, part of their function is to make law. With your indulgence, Mr Acting Speaker, I will respond to that interjection and then sit down. Yes, in principle it would have been possible for the Government to have brought a Bill to Parliament to provide for ministerial direction of the economic regulator. To do so would have required the Government to repudiate an intergovernmental agreement signed by our predecessors which provides that any change to that law requires the agreement of every other jurisdiction in the country. That requirement for the agreement of every other jurisdiction in the country is backed up by competition policy

payment penalties if the agreement is breached. Yes, the law could have been changed, but that would have required the State Government to renege on a signed intergovernmental agreement. That we do not intend to do. It would also have cost the Government competition policy payments of probably quite significant amounts.

Mr M.W. TRENORDEN: Under proposed section 101C the minister can direct the corporation -

- (a) not to perform a function specified in the direction;
- (b) not to perform a function specified in the direction to an extent, or except to an extent, specified in the direction; or
- (c) not to perform a function specified in the direction in or in relation to an area, or except in or in relation to an area, specified in the direction.

The last two are gobbledegook. Can the Treasurer provide us with any worthwhile examples when this direction may be used?

Mr E.S. RIPPER: The amendments to section 28 would, for example, permit the Government to limit the generation or retail activities to Western Power to free up resources to improve the reliability and quality of supply. That would occur through the encouragement of new private generation investment to free up government capital to spend on network reliability. It would allow for the diversification of new generation capacity by restricting Western Power's ability to invest in new generation capacity within a particular area of the State, and it would also allow for diversification of generation capacity to avoid undue dependence upon any one fuel generation source.

It is not intended that, as a result of this direction power, the minister become the industrial relations manager or the network planning manager for Western Power. It is not intended that the minister become involved in the micromanagement of Western Power. However, we have a problem with the current accountability whereby the minister is held accountable by the Parliament but cannot necessarily produce the result. It is instructive to think about accountability. Over the past decade, extensive restrictions have been put on the ability of ministers to exercise powers, while, at the same time, there has been a growing definition of ministerial responsibility. I think power goes with responsibility, and vice versa. If we give someone responsibility, and hold him accountable, he has to have the power, and if that person has the power, he has to be responsible and accountable. However, public debate has been going in opposite directions; ministerial power has been reduced while the notions of ministerial responsibility have been enhanced.

Mr M.W. TRENORDEN: The minister is just agreeing with what I said 20 minutes ago, but in a different way. I agree with that proposition. This Chamber will rue that day, and some time in the future it will have to swing back to give the balance.

Is access a part of proposed new clause 101C, or is that found a little later on in the -

Mr E.S. Ripper: It is found in proposed new clause 101G. If the members likes, I will get up and -

Mr M.W. TRENORDEN: I am happy that we speak to proposed new clause 101G, as long as you, Mr Acting Speaker are allowing us to talk across amendment No 116.

Mr E.S. Ripper: We are dealing with all of amendment No 116, which includes proposed new clause 101G.

Mr M.W. TRENORDEN: I am just making sure that the Acting Speaker will allow us to deal with all those proposed new clauses under amendment No 116.

The ACTING SPEAKER (Mr A.P. O'Gorman): We are dealing with the whole amendment.

Mr E.S. RIPPER: Amendment No 116 deals with a range of matters. One of them relates to the insertion of proposed section 95A into the Electricity Corporation Act 1994. The proposed section provides for the phasing out of access and procurement provisions under that Act in recognition that both those matters could be dealt with under the Electricity Industry Act 2004. Sections 90, 91, 92 or 93, schedules 5, 6 or 7 or any portion of those sections or schedules may be repealed by the Minister for Energy following the enactment of regulations provided that the minister is of the opinion that the manner to which those sections or schedules relate are adequately dealt with or will be adequately dealt with on or after a specified day under parts 8 and 9 of the Electricity Industry Act 2004. Essentially, the access and power procurement arrangements within the Electricity Corporation Act are being replaced by improved arrangements under the Electricity Industry Act. We must have a smooth transition from one regime to another. We certainly have to avoid any situation in which industry is required to respond to two different sets of requirements, which may be potentially contradictory. Originally, the preferred framework was for the deletion or repeal of the sections in the Electricity Corporation Act to be replaced by the Electricity Industry Act provisions. The proposed amendment essentially provides for the same, but in a more flexible way. Rather than the repeal being dealt with by way of proclamation, it is dealt with by way of a ministerial order when everything is in place. Although that gives significant power to the

minister, it also enables the flexibility that is required for a very smooth transition. It gives the industry confidence that there will not be any glitches due to legislative arrangements. The power has been hemmed in as a result of Hon George Cash's amendment, which we were pleased to support; it seemed like a sensible amendment to us. That power has to be exercised within two years, which has a dual effect. It means that a strong ministerial power does not persist for years, when it might be used in an unintended way; and any minister responsible for the Act and the industry know that the minister has two years in which to get it organised, otherwise the required powers will lapse and the matter will have to come back to the Parliament. It is a stimulus to the public service, industry and the relevant minister to get on with the job, and it is an appropriate constraint on what is otherwise a broad ministerial power.

Mr M.W. TRENORDEN: I asked that question for a reason. There is a great deal of uncertainty in this world of limbo, and we also have these powers of direction; however, there are other more pressing matters. For example, three biomass propositions are currently before Western Power; one each in Albany, Pinjarra and Bunbury. In the coming three summers, 100 megawatts of generation through those biomass plants would be useful. Clearly, Western Power has given no signal that those plants will be allowed access. Two different companies run the three plants. How will this provision work? The minister is indicating that he will act on due consideration from the board and Western Power, but these provisions provide more than that. They would give the minister the capacity, if he wanted to, to bring those three biomass plants on board. Each of those plants would operate on leftover residue from the timber industry; the plant in Pinjarra would operate on residue from the pine plantation, and the Bunbury and the Albany plants would operate on the residue from the woodchip operations. This gives the State an opportunity to produce a useful outcome from the residue of an industry and, more than that, it gives the State the capacity to have an extra 100 megawatts of generation within 12 months. The purpose of the Bill is to allow the minister to make those sorts of decisions. The minister is indicating that he will not make decisions unless he gets due consideration from Western Power. Obviously, no minister will do without that. However, this enables the minister to act against Western Power's recommendations. For example, as has been its wont until now, Western Power refuses to give access to those three plants, and there will be others - the minister knows there are others. The community of Perenjori has just approached me, and it is very keen to get 100 megawatts of solar power. I must admit, 100 megawatts of solar power quite excites me.

Mr E.S. Ripper: Did they tell you what price they want to charge for it?

Mr M.W. TRENORDEN: As with every decision, there are consequences; there is no doubt about that. However, it would be fantastic to get a substantial amount of solar power on to a grid. At some stage we will talk about bringing solar generation into the south west interconnected system. The question is when. Western Power has taken the view over a number of years that it will seriously limit access. We know that during this summer and the next two summers it will be difficult to keep the lights on in the State. This is an opportunity for the minister to let industry know how he will use these directions. Will he act only on the recommendation of Western Power? If he does, the minister will be announcing to everyone that the status quo will prevail. Access to the grid has been more than difficult under the current regime. Alternatively, the minister could give an indication that in the transition period, those companies that are spending a lot of money, putting in a lot of effort and undertaking a lot of research in an attempt to come up with a workable proposition can approach him to reverse the process. This amendment does give the minister the ability to reverse the process.

Mr E.S. RIPPER: I am not the minister who is captive to Western Power. I am the minister who took on Western Power and said that it is not on that an organisation that is involved in the industry on a competitive basis also has control of the network and can use that control of the network to frustrate the activities of its competitors. I am the one who said that we need a fairer arrangement; we need the network to be independent of the competitive elements of Western Power so that the network makes decisions on a non-discriminatory basis and on the basis that the more electricity that is fed through the network from wherever it comes, the better the result for the network, instead of the network being always suspected of making the decision that it does not want electricity from the private sector because that might disadvantage its cousins in Western Power generation.

That is one of the major points of the reform program; that is, to get non-discriminatory access to the network; and not only to get non-discriminatory access in practice, but also to get the perception among industry people that they will get a fair go. If they have an electricity project and want to front up to the network, they will get a fair go and be judged on the merits, not on whether their competition is a disadvantage to the state-owned generator's activities. This is what it is about. We want private sector investment in power plants, because there are a wealth of ideas and proposals for new generation. I want modern power plants and a diverse range of power plants on the system, because that will provide us with lower electricity prices, or put downward pressure on prices, at the very least, and also provide us with more security of supply. We need to have a situation in which we do not have all our eggs in the one Western Power basket. We need a variety of actors in the system. We are about exactly what the Leader of the National Party wants us to be about, which is non-discriminatory

access to the network so that private sector investment and competition in our electricity supply industry can be encouraged.

As part of the amendment that we are discussing now, there will be a new access code. There have been extensive consultations on that with industry. It will be introduced shortly. There will be a new set of rules that will govern Western Power's decisions on access. Part of this amendment also deals with strengthened ring fencing, which is important to keep the network separate, so far as possible, from the competitive aspects of Western Power, because we do not want either the reality or the perception of network decision making to be compromised by its association with the competitive aspects. The best result would have been structural reform of Western Power. We cannot get agreement on that for a variety of reasons, so this is the next best approach that the Government can come up with. It is not really a matter of exercising powers of direction; it is a matter of the other elements of this amendment - the new access code and the ring fencing - coming into play.

I am aware of the biomass projects. I have had a number of briefings from Beacons, for example, about its Pinjar and Albany projects. I believe there is a lot of merit in what it proposes. What I cannot and will not do as minister is pick favourites in the commercial world. I will not say that I like that company and that project, and then go in over Western Power and get the queue changed or get some preferential treatment for one commercial competitor over another. That is WA Inc stuff; I am not doing that. I will have fair treatment for all players in the commercial sector, with the same rules applying to all.

One of the rules that I believe is an issue for some participants is the requirement for a network study before the proponent can get a connection agreement. Basically, the proponent must pay for a study of the impact on the network of its connection. When that study is done, it informs the connection agreement. Some of the proponents have come to me and said that they do not think they should have to pay up front. I believe that is an issue. However, if that issue is addressed, it will be addressed on a basis that deals consistently with every participant. We will not say, "You don't have to pay, but you do."

Mr M.W. TRENORDEN: The point I am making is that the minister must make a few decisions. We have a generation capacity of 3 200 megawatts, and the demand is for about the same amount. There is an opportunity to bring on the biomass proposals in less than 12 months. I agree totally with the minister that there should be an absolutely open process under which people can approach either Western Power or the Western Australian Government itself to ensure that each proposal that comes forward is of the best possible merit. I suspect that the Pinjar project would suit you quite well, Mr Acting Speaker (Mr A.P. O'Gorman). The Albany project would certainly suit the Albany people quite well, and the Bunbury one would suit the people of Bunbury quite well. We are talking about 30-megawatt plants with an operating capacity of about 28 megawatts. The minister will get that pressure. I am putting to the minister that this Bill allows a two-way street. These amendments to the Bill do not say that the new access regime will come in and that is the only provision. They say that the minister also can decide.

We had a discussion a few minutes ago about the role and responsibilities of the minister, and we have agreed on that. We have agreed that the minister should have a role. As long as I am a member of this Chamber, I will always argue that ministers need to act in the best interests of Western Australians.

There is another situation in which the minister is saying that yes, an access code is coming in. Frankly, I am pleased to see a change to the access regime. However, that will not change the fact that people will read these documents and know that there is another mechanism now. The minister has agreed that ministerial direction is another mechanism. Therefore, one of the approaches will be for people to go to the minister. As I just indicated, the Acting Speaker might have a favourite project. My favourite is the Avon Energy Pty Ltd project.

Mr E.S. Ripper: Leader of the National Party, you are the opposition spokesperson on energy. You are the alternative minister. Surely you would not propose, if you were the minister, to exercise direction and powers in favour of one commercial proponent or one project over another. Surely you would not support that as an approach. Surely you would not say that, as Minister for Energy, you would issue a direction with regard to, for example, Western Power being required to purchase power from Avon Energy. You wouldn't do that, would you?

Mr M.W. TRENORDEN: I might under the current conditions.

Mr E.S. Ripper: You might?

Mr M.W. TRENORDEN: It would depend on a lot of conditions.

Mr E.S. Ripper: That proposal would take us down a very dangerous road.

Mr M.W. TRENORDEN: The difficulty is that we are already on that dangerous road. There is a day coming this summer when the lights will not come on.

Mr E.S. Ripper: That is not true.

Mr M.W. TRENORDEN: It is my view that this summer there will be a day when the lights will not come on. The minister has an opportunity to put on the grid three very small plants.

Mr E.S. Ripper: Not for this summer.

Mr M.W. TRENORDEN: No; they take about 12 months to build.

Mr E.S. RIPPER: By the summer of 2005-06 the Kemerton peak station will be operating. Along with the gas pipeline, we will be in a significantly better position than previously. The biomass plants cannot operate this summer. However, they can perhaps operate in 2005-06. In 2005-06 there will be other developments also. I do not want a huge debate with the member on this matter but I think he should think carefully about whether he would seek to favour one commercial proponent over another.

We are talking about a new model for the industry whereby instead of the industry being Western Power, a variety of companies will operate in the industry. I look forward to a day when the state-owned generators that are involved in the system will be faced with competition from Alinta's cogeneration plant - Alinta 1 - from the private sector's establishment of wind farms and biomass projects, other gas-based projects and from independent coal-fired power stations. I look forward to that day. However, power station investments are large investments; they require long lead times to establish. If the industry is to make those investments, it must have confidence in the propriety, consistency, openness and certainty of the regulatory arrangements. If the industry must factor into the scenario the possibility that a minister might have a rush of blood to the head and give a favour to a competitor, thus affecting the viability of a proposal because extra power and competition will come into the system courtesy of a ministerial favour, the industry will have less confidence in the Government and will seek to implement fewer proposals. We have learnt some lessons in Western Australia over a decade or more. One of those lessons, which I hope we have all learnt, is that we must have consistent rules for the Government's relationships with the private sector. The Government must treat the private sector fairly, openly and consistently. We cannot ever go back down the road of the Government playing favourites with particular commercial operators. The Government might achieve a particular narrow objective by doing that but it would sacrifice a broader objective because people would lose confidence in investing in the power industry if that were the case. The Leader of the National Party and I are having a bit of a friendly discussion. Although the power of ministerial direction could be used to fix certain problems, such problems should be fixed on an open and consistent basis rather than on a basis whereby, for example, a minister chose to assist one particular biomass project over another. The member knows that I have a particular reason for my dealings with certain companies in this field to be conspicuously consistent, open and transparent: there are people involved with whom I have had previous connections.

Mr M.W. TRENORDEN: The point I am attempting to make is that this Bill allows a greater provision for a minister to make a decision than does the existing legislation. People will approach the minister for direct intervention because the Bill allows that to occur.

Mr E.S. Ripper: I already have people approaching me and asking me to fix certain things for Western Power. If they think that I have an improved power of direction under this legislation, they might come and see me all the more. All I am saying is that we will apply the same rules of consistency, openness transparency and lack of favouritism as we apply generally in our dealings with the private sector.

Mr M.W. TRENORDEN: The point is that the Bill changes that regime. The minister will have pressure placed on him, depending on what happens to the pipeline. We both know that the Kemerton power station will not fire up properly until the gas situation is resolved. Until then, it will run on diesel. People will come to the minister. Treasury would tell the Minister for Energy that \$100 million would be blown on diesel consumption and a range of discharge and other issues with regard to burning a considerable number of tonnes of diesel under the current process. That is hardly a good position for the minister to be in. People will tell the minister that alternatives are available. The minister will have to make a decision to either keep pumping diesel through Pinjar or allow some biomass activity. I agree that that puts the minister in a difficult position. I want to have this debate because people will become aware about the provisions of this Bill.

Mr E.S. Ripper: Can the Leader of the National Party give me an undertaking that he would not politically exploit a government decision along the lines he has just advocated?

Mr M.W. TRENORDEN: If the Minister for Energy really wanted to do that, he should talk to us about it. Both major parties need to be concerned about the power supply for the next two or three years. To be absolutely bluntly honest with the minister, I would talk to him about that. I would want to know about a raft of issues, as the minister quite rightly pointed out. However, the alternative is not that flash. We have a choice of two poor outcomes.

Mr E.S. Ripper: The issue for 2005-06 is sorted because of the commissioning of the Kemerton power station.

Mr M.W. TRENORDEN: It will run on diesel though.

Mr E.S. Ripper: That is not a security but a financial issue. It is possible to construct a scenario in which that will be the case, but it is not inevitably the case. For example, we are working very hard on the sale and expansion of the pipeline and the availability of a gas supply through that pipeline.

Mr M.W. TRENORDEN: The point I make is that the minister is open to criticism. He is happy to throw \$100 million into the bucket for the pipeline. The minister has already gone outside of the square. There is no point lecturing me about what my attitude might be if I were in the minister's shoes.

Mr E.S. Ripper: I have gone outside the square in a legal way, not in the illegal way as espoused by the member.

Mr M.W. TRENORDEN: The minister has said publicly that he will give a grant to the purchasers of the gas pipeline.

Mr E.S. Ripper: For its expansion.

Mr M.W. TRENORDEN: What will that grant to do for Western Australia? It will go to the American banks.

Mr E.S. Ripper: It will fund the expansion of the pipeline.

Mr M.W. TRENORDEN: It will not. It will go to the purchasing process of the bank. The minister deliberately made that announcement before the closure of the tenders for the pipeline so that those companies that tendered would know the process was worth \$100 million. Who are the winners of the tendering process? The American banks. The minister has already decided that he is prepared to make decisions outside the square. I am putting it to the minister that the Bill will provide a mechanism for people to rightly argue with the minister that there are other ways of dealing with the power supply. It is fair enough for us to have this short debate because it will occur to not only me as the opposition spokesperson on energy, but also a range of lawyers and market operators. Those pressures will be placed on the minister.

Mr E.S. RIPPER: Of course this power of direction gives the minister more power. The minister of the day will be judged on how he uses the power and the alternative minister will be judged on how he proposes to use the power. In short, there will be more accountability. If people do not want something to happen, they will not be able to say that they cannot do anything about that. They will have to say that they do not want it to happen for a particular reason. There will be more accountability, which will apply to both the Opposition and the Government, albeit not in the same measure. It will apply to the Government for its exercise or non-exercise of the power, and to the Opposition for its advocacy of particular uses of the power for its own policy position. The Leader of the National Party is the shadow Minister for Energy. In a sense, there is extra heat on him too, because he will now be required to justify how he intends to use this power. This power is a double-edged sword. For every objective the member thinks he can achieve using this power, there will be possible negative consequences, not only operationally but also, if he will accept my advice, politically. That summarises the circumstances. The Leader of the National Party should not think that the pressure is on only me with regard to this power.

Mr M.W. TRENORDEN: One of the other functions that I presume is provided by proposed clause 101C is the spinning capacity. If that capacity became very narrow - many in the industry have argued that the spinning capacity is already exceedingly narrow - does the minister consider that he might make a direction, or is he clearly saying that he would operate purely on a recommendation of Western Power?

Mr E.S. RIPPER: One reason for having a power of direction is that the responsibility of the board of a government trading enterprise is different from the responsibility of the minister. I will explain. The board of Western Power is legally responsible for the commercial health of Western Power as a corporation. My responsibility is broader than that. Of course, the commercial health of a government-owned trading enterprise is an important aspect of my responsibilities. However, it is not the only thing for which I am responsible as Minister for Energy. I am responsible for the overall health of the electricity supply industry and its capacity to deliver the electricity needs of the community, and not just in so far as that is represented by Western Power. It is possible that the board of Western Power could in good faith make a decision that it believed was in the long-term financial interests of Western Power and for the Government of the day to say that, although it was in Western Power's interests, it was not in the interests of the State or the public and therefore believed that a different decision should be made. Such a matter would not necessarily involve acrimony. There are different roles. It is possible that the minister could issue a direction on the basis of the needs of the State. Spinning reserve is an interesting issue. I do not want to indicate anything to do with current circumstances, but it is possible to imagine a scenario in which Western Power could have a different view from that of the Government on the balance between investment and risk with regard to spinning reserve. It is possible to imagine that a future Government might want more investment and less risk even though Western Power might not, because

Western Power's books might look better with less investment and more risk. Those are the sorts of trade-offs that might be required at some future point.

I do not want to get into a debate in which I am canvassed on a range of theoretical issues and asked what my approach would be. What has been apparent from my experience over the past three and a half years is that there have been examples in which a power to specifically direct Western Power would have been useful but has not been available. We should fix that framework, particularly the accountability framework, by making this change. Every future matter would have to be examined on its merits. I will give one example. Remarkably, late in 2003 it was apparent that Western Power's management and board were moving to a view that they did not need to proceed with a power procurement process for the new base-load station due to be commissioned in 2008. That matter was of great concern to me, because I believed that the interests of the State and the public of Western Australia required that power procurement process to go ahead so that we could be in the position of having a new power station on stream in 2008. I discussed this matter with the board and the chairman at the time. I informed the chairman that, if necessary, this matter would be resolved by a direction. I said that if for some reason the board decided that the commercial health of Western Power did not justify proceeding with the power procurement process, I would give a direction, because my view was that the interests of the State and the public required the process to be proceeded with. That is an example of a potential difference of opinion. As it happened, when Western Power finally reached a decision its view was the same as mine. If it had not been, my view would have prevailed.

Mr M.W. TRENORDEN: It is my role as a member of the Opposition to question the functions of the Bill. I will continue to do so. I refer the minister to proposed clause 101D. As I have already said, on the surface I think this is a very good change. However, it will provide greater application to this Parliament than has previously been available. The Leader of the House mentioned some days ago the changes to the estimates committee process and so forth. This provision gives the standing committee the opportunity to look again at the process and to think about next year's estimates process, because, if the minister is true to his word, a range of information will be available that has not been available for some time. I would like to think that the minister will be prepared to allow the Parliament to engage with the agency to work out a process of how things will work. Proposed section 31A, which is inserted by proposed clause 101D, outlines the keeping of accounts and records; financial reporting; the apportionment of income, expenditure, assets and liabilities; and the protection of information. They are issues in which future Oppositions will have great interest. I suggest that a number of backbenchers, such as the member for Collie, will also be greatly interested in some of those services that may come out of the provisions of this Bill. Is it the minister's intention to go through the process he has outlined of ring-fencing the activities within Western Power and for that to be the extent of his intent with this Bill, or will the minister do what the Bill seems to state; that is, to make this information available to the Parliament and through the estimates committee to the Opposition and backbenchers? Does this make any changes to the arrangements with the Auditor General in the general audit of these agencies? Has the minister discussed these provisions, which will provide a different regime, with the Auditor General, because it will be at a cost to him?

Mr E.S. RIPPER: I like the assumption of the shadow Minister for Energy that I might be the minister responsible for deciding these matters during next year's estimates committee process. As shadow Minister for Energy, I pressed for government trading enterprises to be subject to the estimates committee process. That request was never granted. In fact, the previous Minister for Energy did not allow me to be briefed by Western Power. However, this Government has a position that government trading enterprises can be examined by the estimates committees. I support that; I think that is proper accountability. Sometimes, when Western Power is before an estimates committee, it might state that it would be damaging to the public interest for certain information to be released because it might give an advantage to a competitor. That is something that would have to be debated at the time. Despite that, I support its presence before the estimates committees.

With regard to how the ring-fenced information is made public, that will be dealt with in the regulations. The Parliament will have an opportunity to state whether it likes or does not like the regulations. Members will have another bite at that issue.

Mr M.W. Trenorden: In general, thousands of regulations pass through the Parliament and very few of them are opposed. Has extra consideration been given to the logical outcomes of what we have before us? It means a different format; reporting will be done differently. That will mean a difference for Treasury and the Auditor General. If there is a different format, there is a difference for us.

Mr E.S. RIPPER: I think it is fair to say that some of these issues have not been explored in detail. I will take on board the questions raised by the member. I will bear those matters in mind when I look at the regulations, as I now know of the member's interest in how they might play out in the estimates process.

Mr M.W. Trenorden: It will not just be my interest. I think the minister will agree that he is doing this for a particular purpose. It will make the four sections that he wants to specify more accountable.



Mr E.S. RIPPER: How could I disagree? I wanted these things in separate organisations with separate annual reports and separate appearances before the estimates committees. This is very much a second-best. Of course I am in favour of network financial information being separate from generation financial operation and separate from retail financial information. There would be no point in doing that and keeping it all secret because the purpose of the exercise is to give confidence to the entire industry, in particular the private sector participants, that this is an industry in which it is reasonable to invest. We want to work in a way that promotes that investment. We could have a bright, shiny, highly elaborate electricity reform outcome but if it is not perceived to be right by industry we will not get the practical outcome, which is competitors turning up to play. How industry views it is something I regard as important, not just because they are players and they have a right to be consulted, but because, in the final analysis, if they will not put their money into private investment in the industry we will not get the outcome we want. That does not mean they will get a free ride at the expense of Western Power. Matters of perception need to be attended to and they will be.

Mr M.W. TRENORDEN: There are fine sentiments in that address but the minister has still not indicated how the people in private enterprise who have an interest in Western Power's running costs and so forth in generation will obtain that information. The minister has not indicated how Treasury and the Auditor General will handle that. What is the turnover?

Mr E.S. Ripper: It is \$1.5 billion.

Mr M.W. TRENORDEN: We are talking about a substantial slice of the Western Australian budget. Even though the amendment covers only half an A4 page, it is a considerable change to the function of reporting. I am saying what the minister is saying - that this is fantastic and it is great to see this information. I would like to get some commitment from the minister even though he has just said - I will happily take it on board - that he has not taken this beyond the separation within the process. The minister knows it is a fair question. What are his intentions? I do not want him to just take my comments on board. I want to know what he will do with this, because I know that a range of people will want this information. I want to know what will happen with the minister's Treasury hat. What will happen with the Auditor General, which is not another hat of the minister's although the minister has an obvious connection with the Auditor General?

Mr E.S. Ripper: He does report to me but he is not subject to ministerial direction; he is like the Chairman of the Economic Regulation Authority.

Mr M.W. TRENORDEN: I was to going to say that that is another bone of contention - that he reports to the minister. He should not; he should report to the House. However, we are not going to have that debate now. Under current arrangements, the chairman is responsible to the minister. If the minister is able to tell me that the two functions under the Auditor General and Treasury will work, a range of people in the State will be quite happy with the outcome. However, there is no definition in the Bill setting out how that will proceed and how it will be of benefit to this House or to the people Western Australia.

Mr E.S. RIPPER: This amendment establishes the power to create the regulations for the keeping of accounts and records, financial reporting, the protection of information and so on and so forth. We have not as yet drafted the regulations, but I can assure the Leader of the National Party that the Department of Treasury and Finance will be involved because it is part of the electricity reform implementation steering committee; it is represented on the committee. Of course, the Auditor General will be consulted about any impact there might be on his office. There is an elaborate process of consultation with industry. I know that industry will be particularly interested in how these regulations work out. The member has raised an interesting question about the estimates committees. As a result of this discussion, I propose that there will also be consultation with the Public Accounts Committee, which would be a way forward to ensure that the parliamentary side of it is included. I give an undertaking that there will be that consultation.

Mr M.W. TRENORDEN: I would like a indication from the minister about the provisions in proposed section 101N. Can the minister or his adviser comment on any points that we need to discuss?

Mr E.S. RIPPER: I am advised that, in developing the access code, legal advice was received that the operation of the access code would be improved if this particular provision was tightened. Since the Electricity Industry Act has passed through the Parliament, a lot of work has been done on the new access code, including consultation with industry. One of the issues that emerged from that consideration was legal advice that we could do a bit better with section 115(1) of the Electricity Industry Act than we had originally achieved. Consequently, this amendment is proposed.

Mr M.W. TRENORDEN: Does that mean there has been any change to the penalties? A maximum penalty of \$100 000 and a daily penalty of \$20 000 are stated. Has there been any change to the application of the penalties or when they can be applied? I do not want to be difficult, but it is a fair question. I would like something on record from the minister about how he thinks any changes will be effected.

**Extract from *Hansard***

[ASSEMBLY - Thursday, 23 September 2004]

p6479b-6511a

Mr Eric Ripper; Mrs Cheryl Edwardes; Mr Max Trenorden; Acting Speaker

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Mr E.S. RIPPER: I am advised that the penalties have not changed from those originally in the Electricity Industry Act 2004. However, the requirement that a network provider form an intent to engage in conduct that prevents or hinders access has been amended to preclude a network service provider or an associate of the network service provider from engaging in conduct that has the purpose of hindering or preventing access.

Debate interrupted, pursuant to standing orders.

[Continued on page 6537.]