

WESTERN AUSTRALIAN FUTURE FUND BILL 2012

Consideration in Detail

Resumed from 26 September.

Clause 5: Western Australian Future Fund —

Debate was adjourned on the following amendment moved by Mr J.J.M. Bowler —

Page 3, after line 12 — To insert —

- (5) Notwithstanding the requirements of subsection (4), ten per cent of the money standing to the credit of the Future Fund referred to in subsection (4) must be held in gold.

Amendment, by leave, withdrawn.

Mr J.J.M. BOWLER: I move —

Page 3, after line 12 — To insert —

- (5) Despite subsection (4), money standing to the credit of the Future Fund referred to in subsection (4) may be invested in gold.

Mr W.J. JOHNSTON: I note the member for Kalgoorlie did not speak on the amendment, although he might make some remarks. We do not want to hold up the debate. This is a good amendment. It is not quite what was being discussed last night, but I understand from the information we have been given that we are going to be investing in Queensland government bonds and bonds from manufacturing companies on the east coast, so I do not think it is unreasonable to give us the authority to invest in Western Australian gold, a product of the electorate of Kalgoorlie and other places. As I said last night Western Australia is the principal gold province in Australia, and Australia is the second-largest gold producer in the world, so it is appropriate that Western Australia includes gold in its contemplation of investments. If we are going to create this fund, and the Labor Party has many criticisms of the fund, we should be allowed to invest in Western Australia as well as the east coast.

Mr J.J.M. BOWLER: As the member for Cannington said, the earlier change may have been more acceptable, but I recognise that the previous amendment locking in something, when we are looking at a fund that will go over decades, may have been unwise. In saying that, I would like to think I have now put gold in the public focus. Whereas the previous amendment limited the fund's investment in gold to 10 per cent, it may be that at times the fund's investment in gold will be more than 10 per cent. I say to the Treasurer that, if he is looking for a stable, long long-term future, then gold is a long-term investment. It has been around for a long time; it was the first currency once bartering stopped, and I believe it offers the type of security and long-term stability this fund will be seeking.

Mr T.R. BUSWELL: The government supports the amendment from the member for Kalgoorlie. Gold has obviously been good to the electorate of the member for Kalgoorlie, and to the state of Western Australia; it may have even been good to the member for Kalgoorlie personally. It is fair and reasonable that in our state, as we look to a long-term investment profile for the future fund, that gold need not be excluded from that. Under this amendment, if it is the opinion of those making investment decisions that gold should be considered, then it should be considered. I am not going to predetermine that outcome other than to say that this is a good outcome for the member for Kalgoorlie and for his electorate.

Mr E.S. RIPPER: Will the minister confirm that under this amendment it is entirely possible that not a single gram of gold will be invested in by the future fund?

Mr T.R. BUSWELL: That will be a decision for others to take. It may well be the case. It may well be the case that there is a significant investment in gold as a result of this amendment. I would like to think that if there is an investment in gold, it will be balanced against the objectives of the fund, because the objectives of the fund and indeed the objectives of the investment framework should still be guiding what we are doing. Ultimately we have to act very prudently with the money of taxpayers, but that may be the case; however, that is a decision for others to take.

Mr M.P. WHITELY: I just want to get the Treasurer's opinion: would an investment in gold in the long term increase the risk involved in the portfolio? I imagine a simple investment in gold means it follows the world price for gold. To me—I bow to his greater expertise and those who advise him—it would seem that this strategy would increase the riskiness of the portfolio even further. I guess, if that is the case, the member for Belmont's question takes on even greater significance.

Extract from Hansard

[ASSEMBLY — Thursday, 27 September 2012]

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Mr Bill Johnston; Mr John Bowler; Mr Troy Buswell; Mr Eric Ripper; Mr Martin Whately; Mr Ben Wyatt; Mr John Kobelke; Acting Speaker; Dr Tony Buti

Mr T.R. BUSWELL: It may, member. As I said, there are others who will control those investment decisions. We have tried to come up with a solution here that is respectful of the views of the house. I am confident it will give us a way to move through this clause.

Mr E.S. RIPPER: Can the Treasurer now confirm that the legislation as amended is in contradiction to the investment framework as put forward by the Treasury Corporation in its briefing to the opposition? It would seem to me that a gold investment is not provided for in that investment framework that the Treasury Corporation modelled.

Mr T.R. BUSWELL: This is a development subsequent to the development of the investment framework, I imagine.

Mr E.S. Ripper: So now the investment framework will have to be altered. Is that what the minister is saying?

Mr T.R. BUSWELL: There is a probability that the investment framework will have to be altered so that we can understand the way in which the Parliament's desire to include gold as a potential source of investment will be catered for within the risk profile.

Mr E.S. Ripper: Will the minister give an undertaking to table a copy of that investment framework when it is modified?

Mr T.R. BUSWELL: Yes, I will. With the greatest respect to the house, I am trying to move through this bill. We dealt with an amendment last night that was supported.

Mr E.S. Ripper: I am not exactly speaking at length.

Mr T.R. BUSWELL: I know.

Mr M.P. WHITELY: What advice has the Treasurer had from the Treasury Corporation towards its attitude to the potential investment in gold? I presume the Treasurer has spoken to its officials overnight to get their perspective. Have they given the Treasurer any indication of how frequently they think that is likely to happen?

Mr T.R. Buswell: No, they have not, member. I anticipate that that will be reflected in a revision to the future fund investment framework.

Mr M.P. WHITELY: Given that they are the source of the advice on the suitability of the future fund, would the Treasurer not think it prudent to get their advice on whether this affects the risk portfolio?

Mr T.R. Buswell: I think that is why the member might see it includes the word "may". The member for Kalgoorlie was good in understanding —

Mr M.P. WHITELY: So we are actually putting Clayton's lipstick on a pig now, are we?

Amendment put and passed.

Mr B.S. WYATT: I also have an amendment, as foreshadowed by the opposition to the government. It will perhaps not be a surprise after the Treasurer's amendment last night that it is around debt. I move —

Page 3, after line 12 — To insert —

- (6) No money is to be credited to the Future Fund until there is no net debt existing for the general government sector.

This amendment has been foreshadowed by the opposition. I do not think there is any surprise with this amendment. Certainly there has been much discussion on rates of return both at the second reading stage and last night. Based on a hypothetical fund, if it was established and invested over the last eight years, there would be a rate of return of 0.05 per cent. I want to quickly make some comments in support of my amendment. I do not intend to speak for hours on the amendment. I think we knew it was coming. I want to quote the words of the former Treasurer, the member for Bateman, who gave us all some of the details around the future fund in his budget this year. When we got to budget estimates on 30 May this year, the member for Bateman made this point —

I would be happy to acknowledge, as I properly should, that, generally speaking, over a long period more will be paid on debt than will be paid on invested moneys in the type of conservative investment portfolio that we are talking about here.

With a focus on that conservative investment portfolio, the current Treasurer has made the point that the way the future fund will be invested will be according to the Financial Management Act regulations, which stipulate a conservative framework other than perhaps the right to do TAA—tactical asset allocation—but certainly we

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doubt, supported by the position taken by the former Treasurer, that there will be the returns that are needed on this money to justify the opportunity cost.

That was indeed the position taken by the current government when we discussed the Fiona Stanley Hospital account. The Treasurer himself, the member for Vasse, said —

Another issue arises out of the Treasurer's decision to put \$1.09 billion into this account; that is, the opportunity cost. The member for Dawesville asked about state debt. I understand there are state debt instruments that could be retired with this money. My reading of the budget papers suggests that there is gross debt in the general government sector. Certainly, there is gross debt in the public non-financial corporations sector to which the Treasurer could have allocated this funding.

The Deputy Premier made the following point —

... the government is only doing this because it sounds good and not because it achieves any great purpose. Although the interest that is earned from this money will be available for use in health, the reality is that if it was paying off debt, the state government and the people of Western Australia would be far better off.

That was the position taken by the now Deputy Premier and the now Treasurer regarding the two options of investing money into the public bank account. I know the Treasurer agrees strongly with my views—I have no doubt, personally—of investing money in the public bank account, paying off debt or even building infrastructure now. That opportunity cost is not being compensated by a 0.05 per cent, at best, rate of return that we can expect on the investment we will make in the future fund. I think that was the point made by the member for Vasse, because the opportunity cost is not just the amount by which we may or may not be exceeding the cost of the funds but the opportunity cost of building infrastructure later—20 years from now. So there is a significant opportunity cost in not only the loss of moneys a year in terms of what we pay on the debt and the interest we receive on this future fund, but also building infrastructure at a much later date.

I also note, because I think it is worth noting, that Hon Peter Costello —

Mr W.J. JOHNSTON: I am very interested in the member for Victoria Park's argument. I would appreciate him continuing.

Mr B.S. WYATT: I thank the member for Cannington.

Hon Peter Costello made the point when he introduced the commonwealth Future Fund Bill in 2005 that he had gone through a significant period of debt reduction and now was the time to create a future fund as he had effectively paid off the net debt. That was the point he made in his second reading speech on 7 December 2005. Interestingly, I want to look to some of the Treasurer's federal Liberal colleagues. There was a debate on a future fund on 28 February this year in federal Parliament. One MP in particular, Mr Alan Tudge, the Liberal member for Aston, was very determined in his views regarding the future fund. He made the point that a future fund actually keeps taxes higher; having a future fund means that taxes will be higher than if there was no future fund. That was the first reason he opposed the future fund. He then went on to say —

To start with, if you want to have a sovereign wealth fund —

Or future fund —

you must have a budget surplus and you have to have paid off your existing debt.

He later said —

... we have got to pay back the debt before we can even think about creating some new financial assets.

He went on to say —

If we are honestly interested in intergenerational equity, which is one of the arguments being put forward for a sovereign wealth fund, what we should be doing is ensuring that our policy settings are geared toward maximising GDP.

He went on to make the point that investing in infrastructure now and paying off debt now is the better way to use money that would otherwise be stuck in a sovereign wealth fund or, in our case, a future fund. We have made that point time and again. As was accepted by the former Treasurer, the member for Bateman, not only is there an opportunity cost because we are not going to cover the cost of funds, but also it will cost more money in the future to build the infrastructure that we are putting this money aside for.

Mr E.S. RIPPER: I strongly support this amendment. There are arguments in general against having a future fund in any circumstance. Leaving aside those arguments, there is no logic whatsoever in having a future

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fund when there is debt in the general government sector. There is the possibility of some logic if there is debt in the government trading enterprises but positive financial assets in the general government sector. I strongly support the amendment moved by my colleague the shadow Treasurer, the member for Victoria Park. I think the shadow Treasurer has demonstrated what a fine Treasurer he will be after 9 March by his contributions in this debate.

I find it difficult to accept that the Treasurer and his advisers believe in this bill. I know the Treasurer. I certainly know his advisers well. I just cannot see Treasury and the Treasurer actually signing up to this farrago of a bill. I think what we have here is Dixie Marshall economics, or Dixie-nomics for short. In other words, some spin doctor has decided that to deal with the debt issue, the government better have a future fund. The poor old Treasurer and the poor old Treasury have had to come up with a bill to implement the nonsense generated by the spin doctors. It would not be the first time that this has happened in any government, but it is certainly the case that it appears to have happened in this government.

Mr M.P. WHITELEY: I will make a very brief comment. These are not the circumstances in which one should be setting up a future fund. When there has been an explosion of debt—a 400 per cent growth in debt—in one term of government, it is not the time to be setting up a future fund. Future funds should be set up at a time when a government is running a significant budget surplus; when there are capacity pressures on infrastructure spending so that if the government spends money, there is a danger of crowding out private investment and causing inflation; and when there is certainly no net government debt. In fact, we could even argue that it should occur only when there is no gross debt, as it could be argued that money could be better used to finance internally—to look at the relevant interest rates that the government trading enterprises are paying and see whether it would be better to do internal loans. None of those circumstances is true. This is exactly the wrong time to be setting up a future fund. This is all about politics. The response we saw to the proposal to ensure that some of it was invested in gold showed the problem of building shaky foundations on shaky foundations, when politics are built on politics. It is an absurdity. It really is not much more complex. We are supposed to believe that there is the potential for growth of five basis points. We all know that the only way to achieve that, despite the flibbertigibbet-like manner in which the Treasurer was talking the other night, is through having a different risk profile. For all those reasons, this is the wrong time. There are times to set up a future fund. I am one of those great believers in fiscal conservatism. In Australia we do financial management in a bipartisan way and we do it very well.

Mr E.S. Ripper: Better than the Americans.

Mr M.P. WHITELEY: Absolutely better than the Americans. They talk about small government, but we actually have a cultural commitment in politics from both sides, but particularly on the Labor side, to cyclically balance budgets and to responsible financial management. This is the sort of thing that diminishes the commitment to that. It is done to gain a small and temporary political advantage, because Dixie Marshall or some genius in the government spin department thinks that members of the public are foolish enough to fall for this. They are not, actually. Everyone who has a mortgage and everyone who has had a term deposit at some time understand the difference in the rate of return and the rate of payment on those two things. It is not much more complex than this. Yes, future funds can be appropriate, but they are appropriate at times of strong economic performance, when there is a potential for crowding out if there is government investment in infrastructure, and when there is a potential to squirrel away something for the darker times that lay ahead—putting something aside for a darker future. None of those circumstances applies at the moment. We have a government that will have a record of 400 per cent growth in debt in one term. This is just smoke and mirrors. Everybody sees it for what it is. Yes, future funds can be appropriate when there is no net debt and possibly even when there is no gross debt, but certainly a no-net-debt provision would be what we would put in legislation and then we would leave it to the appropriate managers at the time to make that final decision. There is a time for future funds but now is not the time. These circumstances are not appropriate.

Mr T.R. BUSWELL: Clearly this is a point of difference between the government and the opposition.

Mr E.S. Ripper: Between the government and most economists and financial managers, I am sure.

Mr T.R. BUSWELL: That may well be the member for Belmont's view.

Mr M.P. Whately: I think it is yours, to tell the truth.

Mr T.R. BUSWELL: I am about to tell members what my view is. My view is that the government has a long-term concept for the future fund; that is, a future fund with a 20-year-plus horizon. It does not happen very often in politics that we have a 20-year-plus horizon. What we accept —

Mr E.S. Ripper: It usually happens when the present is difficult to sell.

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Mr T.R. BUSWELL: What we have is a longer term view that accepts that over the longer term a whole range of cyclical factors will impact on state finances from time to time. There will be times, hopefully not when the state is in deficit as a result of those cyclical movements, although that may happen at some stage —

Mr E.S. Ripper: February.

Mr T.R. BUSWELL: No, I do not think so.

Mr M.P. Whately: You just said that it was a danger.

Mr T.R. BUSWELL: It is a danger; I can tell members right now that it is a danger. There will be times when debt will increase and I imagine there will be times when debt will be reduced. Our view is that the future fund should operate through all of those times to deliver the long-term outcome that we are seeking from the future fund. I do not intend to go on anymore. I understand the position of members opposite. I listened with interest as the member for Victoria Park quoted some *Hansard*. I perhaps could obtain the *Hansard* from the then Treasurer. He has rebutted those conversations. At the end of the day, if my recollection goes, we agreed to disagree in a very gentlemanly manner.

Mr E.S. Ripper: In those circumstances there was no net debt in the general government sector.

Mr B.S. Wyatt: That is right—in the general government sector. That was the key difference.

Mr J.H.D. Day: You should have done it then!

Mr T.R. BUSWELL: That is the point I was going to make: they are two different issues. The future fund we are looking at has a long-term horizon. I expect that as we move through that 20-year period, there will be times when the state finances are aplenty and there will be times when state finances are more challenging. My view is—I know it is also the view of the government—that the future fund should transcend those ups and downs and stand as a long-term investment for future generations.

Mr B.S. WYATT: I am not surprised by the Treasurer's response, despite the fact I could not persuade him with his own words! One can only try. The member for Kalamunda responded to the member for Belmont's interjection that we should have set one up then. The member for Belmont made the point that when we lost government, there effectively was a future fund in the general government sector.

Mr E.S. Ripper: Of \$3.4 billion!

Mr B.S. WYATT: I thought it was \$3.6 billion, but it was \$3.4 billion. It was there! That of course is now long gone. I did not quote the member for Kalamunda, but I quoted most other members of the government when they opposed something like this. Even when the member for Kalamunda introduced the Western Australian Resources Heritage Fund Bill, modelled on the Alberta fund—a genuine sovereign wealth fund—he made the point that the timing was right because there was no net debt in the general government sector. All we ask is that this government ensures there is no net debt in the general government sector. It may even cause the Premier to think about the debt. As I have quoted ad nauseam in this place, in an interview with Robert Taylor the Premier said, "In reality you don't have to pay back the debt", but I think we all know that is not correct. An amendment such as this might get him thinking about, at the very least, reducing debt.

Mr W.J. JOHNSTON: I will make two points regarding the amendment that has been moved. I want to take up the member for Kalamunda, who said the former Labor government should have set up the fund in 2007. If we had borrowed money then and took the debt and the state up to the sort of stratospheric levels it is now getting towards, it would not have made any difference because we would have borrowed money. That is the point that is being made. If the member for Kalamunda is genuinely saying that the current generation will leave something for future generations, he cannot say we will leave \$4 billion as an asset and \$30 billion, \$40 billion or \$50 billion of debt. It does not make any sense. The intergenerational donation we are making is two completely contradictory gifts. One is a relatively small amount of money that will generate a tiny level of income; the other is this huge debt that needs to be repaid.

Mr E.S. Ripper: It is like a gift from a Nigerian scamster!

Mr W.J. JOHNSTON: Don't give them your BSB number!

Mr J.H.D. Day: You need to put in something to start off.

Mr W.J. JOHNSTON: No, no, no. I thank the member for saying that, because the point made in the review by Jason Hart into the member for Kalamunda's private member's bill is that financial discipline cannot be achieved through an act of Parliament—a government has to have financial discipline. The future fund makes no difference to the government's financial discipline. That is the wrongheadedness of the whole debate. The government is not creating a future fund; all it is doing is offsetting a bit of the debt. That is what is happening.

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The government's gift to the future is not just a \$4 billion fund; it is a \$24 billion debt, and rising. That is the contradiction. The government has to choose which horse it is on. If the government had set up the future fund in 2008, it still would have needed discipline not to spend all the money. It cannot do both. The government has to be honest with this generation and the next. In 20 years there will not be a single person in this state thanking this Parliament for this fund. The Alberta heritage fund that this future fund is modelled on is used as the textbook example of a failure of a sovereign wealth fund.

Mr J.H.D. Day: Who says it is a failure? What—the people of Alberta think that?

Mr W.J. JOHNSTON: Yes.

Mr J.H.D. Day: I think they have a very different view.

Mr W.J. JOHNSTON: Not if the member reads all the literature. In fact there is a very good book that I have quoted here before, written by a Norwegian economist, which uses the Alberta heritage fund as the example of how not to do a future fund. The fact that it collapsed and failed is used as an example of why it should not be done with political interference.

Mr J.H.D. Day: It has not collapsed and failed.

Mr W.J. JOHNSTON: It has.

Mr J.H.D. Day: It is only worth about \$Can15 billion!

Mr W.J. JOHNSTON: Yes; and they haven't put any money into it for over a decade.

Mr J.H.D. Day: That is their decision.

Mr W.J. JOHNSTON: Minister, that is the whole point. If a government ends up with such large debts that contributions cannot be made to the future fund, it does not work. That is what happened in Alberta. This is ridiculous. The government will end up giving to people, in 20 years, a \$4 billion fund and \$30 billion to \$40 billion debt. The Premier recently talked about the 1996 election campaign. He wrote a thing called "Fightback! W.A."

Mr C.J. Barnett: It was 1993.

Mr W.J. JOHNSTON: It was 1993, was it? Okay. One of the undertakings in that document the Premier wrote was that Western Australia would have no debt by 2010.

Ayes (22)

Ms L.L. Baker	Mr J.C. Kobelke	Ms M.M. Quirk	Mr P.B. Watson
Dr A.D. Buti	Mr F.M. Logan	Mr E.S. Ripper	Mr M.P. Whitley
Mr R.H. Cook	Mr M. McGowan	Mrs M.H. Roberts	Mr B.S. Wyatt
Ms J.M. Freeman	Mr M.P. Murray	Mr T.G. Stephens	Ms R. Saffioti (<i>Teller</i>)
Mr J.N. Hyde	Mr A.P. O'Gorman	Mr C.J. Tallentire	
Mr W.J. Johnston	Mr P. Papalia	Mr P.C. Tinley	

Noes (26)

Mr P. Abetz	Mr V.A. Catania	Mrs L.M. Harvey	Dr M.D. Nahan
Mr F.A. Alban	Dr E. Constable	Mr A.P. Jacob	Mr D.T. Redman
Mr C.J. Barnett	Mr M.J. Cowper	Dr G.G. Jacobs	Mr M.W. Sutherland
Mr I.C. Blayney	Mr J.H.D. Day	Mr A. Krsticevic	Mr T.K. Waldron
Mr I.M. Britza	Mr J.M. Francis	Mr W.R. Marmion	Mr A.J. Simpson (<i>Teller</i>)
Mr T.R. Buswell	Mr B.J. Grylls	Mr P.T. Miles	
Mr G.M. Castrilli	Dr K.D. Hames	Ms A.R. Mitchell	

Pairs

Mrs C.A. Martin	Mr R.F. Johnson
Mr A.J. Waddell	Mr J.E. McGrath
Mr D.A. Templeman	Mr J.J.M. Bowler
Mr J.R. Quigley	Mr C.C. Porter

Amendment thus negated.

Clause, as amended, put and passed.

Clause 6: Credits to Future Fund from Royalties for Regions Fund —

Mr B.S. WYATT: This is the clause that credits money from the royalties for regions fund. By implication, it almost amends the Royalties for Regions Act 2009. Clause 6(2) states —

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The Regional Development Minister is taken to have authorised the expenditure from the Royalties for Regions Fund of —

- (a) the sum of —
 - (i) the amount that represents 25% of the forecast fines royalty increase for the financial year commencing on 1 July 2013; and
 - (ii) \$25 million;

Then it goes on to refer to the 25 per cent going on to 2015. Effectively, this is the seed capital of the royalties for regions fund. In reality, it is borrowings to those amounts; it is not actually those amounts. We just voted on an amendment through which the opposition attempted to insert a clause that would provide that no money would flow into the future fund until there was no net debt in the general government sector. I move —

Page 3, after line 30 — To insert —

- (3) Notwithstanding subsection (2), no money can be credited to the Future Fund in any year where the general government sector borrows money.

This amendment simply seeks to make the point that the opposition just lost the vote to provide that money cannot be put into the future fund until net debt in the general government sector is at zero, as it was in 2008 when the government came to power. This amendment seeks to simply make the point that in a year when the government sector borrows money, it will not be able to put money into the future fund account; it has to be a year when the general government sector does not borrow money. That is a fairly reasonable amendment. It does not necessarily stop money flowing into the future fund; it just means that some priorities have to be set. I have made the point time and again that when the government came to power in 2008, there was no net debt in the general government sector. We are now at 30 per cent of the total make-up in the general sector. This amendment is a reasonable amendment. It is obviously less stringent with the debt requirements as moved in the previous amendments to clause 5, but I think it is an amendment worthy of consideration.

Mr W.J. JOHNSTON: The opposition is not trying to delay the house unreasonably. It is important to put on the record the effect of this amendment. The member for Kalamunda interjected about making sure that we have an eye on the future and that we are acting in the interests of future generations. If the government votes against this amendment, it is saying that it will borrow money to put into the future fund, unless it is borrowing \$60 million. The expectation is that about \$50 million to \$80 million a year will go into the future fund. If the government is borrowing more than that, every dollar that goes into the future fund will be borrowed. It is very important that we understand what we are proposing here.

Arguments can be made about the federal Future Fund, which, as we have said, was set up for a different purpose from that of this future fund; it will cover liabilities, not create an income stream. It is not a model for what we are doing here; it is completely different. It is much more like what was done by the former government in the Fiona Stanley Hospital Construction Account Bill 2007. Even if we did take that as the model, no money goes into that fund except from government surpluses. The federal government operates under a different accounting system. When it talks about a surplus, it is talking about a surplus after capital expenditure, whereas in Western Australia, when we talk about a surplus, it is only on the operational expenditure. This provision will ensure that only money that is in excess of the activities of the general government sector ends up in the future fund, and we are not in the position that is currently proposed by this bill whereby we borrow money to put into the future fund.

I will make a final comment about this. The general government sector is what we see as the public service; it is not a government trading enterprise, which will have to borrow and use money at different times and for different purposes. Government trading enterprises are completely separate and they are not included in this amendment. This amendment is only about the general government sector. The member for Kalamunda talked about discipline. This is the provision that requires discipline. Without this provision, there is no need for discipline and we would get to a position in 20 years in which we would have a future fund of \$4 billion and debts of \$40 billion.

Mr E.S. RIPPER: This amendment goes some way towards dealing with the fundamental problem in the legislation. The future fund cannot be protected against borrowing by future governments. If they wish, the governments of the future can simply borrow against the future fund. The governments will be measured on the metric of net debt. The future fund will simply be a positive financial offset; it will be offset against gross debt to give the resultant net debt calculation. The amendment does not deal in total with the problem but it does at least deal with the issue of the government increasing in any one year general government borrowing by more than it puts into the future fund.

The government is really conning the public here. As the member for Cannington has pointed out, what will be bequeathed to subsequent generations is a combination of the future fund and the debt that governments have incurred. If this government carries on as it is, the debt that will be passed on to future generations will be far in advance of anything that might be in a relatively small future fund. Unless the government inserts provisions into this legislation that will limit and discipline the borrowings of future governments, in the end, the bill will have no weight, no meaning and will not do anything for future generations.

Mr M.P. WHITELEY: It is a pity that the previous amendment was not supported. Having said that, this is a pretty good second go. It comes back to the fundamental point that was made by the member for Cannington. There is no point putting money in a future fund when we have not displayed the discipline to be in a situation in which we do not have to borrow to do so. Although I would like to see a circumstance in which we would not put any money into a future fund when there is any net debt, this provision would give us an incentive to act responsibly. If the government opposes this amendment, which it undoubtedly will, it highlights the transparent and cynical nature of this whole bill. It is all about creating the veneer of financial discipline when the reality is that the government is actually borrowing to invest. Despite the assurances that the Treasurer has tried to give us, presumably the government will be borrowing at a higher interest rate than it is earning on investments.

If this amendment is accepted, it will impose that discipline on government. It will also give government a reward. Government will be able to say, “Look at us. We’ve been financially responsible enough that in this year we’re going to be a net saver. We can brag because we are entitled to put something into the future fund.” It will be a measure of fiscal responsibility, in the same way that budget surpluses and deficits are used as a measure of fiscal responsibility, although they are of course cyclical in nature. This amendment will provide a reward for fiscal discipline; if the government opposes it, it will simply highlight the cynical nature of what it is trying to do here. The government is trying to pretend that by borrowing a lot to save a little, it is being financially responsible, when it is obvious to anybody that the only way to invest for the future is to be a net saver. Governments that are net savers will be rewarded; they can brag and they can go to the public and say, “We’ve been fiscally responsible. We’ve actually managed to reduce the net debt position of government and we are rewarded politically by having put money into a future fund.” So if the government really believes in financial responsibility and believes it has the capacity to be financially responsible, it will certainly support this amendment, but I suspect it will not.

Mr T.R. BUSWELL: For the reasons we canvassed earlier, we will not support the amendment. Our view, again, is that the future fund is a long-term investment on behalf of future generations and that we will move through cycles. Technically, the government borrows money nearly every year.

Mr B.S. Wyatt: The government or the general government sector?

Mr T.R. BUSWELL: The general government sector. Even when the general government sector is net debt negative —

Mr E.S. Ripper: Someone in the general government sector borrows.

Mr T.R. BUSWELL: Yes; there is always some borrowing in the general government sector. It just means that the liquid financial assets of the general government sector exceed the gross debt of the general government sector. There are always some borrowings in the general government sector. I think the member is talking about when more is borrowed. Irrespective of my endeavours to interpret that —

Mr E.S. Ripper: Given my attitude to the future fund, that’s no reason —

Mr T.R. BUSWELL: I know, and it is not worth having a technical argument, because I understand very clearly the principle that the member is raising; it is the principle that we have discussed previously, and for the same reasons as discussed previously, we will not support the amendment.

Mr J.C. KOBELKE: It took me a while to find, but today the Treasurer tabled the Western Australian Treasury Corporation’s annual report. It was interesting to compare the figures in that report with other years. We found that the differential is about the same as it was the year before; that is, the government is likely to earn less on its investment than it pays on its borrowings. Taking the figures from page 58, the investment by WA Treasury Corporation, using the weighted average effective interest rate, is a substantial investment—about \$5.4 billion, which earns 4.42 per cent; whereas the actual borrowings of the state through the WA Treasury Corporation are nearly \$35 billion on which we pay 4.96 per cent. We are not dealing with just a few hundred million dollars; we are dealing with a professional organisation seeking to represent the state’s interests as best it can, dealing in billions of dollars, and we find a difference of 54 basis points. That means, on those billions of dollars, we are 54 basis points worse off in terms of the investment against what we have to pay on borrowings. The government will need a big tailwind to make any money out of this. As I said during the second reading debate, regardless of who is in government, it will just be a paper swap; a government buys its own debt. Although the government is

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going to invest in other sureties, whether it is Queensland bonds or whatever, and actually lose money, it is not going to do it. All this is about is creating an image and doing a paper swap. The government will buy its own debt and therefore it will not lose out; it will simply pay a small amount to manage it. The government can go ahead and play its games; it will not do the state any harm, but as the member for Belmont has already pointed out, it is simply going to borrow against what it puts aside, and when it does have money in the future fund, it will just borrow against it to cover its debt. It is just playing with bits of paper and there is no actual benefit to the state.

Mr M.P. WHITELEY: That is very illuminating information; it is not consistent with what we have heard over the last few days. Can the Treasurer explain the difference between the 54 basis points negative and the five basis points positive that he is claiming? What accounts for the 59 basis point difference between what he is projecting and the reality of what has been happening?

Mr T.R. BUSWELL: I do not want to canvass this for too long, but last night we had a conversation about the difference between the public bank account, which is a liquid fund of government invested over a shorter period of time with a range of different objectives, and the tactical asset allocation, which will basically guide the investment of the subset of the public bank account that forms the future fund. I have provided to the house the advice I have received from Treasury Corporation; I am not disputing the commentary by the member for Balcatta. The advice I have from Treasury Corporation is that, because of a slightly different maturity profile and a slightly different risk profile, there will be a divergence in the rates generated in the future fund, which is held for a longer term, and the rates generated out of the public bank account more generally, which is held over a shorter term for more liquid purposes. I am happy to go back over it, but I have already provided that advice to the house, and that advice has not changed because it is in the document from the very same organisation that the member for Balcatta rightly referred to.

Amendment put and a division taken with the following result —

Ayes (22)

Ms L.L. Baker	Mr J.C. Kobelke	Ms M.M. Quirk	Mr P.B. Watson
Dr A.D. Buti	Mr F.M. Logan	Mr E.S. Ripper	Mr M.P. Whitley
Mr R.H. Cook	Mr M. McGowan	Mrs M.H. Roberts	Mr B.S. Wyatt
Ms J.M. Freeman	Mr M.P. Murray	Mr T.G. Stephens	Ms R. Saffioti (<i>Teller</i>)
Mr J.N. Hyde	Mr A.P. O’Gorman	Mr C.J. Tallentire	
Mr W.J. Johnston	Mr P. Papalia	Mr P.C. Tinley	

Noes (27)

Mr P. Abetz	Mr V.A. Catania	Mrs L.M. Harvey	Dr M.D. Nahan
Mr F.A. Alban	Dr E. Constable	Mr A.P. Jacob	Mr D.T. Redman
Mr C.J. Barnett	Mr M.J. Cowper	Dr G.G. Jacobs	Mr M.W. Sutherland
Mr I.C. Blayney	Mr J.H.D. Day	Mr A. Krsticevic	Mr T.K. Waldron
Mr I.M. Britza	Mr J.M. Francis	Mr W.R. Marmion	Dr J.M. Woollard
Mr T.R. Buswell	Mr B.J. Grylls	Mr P.T. Miles	Mr A.J. Simpson (<i>Teller</i>)
Mr G.M. Castrilli	Dr K.D. Hames	Ms A.R. Mitchell	

Pairs

Mrs C.A. Martin	Mr R.F. Johnson
Mr A.J. Waddell	Mr J.E. McGrath
Mr D.A. Templeman	Mr J.J.M. Bowler
Mr J.R. Quigley	Mr C.C. Porter

Amendment thus negatived.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Additional money credited to Future Fund —

Mr B.S. WYATT: I received some information at the briefing provided by Mr Barnes. I want to get something on the record from the Treasurer. I am interested to know in what circumstances the Treasurer is expecting additional money to be credited to the future fund.

Mr T.R. BUSWELL: It may be that from time to time, a future government decides it wants to allocate more than one per cent of royalties to the future fund. That will probably not happen for a while, but it may later. As we discussed last night, royalty flows can change in unexpected ways. The point to note is that if a future government decided to do that, it would have to come before the Parliament as part of the annual budget appropriation for the approval of Parliament. It would be made known to the Parliament through the annual appropriation process and would be subject to the normal scrutiny of Parliament.

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Mr E.S. RIPPER: Is it this government's policy that, if a major privatisation were to be conducted such as privatisation of the Fremantle port, the proceeds of that privatisation would be credited to the future fund?

Mr T.R. BUSWELL: No.

Mr E.S. RIPPER: Is the Treasurer saying that the government may privatise an asset and then not put the money in the future fund for future generations but fritter it away on recurrent expenditure?

Mr T.R. BUSWELL: No; I am saying that it is not the government's policy to privatise the Fremantle port, so it is a hypothetical that I am not in a position to comment on because it is not the government's policy.

Mr E.S. RIPPER: Is it the government's policy not to privatise anything? If the government will not rule out future privatisation, what is the government's policy on the crediting of the proceeds of privatisations to the future fund?

Mr T.R. BUSWELL: We have no plans to contemplate any privatisation.

Mr W.J. JOHNSTON: They are the exact words used by the Premier about privatising Alinta.

Clause put and passed.

Clause 9: Application of Future Fund —

Mr W.J. JOHNSTON: I have two separate but interrelated sets of amendments. I will go through what I am proposing to move and I will move them when I know I am doing it the right way.

The ACTING SPEAKER (Mr A.P. O'Gorman): Member, we require a copy.

Mr W.J. JOHNSTON: I understand that, but I am foreshadowing what I want to do and I will formally move them in a second.

There are two interrelated issues. Earlier during consideration in detail, the Treasurer said that this would create a fund that would focus on 20-plus years into the future. The literature about future funds says that when a very small amount such as one per cent of royalties is going into a fund, we should take it very long term. In fact, the recommendation is 80 years before we have a withdrawal. We are not proposing to do that; we are proposing to change the 2032 to become 2062 so that rather than being in place for 20 years, the fund would be in place for 50 years so that it is genuinely intergenerational. The other thing to do is to protect the capital once the fund becomes available to the people of the state. At the moment under clause 9(3), the whole of the income derived from the investment is available to be spent, which means there will be an erosion of the principal by effective inflation. We want to protect the value of the capital of the fund.

Leave granted for the following amendments to be considered together.

Mr W.J. JOHNSTON: I move —

Page 5, after line 13 — To insert —

After inflation income means income derived from the money standing to the credit of the Future Fund in each year discounted by the inflation rate for that year, so as to ensure that the principal of the Future Fund is protected against the effects of inflation.

Page 5, line 21 — To delete "2032" and substitute —

2062

Page 5, line 26 — To delete "Income" and substitute —

After inflation income

Page 5, line 26 — To delete "2032" and substitute —

2062

Page 6, line 1 — To delete "Income" and substitute —

After inflation income

There will have to be a minor amendment to clause 10 to delete "2032" and insert "2062".

These amendments, if accepted by the government, will ensure that the future fund is focused on the future, which is not a bad thing. If we are to have a future fund, let us focus it on the future. We have discussed that in 20 years the income available from this fund will be enough for one and a half high schools or one-quarter of a Roe Highway. It is a very small amount of money. Because of the provisions that the Minister for Regional Development must sign off for any activity from the fund, they may well be frittered away on small capital

works programs rather than programs of capital works that make a difference to the state. These amendments will ensure that we protect the capital value of the asset so that it is not the gross earnings but only the after-inflation earnings of the fund that are available for expenditure, which will protect the \$4 billion we are setting aside, and will change the focus of the fund from 20 years to 50 years.

Mr T.R. BUSWELL: It is a very interesting proposition. I am not going to agree with it, but I still think it is a very interesting proposition. I listened to the points the member made about the relative science and the concept of time. My reading of the member's argument is that, if we are serious about it, 20 years is not long enough and that by taking out the totality of the interest earned compared with the difference between the nominal interest earnings and real interest earnings, it would be effectively eroding the capital value by that differential. It is a reasonable point. Probably the only other factor to consider is that the one per cent of royalties will continue into perpetuity. I am not disagreeing with what the member was saying. It will depend on the differential, but I imagine that will mean there will still be a net contribution or a net growth of the capital in any one period because we will still have effectively a capital growth through the addition. But it is a fair point. In our view the 20 years is a period that we feel comfortable with. Being able to harvest the interest after 20 years will provide a return for future generations; therefore, we will not be supporting the amendment. However, I certainly acknowledge the position the opposition is taking in and around an even longer term view of the future. I think I will leave my contribution at that.

Mr W.J. JOHNSTON: The Labor Party will not labour the point but what we are trying to do is get a fund that, firstly, will protect the value of the capital. I appreciate, as the Treasurer said, the point about the one per cent. But as I understand the discussion about the round figures, it means that \$150 million will come out and \$80 million will go into the fund. Therefore, all the government will do is protect the capital base and it will never grow again once we get past 2032. That, to me, is not about the future. It means that unless the discretion under clause 8 is used, the fund will never grow. It does not seem sensible. In terms of 2032, 2052 or 2062, my view is as I have said, and the Treasurer's view is different. I understand that that is just a difference of opinion and there is no real way to argue that. But I do think that protecting the —

Mr T.R. Buswell: The real value.

Mr W.J. JOHNSTON: — real value of the underlying asset is very important. I will just finish on this point and do not intend to go much longer. Years ago I was appointed to the board of what is now called the Australian Youth Foundation—originally called the Bicentennial Youth Foundation—which was a terminating trust that lasted only 20 years. The reason for that is that there were still trust funds in England from the days of George III. Members can imagine that the capital value of the fund was so small that it could not even pay basically for its own stamps.

Mr T.R. Buswell: I would want gold currency.

Mr W.J. JOHNSTON: It is very easy to have a fund that looks big at the start end up being very small after a long period. Given the nature of the bill—we will get to manner and form in a minute—it is probably worth trying to protect the underlying asset.

Amendments put and negatived.

Clause put and passed.

Clause 10: Manner and form of amendment or repeal during accumulation period —

Mr B.S. WYATT: I am keen to speak to this clause, as is the member for Armadale. I was interested in the Treasurer's reading in bits and pieces of the advice he received from the Solicitor-General yesterday. I do realise I have a blue copy of *Hansard*, so I will simply be saying words to the effect of what the Solicitor-General said. I have previously made this point and the Treasurer has gone through this and I have gone through this so I will not repeat myself. The manner and form provision, which is what this clause is, states —

(1) In this section —

...

(2) A Bill to repeal or amend section 6, 7, 8 or 9 or this section —

It is effectively trying to double entrench itself —

must not be presented for assent by or in the name of the Queen during the accumulation period unless the second and third readings of the Bill have been passed with the concurrence of an absolute majority of the whole number of the members for the time being of the Legislative Council and Legislative Assembly respectively.

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I have heard the Treasurer make the point on radio that this is to stop future Parliaments, future governments, raiding the future fund—I think those were the words he used or words to that effect. I have made the point, and I think I am correct, that this will not bind a future Parliament. A future Parliament will not be required to get an absolute majority in both houses of Parliament if it seeks to repeal or amend this legislation. It will simply be able to do it by way of ordinary legislation. The Treasurer says that that is a matter of opinion, and that is correct; we can always find legal opinion to back any case. But I was very interested to note that the Treasurer read bits of advice from the Solicitor-General making that point. Referring to the 1931 High Court of Australia case of *Trethowan*, he said words to the effect that the factors included implications of widespread exercise that Parliaments do not as a matter of course entrench everyday statutory provisions; that this is not a question, however, of power or validity or efficacy but of inclination of good sense; that thirdly, and most importantly, the express terms of the provision understood, having regard to the Australian constitutional tradition, are contrary to Professor Twomey's assertion that Parliament, in enacting the manner and form requirement, has sought to affect its power and modify its procedure; and that is what a manner and form requirement is.

I am very surprised that the Solicitor-General at no point referred to the High Court decision in *Marquet*. *Trethowan* was a 1931 High Court decision. The High Court in *Marquet* in 2003 looked at this matter and said in effect that *Trethowan* may indeed say that these terms are broader, but it made the point that there has to be a limit. The Solicitor-General is allegedly saying here that there is no parliamentary sovereignty; that is, there is no limit to what we can bind a future Parliament over. For a conservative government and for any Solicitor-General in Australia, I would have thought, it is an absolutely extraordinary assertion that there is no capacity to stop a Parliament from impinging on the sovereignty of a future Parliament. That is what a conservative government is saying. To me that advice seems wrong and I do not think would be accepted. But the problem I have with that is ultimately the point that I think we will inevitably get to—that is, a future Parliament quite happily amending or repealing this bill. In that case, because the clause states that that bill “must not be presented for assent”, the Clerk of the day will be required to run off to the Supreme Court to get directions about whether he or she can present the bill for assent. I think the law is reasonably settled in this area at the moment. The High Court in 2003 discussed this issue at some length in a very long judgement, but that will probably result in the Supreme Court and probably the High Court spending hundreds of thousands of taxpayers' dollars to get to the point of saying, “Yes, Parliament is a sovereign.” I do not think that is acceptable, and the opposition will be dividing on the vote on this clause.

Dr A.D. BUTI: I want to hear a bit more from the member for Victoria Park.

Mr B.S. WYATT: I thank the member for Armadale; I am sure he does!

It is worth noting some comments made by the federal conservative shadow Attorney General, George Brandis, on the front page of *The Australian* of 21 September this year. The Gillard government has made the point that it will delay the referendum about acknowledging Aboriginal people in the Constitution, but wants to have a pledge introduced by way of legislation so that it will be dealt with in the future. This is what the article said —

Opposition legal affairs spokesman George Brandis said the Coalition would not support the Act of Recognition proposed by Labor as the alternative.

He believed it would violate the Constitution and steamroll the next parliament into a fixed wording on the constitutional amendment.

Here is his quote —

“There's a constitutional reason and, secondly, there's a substantive reason,” Senator Brandis said.

“The constitutional reason is first of all because the act as it has been explained to us would have the effect of binding the future parliament, the next parliament, to a particular course of action and it's a basic principle of parliamentary government that one parliament cannot bind its successor.

He said that in respect of the commonwealth Constitution. The commonwealth Constitution imposes many more constraints on the Parliaments than the state Parliament imposes. The state Parliament is a Parliament of plenary power, given power to make orders for the peace, order and good government of the state of Western Australia. There is a very limited circumstance in which a government can bind a future Parliament, as explained by the High Court in the case of *Marquet* in 2003. There has to be an element about the representative character of the Parliament. What the Solicitor-General is allegedly saying in this advice is that we could entrench the Cat Act! As the Cat Bill came through the Parliament, we could have bound a future Parliament by simply inserting a manner and form clause, because apparently it is the manner and form clause itself that gives us the constitutional power to do that. That is utterly absurd, and I do not accept the reasons given. I do accept that the Treasurer has read only a very small component of the advice from the Solicitor-General. But it simply cannot be

the case as it is contrary to any constitutional argument that has been made about state constitutions over the last 50 years.

The other point that was apparently made by the Solicitor-General is that it has regard to the Australian constitutional tradition. We cannot actually look to the commonwealth Constitution to find a capacity for a state government to bind a future government. Again, coming back to the decision of the High Court in *Marquet*, the point it made was that section 6 of the Australia Act is the exclusive base upon which to bind a future Parliament. That is it! It is not the Australian Constitution; it is not Trethowan or Ranasinghe—they are no longer applicable. The Solicitor-General is basing his advice on a 1931 case, when the Colonial Laws Validity Act applied to Western Australia. Once the Australia Act passed in 1986, it became the sole capacity upon which Parliament could seek to bind a future Parliament. I cannot accept that that is the entirety of the Solicitor-General's advice. The Treasurer has made the point that this is the Attorney General's area and we can wait until the bill gets to the upper house. The reality is that if this is forced through, at some point the taxpayer will be paying hundreds of thousands of dollars for a case to meander its way through the Supreme Court and more than likely to the High Court, led by the Clerk of the day seeking instruction about whether he or she can present an amending or repealing bill to the Governor for assent.

Dr A.D. BUTI: I also rise to chip into the debate on clause 10. The Treasurer said that this will be a matter for the Attorney General; but, really, that is not good enough. This is the Treasurer's bill; he has responsibility for it. It is no good to say that the Attorney General will deal with this manner and form provision if he needs to. It is shame that the Treasurer does not have the Solicitor-General here to advise him on this matter. The Treasurer quoted yesterday from part of the advice he received from the Solicitor-General. There is nothing preventing the Treasurer waiving any legal privilege and tabling that advice. I must say that I am very surprised at what the Treasurer read out. As politicians, we always argue that we are taken out of context. I wonder whether the Solicitor-General has been taken out of context because, as the member for Victoria Park has stated, we find it absurd that a manner and form provision can basically deal with any matter, and the Treasurer said that is constitutionally valid. As the member for Victoria Park stated, basically, it would be valid to entrench the Cat Act. The advice the Treasurer read out yesterday from the Solicitor-General said that we should look at the implementation of good sense.

Mr B.S. Wyatt: Apparently that is the only constraint on binding a future sovereign Parliament.

Dr A.D. BUTI: We have 100 years of parliamentary sovereign theory and legal cases. We have Trethowan and *Marquet*; however, those High Court cases have no relevance to the legality of manner and form provisions, and what matters is good sense! Honestly, good sense would have meant that the Treasurer brought the Solicitor-General here today. The Treasurer complained last night when the member for Kalgoorlie presented an amendment that part of the future fund be held in gold reserve. It is a bit a hard for us to have any confidence in what the Treasurer is espousing with regard to the constitutionality of the manner and form provisions in clause 10 when he states himself that he does not have expertise in legal matters and that we should wait for the bill to be debated in the other place so that the Attorney General can deal with it. The member for Vasse is the Treasurer; this is his responsibility.

As the member for Victoria Park has stated, we have a long theoretical, common law and constitutional law history of manner and form dealing with the constitution, powers and procedures of Parliament. What are the powers of Parliament? We expect that the entrenching provisions would have to deal with the powers or the constitutional structure of Parliament. We cannot have an entrenching provision that is based on good sense; otherwise, as the member for Victoria Park stated, it will be the end of parliamentary sovereignty. This should be headline news in the paper: on 26 September the Treasurer of Western Australia stated that parliamentary sovereignty no longer exists in Western Australia. The Treasurer's reading of the manner and form provision is basically stating that a Parliament of the day can entrench laws that it wishes to make that will bind future Parliaments for all time; that is, they can put in a manner and form provision, an entrenching provision, to stop future Parliaments from amending the act. That is absurd. The Treasurer is a very intelligent person and he knows that is absurd; it is also very undemocratic. Why not adjourn this debate for another day and bring in the Solicitor-General and allow him to espouse his advice, or why can the Treasurer not table his advice? I think the Solicitor-General's reputation is at stake. It is up to the Treasurer to present the full advice that he provided. It is purely absurd for the Treasurer to say that this manner and form provision does not have to deal with the structure or the powers of the Parliament at all. The substance has to relate to the powers and procedures of the Parliament; and, if it does not, it is not a valid manner and form provision.

Mr M.P. WHATELY: I certainly do not pretend to have any understanding of the legal issues, but they are very concerning. Let us suppose that it turns out that the rates of return on this future fund are negative, as I suspect they will be if we net off the borrowings and the lendings. Let us say that a future government sees this massive

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government debt and says that the most responsible thing it can do is pay it off rather than have this nonperforming asset further drag down our financial position. My real fear is that this manner and form provision, as it is described by the member for Victoria Park, would prevent a government from changing that—not because it could not do it legally, but because it would have to go through the expense of fighting it through the courts. The government would be faced with this economic decision of having to spend money to take a prudent decision to kill off a nonperforming asset and pay down net debt. I think this is the height of irresponsibility. We all know what the Treasurer is doing here. He has got his cheap headline—his Dixie Marshall outcome! The Treasurer has got his one-day wonder and he can say, “Aren’t we being responsible; we have the future fund!” For the Treasurer to go ahead with this clause would be the height of cynicism. The government does not need to do this. This is overkill. I take at face value what the member for Armadale and the member for Victoria Park say, because I frankly do not have any knowledge in this area, but what they are saying seems entirely reasonable. The Treasurer does not have the legal capacity to debate this; however, the Treasurer has the economic capacity to put an inhibitor in front of it, because, as the member for Victoria Park explained, a future Clerk of the Parliaments may feel obliged to take this to the Supreme Court and possibly the High Court, at the cost of many hundreds of thousands of dollars, to see whether it is legal, in order to allow a future government to take the prudent course of action.

We have heard from the member for Balcatta that there was a 54 basis point difference between borrowings and lendings. The Treasurer came up with an explanation for that. But in reality—even if it is not a 54 point difference—let us suppose there is not any negative effect in the future—would not the prudent thing be for any future government to take whatever money is in the future fund and pay down government debt? By putting this clause in, is not the Treasurer obligating any future government potentially to spend hundreds of thousands of dollars, if not more, by fighting the legality of what would be a prudent action?

The Treasurer has got his little blast. He has his one-day wonder in the newspaper. He has got his headline about financial responsibility. This is just overkill. Let us remove this provision and not put this artificial barrier in the way of prudential and responsible financial management of future governments.

Mr T.R. BUSWELL: I will read the conclusion provided to me by Mr Grant Donaldson, SC, Solicitor-General —

In my opinion, an attempt in the future to repeal or amend sections 6, 7, 8, 9 or 10 itself of the *Western Australian Future Fund Act* would be a law “respecting the powers or procedures ... of the State Parliament”, within the meaning of s.6 of the *Australia Act* and thereby be required, by reason of s.6 of the *Australia Act*, to comply with the manner and form prescription of s.10 of the *Western Australian Future Fund Act*.

We sought that advice in relation to this bill, and that is the advice that we have received. I read that advice into *Hansard* now. I respect the fact that the member has a different view based on his legal knowledge, but that is the view provided to us by the Solicitor-General.

Mr B.S. WYATT: I know the Solicitor-General, as does the member for Armadale, and as do the many people.

Ms R. Saffioti interjected.

Mr B.S. WYATT: Some of my best friends are Solicitors-General!

The Solicitor-General is a very good lawyer—we know that. What we are dealing with is very significant. These things, manner and form, happen very rarely, which is why I think it is not unreasonable for the entirety of the advice that has been provided to government from the Solicitor-General to be tabled so that it can be discussed and debated and analysed. I think in future we will potentially be dealing with litigation paid for by the taxpayer. I know that if it ends up in the High Court, the cost will be in the hundreds and thousands of dollars. I do not think it is unreasonable to analyse that, because what the Treasurer read yesterday from the Solicitor-General means that there is no limit. That means that any government can bring in a manner and form provision on any piece of legislation, and apparently it will apply.

The Treasurer just referred to section 6 of the *Australia Act*. Even though, apparently, Trethowan has some impact—I do not think it does—section 6, which replicates section 5 of the *Colonial Laws Validity Act*, makes the point that a law made after the commencement of that act by the Parliament of a state respecting the constitution, powers or procedure of the Parliament of the state shall be of no force or effect unless it is made in such manner and form. There is not a lot of litigation around. The key case is *Marquet* of 2003. I want to read again one short quote from that case, because this is the key issue. I am surprised that the Treasurer has not read any of the advice in the chamber that the Solicitor-General gave about *Marquet*, because that is, to be frank, the only relevant piece of case law that we have at the moment. I quote the majority judgement led by Chief Justice Gleeson —

Extract from *Hansard*

[ASSEMBLY — Thursday, 27 September 2012]

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Mr Bill Johnston; Mr John Bowler; Mr Troy Buswell; Mr Eric Ripper; Mr Martin Whately; Mr Ben Wyatt; Mr John Kobelke; Acting Speaker; Dr Tony Buti

For some purposes, the nature and composition of the Western Australian Parliament might be described sufficiently as “bicameral and representative”. But the reference in s 6 of the *Australia Act* to the “constitution” of a State Parliament should not be read as confined to those two descriptions if they are understood, as the submissions of the Attorneys-General for New South Wales and Queensland suggested ... That is, s 6 is not to be read as confined to laws which abolish a House, or altogether take away the “representative” character of a State Parliament or one of its Houses. At least to some extent the “constitution” of the Parliament extends to features which go to give it, and its Houses, a representative character.

That is the key point. That is why I would like to see the advice the Solicitor-General gave around that point from the High Court in *Marquet*. That is the only real, relevant High Court decision that deals with state manner and form. I do not know whether we can convince the Treasurer, but it is not unreasonable in light of the rarity of manner and form provisions, and in light of the serious desire to impinge on a future sovereign Parliament that may be dealing with this well after we have all gone from this place. Who are we to impinge on a future Parliament? It is arrogant for us to assume that we know the circumstances of the future Parliament and the state in the future of Western Australia. That is why these things are limited. The advice that the Treasurer has read in—that it is limited only by the good sense of the Parliament of the time—is simply nonsensical. There have to be other limits. That is why I think it is not unreasonable for him to read in or provide the opposition with the advice that he received.

Dr A.D. BUTI: Adding to what the member for Victoria Park said, if the Treasurer is not prepared to table the legal advice from the Solicitor-General, is he able to tell us whether he provided a contrary argument to what he actually read into Parliament? It is possible to mislead Parliament by providing only certain pieces of advice and not providing the total advice. Did the Solicitor-General provide the Treasurer with a contrary view and/or did the Treasurer ask the Solicitor-General to provide him only with advice that would support his legislation, or did he ask for advice that would canvass all the legal parameters and legal argument?

Mr T.R. Buswell: We sought advice in relation to the framework we were proposing. Clearly if the advice was that the framework we were proposing was not acceptable, we would not be in a position to present that framework. I have read the Solicitor-General’s advice. My reading of that is that the advice that is in the conclusion I read is the advice that he provides. I did not see him deliver any other conclusion in that advice.

Mr W.J. Johnston: What are the other arguments?

Mr T.R. Buswell: He looks at the issues that the member has raised, and the different cases that he has raised.

Mr B.S. Wyatt: He went through *Marquet*?

Mr T.R. Buswell: Yes.

Dr A.D. BUTI: Treasurer, why not just submit it? Why not just submit the advice?

Mr T.R. Buswell: I have provided the house with the conclusion from the advice that we were provided with.

Dr A.D. BUTI: A good lawyer when advising a client will always end up with a conclusion, hopefully, that will support the client’s position. In a proper piece of legal advice they will traverse all the legal arguments for pro and con. I would be surprised if the Solicitor-General has not provided the Treasurer with a contrary proposition or contrary proposal.

If the Treasurer will not submit it, why not read it out? It is very unfair for him to read into *Hansard* and present before this house evidence that supports his position and not to submit advice that is contrary to his position. If there is no advice contrary to his position—I would be surprised, but fair enough—submit it; table it.

Clause put and a division taken with the following result —

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[ASSEMBLY — Thursday, 27 September 2012]
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Mr Bill Johnston; Mr John Bowler; Mr Troy Buswell; Mr Eric Ripper; Mr Martin Whitely; Mr Ben Wyatt; Mr John Kobelke; Acting Speaker; Dr Tony Buti

Ayes (25)

Mr P. Abetz
Mr C.J. Barnett
Mr I.C. Blayney
Mr I.M. Britza
Mr T.R. Buswell
Mr G.M. Castrilli
Mr V.A. Catania

Mr M.J. Cowper
Mr J.H.D. Day
Mr J.M. Francis
Mr B.J. Grylls
Dr K.D. Hames
Mrs L.M. Harvey
Mr A.P. Jacob

Dr G.G. Jacobs
Mr A. Krsticevic
Mr W.R. Marmion
Mr P.T. Miles
Ms A.R. Mitchell
Dr M.D. Nahan
Mr D.T. Redman

Mr M.W. Sutherland
Mr T.K. Waldron
Dr J.M. Woollard
Mr A.J. Simpson (*Teller*)

Noes (20)

Ms L.L. Baker
Dr A.D. Buti
Mr R.H. Cook
Mr J.N. Hyde
Mr W.J. Johnston

Mr J.C. Kobelke
Mr F.M. Logan
Mr M. McGowan
Mr M.P. Murray
Mr A.P. O’Gorman

Mr P. Papalia
Ms M.M. Quirk
Mr E.S. Ripper
Mrs M.H. Roberts
Mr C.J. Tallentire

Mr P.C. Tinley
Mr P.B. Watson
Mr M.P. Whitely
Mr B.S. Wyatt
Ms R. Saffioti (*Teller*)

Pairs

Mr R.F. Johnson
Mr J.E. McGrath
Mr J.J.M. Bowler
Mr C.C. Porter
Mr F.A. Alban

Mrs C.A. Martin
Mr A.J. Waddell
Mr D.A. Templeman
Mr J.R. Quigley
Mr T.G. Stephens

Clause thus passed.

Clauses 11 and 12 put and passed.

Title put and passed.