ELECTRICITY CORPORATIONS AMENDMENT BILL 2013

Consideration in Detail

Resumed from 31 October.

Clause 10: Part 3 Division 1 Subdivision 2 heading amended —

Debate was adjourned after clause 9 had been agreed to.

Clause put and passed.

Clause 11: Section 35 amended —

Mr W.J. JOHNSTON: This clause deals with amendments to the principal functions of the entity. Firstly, can the minister explain the intention of each of the amendments? I want to ask him some questions about certain parts of the clause, but first can he put on the record the intention of the changes in this clause?

Dr M.D. NAHAN: This clause will transfer the principal functions of Synergy that are in the existing legislation to the sections of the act that relate to Verve.

Mr W.J. JOHNSTON: The minister did not really explain what he is trying to do. If he does not know, tell me; otherwise, can he explain what each of the amendments in the clause will do? Four new powers are being added. Can the minister assure the chamber that these are the exact same powers that will come out of the retail corporations' rights? Can he explain why they are in this particular order? What do the powers in proposed paragraphs (da) and (db) allow? If he could just explain those things, I would appreciate it.

[Quorum formed.]

Dr M.D. NAHAN: The purpose of this amendment is to bring the section of the act that relates to the retail corporation, Synergy, into the section of the act that relates to the generation corporation, Verve. This is about the merger of Synergy and Verve. As I indicated earlier, the purpose of the exercise is to move the retail corporation into the generation corporation. Subclause (1) states —

> (1) In section 35:
>
> (a) after "Generation" insert:
>
> and Retail.

The reason that is subclause (1)(a) is that that is how it appears in section 35 of the existing act. Paragraph (b) states —

> after paragraph (c) insert:
>
> (da) to supply electricity to consumers and services which improve the efficiency of electricity supply and the management of demand; and

So after paragraph (c) and the issues that refer to generation, we put in statements from other parts of the act that refer to retail. The purpose of this exercise is to combine Synergy and Verve. We take the statements in the act that relate to the retail operation, and we take the statements in the act that relate to the generation operation, and we make it both retail and generation.

Mr W.J. JOHNSTON: I am a little confused about the minister's answer. Does the minister mean subsection (1)(a) of the act or subclause (1)(a) of the bill? Also, is the minister saying that these words are identical to the words that are currently in the act in respect of the retail corporation, or are these changed words that we are inserting into the act? My first question arises from the minister's answer. My second question is the one that I asked the minister earlier; namely, what will these provisions allow the corporation to do, and are these words the same as the words that are currently in the act?

Dr M.D. NAHAN: It states —

> (1) In section 35:
>
> (a) after "Generation" insert:
>
> and Retail.

Mr W.J. Johnston: So the minister is not referring to the act; he is referring to the bill?

Dr M.D. NAHAN: I am looking at the bill, yes. That is what I thought we are dealing with.

Mr W.J. Johnston: The bill is amending the act. I am confused.

Dr M.D. NAHAN: We have a bill in front of us, and I have said that I am reading from that bill. The member asked me a question in relation to the bill, so I am answering it. It states —

(1) In section 35:

(a) after "Generation" insert:

and Retail.

The quotation marks mean that those words are in the existing act. We then have paragraph (b), which will insert paragraphs (da) and (db) into the act. We currently have separate retail and separate generation. We are proposing to put the sections that relate to retail into the sections that relate to generation so that the entity can undertake both retail and generation activities. This is part of the process of the merger.

Mr W.J. JOHNSTON: I will ask the question again, and if the minister wants to say, "I am not sure; I do not know", I will be relaxed about that. There are two parts to this question. The first is: what powers will be provided to the so-called Electricity Generation and Retail Corporation? That is a very simple question. The second question is: are the powers that will be provided to this organisation the exact same powers as apply currently to the Electricity Retail Corporation, or are they different powers? Those are the two questions that I am asking the minister, and I would be very obliged if he was capable of answering them.

Dr M.D. NAHAN: We propose to delete section 44 of the act, which gives this entity the power to retail. We are now proposing to put those powers into section 35. The second question was: are these the same powers as those that were previously given to Synergy and Verve separately? These are additional powers, in that, in the past, one had only retail and one had only generation. The combined entity will now have the same powers for both retail and generation.

Mr W.J. JOHNSTON: I am not sure what it is about the question I am asking that the minister cannot seem to answer. I will ask it again. Are the words in this clause the exact same words in section 44 of the Electricity Corporations Act or are they different words? That is not a complex question and I would be obliged for an answer. Whatever the answer, there is a second question. Again, I am asking the minister to explain what the words mean. Could the minister please oblige the chamber and, through us, everybody in Western Australia what is the meaning of these words? It is not a very complex question or complex clause so I am not sure why the minister is not able to answer the question, but I would be obliged for an answer, and I will continue to ask the question until we can get the minister to answer not another question that he wants to answer but the question I am asking. I am asking a simple question in two parts. Are these words identical or are they different? I imagine that would be very simple to know. Secondly, what are the powers being provided to this organisation that it currently does not have?

Dr M.D. NAHAN: I will answer again. What is being done in amended section 35 is taking words that are in section 44 of the act, which have now been deleted—the same words, same intent—and transferring them to amended section 35. They are the same words. If the member for Cannington wants, I will say this over and over again. I do not know what the game is; nonetheless, that is what I have to do. Are they therefore the powers for retail and the powers to generate, that this section deals with, the same? Yes, they are.

Mr W.J. JOHNSTON: The minister is assuring me that the words are identical, but they do not appear to be identical. Secondly, could the minister tell me what is the purpose of proposed paragraphs (da) and (db)?

Dr M.D. NAHAN: Proposed paragraphs (da) and (db) are directly from section 44(a) and (b) of the Electricity Corporations Act 2005. I encourage the member for Cannington to look at them. Proposed new paragraph (da) states —

to supply electricity to consumers and services which improve the efficiency …

Proposed new paragraph (db) states —

to purchase or otherwise acquire electricity for the purposes of paragraph (da) …

It basically gives the retailer powers to the merged entity. That is taken verbatim from the act. The member can ask the question again if he wishes.

Mr W.J. JOHNSTON: What does proposed new paragraph (da) mean?

Dr M.D. NAHAN: It gives the power to the combined entity, as it did in the act for Synergy, to supply electricity to consumers—so to sell energy to them—and services associated with the delivery of energy, which might be many and varied, and the management of demand. Synergy provides programs and services to its customers to manage their demand in the form of energy provided and otherwise. It gives Synergy the power to provide energy, which is the core of its business, and provide services associated with that energy and also gives

it services to manage the demand of the customers; in other words, it provides the power to do what a standard electricity retailer does.

Mr W.J. JOHNSTON: We have made great progress now. What do the words in proposed paragraph (db) mean and what do the words in proposed subparagraph (iii) in subclause (d) mean?

Dr M.D. NAHAN: Proposed paragraph (db) will do the surprising thing of allowing a retailer to purchase electricity to onsell. Proposed paragraph (e) is more interesting. Horizon Power wanted us to give it the power to provide telecommunications services and retail support services.

Mr W.J. JOHNSTON: Could the minister tell us which functions of Verve, the electricity generation corporation, currently overlap the powers of the electricity retail corporation?

Dr M.D. NAHAN: What section is the member referring to?

Mr W.J. JOHNSTON: It is a very simple question. At the moment, as the minister has observed, we are dealing with clause 11 of the bill, which is amending section 35 of the act. He has referred to the fact that later we will be deleting section 44. One of the arguments in favour of this decision by the government to merge these two companies is that the activities of Verve and Synergy overlap; in other words, the activities of the electricity generation corporation and the electricity retail corporation overlap. I am asking the minister to specify which of the powers of the electricity generation corporation overlap the powers of the electricity retail corporation.

Dr M.D. NAHAN: In this bill, they are one and the same so there is no overlap. We are going through section 35 in consideration in detail. There is no overlap in this entity because they are a combined entity. I understood that in consideration in detail, we stick to the issues at hand and the changes to the act and not get into a wider debate. I think the member wants to go into a wider debate about whether the two separate entities that exist now overlap each other. There is no overlap in section 35, which we are amending; they are one and a single entity.

Mr W.J. JOHNSTON: All these members are desperate to get to their feet but I want to get to the bottom of this issue. The minister is proposing this bill, not me. I do not know what made the government decide to bring this legislation to us. I am asking a very simple question. In telling us that we should support this legislation, the government has made great play of this allegation that the electricity generation corporation and the electricity retail corporation are competing against each other and have overlapping powers. In deciding whether to support clause 11, we need to know what those overlapping powers are. Could the minister tell us what the overlapping powers of the electricity generation corporation and the electricity retail corporation are? Again, I am perfectly relaxed. If the answer to that is, "I don't know", the minister should just say that. That is a perfectly acceptable answer. We need to get to the bottom of this because he is telling us that one of the reasons we need to vote in favour of clause 11 is to eliminate competition between these two entities. What powers of the electricity generation corporation overlap the electricity retail corporation? I do not mind what the answer is but we do need an answer.

Dr M.D. NAHAN: I enumerated in detail with many examples during the second reading debate. We are now in consideration in detail. I understand that we should deal with the issues at hand.

Mr F.M. Logan: He can ask any question he likes.

Dr M.D. NAHAN: He can; that is right. There is no overlap of function with this amendment because the companies are being merged. That is the issue we are discussing now. We are not revisiting the second reading speech.

Mr W.J. JOHNSTON: I will not raise objection to the fact that the minister is defying your ruling, Mr Speaker, because you are allowing me to ask these questions; therefore, they are in order and relevant to this clause. I will not talk about the fact that the minister is canvassing your ruling on these issues. Far be it for me to do that. All I want is what I expected to be a very simple answer. This is not a complex question; it is a very simple question, in fact. We are not on the second reading debate; we are dealing with clause 11. We are in consideration in detail so that we can examine every word of the bill to decide whether we support each of those words. My question relates directly to clause 11, which seeks to amend section 35. Given that—not the Labor opposition—the government says there are overlapping powers between the existing electricity generation corporation and the existing electricity retail corporation and because of that overlap we are being asked to support clause 11, could the minister tell us what those overlapping powers are? If the minister's answers are, "I'm not sure", "I don't know" or "I'll get back to you later on", they are all acceptable answers. It is not a complex question; it relates directly to what we are debating in the chamber. I would be obliged if the minister could either, now, tell us what the overlaps are or say, "I don't know; I'll get the information back to you" or "I don't know and I don't care." I do not care what the answer is, but we need an answer. The moment the minister answers, we can move on. It

is not the Labor opposition that is delaying the passage of the bill at the moment; it is the minister. We would appreciate being able to move on from this clause if the minister will provide us with an answer.

Dr M.D. NAHAN: I will please the member. He has raised this matter numerous times before; his memory fails him. Nonetheless, the issue is not so much overlapping powers; it is competition between the two. Under the existing legislation, under direction from the minister, Synergy and Verve were prohibited from competing with each other directly; that is, Synergy was not allowed to go into generation directly and Verve was not allowed to go into retail directly. I might add that it came up for renewal and I continued that. They basically agreed to that. Synergy does not directly own generation and Verve does not directly own retail. However, they do it synthetically. One good example, of course, is Muja AB, which the member is very fond of. Verve entered into a contract with a private retailer to refurbish Muja AB. That retailer competes with Synergy. Likewise Synergy underwrites the generation of most renewable energy, for example. Most renewable energy is underwritten through the renewable energy target scheme and otherwise through Synergy. Therefore, they are underwriting generation.

I might add that, in fact, Verve competes with those private sectors for generation. Mumbida wind farm was competing with other renewable energy providers that were underwritten by Synergy. That is one area of direct competition in the market. That is understandable. That cannot otherwise be prohibited. The issue is that decisions made by Verve Energy impacted on Synergy and vice versa, and it was hard for the collective as an equity holder to ascertain the impact on the government's position. We raised that issue many times. Although proposed section 35 is not explicitly designed to deal with this issue, it is an example of the overlapping powers between the two.

Mr W.J. JOHNSTON: Without labouring the point, as I know other members want to move on to other areas, we still do not know the answer. It is fine by me if the minister does not know what the overlapping powers are; that is just the way it is but I would still like an answer. Mr Acting Speaker (Mr I.C. Blayney), I am being as helpful as I can to the chamber. I do not want to unnecessarily delay the chamber. I am staggered that the minister cannot answer the question. It is a very simple question. The minister is asking us to amend section 35 of the Electricity Corporations Act. Which powers in existing section 35 are the same as the powers in existing section 44? If the minister can answer that, we will move on to the next set of questions.

Dr M.D. NAHAN: I have answered the question. Existing section 44 has a reference to ancillary services and supply of gas. Those words are not being transferred over to existing section 35 because they are already there.

Mr W.J. Johnston: Is that it? It is only the supply of ancillary services and gas?

Dr M.D. NAHAN: Those are the only two.

Mr W.J. JOHNSTON: Thank you very much, minister. It has only taken 25 minutes to get that simple answer. Only two provisions actually overlap—the supply of ancillary services and the supply of gas. No other provisions in existing sections 35 and 44 overlap—just those two.

Dr M.D. Nahan: Yes.

Mr W.J. JOHNSTON: Okay; thank you.

Mr F.M. LOGAN: I congratulate my colleague the member for Cannington for drilling down to those changes. Another provision that the minister said was identical to section 44 of the act and was in proposed section 35 but is not there is section 44(c) of the act, which states —

> (c) to generate electricity, but only after the expiry of the designated period under section 47;

That is the section on the prohibition on the generation of electricity by the retail entity for a designated period being seven years. Of course this was the alternative route that, had the government gone down it, would have allowed that period of time to mature—which is next year—and it would then have allowed both Verve and Synergy to compete against each other both in the generation and retail of electricity, as per this paragraph (c). Of course that has been taken out because it is now a gentailer. My question relates to the inclusion of the words "to provide telecommunications services" in proposed section 35(fa). I ask the minister: why has that paragraph been included? I know the minister has been requested by the gentailer to include telecommunications services, but I remind the minister that the telecommunications services that Western Power picked up and held onto were sold—I sold them when I was the minister. That happened to be a telecommunication network that only Western Power picked up, so it was not in Verve or Synergy—it was actually Western Power. That historic relationship with telecommunications services was bundled up and sold off; I sold it off as the minister. Why do we then include telecommunications services under the gentailer; and what does the minister intend to do with the telecommunications company?

Dr M.D. NAHAN: The member is right, Western Power had that type of business and he sold it off as minister. At disaggregation, those powers went to Synergy and all we are doing here is transferring them from the old section 44(g) to proposed section 35. The powers are in the act now relating to the retail arm, and we are taking the retail provisions and sticking them into the generation provisions—we are just transferring them over. Do I have any intentions? Synergy, to my knowledge, never did anything on this issue. As the member says, we are transferring over those powers as they sit in the act now.

Mr F.M. LOGAN: Does the minister think that is an appropriate thing to do? It is obviously within his powers to delete that provision, unless of course he has an intention that the new gentailer will move into the telecommunications business. I am sure a few telecom companies around Australia would probably like to know whether it will.

Dr M.D. NAHAN: I think the member for Cockburn was the minister at and around the time of the enactment of that act, if not afterwards; why did he leave the provision in?

Mr F.M. Logan interjected.

Dr M.D. NAHAN: The former Labor government did the disaggregation. There were the powers with —

Mr W.J. Johnston interjected.

Dr M.D. NAHAN: We are having a discussion. The member for Cannington did not ask a question.

Mr W.J. Johnston: I know, but you're not answering.

Dr M.D. NAHAN: Who are you?

The ACTING SPEAKER (**Mr I.C. Blayney**): The minister should address his response to me.

Dr M.D. NAHAN: The question is that there are powers under the act to provide telecommunication services that sit with the retail corporation now. The member asked me a question about why we are transferring those. First he asked me a question about why they were being put over. We are transferring them over. Why? It is because there are already powers in the act. Second, do we have any intention to use those? No. The question is: why do we therefore not delete that provision? I responded that it is the same reason that the government of the day, when it created the act and did the disaggregation, left the provision there—just in case technological change or other things make it a worthwhile business. As the member for Cockburn would recognise, back in 2000, a lot of electricity firms were saying that they could get into the retailing of telecommunications, particularly into the distribution side, if my memory is correct. I am not sure what happened to the technology; I never saw any of the firms in the eastern states take it up successfully, but we just left the provision in that legislation because it was there. We transferred it over, and who knows—it might be useful business. However, we have no intention right now of progressing it, nor have any of the firms really pushed it.

Mr F.M. LOGAN: Just to answer the minister's question to me, although I suppose it should be the other way around given that we are in consideration in detail, we were not going to walk into this place with a minor amendment to a bill and take up parliamentary time on a thing as small as this. Had we made further amendments to the bill, we probably would have made a change and deleted the provision during my time in office. I certainly would have done that. I was just asking why the current minister would not do the same thing unless there was an intention, or a possibility, that the new gentailer would like the provision in the legislation because it is an area of business it would like to go into.

Mr C.J. TALLENTIRE: Mr Acting Speaker —

The ACTING SPEAKER: Member for Gosnells, I am waiting for an answer from the minister.

Dr M.D. NAHAN: Yes. The power is there; we just transferred it over. I do not have any intention nor have the firms approached me to use it, but if it is a useful business through a technological change down the track, and if network businesses or these types of services businesses believe they can effectively be retailers or otherwise of telecommunications services, we would consider it at the time.

Mr C.J. TALLENTIRE: I return to the issue in clause 11(1)(b) in which we are combining things particular to a generator with those particular to a retailer. I am looking especially at the use of the term "efficiency". It strikes me that efficiency from the perspective of a generator would be efficiency of production, whereas efficiency from the perspective of a retailer would be very much efficiency of distribution and efficiency of sales. By collapsing things together, I am concerned that the minister is creating a situation in which there will be an internal conflict. Previously, with the disaggregated model, that conflict was resolved with this legislation by having it in separate sections. By having references in section 35 and in section 44, one being applicable to generation and one being applicable to retail, we were saved from that conflict, but the minister has collapsed

things into one section around the notion of efficiency, and I am very concerned that that will lead to conflicting goals internal to the organisation—internal to the piece of legislation that governs the organisation's operations. Therefore, I am keen to hear from the minister how that would be resolved.

The minister may have some explanations around what his efficiency endeavours would be for the newly merged body, but I would like to know whether that involves simply the delivery of electricity in an efficient manner being the delivery of cheaper electricity or whether it means the delivery of electricity when there is an efficient supply that is not subject to distribution losses and whether it is efficiency in terms of reliability, energy units expended or greenhouse gas emissions caused. There are any number of ways of looking at the term "efficiency". As I said, previously there was not a problem, because there was the potential for a retailer to make its interpretation and for a generator to make its interpretation, but now the minister is creating a potential for a conflict. Therefore, I think it is important that we spell out in this discussion what the minister really means by "efficiency" and what measures he has in place to make sure that there is not a serious conflict that could mean that within the organisation we will have people with totally different objectives and no real means of resolving the conflict that comes from those differing objectives. I look forward to the minister's response on that matter.

Dr M.D. NAHAN: Section 35 of the amended Electricity Corporations Act will have paragraph (c), which refers to generation and states —

(c) to acquire, develop, operate and supply energy efficient technologies;

Proposed paragraph (da), which is one of the provisions to which the member referred, states —

(da) to supply electricity to consumers —

That is a retail function —

and services —

So it is to supply both electricity and related services —

which improve the efficiency of electricity supply —

That is, to the consumer —

and the management of demand;

That is, of the consumers. This, I might add, is just a transfer of the wording from the old retail section to the combined proposed section 35. I guess the question the member is asking is: if we put both those in there, will there be conflicting definitions of "efficiency"? Clearly, there could be; "efficiency" is open to many definitions, as the member well knows, and perspectives. From the retail perspective, this is to sell electricity to consumers, and in this case it refers to supplying electricity to consumers that improves the efficiency of electricity supply to those consumers, and the management of the demand of consumers. As the member well knows, one of the major services is not just to supply electrons, but also to provide ancillary services—various services—to help customers manage their demand or meet their demands, whether it is variable or otherwise. This one is focused quite clearly on the retailing objective of the merged entity.

The member then asked a wider question on the merged entity, which is relevant, and we will go to that in later clauses. He asked: when it is combined, how will we deal with the issue of potential conflict of interest between generation and retail? There could be numerous conflicts of interest, which we can talk about later when we get to those clauses. Those two are, as government will argue later, ring-fenced. They will be segregated into generation and retail wings, with a wholesale wing between them. They will be run under specific objectives. Proposed section 35(da) sets out the objectives through which the retail section operates and 35(c) provides objectives for the generation side. There will be separation and ring-fencing of those two. Retailing is really trying to provide an indication of the services that the retailer will provide to the consumer; not so much how the firm operates internally.

Mr C.J. TALLENTIRE: I thank the minister for that explanation, but I seek some clarification. The minister is saying that proposed section 35(da) will not override the operations of the ring-fenced generation unit and that that proposed section would only apply to the ring-fenced retail unit. We are going to the trouble of doing this ring-fencing, yet in the legislation we are merging things together into the one proposed section. To me that seems like a grave risk in legislative design, especially when we have the added complication of a single body that will be known as a gentailer. The minister talked about ring-fencing, but in the legislation we are collapsing things together. That sounds counter to the minister's idea of wanting to ring-fence things.

Dr M.D. NAHAN: We are creating a gentailer, and that means that the combined entity, which will trade as Synergy, will have both a generation and retailing arm. That is not uncommon; in fact, it is a dominant structure within the electricity industry. If we had a number of gentailers competing in the industry, in an effectively

competitive market we would not have to ring-fence them at all. But we do recognise the dominance of this entity in both retail and generation, so we are putting in place powers that limit and restrict its market power and make it transparent. One of those is the ring-fencing, which we will go into at length later on, I assume. That is, we are keeping the decision-making of the retailing side separate from the generation side. Proposed section 35(da) is a function of the retail section, which will apply to the ring-fenced retail operations. It will be its operational objectives, along with section 35(db), which is for the purchase of electricity.

Mr C.J. TALLENTIRE: If the point is that the minister wants to keep these things ring-fenced separately, I do not see why he is collapsing things into one section. Why would the minister not retain a section of the Electricity Corporations Act that refers to the generation side, and another section that refers to the retail side? Why would the minister not go to that legislative means of ring-fencing?

Dr M.D. NAHAN: Why are we merging these two?

Mr C.J. Tallentire: No, that is not the question.

Dr M.D. NAHAN: Why would we have different sections in the act—one related to retail and one to generation? This clause deals with the principal functions of the entity. The entity will have generation and retailing functions, so it is incumbent on us, under the heading "Principal functions", to list the retail functions as well as the generation.

Mr C.J. Tallentire: Under the one section?

Dr M.D. NAHAN: Yes.

Ms R. SAFFIOTI: Amended section 35(da) reads —

> to supply electricity to consumers and services which improve the efficiency of electricity supply and the management of demand;

In relation to the management of demand, what does the minister foresee or believe would be the utility's role in that function, given that it also has a function to profit maximise? What sort of demand management functions does the minister believe this merged utility will undertake?

Dr M.D. NAHAN: This wording—this function—is what Synergy now operates under, so it is being transferred over to the merged entity. In short, it will provide the same range of services that Synergy now does. A customer might want a certain type of pattern load, so it could be just meeting the demand and the needs of the customer under the various contracts. It could actually lead to demand side management conditions; that is, Synergy could have an arrangement with a customer where it could change the demand pattern or service pattern to a degree. Again, this is essentially what Synergy is doing now. Most of the contracts are negotiated on the contestables side according to the demand of the customers. On the franchise side—on the tariff side—they could go into time-of-use tariffs and other aspects of it. But, again, this is basically taking the function that Synergy currently operates under—it is the same wording—and transferring it over to this combined entity.

Ms R. SAFFIOTI: But this is a new legislative function as I understand it; it is not currently in the legislation?

Dr M.D. NAHAN: It is in section 44.

Mr F.M. LOGAN: I notice the minister missed out a couple of words in the transfer provisions from current section 44 to clause 11 of the Electricity Corporations Amendment Bill 2013. Section 44, "Principal functions", reads —

> (f) to acquire gas and supply it to consumers;

Section 35 of the current act reads —

> (b) to acquire, transport and supply —
>
> (i) gas; and
>
> (ii) steam;

The words "and supply it to consumers" are missing from proposed section 35(b). They are also not contained further on in proposed section 37. It is contained in section 44 of the current act because it deals with the wholesaling functions of the gas by the retailer, where Verve were to acquire, transport and supply gas for its own purpose under the current section 35; whereas the retailer was to acquire gas and supply it to its consumers because it was a wholesale trader in gas. That wording is not in new section 35. Is that deliberate? Is the minister suggesting that the new gentailer will not wholesale gas?

Dr M.D. NAHAN: No, there is no intention to change the functions. The member is right. In section 44(f) one of the functions of the corporation is to "supply it to consumers" but this bill amends the act and removes that wording. The reason is that new section 35 was interpreted as including supplying gas to consumers. Proposed section 35 states —

> (a) to generate, purchase or otherwise acquire, and supply electricity from sources of energy including renewable sources; and
>
> (b) to acquire, transport and supply —
>
> (i) gas; and
>
> (ii) steam;

Mr F.M. LOGAN: I understand that, but that wording is repeated elsewhere in the act. The words have been completely removed. In reading the act as it will be amended, we have dropped off the powers under the act to supply gas to consumers. It takes it out of the act. This could be interpreted in a court of law. In a plain reading of the act, it would appear that the amendment was deliberately done to take away the supply of gas to consumers, because not only have those words not been included in new section 35 but they are not included in changes that have been made elsewhere. In a court of law it could be determined that the government's intention was to deliberately take away the power of the new gentailer to supply gas to consumers.

Dr M.D. NAHAN: It is not our intention to limit those powers. It is our understanding that the wording in amended section 35(b) —

> To acquire, transport and supply —
>
> (i) gas;

Will allow it to supply gas to consumers. In this case, those powers are not restricted to just consumers, but it does exclude the powers to acquire, transport and supply gas to consumers.

Mr F.M. LOGAN: It does or it does not?

Dr M.D. Nahan: It does not restrict.

Mr W.J. JOHNSTON: When we were dealing before with powers that overlap, this was not a power that the minister indicated overlaps. If they are not overlapping powers, the power being provided to this corporation must be different from the powers that are currently with the electricity retail corporation. When a court interprets the act, I assume it will pay attention to what the minister has said. He has said it was not an overlapping power, but if it is an overlapping power, it is not being transferred. Either way, the Parliament will deliberately not transfer the power from the electricity retail corporation to the electricity generation and retail corporation. Unless the minister can tell us that he has that advice, we are concerned that he is not transferring the power, because he said he is not.

Dr M.D. NAHAN: As I understand it, Synergy had the power to transmit and sell gas to consumers. The wording for Verve is to acquire, transport and supply gas and steam. It is a wide-open power. Under that power, Verve is able to sell gas not only wholesale —

Mr F.M. Logan: It swapped gas.

Dr M.D. NAHAN: This power to acquire, transport and supply gas allows it to sell gas to third parties.

Mr F.M. Logan: That's not quite right.

Mr W.J. Johnston: But that's contrary to your earlier answer.

Dr M.D. NAHAN: The wording for Synergy is "to acquire gas and supply it to consumers". If the words "to consumers" are left out, this merged entity will be able to sell it to consumers, wholesalers and firms. It will give wider powers beyond consumers to the wholesale market.

Mr F.M. LOGAN: We are not trying to do anything; we are just trying to make sure that the act is worded properly so that it does not fall over later. I would accept that wording if the words "and supply it to consumers" were not already in the act. That power was deliberately given to Synergy to make its powers different from Verve's powers, which were basically to supply gas to itself. It did swap gas when it needed to, but it did not sell gas in the marketplace in the way that Synergy did by going upstream, as the minister knows, to purchase gas as well. There was a deliberate distinction between one entity and the other entity under the act by removing one power and not passing that on to the new entity, which is the gentailer. It could be interpreted quite clearly that the intention of the Parliament was not to give it those powers.

Dr M.D. NAHAN: My advice is that the wording for Synergy was to restrict its power to consumers. Leaving out the words "to consumers" will not restrict the combined entity to consumers. The wording for Synergy's existing powers in section 44 restricts it to acquiring and supplying gas to consumers. Verve has had more wide-open powers. Using the wording that is currently applied to Verve will allow the combined entity to supply to consumers as well as to others.

Mr W.J. JOHNSTON: That is an interesting answer, but it contradicts the answer that the minister gave earlier. I asked about the provisions in the current section 44 that overlapped with the provisions in the current section 35, and the minister named ancillary services and another one—I forget what it was. But they were not about supplying gas to consumers. The problem is that the minister said in his answer that section 44(f) does not overlap with section 35(b). If the minister is now saying that sections 44(f) and 35(b) are the same, that contradicts the answer that the minister gave earlier, when he said that there are only two provisions that overlap. The minister is now saying that there are three provisions that overlap.

Dr M.D. NAHAN: Section 44(f) restricted the ability of Synergy—the retail arm—to supply gas to consumers. The merged entity will be able to supply gas to consumers, and to others.

Mr W.J. Johnston: What does that mean?

Dr M.D. NAHAN: To a wholesaler, to each other, or to Horizon.

Mr F.M. Logan: That is not quite right.

Dr M.D. NAHAN: This will allow Synergy to supply gas to a range of consumers, not just retail, such as industrial suppliers.

Mr W.J. Johnston: In fact, there is a ministerial direction preventing it from supplying gas to retailers.

Dr M.D. NAHAN: What we are arguing is that in section 44(f), the power to acquire gas to supply to consumers is a subset. When we move them over, that will be a subset of the powers that already exist for Verve. Yes, there is an overlap to some extent, but not fully; there is not a complete overlap. That is what I meant. Section 44(f) refers to Synergy's power to supply electricity to consumers. We are merging the two entities, and we want to give Synergy the power to acquire, transmit and supply gas, without restricting it just to consumers. One of the purposes of this legislation is also, as we will discuss later, to supply gas to Horizon, but there might be some restrictions on that now.

Mr W.J. JOHNSTON: The minister named two areas of overlap between existing section 35 and existing section 44. The minister is now saying that there is a third area of overlap.

Dr M.D. NAHAN: It was the second one that I mentioned.

Ms R. SAFFIOTI: I have a question about the word "and" that is proposed to be inserted in paragraphs (a), (b) and (c). My understanding of grammar is not great, but I am not sure why that word is be inserted.

Dr M.D. NAHAN: I have been told that it is a drafting decision.

Mr W.J. Johnston: The minister does not know?

Dr M.D. NAHAN: I do not draft the act.

Mr W.J. JOHNSTON: Is there any requirement, given that later on in the bill the chamber will be dealing with so-called ring-fencing provisions and given that unlimited powers are being provided to the entity, to make it clear that these powers are subject to the ring-fencing provisions that the chamber will be debating later on?

Dr M.D. NAHAN: The ring-fencing will apply to many aspects of the bill—this and others—and we will get to the detail of that later on.

Mr W.J. JOHNSTON: Perhaps I did not make myself clear. Should there not be a provision that says that these are the functions of the electricity generation and retail corporation subject to this subdivision? Is that sufficient? Is the minister saying that that makes them subject to the ring-fencing or should there be a specific reference to the ring-fencing arrangements? I am not sure of the answer but I would appreciate it.

Dr M.D. NAHAN: The amendments to section 35 enumerate the functions of the whole entity. The ring-fencing is detailed in the section that outlines the retail and generation functions; it indicates where the ring-fencing conditions apply.

Mr W.J. JOHNSTON: We are providing these powers, so there are separate ring-fencing arrangements. If there are words here that already deal with it, perhaps the minister can direct me to them. Even though they are worded as unlimited powers, they are limited because there will be ring-fencing provisions. I want to know

whether the ring-fencing provisions need to be acknowledged in this amendment, or is that already done? If it is already done, I would appreciate the minister directing me to the words that make it clear that those powers are already subject to the ring-fencing arrangements?

Dr M.D. NAHAN: Again, I go back. These are broad functions of the agency. A later clause will give the power to segment the business into three sections, and that relates to ring-fencing of those sections. We are dealing with the general function; later on we will segment the business into three sections—generation wholesale and retail—and we will deal with the ring-fencing of those functions of generation, retail and wholesale.

Mr W.J. JOHNSTON: I am still confused. I am terribly sorry and I apologise for that. The words in the marked-up bill state that the functions of the electricity generation and retail corporation are subject to this subdivision. It then lists the powers. If they are the powers, how is it that the ring-fencing provisions can then limit those powers? It does not say that, unless the clause includes the words "subject to this subdivision", that that is the limit, the reason that the ring-fencing takes precedence over the corporation's power. If it does, fair enough, let me know and I will be satisfied, but if it does not I am not sure how the two sections interact. On the one hand the corporation is being given the power to do these things, but on the other it is not subject to any qualification. I am not sure, given that the other clauses of the bill require the board to operate on the basis that it needs to fulfil the objectives of the cooperation et cetera, it appears that a conflict is being set up between the functions of the corporation and a subsequent provision that is not referenced in this area. If the powers of the corporation are subject to that other provision, why would it not state that?

Dr M.D. NAHAN: This section lists the functions of the entity. It does not say how it will be carried out; that is in a different section. We are just listing the functions and in later sections, including segregation and ring-fencing them, we will deal with how they are carried out. Right now all we are doing is listing all the functions and then we will go to the other sections and examine how they are implemented.

Mr W.J. JOHNSTON: I do not know whether my colleagues have any further questions on this clause but this will be my final question on this clause. From the passage of clause 11, what will be the expected cost savings per annum of the decision to combine the functions of the electricity generation corporation and the electricity retail corporation into one electricity generation and retail corporation?

Dr M.D. NAHAN: That question relates to the whole bill, not just to this section. The intent of the bill is to bring them together and have them operate. We have not quantified the whole savings, but they will be significant. From that section alone, it is hard to answer. We will work through the expected savings, which will be substantial.

Clause put and passed.

Clause 12: Section 36 amended —

Mr W.J. JOHNSTON: What is the reason for bringing over the additional power proposed by this clause?

Dr M.D. NAHAN: My advice is that there is an equivalent section in the old section 45 that referred to the functions of Synergy. This clause seeks to delete that equivalent section and adds that function into section 36.

Clause put and passed.

Clause 13: Section 37 amended —

Mr W.J. JOHNSTON: I refer to clause 13(1), which seeks to insert two new provisions. I want to read them so members can understand the question I am asking. The proposed subsections state —

> (3A) Subsection (1) does not apply to the performance of the corporation's functions under section 35(b) to acquire and transport gas.
>
> (3B) Subsection (1) does not apply to the performance of the corporation's function under section 35(b) to supply gas so far as the performance involves only the supply of gas to the Regional Power Corporation.

It appears that the words are directly contradictory because proposed subsection (3B) is a qualification on the power so that the power is only where it is being provided to the Regional Power Corporation; whereas proposed subsection (3A) has no such restriction. Would not the plain reading of this be that (3B) overrides (3A) because where there is a conflict between two clauses, the specific clause applies, not the general clause? From my former life as an industrial official drafting industrial agreements, I know that that is a common understanding in drafting. Given that the specific overrides the general, (3B) negates (3A), and (3B) is the only provision that applies. Given the words are identical, other than the qualification, why not just insert (3B) and not (3A)?

Dr M.D. NAHAN: Proposed subsection (3A) gives the power to acquire, obtain and transport gas. Proposed subsection (3B) allows the merged entity to supply gas outside the south west interconnected system, but only to Horizon.

Mr W.J. Johnston: That's not what it says. If you sit down I'll read it out.

Dr M.D. NAHAN: Yes.

Mr W.J. JOHNSTON: I have got the marked-up bill in front of me and I again thank Mr Oates for providing this to us in the briefing. Section 37(1) of the act reads —

> Within the State the performance of the corporation's functions under section 35 is limited to the South West interconnected system.

Then this amendment seeks to insert (3A), which reads —

> Subsection (1) —

That is, the restriction to the SWIS. To continue —

> does not apply to the performance of the corporation's functions under section 35(b) to acquire and transport gas.

We had a long debate about proposed section 35(b); we know what that means: to acquire, transport and supply gas and steam. We are providing an exemption under proposed subsection (3A) to subsection (1) of the act in respect only of proposed section 35(b). Proposed subsection (3B) is worded identically but adds the words "as the performance involves only the supply of gas to the Regional Power Corporation." It appears that it is contradictory. The minister is saying that the bill gives it the power to acquire and transport, but not to sell gas, except to Horizon.

Dr M.D. Nahan: Yes.

Mr W.J. JOHNSTON: The minister appears to be adopting a strange set of words.

Dr M.D. Nahan: I can tell the member why, if he wants.

Mr W.J. JOHNSTON: Fair enough; I will listen to what the minister says.

Dr M.D. NAHAN: The member is right; it is uncertain whether Verve had the power to acquire and transport gas outside the SWIS. It did; it had contracts that were grandfathered into it from Western Power. This confirms that power to acquire and transport gas outside the SWIS.

Mr W.J. Johnston: Where does it transport gas?

Dr M.D. NAHAN: In the pipeline.

Mr W.J. Johnston: That's not transporting gas.

Dr M.D. NAHAN: It buys gas from the North West Shelf and pays for the transportation of it.

Mr W.J. Johnston: It pays for the transportation, but it does not transport it. It does not need to be given the power to transport it.

Dr M.D. NAHAN: We are giving it the power to acquire gas and transport it outside the SWIS. We are giving it the power to also supply gas outside the SWIS but only to Horizon.

Mr F.M. LOGAN: I want to put this into a bit of a historical context. This comes back to the previous discussion we had about the supply of gas and why that was in the retail section. Supply to consumers is in the retail section but not in the generation section because, as the minister said to the house, Verve supplied gas but they were inherited contracts from Western Power. Verve was not given the power to be a wholesale trader of gas; it was deliberately given to Synergy as opposed to Verve under this particular section 37. That is why the wording on excluding the powers of Verve from supplying and transporting gas is not included currently in section 37. That is the reason that it is not there. This proposed section 37 now includes a set of provisions that would allow the new gentailer to acquire and transport gas outside the south west interconnected system. It also puts a constraint on what the gentailer can do by supplying gas only as far as it goes to the regional power corporation.

Dr M.D. Nahan: Outside the SWIS.

Mr F.M. LOGAN: Outside the SWIS. But bear in mind that the previous powers of Synergy, the retailer, allowed it to supply gas to whomever it liked outside the SWIS.

Dr M.D. Nahan: But only in the SWIS.

Mr F.M. LOGAN: No; outside the SWIS. It could purchase gas, for example, from an upstream provider and onsell it to a customer such as Rio Tinto. It could do that; it was a wholesale gas trader. The minister in this proposed section is saying that the new gentailer can outside the SWIS acquire and transport gas but it cannot supply that to anybody else except the regional power corporation. Those are not the powers that were deliberately given to the retailer Synergy.

Dr M.D. NAHAN: My advice is that there is a grey area here about what Synergy and Verve could do outside the SWIS. Indeed, one of the proposed sections makes it clear that they can acquire and transport gas outside the SWIS—this recognises the reality of it—and there is a grey area about whether Synergy could actually sell outside the SWIS. Its powers were restricted to the SWIS.

Mr F.M. Logan: No.

Dr M.D. NAHAN: That is what we are trying to address.

The ACTING SPEAKER (Ms L.L. Baker): Members, we can have only one person on their feet at the time. Has the minister finished?

Mr F.M. LOGAN: I am sorry that I have to contradict the minister on that. Section 46 of the act states that the restrictions placed on Synergy, the current retailer, limit the performance of the company's functions under section 44 to the south west interconnected system, with the exception I believe of the retail supply of gas to consumers.

Dr M.D. NAHAN: Let us go to section 46(2) under "Restriction on area in which corporation may operate", which states —

> Subsection (1) does not apply to the performance of the corporation's functions under section 44(e).

Section 44(e) relates to an agreement with regional power—Horizon—to provide retail support services to that operation. Section 44 does not provide an exemption to Synergy selling to consumers outside the SWIS.

Mr W.J. JOHNSTON: I want to now move to a new aspect of this clause, although I am not trying to prevent my colleague returning to the issues he is dealing with. I want to ask the minister the purpose of proposed section 37(5) and (6). It seems to me that, given proposed subsections (5) and (6), the entire restriction provision may as well be deleted and simply allow the new Synergy—the old Verve—to operate in any part of the state. Why not just delete all these words and insert, "The minister may issue directions about where the electricity generation retail corporation can operate"? The bill states —

> … Regulations may be made authorising the corporation to perform one or more of its functions under section 35 (including functions referred to in subsections (2), (3A), (3B) and (3)) —

I make the point that subsections (2), (3A), (3B) and (3), refer to proposed section 37, not proposed section 35 —

> in a part or parts of the State not served by the South West interconnected system.

It then goes on to state —

> … Regulations referred to in subsection (5) are in addition to and do not affect subsections (2), (3A), (3B) and (3) unless a provision of the regulations is declared by the regulations to have effect despite any conflict or inconsistency with any of those subsections.

Power is being provided to have a regulation that overrides the act. I know my good friend the Minister for Corrective Services in his role in the delegated legislation committee in the last Parliament railed against such a provision. I am not quite sure why this enormously wide authority is being provided by regulations, which effectively sets aside every single word in the whole of proposed section 37 we have been debating for the last number of minutes.

Dr M.D. NAHAN: The aim is to have a dividing line between the south west interconnected system and the regions. There are often examples, for instance, especially at the margins, where it would be more sensible for Verve, Synergy or Western Power to provide that service. Indeed, corporations come to me and ask for these powers to tweak the SWIS at the margins to more efficiently provide services at the borders. Also, although I believe the provisions are already in the act, there could also be the possibility that Synergy could provide billing services to Horizon. We do not envisage that Synergy will take over large sections or redefine the SWIS, but this will just allow tweaks at the borders. There is a large number of examples whereby it would be more sensible for Western Power to provide a service at the border rather than Horizon. This provision basically keeps restrictions on the borders, but it allows us to tweak at the margins.

Mr W.J. JOHNSTON: Of course, we are not debating Western Power's powers. We are not dealing with Western Power, we are dealing with electricity generation and the retail corporation, which does not provide distribution services like Western Power does. We are talking about retail and generation issues. I am not quite sure why the minister would raise issues of Western Power, because they clearly have nothing to do with the debate we are trying to have. We are debating Verve–Synergy, not Western Power. I am happy for the minister to draw our attention to the Western Power issues he will bring to us, and I will eagerly look at those, but at the moment we are not dealing with them. The minister says he does not want to redefine the SWIS, but then he says he wants to tweak it around the edges. That is redefining the SWIS. As the minister has already correctly acknowledged, where Horizon Power needs the assistance of either Verve or Synergy, those powers already exist, and I can point to all of that in the act already. This is not that provision; it is not a provision about Horizon seeking the assistance of the merged Synergy. This is a different provision. This is a provision about Synergy operating outside the SWIS on its own powers. It is extending the powers under proposed section 35, which we just debated under clause 11, to any part of the state. Not only are we doing that; we are doing it through regulation, so that the only opportunity the Parliament has is an up or down vote on the entirety of the regulation. Let us be honest; when was the last time a regulation came forward for debate in this chamber? I cannot recall. The minister and I have been in the Parliament for the same length of time. Perhaps the minister could tell me of an occasion on which we have debated a regulation in this chamber, because I cannot remember any of them. Therefore, we are effectively saying that the arrangements to allow this new Synergy to operate outside the south west interconnected system are completely blind to us. The minister says that it just tweaks around the edges, but the whole point of having one corporation operate within the connected system is because it is a connected system. I ask, for example: will the new electricity generation and retail corporation, when it operates outside the SWIS, be able to get access to the tariff equalisation fund to help it with the costs of its operations? Will it have to provide separate accounting for the operations so that people can see what is being spent on its operations in the SWIS compared with its operations outside the SWIS? The minister tells us that the amount of money for the government's community service obligation payment is wrong. He says that we should not change the electricity system while we are subsidising the government retailer. Will any of the money that is obtained from the CSO payment to the merged Synergy be allowed to be used on operations outside the SWIS? How is this going to work? This is an immense power. We will have only one chance to debate it, and that is this afternoon and tonight, if we are still going after the dinner break. We do not get a second chance because the regulations will probably never come back to this chamber for debate.

Dr M.D. NAHAN: The reason that I mentioned Western Power—the member asked a generic question—is that we will deal with similar powers for Western Power later.

Mr W.J. Johnston: Yes, but not tonight.

Dr M.D. NAHAN: Yes. The member asked me why and I gave an example.

Mr W.J. Johnston: Yes, but it does not have anything to do with the provision in front of us.

Dr M.D. NAHAN: One of the reasons for this is to try to allow the most efficient delivery of energy to consumers both in the SWIS and outside the SWIS. I do not decry the existence of a subsidy, whether it is through the tariff equalisation contribution or community service obligation, just the growth of it and the magnitude. We are trying to respond to clear indications of the potential, at least, for Synergy to provide a more efficient, lower-cost and better-quality service at times at the margins of the SWIS, rather than Horizon Power. Horizon has a huge task over a vast area. One of the objectives of this is to drive efficiencies, as well as quality of service. We are putting in the possibility of Synergy operating outside the SWIS. We will do that only if in fact it gives benefits either to the consumers or to the total funders of electricity in the state. This is simply logical. We are not giving Synergy a carte blanche power to operate across the state. The regulations are gazetted in this Parliament. The member can look at them if he wishes. There are many powers to bring on debates—we had one earlier today—if the opposition wishes to do so. One intent of this bill is to focus on being rational and providing the electricity providers with the capabilities to provide electricity safely and efficiently to consumers, rather than having blanket prohibitions.

Mr W.J. JOHNSTON: I will just ask the questions again and perhaps this time the minister will be so generous as to answer them. Will the merged entity have access to the tariff equalisation contribution? Will the community service obligation payments made to the new Synergy be allowed to be used in the exercise of functions that are allowed to the new entity on the basis of the regulation power we have in front of us?

Dr M.D. NAHAN: There is no change to the TEC; it will continue to operate. It is collected by Western Power and paid to Horizon Power, so there is no envisaged or proposed change there. The aim, of course, is to provide energy that is safer, better quality and more efficient. That is the aim; we do not yet have any examples of where this will happen, and there is no intention for it to operate across the state. No regulations have been given to

Synergy yet to operate outside the south west interconnected system, so I cannot give a comprehensive example of where the restrictions will be given to it.

Mr W.J. JOHNSTON: I ask again: will the Electricity Generation and Retail Corporation, operating under the powers that we are proposing to give it under this regulation-making provision, have access to the tariff equalisation fund for those works—yes or no? If the Electricity Generation and Retail Corporation is in receipt of a CSO payment from the government in respect of the gap between the costs of supply and delivery of electricity, will that payment be allowed to be used by the Electricity Generation and Retail Corporation in the performance of its duties under regulations made under proposed section 37(5)?

Dr M.D. NAHAN: As I indicated, there will be no changes to the TEC, and it goes to Horizon.

Mr W.J. Johnston: That's not what I asked you.

Dr M.D. NAHAN: The member did!

Mr W.J. Johnston: No, I didn't. I asked whether it's got access to the TEC, not whether the TEC's changing.

Dr M.D. NAHAN: Okay; right now, it does not have access to the TEC. The TEC is paid via south west interconnected system users by Western Power to Horizon. I said that there would be no change to that arrangement, so if Synergy were to operate outside the south west interconnected system, it would want to have access to the TEC. The CSO is equivalent to the tariff equalisation; Synergy gets that now and it will continue as long as there is a uniform tariff policy, which will continue, and the differential between the regulated price for franchise and the cost, so there will be no change. Synergy will operate as Synergy, Horizon will operate as Horizon. Horizon will get a TEC and a CSO and Synergy will get the tariff adjustment payment.

Mr W.J. JOHNSTON: I understand now that the answer to my first question is that the tariff equalisation fund will not be paid to the operations of the new Synergy when it operates outside the south west interconnected system—is that correct, minister?

Dr M.D. Nahan: That's what I said.

Mr W.J. JOHNSTON: Okay. The CSO is the gap between the income of the entity and its costs. If its costs include operating outside the south west interconnected system, can its operations be done on a subsidised basis, or does it have to cost-cover 100 per cent of the costs of its operations when it operates outside the south west interconnected system? Clearly, if it goes out to do contract work in respect of supplying electricity as a generator under its power under proposed section 35(a), does it have to do that at 100 per cent of the costs, or can it use the community service obligation payment to subsidise its operations when it is outside the south west interconnected system?

Dr M.D. NAHAN: A couple of things. The first is that there is no intention to change the subsidy pattern, either the tariff equalisation contribution or the tariff adjustment payment. If Synergy does work outside the SWIS on behalf of Horizon, that will be a commercial transaction between Horizon and Synergy and will not affect the TEC or the CSO payment; Horizon will get that, whatever is calculated, as it does now. Horizon sometimes contracts out services to private and other parties. That is just treated as its costs of service, so there will be no change to it. Synergy currently has a TAP payment, which is the difference between its costs and the regulated tariff. It will get that, and actually Horizon gets it also in the form of a CSO payment. So there will be no change to the pricing arrangement. If Synergy operates outside the SWIS, it will not get TEC; if it operates and does services on behalf of Synergy, Synergy will get its TEC and CSO payment. Presumably it will purchase those services from Synergy because it is less costly for it, which means a lower TEC and CSO payment perhaps, but that is yet to be determined on a commercial basis.

Mr W.J. JOHNSTON: I hate labouring these points, but it does appear that the minister does not understand me, and I apologise for my inability to communicate properly. I make it clear to the minister that this has nothing to do with Horizon. I have heard what the minister said about the TEC and I have moved on. This is not a provision that relates to the merged Synergy providing services to Horizon. This is a capacity for the minister to allow Synergy to operate anywhere in the state. Effectively, the minister could, if he wanted to, set Synergy up as a competitor to Horizon. I am not saying the minister intends to do that, but I make the point that that is what this power allows him to do. This power also allows the minister to get Synergy into the energy contracting market for off-grid services. That is a major part of the energy system in Western Australia. In fact, as the minister knows, there is almost as much generation off the SWIS as there is on it. It is one of the interesting things about Western Australia, and we are the only state that does it. This power would let Synergy get into competing against those companies that currently operate those remote power services. Is that what the government is trying to do? That is what this power would allow the minister to do. If that is what the minister wants to do, tell us. I do not understand why he cannot tell us. Because, see, there is a question then: how does

the competitor who is bidding for that same contract know that the CSO payment is not going to be used to subsidise the new Synergy's tendering for those remote power contracts? That is why I asked—I still do not have an answer—will the CSO payment be able to be used by Synergy in providing remote power to purchasers who are buying electricity; yes or no?

Dr M.D. NAHAN: There is no intention for Synergy to get involved in outside–SWIS isolated systems. I might add that Horizon does sometimes now, particularly if those systems are adjacent to some of its generating facilities. There is already an issue that Horizon competes sometimes with private sector ventures. That is a separate issue. That is the status quo. This is, again, an issue of flexibility for Synergy to provide, when it is more efficient and effective, services at the margins of the grid. It is a point of sensibility. It is a point of trying to be flexible and driving efficiencies in the system rather than drawing a rigid boundary beyond which we cannot sensibly cross. Yes, the way we do this is to have regulations, under the powers of the minister, which are gazetted in Parliament and which the member for Cannington and everyone else can scrutinise, if they so wish, and if there is an indication that we are going beyond and undermining the competitive off-grid systems or undermining Horizon's business, which we have no intention of doing, that can be brought to our attention.

Mr W.J. JOHNSTON: The minister says that there is no intention, but, minister, there is; that is what these words do. That is what the minister is intending to allow. That is why I just want the answer. Will the new Synergy, the electricity generation and retail corporation, be allowed to use its community service obligation payment in respect of off-SWIS activity provided under proposed section 37(5)? Is the answer yes or no?

Dr M.D. NAHAN: Synergy already operates in the competitive market. It does not get CSO payments for operating in the contestable market. It gets those only for the franchise market. By definition the franchise market does not go outside the SWIS. That is how it is defined and, therefore, the answer is no.

Mr W.J. JOHNSTON: I am pleased I now have two answers for these questions, which has taken quite some time to achieve. It is not that I am trying to delay the bill; I am trying to get the answers and when I get the answers, I move on.

What mechanism will be put in place to ensure that no CSO payments are used to cross-subsidise the powers provided under proposed section 37(5)?

Dr M.D. NAHAN: As I indicated, the CSO relates to the franchise market. When the companies went into disaggregation, there was a large debate about ring-fencing the contestable and franchise market. We have been going through a process to make sure that is in place, so all the subsidies relate to the franchise market. The member's issue is whether we will provide CSO payments by Synergy's operations outside the SWIS.

Mr W.J. Johnston: The minister answered that. I asked a different question. What mechanism will the minister use to ensure that will happen?

Dr M.D. NAHAN: The mechanism right now is that the CSO payment or the tariff adjustment payment applies only to services delivered to the franchise market. By definition, the franchise market is restricted to the SWIS. Therefore, there will not be any TAP or CSO applied to any operations, if they happen, of Synergy outside the SWIS. If the TAP or CSO is restricted to the franchise market and the franchise market is only in the SWIS, that is the restriction.

Mr W.J. JOHNSTON: As I understand, later we will debate some detailed provisions that will provide for ring-fencing between the wholesale and retail business. One of the problems from doing this is that we will now have to see how the government will ring-fence the non-SWIS operations of the new Synergy with the SWIS operations. Will the minister require them to have separate accounts? Will they report separately on its activities? At the moment we have Verve and Synergy; so we have ring-fenced the two entities very clearly. A very small number of services are provided by Verve and Synergy to Horizon, but we do not give general powers, which is what this provides for, to the organisation. I do not understand why the minister cannot tell us what the arrangements will be. The minister says, for example, that at the moment he does not have a plan to do any of that.

Sitting suspended from 6.00 to 7.00 pm

Mr W.J. JOHNSTON: Before I was so rudely interrupted, we were debating the fact that the powers under proposed section 37(5) and (6) are effectively unlimited. We got from the minister that the new Synergy, the Electricity Generation and Retail Corporation, will not have access to the tariff equalisation contribution. We also got from the minister that community service obligations are not intended to be paid to the new Synergy when it operates outside the south west interconnected system. I am not sure what mechanism will be used to

ensure that there is no cross-subsidy. I make the further point that this clause inserts proposed subsections (3A) and (3B) regarding the supply of gas. I remind members that proposed subsection (3B) states —

> Subsection (1) does not apply to the performance of the corporation's function under section 35(b) to supply gas so far as the performance involves only the supply of gas to the Regional Power Corporation.

However, proposed section 37(5) allows us to go beyond that. The merged company will be able to sell gas to everybody in the balance of the state outside the SWIS. The minister says that we are tweaking around the edges—I think they were the words he used—that we are looking for the best cost opportunities and this sort of commentary, but we are actually doing none of those things. We are providing this unfettered power to the minister to allow the merged Synergy to operate anywhere in the state. Surely, he should just have a provision that states that the Electricity Generation and Retail Corporation is to operate anywhere in the state as authorised by the minister or by regulation, because that would have the same effect as the totality of the clause that the minister has proposed. I am not quite sure why we have put in these restrictions but then said that they will all be set aside. Why are we saying that the regulation power can conflict with the provisions of the written law and the regulations will have authority over the written law? That is not a sensible way to legislate in this chamber. The minister says that that is unlikely and that there would be a very small number of occasions when this particular provision might be used. But, again, that is a good reason to have a different provision from the one the minister has proposed. I would still be obliged if the minister could explain the mechanism that will be used to ensure that the CSO does not get used to subsidise the operation of the Electricity Generation and Retail Corporation outside the SWIS and why it is not better to have a provision so that where the company operates is left to regulation.

Dr M.D. NAHAN: The mechanism is the one that exists now. That mechanism was set up under disaggregation, and, under that mechanism, the CSO is restricted to the franchise market. That is audited by Treasury, and the minister determines it. As I have indicated a number of times already, if this new Synergy were to operate outside the SWIS, it would be operating outside the franchise market, and therefore we would get no CSOs for those operations. So the mechanism that would be used to prevent cross-subsidising with the CSOs outside the SWIS is exactly the mechanism that exists now. That mechanism was put in place by the previous government. The member for Cannington asks why would we not let Synergy operate anywhere, with restrictions subject to regulation; or why would we not say that it needs to operate under the SWIS, and if there is an argument to vary it outside the SWIS, that has to be done by regulation. The clear intention is that Synergy will operate within the SWIS; anything else would be the exception, not the rule. The way the member put it, the rule would be that it can operate anywhere it wants, and the exception would be that it is restricted to the SWIS.

Mr W.J. Johnston: That is not what I said.

Dr M.D. NAHAN: What will prevent it from getting the CSO is the existing rules. If Synergy were to operate outside the SWIS, it would be the exception, and it would be determined in order to achieve efficiencies and better delivery, which should be the objective of all of us, rather than just drawing an arbitrary line on a map.

Mr W.J. JOHNSTON: I do not want to delay the chamber unnecessarily, but I want to pick up on the minister's comment about an arbitrary line on a map. The SWIS is not an arbitrary line on a map. We need to understand what the SWIS is. It is the integrated part of the electricity supply system that feeds the south west of the state. It is a piece of physical infrastructure. It is a system of operation. If something is not part of the SWIS, it is because it is not connected to the SWIS. Of course, if something were to be connected to the SWIS in the future, it would become part of the SWIS. That is the way it works. The SWIS is a series of physical infrastructure that is integrated. Everyone in the electricity industry, including the minister, understands what the SWIS is. It is not a line on a map. It is piece of physical infrastructure that we can go and have a look at and that we can touch.

As we have all acknowledged, there are currently specific powers to allow the existing energy retailer and energy generation to operate outside the SWIS. But that is only in the specific situation in which they are working with Horizon. The minister is now proposing to provide a general power that will allow the new organisation to operate anywhere in the state. As the minister has also pointed out, there will be two parts to the operation of these government instrumentalities. One part is the franchise market, which has not been deregulated, and the other part is the deregulated market. That means that this organisation can follow the money; if there is money to be made out of the SWIS, it can follow that money. That is what this regulation-making power will allow. That is not sensible. The minister says there will be cross-subsidy arrangements. But the current situation does not raise the problem that we are trying to get to the bottom of. This is a new arrangement. The minister, through these proposed amendments, will create a new environment. Therefore, we cannot say that the existing environment has certain procedures, because the existing environment will no longer exist. That is why we need to get to the bottom of this, and at the moment we are not at the bottom of this.

If an entity does not want to give the power, do not give the power. If an entity were to say it does not know when it will ever use it, then why is it being proposed? I refer to the case of an industrial agreement, something I have mentioned previously and something that I am sure Madam Acting Speaker (Ms J.M. Freeman) will be familiar with. If an employer asks for something and says that they are not going to use it, they do not need to get it, because if they do not use it, they do not need it. The same is happening in this clause. The minister cannot tell us how it will operate, where it will operate, how it will be controlled, how the accounting will be specified to make it clear which parts are and are not subsidised. He cannot say that we are going to do exactly what we do now because the whole point is that we are changing what is done now. We are creating a new environment, so the current environment does not give us knowledge or understanding about how this will operate.

I point out that when the chamber debated proposed subsections (3A) and (3B)—which are in this clause the chamber is dealing with now, that is clause 13—it was clarifying the specific powers the organisation needed to do what was always intended. When the minister explained that there was some doubt, we wanted to make it clear that some doubt needed to be removed. There was no trouble. But clause 13(2) is completely new and does not relate to the current powers, and that is why it would be good to get a clear picture of how the minister thinks it will operate.

Dr M.D. NAHAN: One example, which I am sure the member for Gosnells will support—a number of agencies have come to me about this—is that the south west interconnected system is defined as the extent of Western Power's network. If Western Power's network were to be expanded, the SWIS would expand. If we were to go up north and combine Karratha—if we wanted to, we could—Karratha would no longer be part of the regional network, it would be part of the SWIS. That is how it is defined. That can be done now, but that would require an extension of the transmission and distribution systems.

Consumers, especially Western Power, often say to me that they need to be serviced by the SWIS because they are adjacent to it—not into it, nor connected to it—so build another transmission line and service them. That is sometimes very costly and there is often a lower cost solution, including renewables, stand-by diesels and other things, that consumers would like to get under a uniform tariff, but it has flexibility. Western Power and Synergy cannot do that now because there are restrictions on the definition of the SWIS. Horizon can do it; it is not restricted. Its definition is "residual"—that is, it can operate everywhere that Western Power does not operate. Sometimes Horizon Power's network area is huge and it struggles to service isolated areas. It would often be more sensible because of its closeness to the SWIS to service it through Western Power. We receive a large number of requests for expansion of the grid, and at a very high cost—that is imposed on everybody else—and it leads to a non-renewable solution because people who use the SWIS, Western Power's network, derive their electrons from a whole variety of sources. One of the suggestions is to allow sensible use of disaggregated generation systems, and that request has often been made. Sometimes Horizon can provide this, and that is fair enough. The existing system solves it, but often it does not. One of the solutions is to respond to reasonable requests of both consumers and providers—Verve, Synergy and Western Power—to use changes in technology that do not necessarily rely on the distribution system. This is just sensible. Other regions around the world are doing this. These types of technical solutions are growing very rapidly. As the member for Cannington suggested, with our isolated system, we have a huge potential to be very competitive in this type of area; we already are in mine sites and others. Given the definition of SWIS, Western Power's network, this will allow for expansion, using Synergy and maybe even Western Power, and to operate outside what is defined as SWIS and to use non–grid-based solutions.

Mr F.M. LOGAN: We have already dealt with the minister's example under section 37 of the Electricity Corporations Act as it currently applies to electricity generation. Section 37(2) allows the generator to involve itself in the generation and supply of electricity from renewable sources. Subsection (4) allows Verve, as the generator, to generate outside the SWIS if —

> (a) the sources of energy used to generate electricity are a combination of renewable sources and diesel or renewable sources and gas; and
>
> (b) the renewable sources comprise a substantial proportion of those sources of energy,

That mix of options that Verve had to provide that power—the very power that the minister just described—to customers outside the SWIS is already contained in sections 37(2) and 37(4)(a) and (b) on the basis that the majority of the power generated comes from renewable sources, which can have other backup power as well. I have two questions. First, this bill goes beyond that. It allows regulations to be created to provide options to the gentailer that go beyond the options that are already available under the act to the existing Verve organisation. In response to the member for Cannington and to the chamber, it would be fair if the minister gave examples over and above the ones he has already given. In my view—I am sure the minister agrees—the examples that he referred to have already been dealt with under section 37. What other examples can the minister give that would

be dealt with by the new regulations? Is the minister talking about all gas-fired power and not renewable power? Is he talking about fuel such as diesel, or is he talking about coal? Is the minister talking about sources other than renewable energy, which has already been dealt with? Are they the sort of examples the minister is thinking of? If they are, they are expensive. The minister knows that all those examples of sources of power that I have given—coal, diesel and gas—are expensive for a generator. That would necessarily fall back onto funding from the tariff equalisation contribution fund, as the member for Cannington has been trying to extract from the minister when referring to the funding of such options.

I turn to the second question I have for the minister. These changes are being made available to the gentailer through these amendments. What about the option for Horizon? As the minister knows, when he supported the break-up of Western Power, it created competition within not only the generation system itself, but also among the three entities—four entities if we include Western Power—particularly Horizon and organisations such as Western Power and Verve. For example, Hopetoun is at the end of the long stringy line. Horizon would be coming to me as minister and saying, "We've got solutions for that area; we're only down the road in Esperance. We are far closer to the problems at the end of the long stringy line in Hopetoun, particularly when there were mining operations there. We can come up with that solution. We will deliver a generation solution for the area." Will that be available to Horizon?

Dr M.D. NAHAN: Firstly, the clause the member refers to will give this combined entity power to go outside the south west interconnected system and deliver energy as long as it is primarily renewable energy. Basically, the act as it stands allows Synergy, or Verve, I guess, to compete across the system in providing electricity from renewable sources. However, to my knowledge, they are not doing that. That allays the member's concern—I have not looked at in detail—of whether the minister of the day has the regulatory ability to limit the extent to which Synergy or Verve can compete outside the SWIS in the provision of renewable energy, whether it is with Horizon or the private sector and mining sites. That can be done now but, to my knowledge, it is not being done; therefore, to the extent that we can do that now and many of the disaggregated systems will be renewable, what is the member's concern? The member for Cockburn's question was: why the expanded power? It is because there might be non-renewable energy. The member's argument about Hopetoun was a good example. There is, to some extent, contestability at the margins of the SWIS; that is a good idea. I imagine that as we develop north, there probably will continue to be contestability. Some day it may extend to Karratha—not in my lifetime perhaps, but it is possible. I think that the SWIS will grow and we will have to evolve our system, to some extent, whether it is done under the SWIS and the energy is provided by Western Power or whether it is done another way. That is some time down the track but there is competition at the margin and that is what this will allow. Clause 19 gives the minister power to let Horizon operate in the SWIS, if it is more sensible.

Mr F.M. Logan: Not this clause.

Dr M.D. NAHAN: No, clause 19. I am just indicating what it can do.

Mr F.M. Logan: That is the question I was asking.

Dr M.D. NAHAN: We are trying to allow, with some ministerial discretion, some overlap when it makes sense to do so. Again, we are not prescribing that there will be no restrictions—we are keeping the SWIS versus the regional system. The member's point is well taken; there are already tensions at the margins, and I think they will grow, especially if we ever get the line north to Geraldton. If the midwest ever takes off, there will be some debate about who will provide that electricity. I believe that the act recognises the same issue I am trying to address, which is to have competition at the margin between Western Power and Horizon and the ability, particularly in disaggregated systems, to go outside the SWIS. We are trying to provide a wider scope than a disaggregated system. There might be an arrangement at a farm that uses just diesel, or primarily diesel. I do not know. I cannot see how a coal-fired power station, which would be a very large baseload station, would ever be outside the SWIS or outside Horizon's facility. A transmission line would definitely be built to it, and therefore it would be in the SWIS, as would baseload gas. It will always be part of the system.

Mr F.M. Logan interjected.

Dr M.D. NAHAN: I said Horizon; that is right. That is an interesting idea.

Mr F.M. LOGAN: The point I was making, as the minister pointed out, is that the current act allows Verve—or Synergy once this bill is passed—to go outside the current SWIS on occasions as long as the majority of power generated is renewable and it can also be backed up by other sources.

Dr M.D. Nahan: Yes.

Mr F.M. LOGAN: It would then logically follow that an extension of that exemption by way of regulation would have to involve sources of energy other than renewable and other forms of backup such as gas.

Dr M.D. Nahan: Yes.

Mr F.M. LOGAN: If that is the case as it currently stands, and I presume will stand for at least within our lifetime, the exemptions that are given by way of regulation would involve only power generated by coal, gas, diesel, hydro and even thermal.

Dr M.D. Nahan: Yes, LNG.

Mr F.M. LOGAN: Hydro and thermal will fall in under the current act, so it would be the normal types of fuel loads, which are diesel, coal and gas. Even if we were to run a very small stand-alone gas turbine or gas engine in a container, like one of the units in Broome, that is still very expensive as are the connections. That then brings in the point that the member for Cannington laboured, which is: does that involve the tech because it is an expensive, stand-alone piece of traditionally fired generation that has to be paid for and it is off the SWIS?

Dr M.D. NAHAN: The member for Cockburn is right: most of the options, other than the predominant renewables, have a high capital cost. Coal and even large-scale gas generally require a transmission line; and they would be part of the SWIS, so that is not an issue. However, we could have trucked liquefied natural gas—like ADL does—but even those generating units are pretty bloody expensive.

Mr F.M. Logan: They are very expensive.

Dr M.D. NAHAN: And they are not all that profitable, I might add. The member would probably say, "Why don't you allow Horizon to do that? They already have the contracts and the systems and whatnot. So, that is what you obviously do." However, there might be gas discoveries, for instance shale gas, outside the SWIS that we want to mine. It might be a stand-alone unit but it might be adjacent to a townsite that we have to service. I would logically say, "Do I bring the SWIS there? I don't know. Or do I give it to Horizon? Probably." However, we are looking for flexibility in delivery systems. That is all this bill does. Clearly it is not an overriding issue, given our large growth, particularly in Horizon's distributive system investments over the last six years—they have been quite substantial—as well as mine-site investments and new diesel and some solar, which is expanding. Given that Synergy and Verve have not entered that market at all, it is not a big issue and therefore this is not a big threat. I think Horizon has more skills in this area of distributive systems than either Synergy or Verve, which are not much judging by their existing composition kit. Providing these systems is part of Horizon's main load business development—and it has done so quite substantially.

This just expands the scope for potential savings and effective delivery of systems. The fact that it is already there, without ministerial discretion I believe, and has not been taken up illustrates that it is not a big worry. If we go for large-scale deliveries of coal and gas, as the member pointed out, that will expand the grid. It is costly and it will require either Horizon to do it if there is no grid or Western Power to come to our aid, which means there is no debate. What we need, and what we are trying to do, with discretion, is deliver the most effective, high-quality, flexible, low-cost systems to consumers.

Mr F.M. LOGAN: I will give some examples of what has occurred so far, and the minister may well be confronted regularly by these examples, which will go to the decision that this minister or future ministers will have to make given these provisions being put in the act. They occur in the goldfields and the northern goldfields. When the gold price was better than it currently is, there were regular requests from mining companies, particularly east, south and north of Kalgoorlie, to extend the grid off the SWIS system to have grid power to mine sites. When that basically was not going to happen because of the expense involved, those mining companies wanted a state-owned company to provide alternative generation solutions. The choice for me as minister was fairly clear. Outside the system there is Horizon; I told them to ask Horizon to see if it could be convinced by a business case that warranted the generation of power at their mine site. Alternatively, I told the companies to do it themselves. Once this provision is in place, those companies will lobby the current minister. They will say that they have spoken to Horizon, but they are not too sure about its capacity and its entire business model. They will ask the minister to pass a regulation allowing them to do a deal with the gentailer. There is no doubt the minister will be approached in this way, because he will have introduced a new player into that marketplace. Those companies will lobby the minister for a new regulation to allow them to use an organisation they may think has a greater capital capacity to deliver the model for their stand-alone generation power. That is exactly what will happen.

Dr M.D. NAHAN: They already do that. They already ask for extensions of the Western Power grid.

Mr F.M. Logan: Yes, they have always done that.

Dr M.D. NAHAN: They are already doing that. To some extent, Western Power is regulated separately from me, so it is really up to the Economic Regulation Authority and the Western Power board. There is some rigour in defence of that, which is good. Farms also do it—they do not have to be mine sites; they can be incremental farmers with medium-sized investments. This will marginally provide to people who want subsidised power

linking in, there is no doubt. That has happened irrespective of the changes. The argument now is to expand the grid, and often we do. We are investing half a billion dollars in the midwest transmission lines.

Mr F.M. Logan: The only difference is that Horizon sees that as its marketplace, unless the organisation, farm or company has its own model to do its own generation. Horizon sees that as its marketplace and the gentailer will now see it as an area for growth.

Dr M.D. NAHAN: Again, as the member pointed out, there is the capacity to do this now with renewables.

Mr F.M. Logan: I am talking about on traditional fuels. Most of those fuels out there are diesel.

Dr M.D. NAHAN: Okay, we are going back to the goldfields stuff. Those companies look to Western Power to service them. Western Power has restrictions. The member's point is that given we allow non-renewable distributed systems to be considered, they will try to use them. That is true. At times that is the best way to do it rather than to do so with a transmission system.

Mr F.M. Logan: I agree, minister. The point I am making is that Horizon sees that as its market for business—that is, stand-alone generation off the grid. These two clauses will provide an opportunity for someone else from the public sector—a publicly owned organisation—to come in and compete against it.

Dr M.D. NAHAN: Why would we allow Synergy to go out and compete in Horizon's territory? I do not see the need for that, especially since in those systems Horizon has more comparative advantage in doing so. That is what it specialises in. It has a number of contractors. Energy Developments Ltd has five generating plants. It is struggling. Adding a sixth, seventh or eighth might help it. So why would we do that? Again, we are not in this just to expand Synergy into the territory of Horizon, which we subsidise very heavily. Why would we do that? This is just at the margins trying, as I said, to provide more flexibility, but the point is taken that it will incrementally put pressure on, let us say, Western Power, I think, most to expand its services, particularly because it allows a non-grid solution. It is already under huge pressure there, and I might add that Western Power is one of the firms that came and said, "Expedite our ability to address this issue", because sometimes we provide a distributed system, and a transmission or distribution line is put through later when we get larger aggregate demand.

Mr F.M. Logan: Sure.

Dr M.D. NAHAN: Again, as the member knows, Western Power's expenditure—I am going off topic a little—is a very large percentage of total debt.

Dr G.G. JACOBS: This should be considered friendly fire, and I do not want to extend the debate, but I think it is particularly relevant when we talk about basically areas on the fringe of the grid. I know the member for Cockburn mentioned Hopetoun, but I just want to mention Ravensthorpe, which has a serious issue with recurrent brownouts and blackouts. It is on a significant, long spur line. As the minister would know, it is over 250 kilometres from Katanning. It is technically on the south west interconnected system. It is very much on the fringe—I would say the fringe of the fringe. I was really pleased to hear the minister say this bill would add to the flexibility in, if you like, getting a power supply that can solve some of those issues with having a significantly long spur line, with all the inherent issues that will continue to be issues. Ravensthorpe has been on and off the grid. When it is on the grid, it has issues with all these brownouts and blackouts. The local member, who is me, gets all these complaints. When it is off the grid, it is on stand-alone diesel generation. It costs an absolute bomb to run. There was the issue of basically having a relay interface; when the grid went down, the town was not out for three days. It could be an automated system so that it could kick over to the diesel plant without having an outage for a long time. We have looked at some of those issues, and they are much improved, thanks to the work of the regional director of Western Power. But the community is telling me that our inherent problems will not be solved until we look at some sort of stand-alone generation in that area. That may be a diesel–wind interface, which is pretty similar to what is in Hopetoun. Of course, by definition, I suppose that would come under Horizon Power. Just very quickly, without protracting this discussion—I think I have a genuine issue here, one that I have talked to the minister about and one to which I think we need to give some more thought—how are we —

Mr F.M. Logan interjected.

Dr G.G. JACOBS: Hopetoun was a good model. How will we actually get to that? The minister talked about flexibility in facilitating this on the fringes; I would just like to see how that would work for Ravensthorpe.

Dr M.D. NAHAN: I would have to do some work on this, of course. All I can say is that clearly this is an area—whether it is what was done in Ravensthorpe, Hopetoun, the goldfields or other places—that has a lot of need in Western Australia, particularly with the decline in photovoltaic prices. I have also been informed that with both battery and diesel generating units, the distributed systems are coming down in price and improving in quality,

and are often better than some of these ageing power stations we have all around the state. Some of them are on their last legs and have serious reliability issues. We have to do this not only as an experiment but also to drive the costs lower. Sometimes they should theoretically be cheaper, but some of them are very costly indeed. Horizon Power should be and, in fact, is to a very large extent, very good at these types of systems; that is the bread-and-butter, other than in Karratha. It should be across these systems and solving them. One could argue that Western Power should also, at times, get more into this issue, because the cost to the state of building a transmission line, delaying the building of a transmission line, or putting up with substandard delivery systems, such as in Ravensthorpe, is very great. One could not run a regular business there; the outages are too high. Again, we are looking for some flexibility on both sides, and I think the argument put forward by the member supports this.

Mr C.J. TALLENTIRE: I appreciate the minister's earlier comments that the proposed amendments to section 37 would somehow enhance the possibility for the new Synergy to be involved in renewable energy generation that is just off the grid. He said that it would perhaps be more cost effective to create an off-grid generation system than to extend transmission lines to a particular site. I must admit that I had hoped to hear this kind of discussion in the strategic energy initiative that the former Minister for Energy, Hon Peter Collier, began a few years ago, but I put it to the minister that grid connection is essential for major renewable energy projects. The big wind farms and future solar thermal plants would need to be grid connected to avoid the problems of intermittency and we would have renewables connected to the grid to balance things through the grid system. Those are the big systems, whereas I wonder whether we really want a Synergy-type operation to be the provider of the plant and equipment for smaller operations, the disaggregated off-grid units. Should it not be the case, in fact—I would have thought this would fit in with what I understand the minister's political philosophies to be—that we should be looking to smaller companies in the private sector to supply those off-grid units and keep them off-grid? The private sector is very capable of doing that. We also have a history of providing subsidies where necessary; there have been off-grid renewable energy rebate schemes, often through the commonwealth government, to support that kind of system. My question to the minister is: are we, in fact, here encouraging a situation in which the giant organisation that will be known as Synergy will get into this area?

I put it to the minister that Horizon Power is a much more effective deliverer of smaller grid systems. I look at the Carnarvon grid system, for example, where Horizon is managing a very high uptake of photovoltaic panels. I forget the actual percentage figure, but it is much higher than on the south west interconnected system in terms of distributed PV systems. But already with the very low level we have on the grid here we are hearing that perhaps it is getting to be too much for the existing grid to cope with in certain places and the network cannot handle it. That is a reflection of the capacity of Horizon as an expert in this area, versus the existing capacity of the Synergy–Western Power arrangement; there is some sort of inability to really gear itself up for that influx of distributed energy generation we are getting from photovoltaics. That is just one example. But my broader point to the minister is, are we not better thinking in terms of the big systems being grid connected? That should be part of our strategic energy planning. We have lots of work to do, and I do not think it is being done adequately enough. We must not fall into anything here that could enable us to become lazy and say, "We don't need to extend the grid because we can build an off-grid system and have it done by the new Synergy." Instead, we really should be setting it as a general principle that, yes, when there is potential for major renewable or non-renewable plants to be built, they should be grid connected, and the smaller grids or smaller stand-alone plants, perhaps for a single town site, should be well and truly open to the private sector to develop, with assistance when necessary. We would still be letting renewables, I think, do a lot of the heavy lifting coming from those difficult-to-service sites, but we would also be setting ourselves as a general principle extending the grid when necessary for the bigger operations.

Dr M.D. NAHAN: This amendment will just provide flexibility, whether it is Horizon or Synergy.

Mr W.J. JOHNSTON: I do not know what my colleagues want to do, but this will be my last contribution on this particular matter.

Look, it goes like this: there is no need to change this if all the minister is talking about is renewable energy projects, because the power is already there. If it is in respect of saying, "Oh well, Synergy and Verve are more capable of delivering some technical solution on the edge of the grid," that is a bit unrealistic and I do not see how the minister could possibly claim that; he has certainly not provided any evidence. But I tell the minister what is going to be an outrage: if this provision is used by a Premier who thinks the energy policy of the state is actually a state development policy to build some massive power station way away from the grid, using the balance sheet of the new Synergy to fund that power station when clearly it should be done as a commercial operation. That is what this provision allows, and that is the big fear. This is allowing the Muja decision to be repeated across the state. It is allowing the Premier to make a decision to build some uneconomic power station in some remote location to support some resource project. It is like giving a licence to build a power station

modelled on the Windimurra gas pipeline—it seemed like a good idea at the time. That is why every taxpayer in this state needs to hold the fear in their hearts that the government will make a decision to support state development desires rather than the financial interests of the state. That is what this provision would allow, and that is what we most strongly object to. If the minister does not want to do it, he should not give himself the authorisation to do it because that is what this provision does. That is why it is wrong.

If the minister wanted it to deal with a particular situation, he should have provided an example, but no examples have been provided. All the debate about technologies is rubbish; it is a distraction. The minister referred to this solution and that solution, but that can all be done already. The idea that somehow Synergy–Verve can do it cheaper than Horizon is rubbish. It will be the same power plant. What is the technological innovation that one company has that another does not? They are furphies. This allows the Premier to make uneconomic decisions on behalf of the taxpayers of the state and to have stranded assets, such as the Windimurra pipeline, left around the state. That is a bad decision; that is why it should not be supported and why the opposition thinks it is a bad idea.

Clause put and passed.

Clause 14: Sections 38 to 40 replaced —

Mr W.J. JOHNSTON: We are getting into some of the meat of the bill. Proposed section 38(1) reads —

> (1) Regulations may be made providing for and in relation to, or authorising the Minister to approve arrangements (***wholesale arrangements***) providing for and in relation to —

It then sets out some provisions. We do not have the regulations in front of us and no-one has ever seen them. We will come to that in a second. I just want to clarify what we will authorise the government to make regulations on. This is my reading of proposed section 38, and I would appreciate if the minister corrects me to make sure that I am right. The regulations may provide for the matters in paragraphs (a) and (b) and may be in relation to the matters in (a) and (b) or they may be regulations that authorise the minister to make arrangements in respect of (a) and (b). It is a power to make not only a regulation, but a regulation that would then allow the minister to make arrangements that are not even contained in the regulations. That is my reading of proposed section 38(1), and I seek clarification from the minister on whether my understanding is correct.

Dr M.D. NAHAN: The member's assessment is correct.

Mr W.J. JOHNSTON: I am back up five seconds later! Given that that is the case, we are being asked to approve regulations that we have not seen and that will authorise the minister to make arrangements over which we have no control. Even though we might disallow the regulations, we cannot disallow the arrangements that the minister approves. When the minister says in public and in this chamber that the provisions of the bill do not have to be presented to the chamber because members will have a right to disallow things in the future, that is not a correct argument. In fact, we are being asked to authorise a regulation-making power that gives the minister unlimited control of the outcomes regardless of what is in the regulation, because the regulation could authorise the minister to make any arrangement he wants to enter into. How will the Parliament of Western Australia exercise its obligations to properly scrutinise the arrangements that the minister has said in media conferences and in the second reading speech would be done through regulation?

Dr M.D. NAHAN: This clause sets up regulations that, basically, implement non-discrimination conditions. The bulk of the actions will be in regulation. There will, however, be some operating procedures and processes that will not, as there are in many regulatory arrangements. They will be audited by the Auditor General, who will assess those processes and procedures and whether or not they are being implemented by the entity, and the Auditor General is answerable to Parliament. I might add that this is very common. We set up the Independent Market Operator. Basically, we took away the regulation of the electricity system from Western Power and gave it to an independent body that had very limited regulation over its operations. Most of its operational procedures are determined by its board, independent of government. That is not unusual. Most of the regulations relating to this will be tabled and they will be complemented by a code or guidelines made by the minister.

Mr W.J. JOHNSTON: I do not understand why the minister has said in the media that these provisions will be controlled by regulation when a plain reading of the legislation does not provide for that. It states that the minister will be able to approve arrangements. A regulation will set up the authority of the minister, so it is like a double delegation—the Parliament delegates to the executive and the executive delegates to the minister. This is not like the IMO. The IMO is about market rules. That is about the way the market operates. The IMO approves those rules through a procedure that involves the market participants. That is not what we are doing here. Of course those regulations took a long time to negotiate with the market participants in 2006, but that is not the analogy we are drawing. The minister has deliberately ignored the advice of Verve and Synergy, which told him

to do a proper due diligence before he got here. We know that because that is in the letter that the Premier tabled —

Dr M.D. Nahan: You obviously read a different letter from the one I did.

Mr W.J. JOHNSTON: Can the minister show me where it states that he should bring the legislation into Parliament before there is a business case? Can he show me one word in that letter that states that he should do this without a plan? In fact, the letter states the opposite. It states quite clearly that that is not what should be done. I am happy to read it into *Hansard* in its entirety. I do not intend to do that, but if it will help the minister, and if he has not read the letter and does not understand that Verve and Synergy said that the government's objectives were not clear—the letter stated that it should proceed with an amalgamation only —

Dr M.D. Nahan: That was a year and a half ago.

Mr W.J. JOHNSTON: Where is the minister's plan? He has brought this legislation to this place and he would not even allow a debate about the fact that he does not have a plan. That is how scared he is. He cannot name one benefit in a financial sense from this legislation. Not one cent of savings has been identified by the minister. That is his job.

Dr M.D. Nahan: We're not going to do what you did and just say that there's going to be an 8.5 per cent decrease in electricity prices. That was a really good plan; it really worked well, didn't it?

Mr W.J. JOHNSTON: Some day we will have a debate about what the former Labor government did and we will expose the dishonesty of the presentation of information about that. But, in the meantime, let us talk about the minister and his responsibilities. Why has he said in the media that the regulations will control the transfer pricing arrangements when that is clearly not the case? The reading of this provision makes it clear that the regulations will authorise the minister to make those arrangements. Why has there not been transparency in his presentation to the media and in his second reading speech?

Mr C.J. TALLENTIRE: I am interested to know from the minister about the transparency arrangements that will surround the contracts that could be entered into if a commercial entity—perhaps a big consumer such as Alcoa—is looking to buy wholesale amounts of electricity. Proposed section 38(1)(a) refers to the wholesale acquisition or supply of electricity by the corporation. I am keen to know how transparent those arrangements will be. Naturally, we hope that we are moving towards a real spot market that will enable people to see what the price is and, at the same time, to see what prices people are paying. I am concerned that some organisations have the potential, through their large buying power, to lock in huge contracts for vast amounts and pay considerably less than the minister and I would pay as domestic consumers. At the moment, my electricity bill is about 24 cents a kilowatt hour. I hear that some people are able to access electricity, through wholesale arrangements, for less than four cents a kilowatt hour. I would like some reassurance about the transparency that will surround any deals that are done under these wholesale arrangements.

Dr M.D. NAHAN: There will be three sections—generation, wholesale and retail—and all three of those will be ring-fenced. We will deal with the ring-fencing conditions later. This issue deals with non-discrimination between the operation of the entity, Synergy, and the private sector. We are dealing with the concern about market power, and we are proposing to address this in a number of ways. One is by ring-fencing the three areas, under regulation, and under procedures and processes that will be audited by the Auditor General and assessed by the Economic Regulation Authority. We are dealing with the principle of non-discrimination and the provision of electricity products to the private sector and to the retail operation, and making sure that the energy that is transferred from the wholesaler to the retailer is also available to the private sector. We will set the powers of the minister under regulation, but there are issues about how that will actually work, and it will require some adjustment to make sure that it does. Those powers will operate under what is called three-tiered heads of power. The Auditor General will assess whether that is suitable and the ERA will assess whether it is effective.

The member asked what would happen if a wholesaler wanted to sell electricity to Alcoa. The generation division will have a number of private sector contracts and a number of generating units. They put them all together, they allocate it, and they come up with a transfer price. The wholesaler will provide that wholesale price to the retail outlet. It will also have various market products that it can sell to the private sector. I must add that this will put the retail division under immense pressure. That will also achieve one of the aims that was identified in the disaggregation; that is, to take Verve's kit, which will now be augmented by most of the private sector kit, and put it out for private retailers to compete with this merged entity. This will augment the competition on the retail side and enable non-discriminatory provision to the private sector.

Mr W.J. JOHNSTON: I want to know whether this is a Henry VIII clause. The second reading speech states —

> The amended act will allow regulations to be made to segregate certain functions within the merged entity. Under these regulations, some functions within the merged entity will be subject to ring-fencing, a transfer pricing mechanism and protocols governing the flow of sensitive information. These mechanisms and protocols are designed to ensure that the merged entity will not unduly preference its own retail and generation arms over third party retailers and generators. This will increase pressure on the merged entity to be efficient, reducing upward pressure on electricity prices.

Why did the minister refer to the regulations in the second reading speech but not explain that the regulations would authorise the minister to amend the procedures the chamber is debating and that there will be no opportunity for any external review? Is there an intention to have the minister's powers subject to discussions through the ministerial roundtable on energy? Is it intended that the minister will be able to use his powers only by reference to a standing committee of the Parliament? Is it intended that the minister will use his powers only with the approval of the Economic Regulation Authority? I would also be interested to know what provision of the act authorises the Auditor General to be involved. The minister mentioned for the first time, in reply to the member for Gosnells, that the ERA will be involved. Where is the provision that allows for the involvement of the ERA? I am happy to go back over that. The chamber is looking at clause 14 of the bill. I want to know if it is a Henry VIII clause. Is there any particular reason that the second reading speech mentions the regulations but the minister did not mention that the provisions are not subject to the regulations but are in fact ministerial authorisations under the regulations? Where is the ERA mentioned? Where is the Auditor General mentioned?

Dr M.D. NAHAN: Later on the chamber will deal with the conditions and transfer pricing in some sections. Proposed new section 39(2)(f) confers functions on the minister, the Economic Regulation Authority or any other specified person, and 39(2)(g) provides for the right of a person to be supplied with electricity or wholesale products. The Auditor General is a specified person under the current act. Under the current act, the Auditor General has the powers to audit Synergy and Verve. That will be retained under these provisions and his powers will also include, to look at, as part of his annual audit—not a 15-month audit—the processes and procedures so that they are appropriate and are being implemented. Part of the ERA's annual audit of the wholesale market will include a section on the merged entity and it will look at the various aspects to do with limiting market power to ensure they are effective and are limiting the market power of the organisation. The ERA will report on that to the minister as part of its annual review and, of course, it will be public, as will be the Auditor General's report.

Mr W.J. JOHNSTON: Is this intended to be a Henry VIII clause?

Dr M.D. Nahan: What is a Henry VIII clause?

Mr W.J. JOHNSTON: I am happy to explain, but I did not think it was necessary given the number of advisors in the department. Are there not 100 000 public servants in Western Australia?

The ACTING SPEAKER (Mr I.M. Britza): I would be happy to hear it, member for Cannington.

Mr W.J. JOHNSTON: According to the Queensland Law Reform Commission Working Paper 33, entitled, "Henry VIII Clauses" —

> A "Henry VIII clause" is a clause in an Act of Parliament which enables the Act to be amended by subordinate or delegated legislation. The name of the clause is derived from Henry VIII, presumably because that monarch persuaded Parliament to enlarge his power to make law by means of Proclamations. Since the time of Coke it has been the law that the Crown cannot legislate by means of Proclamation in the absence of Parliamentary authorization. Allen has remarked that "Henry VIII clauses" are so "named after that monarch in disrespectful commeration of his tendency to absolutism".

That document was provided to me by my good friend the member for Mirrabooka.

A government member interjected.

Mr W.J. JOHNSTON: No, it is not from Wikipedia. I am not a member of the federal cabinet.

Again, I ask the minister why it was not mentioned in either his second reading speech, which I extensively quoted from, or any of his media appearances. Even if we saw the regulations, they still do not tell us what the provisions are. The minister should remember that this is the guts; this is the thing that he says is protecting private investors in the industry from the merger. We can go through why he needs to protect them, given that the government is going ahead with the merger, but we will leave that aside. I am not talking about second reading stuff; I am talking about the detail. Why has the minister not talked about the fact that it is not the regulations that will provide the protections but rather the minister's approval? We have to understand the problem here for investors. The minister is not just regulating the industry; he is also the shareholder. He is the guy who has to maximise the return. The Premier has constantly said that this is about the value of the organisations—the value of the electricity companies. We can see why the private sector investors are so

concerned about these provisions. They are being asked to trust the government as the regulations will be great—pass the bill and then we will table the regulations. If we were to see the regulations, we still would not know what the provisions are because the minister makes the decision. Why has the minister not mentioned that in any of his presentations to the Parliament or to the media?

Dr M.D. NAHAN: The issues relating to transfer pricing, non-discrimination rules and ring-fencing are rather complex. If they were embedded in legislation, they would not work and we would be coming back to this house and amending the act in all sorts of ways. That is common to many regulations and a lot of legislation. We put these types of things into regulations. All regulations and wholesale arrangements, procedures and processes must be consistent with the act. If they are not, the act takes precedence. Most of the conditions will be in the regulations and will be tabled and gazetted in this Parliament.

We also set up two processes of vetting—with the Auditor General and the Economic Regulation Authority. We are putting in the regulations in a timely manner relative to similar acts that used similar levels of regulation and processes and procedures. It is very timely, particularly when we compare it with the disaggregation. I mentioned before that the processes and procedures flow from the regulations, and I made it quite clear that the regulations will follow quite quickly in due course and will contain the bulk of the powers. In fact, we have had extensive discussions about the development of this with the private sector—over 20 meetings with the Independent Power Association. Generally these things are part of some of the most rigorous set of processes in similar organisations around the place and increase the transparency to this house and private sector competitors and suppliers. We have followed the recommendations of the chairmen of Verve and Synergy quite thoroughly and with due diligence and, indeed, that is what we are debating today.

Mr W.J. JOHNSTON: I still have not had an answer to the very simple question about why the minister has not in either the second reading speech or any of his media appearances told us that it is not the regulations but the arrangements approved by the minister that will deal with the issue of the wholesale acquisition or supply of electricity. The minister is to be condemned for his failure to answer that simple question. A moment ago the minister said he had followed the advice of the chairs of Verve and Synergy. I do not want to labour the point about Verve and Synergy because, obviously, I will talk about it a lot during my third reading contribution, but I will make the point that Verve and Synergy said the government's key objectives of the proposed merger were not entirely clear to them. They also said that the corporations were keen to avoid being involved in what might turn out to be a less than satisfactory process or outcome. They suggested that, to this end, the corporations undertake a conventional due diligence exercise before a decision is made to proceed. I remind the minister that Verve, Synergy and the Public Utilities Office had no knowledge of the decision to merge these two companies before 10 April, prior to the announcement by the Premier, that these two billion-dollar businesses were to be amalgamated. He cannot come into this place and say he is acting on the advice of Verve and Synergy because it is totally untrue and I believe the minister knows it to be untrue. It is impossible because Verve and Synergy did not know about the decision to amalgamate the two companies until the Premier's press conference. We know that because we have the freedom of information document to prove it. We know that the Public Utilities Office was not consulted because it told not only the media at the time, but also me in a briefing, that the minister's staff were present and they did not know about it prior to the decision. Let us get away from the fantasy and talk about the bill in front of us.

The minister also said that he has had 20 meetings with the WA Independent Power Association. As Mr Oates pointed out in our briefing—I am not trying to put words in his mouth, so I will depersonalise it. The advice we received in our briefing—I will put it that way; it is a much better way of putting it—was that the private sector still opposed the merger but thought that if the government was going to do it, the way the IPA described it in its briefing was the way to do it. Let us not think anyone endorses what the government is doing. I go back to the question: why has the minister not told anyone in either his second reading speech or his media appearances that it is not the regulations that will deal with the wholesale acquisition or supply of electricity but rather the arrangements approved by the minister? That is a very easy question to answer. Only one person in this room has that answer and that is the minister. I would very sincerely appreciate it if the minister could answer that one question.

Dr M.D. NAHAN: We are here debating the clause of the bill, not going back to the second reading speech. The bulk of the obligations will be in the regulations, although they may be complemented by codes and guidelines made by the minister. This is a normal process. I have been open and honest about this. We have had extensive discussion with the various participants over many months. The member for Cannington might not like hearing that and might not agree with that, and he might like to make a point to stretch out the debate; that is his business, but we are here to debate the content of the bill.

Withdrawal of Remark

Ms M.M. QUIRK: The minister was imputing a motive to the member for Cannington that may or may not be there. In accordance with standing orders, the minister should be made to withdraw that.

The ACTING SPEAKER (Mr I.M. Britza): I do not think so, member. Minister, have you concluded?

Dr M.D. NAHAN: Yes.

Debate Resumed

Mr W.J. JOHNSTON: I will give the minister some advice: he should become "consideration in detail Troy" and stop pretending he is "question time Troy"—it does not work. I have asked a very simple question. We know what is happening here because the minister told us. He agreed with the assessment I made of proposed section 38(1), which reads —

> Regulations may be made providing for and in relation to, or authorising the Minister to approve arrangements (***wholesale arrangements***) providing for and in relation to …

And so on. That means we are being asked to agree to make an arrangement whereby a regulation that we have not seen will authorise the minister to do something we do not know about. That is what the minister—not me or anybody else on this side of the chamber—is asking us to do. I have asked a very simple question. I have been a brawler for my whole life. The minister has a PhD. Who does he think is going to win in a brawl? That is not what is going to happen, so do not worry about being smart and just answer the question. It is a very simple question and only the minister can answer it, and then we can move on. The only reason that this bill is being delayed at the consideration in detail stage is that the minister cannot answer the questions that are asked of him. I do not know why he does not answer the questions, and I do not need to know, but I do need to get the answers because that is my job. That is what I am here to do. I ask the minister again to answer the question and not to tell me what is going to be in the regulations that I have not seen or what is going to be in the authorisations that I do not know about. The minister is asking us here in the chamber to vote on a provision. When the minister gave his second reading speech, he did not mention this provision. On every occasion he appeared in the media he said that there would be regulations to do with these issues and that those regulations would be tabled in Parliament for everybody to see. But now, when we get to the actual words in the bill, we find that that is not true. I want to know why the minister has not thought to mention at any time prior to tonight, in either his second reading speech or in any of his media appearances, that the regulations are not the final words on these provisions.

Dr M.D. NAHAN: Again, the procedures and processes flow from the regulations. There is some ministerial discretion but that is determined by the regulations, and the regulations are consistent with the act. I know that the member for Cannington wants to make a point. He says that I hid things and that I was not open and transparent, but this is the way these types of bills are put through Parliament. That is the way it is. The member got a briefing on this bill some time ago. I have been fully transparent about the nature and purpose of the legislation and that regulations will follow, and that it is necessary to have procedures and processes for implementing these types of arrangements. In fact, the minister has a great deal of discretion, as he does in the existing legislation, to authorise or not to authorise certain things. Competition between Synergy and Verve, for example, is up to the minister. The minister has a range of areas of discretion under the act right now and no doubt some of those will continue. The government has been fully open with the public on the content and purpose of the bill. The member for Cannington might not like to admit that, and that is his choice.

Ms J.M. FREEMAN: I am interested in understanding what is being said in this place. Obviously, I have not participated in any of the debates on this bill, but I take an interest in how regulations operate within legislation. That comes from my participation on the Joint Standing Committee on Delegated Legislation for a number of years previously. The member for Cannington asked the minister whether this bill would enable the act to be expressly amended by subordinate legislation or executive action. The issue there is if that amendment is put into subordinate legislation, the scrutiny is much less than if it comes to the Parliament. If legislation is amended, or even a part of it repealed, by delegation, all we can do in this place is vote that regulation down; we cannot amend that regulation and we cannot change it. It lies on the table and we can either vote against it or it passes. If I understand correctly what the member for Cannington is saying, the current provision provides for even less scrutiny of that process because the minister gets to make the determination. Is the determination the minister makes placed before the house or can we only scrutinise a regulation that tells us how the minister will make his determination? Is the minister's determination on the wholesale arrangement to be put in a regulation that will go before the house for scrutiny—to be voted down or accepted—or will we only see regulations that show a process of how the minister can amend or repeal that arrangement? Proposed section 38(5) states —

> Regulations referred to in subsection (1) may —

> (a) set out the process for the approval, amendment and repeal of wholesale arrangements; …

Therefore, the actual arrangements will not come before us for scrutiny, as I understand it, but only the process. The minister has given himself a power beyond what I understand to be a Henry VIII clause. I go to a fact sheet on this matter for the ACT Parliament, which states —

> Henry VIII powers provide the executive with a power to override primary legislation by way of delegated legislation. The practical significance of Henry VIII clauses lies in the loss of the public scrutiny and accountability for policy decisions that would usually occur when primary legislation is made by Parliament. In other words, matters of policy can be determined by the executive without the effective scrutiny of Parliament.

That was quoted from a paper delivered at the 2011 Australia–New Zealand Scrutiny of Legislation Conference. This provision is a greater step than that, in that all we will see is subordinate legislation that allows for a process. I note that proposed section 38(5)(b) states that the regulation will —

> provide for the publication, commencement, and laying before each House of Parliament, of wholesale arrangements and instruments amending or repealing them.

By being able to amend or repeal, the minister actually takes that regulation to the next step. Usually there will be a repeal regulation, but this is almost like process-oriented legislation. My question, if it has not been clear enough already, is: will the minister lay the wholesale arrangements before the house or will he only lay the process for those arrangements before the house? Will the house's ability to scrutinise and accept or reject simply be related to the process and not the arrangements at all?

Dr M.D. NAHAN: We will lay before the house a wholesale arrangement to transfer a ring-fencing arrangement. Anything I do has to be consistent with those arrangements laid before the house.

Mr C.J. TALLENTIRE: I am looking at proposed section 39 and the definitions that relate to the nature of the wholesale arrangements and products, and the approved instrument that will be used. Following the instruction in the draft legislation, an approved instrument means an instrument referred to in subsection (2)(b). When I go to subsection (2)(b), I do not really find myself understanding what an approved instrument looks like. It says that it is something that a corporation is required to lodge with a specified person and that it is an instrument setting out the terms and conditions. I then look for the definition of that instrument. It seems rather circular that I am then referred back to an approved instrument. I am just wondering whether there is a problem in the drafting of that proposed section in defining what an approved instrument looks like. I gather from the proposed section that it is lodged with a specified person, who I think could also be called a client. I would like the minister's clarification of that. Can that specified person be described as a client or a consumer of the product? When I look further on, I am also confused about the fact that these instruments can relate just as much to the electricity that might be acquired as to the electricity that might be supplied. I am intrigued to know how more or less the same document can apply to the purchase or sale of electricity. I would have thought that the document for the purchase of electricity would reflect the nature of the generator and the type of generation, whereas a supply contract could vary enormously depending on the nature of the buyer. It could be anything ranging from a shopping centre through to a major resources operation. I am really seeking the minister's clarification of what, under this definitional section, the wholesale arrangements are and how that all works. Perhaps there is a provision later in the bill that will give me a greater indication, definition or understanding of what the wholesale arrangements will really look like.

Dr M.D. NAHAN: These arrangements do not relate to retail; they are wholesale arrangements. The aim of these arrangements is to make the entity, Synergy, transparent and in touch with its competition. These arrangements provide for products, and they are called standard products. They can be a certain number of electrons of a certain character for a certain period of time that people go and buy—usually wholesalers that turn around and retail them. The objective of this whole thing is for Synergy to offer products, often to its competitors, at the same price and on the same conditions as those that they provide to the retail section. The wholesale unit will have a requirement to sell electricity under standard arrangements, at the same price on the same conditions as it sells internally to the retail section. At the same time, after 1 July we will consider having buyback arrangements, so that the private sector can offer to sell to this entity. For instance, if the standard product sale price was too high, the private sector could sell it back to the entity and make money on it. In other words, if this entity were selling energy to itself—the retail section to the private sector—above its competitor's price, the competitor can undercut it internally by selling electricity back to it at a lower price.

Mr C.J. Tallentire interjected.

Dr M.D. NAHAN: Yes. After 1 July, we are going to develop products, and it will be required to do that. One way to stop the entity exploiting its dominant position is to make its pricing system transparent through a transfer price and make it contestable with the private sector. This will expose the retail operations, in particular, to immense competition.

Mr W.J. JOHNSTON: Did the minister just say that if the internal wholesale price exceeds the price that a competitor offers the retail business, the retail business will have to buy from the lower-priced external competitor?

Dr M.D. NAHAN: No; I said that these are wholesale arrangements. I said that the wholesale entity is split into generation, wholesale and retail, and the wholesaler will be required to sell to the private sector, on the wholesale market, standard products of a certain price, a certain length of time and a certain composition of electricity. That has to be commensurate with the same price that the wholesale unit sells to the retail unit. In other words, the wholesaler's transfer price to the retail part of the entity is contestable by the private sector. Also, from 1 July we are going to consider developing an arrangement whereby the wholesale unit—not the retail or generation units—buys back energy under certain conditions and types from the private sector, which will also put it under immense pressure. That is, if the private sector can sell electricity cheaper than the combined entity, under certain conditions it will expose the sector to competition in the market.

Mr W.J. JOHNSTON: I am not clear on the answer to that question. I understand that the minister is going to create specified wholesale products that relate to terms and conditions. As we know, terms and conditions are very material to the price; there is no question about that. So, subject to the Ts and Cs—as they call them in the industry—the price that Synergy retail pays for its wholesale electricity has to be no less than the price matching the Ts and Cs that the wholesale business sells to third parties. But there might be wholesale businesses that can actually produce electricity for lower than the price that Synergy wholesale sells its electricity to Synergy retail; if that is the case, is the minister saying that Synergy retail will then be required to set aside the Synergy wholesale supply to take that lower priced, commercially generated wholesale electricity?

Dr M.D. NAHAN: Again, what we are saying—I am not sure what "Ts and Ts" are, but anyway —

Mr W.J. Johnston: Terms and conditions.

Dr M.D. NAHAN: Terms and conditions; okay. We are requiring the wholesale unit to expose the transfer pricing it provides to the retailer to competition from the wholesale market, both into the sell and the buy. For instance, there will not be the totality of the industry; there will be certain volumes and types of products. It is actually a price disclosure mechanism that puts the entity under pressure to show whether its costs and pricing are competitive. Let us say its prices are high and its competitors in the wholesale market can provide the electricity at a lower price; then the entity, under certain standard products, will have to buy it back. It will then have to dispose of this electricity somehow.

Mr W.J. Johnston: A buyback?

Dr M.D. NAHAN: Not a buyback; it will have to buy it. The transparencies and contestability of the private sector are planned to go both ways; into both the sell and the buy. I might add that this is a principle of non-discrimination. The private sector and our own retail are not being discriminated against; it is also taking this very large, dominant set of kit—Verve and Synergy's existing contracts are 80 per cent of the market—and putting it out for private wholesalers to deal with, and ultimately retailing. It is also putting internal and external pressure and transparency on the entity. It is a very powerful mechanism that will expose the entity to an extreme degree of transparency and competition.

Mr F.M. LOGAN: Just following up on that line of thought, if the supply of the wholesale electricity to the retailer at a particular price is no less than their other suppliers, what if a private customer then requests the wholesale purchase of a large volume of electricity? That happens quite regularly. What about the terms of the contract if they would like to offer them a lesser price than they would retail? That is just business, just because of the volume of electricity they are purchasing. That happens now.

Dr M.D. NAHAN: First, the wholesale unit can only sell to those entities that have a retail licence. So, it can sell the standard products on the wholesale market, but it has to sell to those with a retail licence—Perth Energy.

Mr F.M. Logan: So the wholesale entity of this new gentailer can only sell to a retailer?

Dr M.D. NAHAN: To a wholesaler that has a retail licence.

Mr F.M. Logan: It cannot sell to any other customer in the marketplace?

Dr M.D. NAHAN: To clarify the point: it cannot sell directly to a retail customer. It has to sell to a market participant such as a retailer or a wholesaler, and a generator who might have a retail licence. So, the generator unit cannot go out and compete with its retail unit by selling directly to a customer or selling otherwise directly to a customer. It has to sell into the wholesale market and licensed participants in the wholesale market, whether it be a generator or in fact one with a retail licence. These are meant not to get around its retail. This entity will retail through the retail wing of the unit. The standard products come from the wholesaler into the wholesale market, not into the retail market.

Mr F.M. LOGAN: Following that line of discussion, the generator provides or sells electricity to the wholesaler unit within this gentailer. The wholesaler unit of the new merged entity then will sell electricity to the retail arm of the gentailer and other licensed retail owners. Is that correct?

Dr M.D. Nahan: Yes; the wholesale market participants.

Mr F.M. LOGAN: But are they retailers or simply market participants?

Dr M.D. Nahan: They include, but do not exclude, others. Some people in the market might not have a retail licence.

Mr F.M. LOGAN: Yes.

Dr M.D. Nahan: But they can sell to the registered wholesale market participants. That includes those with a retail licence, but does not exclude others. It could be a generator. For example, Bluewaters buys energy and most of it is sold to various customers, including Synergy. It sometimes has to go out and buy energy when its plant is not operating enough to grid. Bluewaters would potentially be a customer for this wholesale entity. It might sell to Bluewaters, which is not a retailer, but is a wholesale participant. Therefore, the wholesale unit can sell to wholesale market participants as currently defined. Most of them are retailers. Most of them have a retail licence, but some of them also sell to retailers but are wholesalers, such as Bluewaters.

Mr F.M. LOGAN: How does that differ from the arrangements whereby generators—Bluewaters is an example—also wholesale their electricity and wholesale arrangements, which is not exactly a market as such? The short-term energy market sits there also providing access. For example, if Bluewaters needs more electricity for a particular point in time, it will purchase from the short-term energy market. We are doing away with those arrangements. What is different from what we are currently doing and what is proposed?

Dr M.D. NAHAN: We are not doing away with the STEM. The member is right; a wholesale participant that needs energy has a number of mechanisms to buy it. It can go to the STEM. That is very short term. It can enter into trades. As the member knows, 90 per cent of the stuff is bilateral. It can still do that and this provides for that. These standard products are three to six months to three years, so they are medium-term contracts.

Mr F.M. Logan: This is in the new proposed market?

Dr M.D. NAHAN: We also have the ancillary market, the follow-up, which provides all these services and a lot of energy into the market. We have the STEM, which is short term, and there will be no change to that. We have ongoing bilateral contracts on various conditions and there will be no change to that. With this one we are trying to have the wholesale unit provide medium to longer-term products to the wholesale market. That is for a number of reasons, but mainly to ensure that the entity does not discriminate against the private sector for itself. The reason for this is the dominant player in the market. We are exposing its dominant position to the contestability of the market buyers. It is providing products that are already out there on the market. I might add that Verve does that now with various sales.

Mr F.M. LOGAN: The minister is putting forward a very, very complex arrangement to resolve the monopoly of power the government is creating through its choice to merge two entities, Verve and Synergy. Having been Minister for Energy, I am aware of the complexity of the market rules around the STEM and around wholesale electricity contracts currently in place. After adding this other marketplace into the electricity market—which is a very, very small electricity marketplace, by the way, compared with the eastern states—what will the market rules be? A person needs a PhD to work out the current market rules, as the minister knows.

A government member interjected.

Mr F.M. LOGAN: Unfortunately, this is econometrics and he does not have that.

A government member interjected.

Mr F.M. LOGAN: How do I know? I was the former minister. It is economics, but a person needs at least econometrics to understand these rules.

Mr D.T. Redman: Are you saying that you weren't up to it?

Mr F.M. LOGAN: Mate, I could not understand them! I will give a copy of the rules to anyone in this house and if they can tell me what they say, I will buy them a carton of beer!

Mr D.T. Redman: Wine?

Mr F.M. LOGAN: A carton of wine even.

Dr M.D. NAHAN: The marketplace is hellishly complex. As the member knows from when he had to sign the market rules, they are very thick and complex.

Mr F.M. Logan: And do you understand them, minister?

Dr M.D. NAHAN: Some of them! A person has to have not only a PhD, but also a PhD in physics.

Mr F.M. Logan: And econometrics.

Dr M.D. NAHAN: Yes; I understand that one.

This will do a couple of things. Firstly, the objective is to ensure that this entity has a large amount of the installed capacity in not only Verve, but also contracts to Bluewaters and others. Once Synergy and Verve are put together, it will control a very large percentage of the generating capacity in the market. It does now, but we are bringing them together. We are requiring the entity to be contestable by providing products to the wholesale market generally. That will do a couple of things. It will provide liquidity if needed, and it will provide contestability to the private sector. The sell–buy arrangements in particular make the entity's transfer pricing contestable in the market. Does that add complexity to the market? I do not know. It is clearly another instrument, but it is one of many instruments and contracts in the market already. Will it add complexity to the market rules that the Independent Market Operator governs? I do not think so. Most of the complexity with the IMO is about the capacity of the market, how its price is governed and how it determines that. As the member knows, there are many aspects of the ancillary market, which this will leave alone. It will not affect those and therefore the complexity will remain the same. It will add complexity to the market, but it will do something that is the whole aim of the aggregation—the member debated this too—and that is getting Verve's kit into contestable private sector hands. One of the options that Hon Eric Ripper looked at was not privatisation, but long-term contracts. That was an option. South Australia did leasing, but I think New South Wales looked at long-term contracts to get it into private hands so that it could have competition in retail. This is moving cautiously down that route to get the best optimisation kit in the state—I think Bluewaters has the lowest variable price and some of Verve—and transferring that price to the private sector. This will achieve one of the ultimate aims of disaggregation and the needs of the sector. The member is right; it is a hellishly complex system, but it is nowhere near as complex as the national electricity market, which is as complicated, if not more so.

Mr F.M. Logan: It's far more complicated, but it's a bigger market; it's five times the size.

Dr M.D. NAHAN: Yes; it is a highly variable price.

Mr C.J. TALLENTIRE: I want to drill down into one area that I am particularly interested in. The minister said that there is an obligation on the wholesaler to buy back at a lower price. How does that not lead to a situation in which the generator would produce electricity and perhaps meet a certain demand but then there would be this excess? I think he said that it is not clear how that electricity will be used. It will be generated. We cannot store it, but there is the obligation for it to be bought back. How is that not going to give us a perverse outcome in terms of an over-generation of electricity that will not be used to good purpose? Where is the check in the system to prevent that from happening? If we put in a measure that will enable excess electricity to be bought back if cheaper electricity is available elsewhere, how will we be able to avoid the situation that electricity is bought back by the wholesaler but is not used?

Dr M.D. NAHAN: There is a lot of excess capacity in the market, but much of that is not in Synergy and Verve. The way this structure will work is that we will have a generating unit that has all of Verve's kit and all the contracts that now lie with Synergy, including renewables. That will have all the generation, and it will optimise the use of that kit to meet the demand. That will be a significant—I think the largest—benefit of the merger. It will for the first time put them all together to enable optimisation. It will generate electricity to meet the demand. Most of the demand will be in the franchise market and the contestable market. It will also—this is what we are dealing with now—provide saleable energy in the wholesale market on bilateral contracts. Verve does that now. It often sells electricity to Bluewaters, for instance, under various contracts that I am not privy to. It will vary its total output to meet the demand. If it has too much generating capacity—for instance, if its private contracts are valued at X amount and it is at night and production exceeds consumption—it will sell to the short-term energy market and it will be traded there. That is the arrangement. It works within the existing wholesale market rules that have been established for the past six or seven years. They are not perfect, they are highly complex and they

are basically governed by the IMO. All we are trying to do is take some of that capacity and take the internal transfer price and make it accessible and contestable by private sector participants in the wholesale market. To be honest, this will put huge pressure on the entity to operate efficiently. It will also take some of the best kit and allow private participants who need low-priced energy to access that, when it otherwise would be difficult to access that under the current arrangements because they would have to go to Verve and convince it to write a contract. This time, the energy generators will be under a requirement—not overwhelmingly, but for a significant proportion of electricity—to sell medium to long-term contracts. That will provide liquidity and contestability, and basically make Synergy's transfer price very transparent.

Mr C.J. Tallentire: What will happen in the situation that you mentioned before where electricity is bought back but there is no demand for it?

Dr M.D. NAHAN: The generators will have to turn down the kit. That happens all the time now. It varies on a daily and a seasonal basis. The generators have to operate their kit to not produce excess capacity. The way it operates is that they have a list—a stack, I guess we could call it—and they start with base load and work their way up; and, if demand goes down, they work their way down and they turn off peaking and other operating units. It is distorted a bit because of minimum-take contracts, and those vary immensely daily, monthly and seasonally, and there is also renewables, which have priority in terms of delivery. This legislation will not change how it is operating now. Putting all of that kit together will give the operator greater flexibility to optimise that. One of the weaknesses of the current system is optimisation of the kit. I am not an electrical engineer, but optimisation of the system provides huge benefits, and we are not getting that now adequately. The generators will go up and down the merit order, I guess it is called, to operate units to meet the level of demand, and any surplus will be put over in the STEM.

Mr C.J. Tallentire: Will there be less dumping of electricity?

Dr M.D. NAHAN: Honestly, it will depend upon the total growth in demand and capacity.

Mr F.M. LOGAN: I am still trying to get my head around the wholesale electricity market, particularly the retail component of it. The minister has talked about people who hold retail licences. Can he give some examples of the current players in the market who hold retail licences and what they are expected to do with that retail licence?

Dr M.D. NAHAN: They include Perth Energy, Alinta Energy, Premier Power, Bluewaters Power and Griffin Energy. I think ERM Power still has a retail licence and is operating in the market. There are about nine of them.

Mr F.M. Logan: Yes.

Dr M.D. NAHAN: How active they are can vary. Companies such as Bluewaters may have a product for a period of time when their plant needs to scale down. A company may have some operational difficulties, which has happened in the past for a variety of reasons, and it may buy a product to meets its contracts with other parties.

Mr F.M. LOGAN: I am still trying to figure out, minister, how different the new regime will be from the current situation in which Synergy is obliged to purchase from the cheapest possible provider of the power at the moment, and then another marketplace is being created on top of that which is doing exactly the same thing.

Dr M.D. NAHAN: Is the member for Cockburn referring to the displacement contract?

Mr F.M. Logan: Yes

Dr M.D. NAHAN: That relates to new capacity. We are way off that; we have a bit of excess capacity. This clause relates to the use of existing contracted volumes, the existing capacity. The member for Cockburn is referring to the purchase of new capacity, and that does not relate to this bill. It is not a major issue for the medium term, except for renewables and that was driven by the renewable energy target.

Ms J.M. FREEMAN: I want to ask a technical question about how the wholesale acquisition and supply of electricity will work under the regulations. Clause 14 will delete section 38 and insert new section 38. The new section will provide for regulations to be made for wholesale arrangements. New section 38(3) states —

> Wholesale arrangements are not subsidiary legislation for the purposes of the *Interpretation Act 1984* and section 42 of that Act does not apply to them or to an instrument amending or repealing them.

I note that section 42(1) of the Interpretation Act, "Laying regulations, rules, local laws and by-laws before Parliament, and disallowance", states —

> All regulations shall be laid before each House of Parliament within 6 sitting days of such House next following publication of the regulations in the *Gazette.*

Section 42(2) also provides for regulations to be laid before the Parliament for 14 days to allow members the opportunity to move a notice of disallowance and to vote against them, if they want. That is the 14-day provision. I note that section 42 is not operable for the purposes of wholesale arrangements. Proposed new section 38(4) then refers to the sections of the Interpretation Act which will apply as if they were subsidiary legislation. The government is making regulations that are not really regulations for the purposes of the Interpretation Act, but is adopting the bits it wants in the Interpretation Act. Proposed new section 38(5)(b) then states regulations may —

> provide for the publication, commencement, and laying before each House of Parliament, of wholesale arrangements and instruments amending or repealing them.

Section 42 of the Interpretation Act sets out how a document is laid before this Parliament for proper scrutiny and discussion, and disallowance if that is what the Parliament wishes to do, and that the regulations referred to in proposed section 38(5)(b) provide for the publication, commencement and laying before each house of the wholesale arrangements. Could the minister lay that subsidiary legislation—the regulations that he wants to introduce for the purpose of this act—before the house for an hour or a day instead of 14 days? If the regulations say that the government does not want to reveal the wholesale arrangements because of commercial confidentiality, in terms of providing for their publication and commencement, can it be written into the regulations that the legislation does not have to be laid before the house? They are my first two questions: first, could the minister intentionally undermine the good processes of section 42 of the Interpretation Act, which have been part of this Parliament to ensure that there is proper scrutiny of regulations, by reducing the time for that process to something like an hour, a day or whatever? Second, has this proposed section been written so that the minister does not have to lay the regulations before the house for disallowance in any event?

Dr M.D. NAHAN: We have adopted what applies to the wholesale market rules now. We envisage that the arrangements would be laid before Parliament in full. They will not be disallowable. That is essentially what currently applies to the wholesale market conditions.

Ms J.M. FREEMAN: I wish to clarify this. The minister has told people that he will make a regulation, but it is really not a regulation because regulations can be disallowed by Parliament. He is making a determination that he envisages the regulations will be laid before Parliament; it is not certain and he may not. The minister is really saying that he is making a determination, but he is going to call it a regulation because that will make everyone feel better about it, and everyone in this place will think they are being consulted. However, the minister will make a determination that he envisages may or may not be laid before Parliament; and even if it is laid before Parliament, we will not be able to disallow it. This is not a regulation in the way that we understand the normal process of regulations; this is simply a process for a determination by a minister. The minister is going to use the terminology that we are accustomed to, but he will give us none of the scrutiny that is part of the process of Parliament. Is that the case?

Dr M.D. NAHAN: The intention here is to follow the principle set up in the wholesale market by which various arrangements or rules are generally tabled in Parliament. They lay out the wholesale arrangements but they cannot be disallowed by Parliament.

Mr F.M. LOGAN: Can the minister take us to which part of the Electricity Corporations Act lays out what he just told Parliament—that the current wholesale market rules, if deemed by regulation, are not disallowable?

Dr M.D. NAHAN: It is in the Electricity Industry Act 2004. I will get back to the member on the section.

Mr W.J. JOHNSTON: I want to turn to a separate issue and come back to something we looked at a little while ago. Wholesale products are specified and there is a price for them. We know that Synergy generation will be selling them to Synergy retail and those contracts will be made available. If a generator says to Synergy retail, "I see in this contract you are paying 6c a unit for your electricity and, on the same Ts and Cs, I can provide that energy for 5.5c", will Synergy retail be obliged to buy from the lowest cost generator? I raise this because in its final report on the costs for Synergy, the Economic Regulation Authority, referred to the fact that in its draft report it had used the proper cost for electricity as what they described as the "efficient" price of electricity, which is the most competitive wholesale price available. Through the Public Utilities Office at the time, the government, Synergy and Verve—the minister might have, but do not quote me on it; I certainly know the other three did—submitted to the ERA that they should not take the efficient price of electricity; they should take the actual price that Synergy was paying. That decision by the ERA in its final report led to a seven per cent increase in the cost that Synergy was able to include in the cost stack that that report showed. Of course, that was an interesting amount because at the time, seven per cent would have brought them to cost reflectivity. The question is: if we are doing this for the benefit of consumers, are we building in an obligation for Synergy retail to buy the lowest cost electricity available to it so that if, as I said, Synergy generation is providing 6c, someone else walks in with 5.5c, Synergy retail will be obliged to buy that cheaper electricity and, therefore, reduce the cost in the

cost stack that is being paid for by consumers, added to by the government's community service obligation payments?

Dr M.D. NAHAN: The retail arm will get all its energy from the wholesale arm. Retail will not be in the marketplace buying energy. They will sell but they will not buy. It will go to the wholesale business unit. Yes, on 1 July 2014 we will work up to having that wholesale arm buy electricity from the wholesale market under non-risk conditions. It will sell standard products in the market and it will buy some sorts of products from the market to make sure its internal price is the market price. Therefore, the wholesale market will have some energy, potentially, from the private sector that is of a lower price than its own, and it will have to dispose of that energy in some way to the retail arm. But first the retail arm will not be buying electricity outside the entity; all external transactions are with the wholesale market. The debate about what the optimal cost should be—some long-run marginal cost versus cost—is still going on and being measured both at the Economic Regulation Authority level and at another level. Getting back to the question, the amount of energy that will be bought back from the private sector is yet to be determined.

Mr F.M. LOGAN: I have two questions following from the minister's explanation to the member for Cannington. The wholesale unit of the new entity therefore is standing in the marketplace purchasing from the private sector from a publicly owned generator at a particular price—we assume at the best market price it can possibly achieve. At what price does that wholesale unit then sell to the retailer that will then onsell to general customers such as us? Where does that price come from? Does it come from a long-run average price or daily or hourly price of the market itself? Where does that price signal come from in the sale? That is one question. I have a second question, which is: inside the wholesale market itself, what visibility is there to the overall marketplace on price movements? What infrastructure will be in place so that market participants have the optics and visibility to be able to understand how that market is performing and how the price is working?

Dr M.D. NAHAN: In answer to the first question, the aim is to get the internal price contestable on the overall market. Therefore the transfer price has to be determined largely in the market, otherwise it would sell energy to the market or buy it. But the way it will operate is that the market unit will have the generating unit optimise its kit according to demand flow-through. Most of that energy will go through the retailing arm; actually the franchise market dominates the customer base for the entity. At the same time it will be contestable in the overall marketplace largely in bilateral contracts. Our market is dominated by bilateral contracts. There is some visibility issue there, so we are going to address that. Essentially the internal price in the wholesale market will be determined by the overall market price.

Also with the products, which is the major way the market demand and price gets put into the internal organisation and disclosed to the market, we are going to have a bulletin board that discloses the price for products at three months, six months and three years. We are going to set up a bulletin board that states from Synergy and Verve Energy—the new Synergy—the price of the standard products going out in the short to medium term, six months and three years. That bulletin board will allow price transparency to the overall market.

Mr F.M. LOGAN: Are we assuming that the minimum period of time on those market contracts is three months or will it be less than three months? If the bulletin board is putting it out every three months or six months or whatever, it is not like the national electricity market, which is by the hour, or wholesale electricity market, which is followed up at the following day's trade. Therefore, it is fairly slow visibility.

Dr M.D. NAHAN: We do not want to compete with the short-term energy market—we do not want to pull liquidity out or undermine its function. As the member knows, it varies in terms of the volume of energy. We are going out there at three months, six months, nine months, 12 months and three years. It will be disclosed so people, firms and participants can look at the price and find out whether it is in their benefit to buy. They will also find it sets a benchmark in the short term and medium term. It is a market-setting mechanism using the operations of the combined entity as a benchmark in the market. If market participants can do better internally, they go on their merry way. If the new Synergy provides a market-setting price that is better to purchase, let us say, from Synergy, in the short to medium term, parties can do so. Much of this exists now with Verve selling, under various conditions, short and medium-term bilateral contracts from providers.

Mr F.M. Logan: But it is all done by bilateral contracts.

Dr M.D. NAHAN: Yes. This is a bulletin board with standard products in the market. It provides more transparency, more predictability and mitigates the exploitation of market power by the firm. It is a product. We do not currently know what the demand for this product will be; we have to test it out. That is one reason we have to proceed carefully with procedures. However, we have had feedback on this product from the market participants that it has potential.

Mr F.M. LOGAN: The minister has touched on this matter, but it would be nice to understand exactly what his views and the advice from his advisers are. What is the depth of that market; and what volume of trades are expected after start-up? I am not suggesting at the beginning, but after a period of time. What influence does that market price have on the normal franchise supply of electricity to us as customers?

Dr M.D. NAHAN: At this time it is primarily aimed at being a price-discovery mechanism. The volumes potentially will not be huge. The aim right now is to put into the marketplace the price of electricity in the new Synergy—to disclose it to the market and have the market respond to it, whether it is taken up or competed with. It is not meant to be a dominant provider of electrons in the market at this stage. I do not know how it will evolve. It might turn out to be a large-volume market, but I envisage larger growth and for private generators to compete with it down the track when we get new investment. It is envisaged to be a relatively large volume, but it is a price-setting mechanism. I might add that the short-term electricity market is not large. It is between only two and 10 per cent of the total volume. The ancillary market is another one that comes up to 10 per cent sometimes. Various sections of the market provide a signalling device and an outlet for buying energy. They are not large but they are very powerful. They are very important in the overall market.

Mr F.M. LOGAN: Why would the government and the minister not take the obvious choice of simply changing the market rules of the short-term electricity market to deepen and broaden that market? Given the infrastructure that is there and the market rules that are already in place for the short-term electricity market, why would the government and the minister not simply change the market rules to be able to broaden and deepen the short-term electricity market? Why would they create another one?

Dr M.D. NAHAN: The main aim here is to put transparency pressure on the new Synergy. The primary aim of this is to provide non-discrimination and transparency of the transfer pricing. The main aim is to put in the marketplace the price of the combined entity and to ensure that it does not discriminate against private wholesale participants as opposed to its retail section. If it did it in the short-term electricity market, it would not give that signal. The price would be determined by the STEM demand, but it would not be a signal of the internal pressure on the market.

Mr F.M. Logan: It would reflect the real price of the generating market.

Dr M.D. NAHAN: Yes, in the STEM market, but not internal to the new Synergy. We want the pricing within the STEM of the new Synergy to be out in the market and transparent and accessible. The STEM has a number of other factors determining the price. That is why we did it.

Ms J.M. FREEMAN: Given the minister's answer to my previous technical question on section 42 of the Interpretation Act and the fact that the minister said that the—I am loath to call them regulations—determinations made under proposed section 38 of the act will not be disallowable, I ask for clarification with respect to imposing obligations and civil penalties, which comes under proposed section 39 in clause 14. Proposed section 39(3) states —

> Regulations referred to in section 38(1) may —

We have already ascertained that these are not, for the purposes of this legislation, regulations as outlined in the Interpretation Act; they are regulations purely for the purposes of this act —

> (a) provide that a provision of the regulations or wholesale arrangements that —
>
> (i) imposes an obligation on the corporation; and
>
> (ii) is specified in the regulations or of a class specified in the regulations,
>
> is a civil penalty provision for the purposes of the regulations;

The regulations will outline a number of civil penalty provisions that I imagine are very serious and are around occupational health and safety issues or various other issues—I am not entirely sure, so I am asking for some understanding of what those civil penalties will be—and there will not be any capacity for disallowance for civil penalties. These regulations will be laid before the house, but there will be no capacity for those regulations, which include the civil penalties, to be disallowed if this Parliament believes that, first, they are too much or, second, they are deficient.

Dr M.D. NAHAN: The regulations are still regulations, and they are gazetted and tabled in the Parliament. The penalties apply to contravention of the regulations. The regulations that set up heads of power for these wholesale arrangements will be gazetted, and the penalties will apply to violations of those heads of power. The penalties apply to a breach of the obligations under the regulations. I might add that the penalties will be determined by the Economic Regulation Authority and the appeal mechanism by the Energy Review Board.

Ms J.M. FREEMAN: I note that we need clarification on where in the legislation it says that the penalties will be determined by the ERA. Will they come under the whole regulations and not be disallowable? I want to know whether they will or will not be disallowable, and whether they will lie on the table for the prescribed 14 days under the Interpretation Act or whether the minister will decide that process.

Dr M.D. Nahan: Could the member repeat the question?

Ms J.M. FREEMAN: The penalties will make up part of the regulations, and the minister has put it on record that those regulations will not be disallowable.

Dr M.D. NAHAN: I have stated that the regulations will be disallowable. The wholesale arrangements, the code for the wholesale products, will not be. The penalties apply to obligations under the regulations.

Ms J.M. FREEMAN: Now the minister has completely confused me. Clause 14 provides under proposed section 38(3) that —

> Wholesale arrangements are not subsidiary legislation for the purposes of the *Interpretation Act 1984* and section 42 of that Act does not apply to them or to an instrument amending or repealing them.

Proposed section 38(5) reads —

> Regulations referred to in subsection (1) —

Those arrangements are the wholesale arrangements, to which we now know section 42 does not apply. The minister has said that he will determine the gazettal, the commencement of the regulations and when they will lie on the table of Parliament; under the Interpretation Act, that is usually for 14 days. This is all about regulations making wholesale arrangements. When I asked a question about that earlier, the minister said of the wholesale arrangements that the purpose of drafting the legislation in this way was to ensure that—in my words—they cannot be disallowed. Considering that this all comes under clause 14, I assume that Parliament will not be able to scrutinise proposed section 39(3)(a), which determines whether or not there are enough civil penalties, in a manner that enables the regulations to be disallowed.

Dr M.D. NAHAN: Proposed section 38(1) creates a power for a regulation that may provide for and relate to authorising the minister to approve a wholesale arrangement. There will be regulations that authorise the minister to develop standard products, and then there will be some wholesale arrangements. They will be things such as code setting, whether it is the duration of the product, whether it is a buy or sell arrangement, whether it is a swap arrangement. It will have various attributes of the products that are sold in the market. That is a wholesale arrangement. They will be variable and will potentially change over time, depending upon the market response and what people want. Therefore, they will be developed as wholesale arrangements, but they will flow from, first, the regulations in the act that will give the minister the power to establish regulations, and they will be gazetted in Parliament.

Ms J.M. Freeman interjected.

Dr M.D. NAHAN: Yes.

Ms J.M. Freeman: But not disallowable?

Dr M.D. NAHAN: The regulations will be disallowable. The legislation will create powers for wholesale acquisition of electricity. Under that is the power to set up regulations; the regulations will be tabled in Parliament and disallowable.

Ms J.M. Freeman: Then why do you need proposed section 38(3)?

Dr M.D. NAHAN: The real detail of this is wholesale arrangements. So, it gives the power to have electricity products in the wholesale market, but then the question is: what are they? They are complex, and they depend upon what the market wants and needs. They might have buy–sell spreads, they might have a different duration, they might have various attributes—I must say that I do not understand them all. So those are the arrangements. It would be impossible to set regulations up that detail all their parameters. The wholesale arrangements are not subsidiary legislation as proposed under the Interpretation Act, but the regulations are. The penalties the member earlier referred to flow from the regulations. The regulations will also specify that the penalties will be determined by the Economic Regulation Authority, and appealed to the Electricity Review Board.

Ms J.M. FREEMAN: I think I understand. Just to clarify: they are not regulations for the purpose of the wholesale arrangements, which are market mechanisms—derivatives, all that sort of stuff —

Mr F.M. Logan interjected.

Ms J.M. FREEMAN: Yes, that is right. Well, no, they are market products, are they not?

Mr F.M. Logan: Yes —

Ms J.M. FREEMAN: I do not know about energy market products, but I was in superannuation long enough to know about different market products. To get my own thinking straight, the minister is saying that parts of the Interpretation Act do apply, but I note that fees and charges do not. So, because this is a wholesale arrangement—a package that is being sold—it is being sold as a product, so section 45 of the Interpretation Act is not needed. I am trying to have clarified that inside the regulations are the wholesale operations, which are the products, and the products sit separately, which is why the minister does not want to have them mucked around with or be disallowable. Although certain parts of the Interpretation Act apply, fees and charges do not, even though this is a product that will be sold for, one assumes, a charge. Can the minister explain to me why that is?

Dr M.D. NAHAN: The wholesale arrangements are the codes that kind of determine the individual products, so they set out the rules about making these products. The products then are determined in the marketplace, usually bilateral contracts between the new Synergy and whoever the buyer is. I do not understand the issue about fees and fines in the Interpretation Act.

Ms J.M. FREEMAN: I referred to the fees and charges. Proposed section 38(3) states —

> (3) Wholesale arrangements are not subsidiary legislation for the purposes of the *Interpretation Act 1984* and section 42 of that Act does not apply to them or to an instrument amending or repealing them.

The purpose of that proposed section is so that we cannot disallow wholesale arrangements. The rest of the regulations will lay on the table, will be gazetted and will be able to be disallowed. That is what the minister has just told us. However, proposed section 38(4) states —

> (4) The *Interpretation Act 1984* sections 43 (other than subsection (6)), 44, 48, 48A, 50(1), 53, 55, 56, 58, 59, 75 and 76 and Part VIII apply to wholesale arrangements as if they were subsidiary legislation.

We grab a bunch of stuff and say this other part of the subsidiary legislation applies; some of it is about "time" and "may" and "shall" and I get all that. However, we do not apply the capacity to have fees and charges, as in section 45 of the act. I think the minister may have answered this in his previous answer. The wholesale arrangement is not the product and the product is the thing we charge on; it is more of a category as such. Why would we not apply a fee or charge? The minister may have previously answered that in a roundabout way.

Dr M.D. NAHAN: Wholesale arrangements do not really set the price; the market sets the price and it varies over time.

Mr W.J. JOHNSTON: I think the member for Mirrabooka would be assisted if the minister could explain proposed section 39(3)(a), which states —

> (a) provide that a provision of the regulations or wholesale arrangements that —
>
> (i) imposes an obligation on the corporation; and
>
> (ii) is specified in the regulations or of a class specified in the regulations, is a civil penalty provision for the purposes of the regulations; and
>
> (b) prescribe, for a contravention of a civil penalty provision —

Et cetera. It would help everybody if the minister could agree or disagree with what I am saying; it is my understanding that the regulations will prescribe the penalty, but that the wholesale arrangements will impose the obligations. Even though the regulations might provide the classes of issues to which the wholesale arrangements will relate, it is the wholesale arrangements that impose the conditions under which the penalty would apply. Again it is the wholesale arrangements that will set out all the requirements referred to in proposed section 39(2). It is clear that we need clarification between what will be contained in the regulations, which we have not seen, and what will be contained in the wholesale arrangements, which, as I understand from the minister's discussion, are the effective part of the procedure. It would be helpful to have some sort of explanation of what will be in the regulations compared with what will be in the wholesale arrangements.

Dr M.D. NAHAN: The majority of the obligations that will be subject to these penalties will be in the regulations. The wholesale arrangements may impose additional requirements, but they will be consistent with the obligations. The regulations will specify the obligations that are subject to penalties. There might be other actions in the code that are subject to penalties, but they will be consistent with those specified in the regulations. I think the second part of the member's question was: what will be in the regulations and what will be in the code and what will be the interaction between the two? Is that not essentially what the member is asking?

Mr W.J. JOHNSTON: Yes, I think that is the important issue for us to understand. What does the minister intend to include in the regulations? Clearly, the important bits will be in the wholesale arrangements, not in the regulations. Proposed section 39(3)(a)(ii) states —

> is specified in the regulations or of a class specified in the regulations,

It is clear that a class is more likely to be specified in the regulations and the wholesale arrangements will give the detail. I just wonder for the benefit of everybody whether we could get an indication of the sorts of things that will be specified in the regulations compared with what will be left for the wholesale arrangements. I draw the minister's attention to that particular provision. I will ask this while I am on my feet to save time later. The penalties referred to in proposed section 39(3)(b) will clearly be in the regulations because that is what the legislation states, but most of the obligations will be in the wholesale arrangements, which will not come to us. Proposed subsection (3)(b) specifies the maximum amounts for the civil penalties that can be set by regulation. I wonder whether the minister knows what will actually be set for those penalties.

Dr M.D. NAHAN: I will answer the latter point first. That will be at the discretion of the Economic Regulation Authority. We need to have an adjudicator. Most of the obligations will be specified in the regulations. The member's question essentially was: will most of the obligations be in the arrangements or in the regulations? They will be in the regulations. The code gives details of standard product regimes, but most of the issues that will be subject to penalties will be determined by the regulations and most of the obligations will be in the regulations.

Mr W.J. JOHNSTON: That answer confuses me, because proposed section 39(2)(b) provides that a corporation has to lodge with a specified person an instrument setting out the terms and conditions that are to apply. It then lists a series of things that may be in those approved instruments. Proposed section 38(1) states —

> Regulations may be made providing for and in relation to, or authorising the Minister to approve arrangements … providing for and in relation to —

The words "providing for" appear twice in that one sentence. It does not seem logical that most of the things will be specified in the regulations; otherwise, what is the reason for the second use of the words "providing for" in proposed section 38(1)? Does the minister see what I am saying? Why would we have regulations that are "providing for and in relation to", if that is what the wholesale arrangements are, and if that is what the minister does? The minister is not going to do both of those things; the minister is going to do one of those things. I would have thought, from the construction of the act, that the regulations are much more likely to be about authorising the minister to approve arrangements rather than for them to approve the arrangements.

Dr M.D. NAHAN: We could have approached it by putting most of the obligations in the arrangements. We have chosen not to do that and to put most of the obligations and detail in the regulations.

Mr W.J. Johnston: Are they in the regulations?

Dr M.D. NAHAN: They will be in the regulations. If the member wants a briefing from Peter Oates and his team about the status of the development of the regulations, the member is welcome to it. We have had discussions about that, and we have made the decision to put in the regulations the vast bulk of the obligations rather than leave it to the discretion of the minister.

Mr W.J. JOHNSTON: I tried not to personalise it earlier, and I will continue to do that. I appreciate the opportunity to be briefed on those regulations, and I will get my office to speak to the relevant people as quickly as I can so that we can get the briefing.

Dr M.D. Nahan: You can organise it on behalf of your colleagues also; they can do it, too.

Mr W.J. JOHNSTON: That is no problem, minister, but of course with everybody's obligations, probably only a couple of us will be there. But I appreciate the opportunity for that briefing.

I have a question about the involvement of the ERA, and I will talk at the same time about the Auditor General so that we can deal with this more quickly. Proposed subsection 39(2) states in part —

> (b) without limiting paragraph (a), require the corporation to lodge with a specified person an instrument setting out the terms and conditions that are to apply to —
>
> …
>
> (f) confer functions on the Minister, the Economic Regulation Authority or any other specified person; and

That is the only place in which I can see the ERA named. I cannot see the Auditor General named.

The minister said that the penalties under proposed subsection (3)(b) will be set by the ERA, but that is not what it says. It says that the penalties will be set by regulation. Through what mechanism will the ERA be consulted?

Dr M.D. NAHAN: Firstly, the Auditor General is a specified person. The regulations will identify the Auditor General as the auditor of the entities—as he is now, of necessity—and he will audit the new entity. The Auditor General will be given additional powers, or duties, under the regulation, in the context of his ordinary audit, to audit, firstly, the arrangements, and then the new Synergy's adherence to those arrangements. We did that because that was considered to be consistent with the processes that the Auditor General already undertakes, and because of the Auditor General's skill base. On top of that, under the regulations, the ERA will be required in its regular report on the wholesale market—so far it has made a report to the minister every year—to include a section that evaluates the performance of the entity, which will include the non-discrimination, the transfer pricing and the ring-fencing, to see whether these are effective in limiting the market power of the entity. The ERA will also be given powers with regard to the penalties.

Mr W.J. Johnston: Will that be in the regulations?

Dr M.D. NAHAN: Yes, and when the member gets the briefing, he will see that.

Mr F.M. LOGAN: Will the Economic Regulation Authority also advise the minister and government on suggested or increased retail prices of electricity for consumers as it does now?

Dr M.D. NAHAN: There was a one-off inquiry, but the government envisages no change to that at all.

Mr F.M. Logan: The normal advice as to what increases should be will continue?

Dr M.D. NAHAN: Yes; the normal advice will continue.

Mr F.M. LOGAN: Going back to the way the structure will be established—that is, the retail section of the new entity will be purchasing from the wholesale unit within the entity—will the minister guarantee that the establishment of the wholesale market, and therefore the transfer price and sale of electricity guided by that market to the retailer, will put downward pressure on electricity prices for the general consumer?

Dr M.D. NAHAN: There will be a number of mechanisms to put downward pressure on prices. First, all the generator units contracted to Synergy and owned by Verve will be combined and will be optimised for the first time. Right now, Synergy optimises its purchases and Verve sells through to the vesting contract that is not necessarily optimised. Second, there will be a transfer price that is contestable in the private sector. If Verve's transfer price is higher than the market, firstly, it will be transparent and, secondly, it will make contestability of the wholesale market to be entered, which will put downward pressure on internal costs and prices in the wholesale market. There will be other efficiencies. The whole purpose of this operation is to put downward pressure particularly on franchise market costs, with ancillary powers to limit its market power, which is a trade-off, and to ensure that the internal prices and costs in the new Synergy are contestable in the market. If the market can provide energy cheaper, we will know about it and it will be purchased.

Something I cannot guarantee are increases in fuel prices, gas and coal, that might drive up costs over time. I also cannot give guarantees about Western Power's costs. They just pass through, as the member for Cockburn well knows. There have been substantial upward prices from Western Power, from fuel prices, particularly gas, and other factors that are outside the control of the market. I can say that these mechanisms are designed to put downward pressure on cost structures, reduce inefficiencies of the combined unit and allow the private sector to not only buy low-cost energy, but also compete with its internal operations. Those things should put downward pressure on prices. If it does not work, no doubt I will be held accountable.

Clause put and passed.

Clause 15 put and passed.

Clause 16: Section 43 amended —

Mr W.J. JOHNSTON: I have no intention of labouring the point but I need to make the point that we do not agree with the arrangements set out in this clause. Horizon is restricted from operating outside the SWIS for good reasons. We went through the same debate a little while ago in respect of providing for the operations of Verve and Synergy outside the SWIS. As I said, I will not debate again what we have already debated but I need to put on the record the problems that we believe will be created by this clause. The first is that Horizon derives a significant part of its income not from its commercial operations but from the tariff equalisation contribution. The TEC is the way that we fund the necessary subsidy to Horizon for the fact that it provides electricity at a uniform tariff. If Horizon is now going to work inside the SWIS, that work has to be done at a proper cost because it is not appropriate for it to use the TEC for the operations that it is doing inside the SWIS. After all, the TEC is funded by charging energy users in the SWIS a fee through Western Power that is then sent back up to Horizon. It would be ridiculous for both corporations and individuals to be paying the TEC in their electricity

charges, which are then paid to Horizon and that Horizon uses to work in the south west. That does not make any sense.

Clearly, the government will need some way of ensuring that the accounts for Horizon are transparent so we know that it is not cross-subsidising its operations in the SWIS for its SWIS activities with the TEC. It is an important issue. There are already provisions for us to do things that we need to. This is not about technology or end of grid; it is about the actual purpose of the horizontal disaggregation between the non-SWIS and the SWIS. Within the SWIS we have vertical disaggregation, and we disaggregated Horizon from that for good reason—to expose the costs of doing business in the remote parts of the state. Everybody understands that. We have a deep commitment to the uniform tariff. This clause will potentially undermine that uniform tariff and we think it is a bad provision. Whatever happens, the government will have to demonstrate how the accounts of Horizon will take account of this issue.

Dr M.D. NAHAN: Clause 16 authorises Western Power to perform one or more functions outside the SWIS. Clause 19 refers to Horizon.

Mr W.J. Johnston: We got the speech earlier.

Dr M.D. NAHAN: I am just clarifying that. I understand the member's argument about the TEC. If the member wants to discuss this during consideration of clause 19, we will but clause 16 relates to Western Power.

Mr W.J. JOHNSTON: I am happy to talk about clause 16 because I want to get to 18 and then 19. It is the same thing: ditto upside down. I made a mistake because I referred to the wrong section in my notes. I was trying to speed things along. Operating outside the SWIS, Western Power will have the same problem. As I say, it is about exposing cross-subsidies. That is, we undertook the horizontal disaggregation. I am not talking about the vertical disaggregation inside the SWIS. The horizontal disaggregation was to expose subsidies, and this has the potential to muddy the waters on that.

Clause put and passed.

Clauses 17 and 18 put and passed.

Clause 19: Section 52 amended —

Mr W.J. JOHNSTON: Ditto.

Dr M.D. NAHAN: This clause gives clarity to the ability of Horizon to acquire and supply gas within the area serviced by the SWIS. Horizon Power undertakes swaps with Alinta. These arrangements are absolutely necessary for it to affect lower-priced gas. This bill clarifies Horizon's ability to buy and sell and acquire outside its regional area. It is essential. The bill also introduces stability, which the member for Cannington was concerned about, regarding Horizon servicing areas within the SWIS. I listened to the member's arguments about funding the Horizon tariff equalisation contribution within the SWIS. That is not the aim of it, and there will have to be appropriate adjustments to the tariff equalisation contribution if Horizon operates within the SWIS.

Mr F.M. LOGAN: What is there to stop the new gentailer from taking gas customers from Horizon Power?

Dr M.D. NAHAN: Section 68 of the act gives me the power to approve transactions between the new Synergy and Horizon. One of the aims of this merger is to have the new entity collectively buy gas for not only its own purposes, but also Horizon's. These changes also allow Horizon to obtain gas from Synergy and Verve. We are doing that because there are huge benefits, particularly for Horizon, to buy large take-or-pay contracts for gas with minimum conditions applied, and allow Horizon to trade with Synergy, as it does now, and with Alinta to swap gas. During certain seasons it needs very little and at peak times it needs a lot. Because of its demand pattern, if purchased by itself, it would owe a penalty for gas purchases relative to Verve. This allows for that swap arrangement. It is a very important part of this merger. Of course, right now, I guess, Horizon has the power to swap with Alinta. We are clarifying that. On behalf of Horizon, Verve will negotiate collectively for the purchase of gas in the future, and the benefits are large.

Clauses 20 and 21 put and passed.

Clause 22: Section 62 replaced —

Mr W.J. JOHNSTON: This is again one of those things the opposition is strongly opposed to. I make the point about this clause that if the government wanted to ring-fence the generation and retailing operations of the government-owned instrumentalities, there is an easy way it could do it. It could issue a direction to Verve to not be involved in retailing and a direction to Synergy to not be involved in wholesaling. Then if there were contracts that caused the government grief, it could swap those contracts between the two companies, and that would be the end of the issue. They would be ring-fenced and we would not need regulations because the two

businesses would be operating separately. This is one of the extraordinary things about the approach that the government is taking to this bill. It is bringing together Verve and Synergy but saying, "Don't worry, we're going to operate the generators and the retailers separately." Where is the efficiency? Where is the lower cost? The minister has already explained that the retail business of the new Synergy is not obliged to buy the lowest cost electricity available to it. This is extraordinary. What is actually being achieved? We know that no business plan or business case underpins the decision. There is no written plan. There is no objective. There is no cost saving identified. There is no budget for the full cost of the process of bringing the two entities together. There is no plan for the number of staff that will be saved from this procedure that the government has talked about. There is nothing! We do not have a single idea, neither does the government, about what will be achieved by bringing these two companies together. We know that the government says, "Given that we are bringing the two companies together, this is the best way to do it." But that is hardly an argument for bringing the two companies together. If the draft regulations are in preparation at this stage and the opposition can be taken into the confidence of the government on these things, that would be great. However, it does not change the fact that the government could achieve everything contained in clause 22 of the bill that we are debating by simply issuing ministerial directions to the two companies now. The minister says that the total cost of operating the two boards with senior executives is about $12 million—I cannot remember the exact figure. However, the cost as a percentage of the cost of the operations of the electricity system is fractional. Nobody thinks that that fractional cost will make any difference to the cost of electricity paid by consumers. Is that not what we are about? For a negligible saving we will disrupt the investments of the private organisations that have been investing in this state, and for what benefit? The government will then introduce a series of regulations that will split the businesses apart. What is the purpose? What is the idea behind that? If we are convinced that we are not going to let the merged entity use its muscle to increase its price and therefore the value of the organisation, what are we doing? There is a big gap between the rhetoric of the government and what it is actually doing, and we need to know why it is heading down that path.

Dr M.D. NAHAN: Yes, we could maintain the status quo and keep Synergy and Verve separate, which would lead to a continuation of losses in the market, or we could do what we are doing now—that is, bringing them together, gaining a benefit from that and also being cognisant enough to address the market-power issues. I might add that there are huge market-power issues in this market already that are not being addressed, except through losses in Synergy, and that is a negative that is not recognised enough by the other side. However, we are going to get gains on numerous fronts. For the first time we will bring all Synergy's contracts together—I understand Synergy has about $25 billion worth of long-term contracts to buy energy from the private sector—and we will buy Verve's kit and optimise the use of that. That is very important. There will be large gains. We could not achieve those if the entities were operated separately. Second, we will optimise the purchase of fuel and that includes having a balance sheet to address the risk in those markets. That is real and substantial, and would not be achieved if the entities were separate. We will also get the benefits of Verve's and the new Synergy's operating kits into the private sector and will allow for growth in competition, which has not been sought effectively. Most of the private competitors in the market operate by having most of their plant underwritten by the current Synergy, with losses incurred by Synergy, and then they top up and compete in the market. The competitive market is really thin and this will potentially allow more of the kit to get into the market. It will also allow us to derive efficiencies in the operation of the units and to get more clarity into the position of the state in the capacity of the market and other issues. The benefits are real. We could ignore the problem and continue to have Synergy haemorrhage, but we choose not to do that. If the Labor Party got back into government it could disaggregate them again and suffer the consequences for those losses. We are putting this together because of the real benefits. We also recognise the market power and we will put in extensive conditions, including ring-fencing, segregation of units, transfer pricing and a principle of non-discrimination. They are very powerful restrictions on market power. That is what we are doing. There are real benefits to this. From my perspective it is untenable to continue with the status quo.

Mr W.J. JOHNSTON: It is untenable to continue with the status quo, yet the only thing that will change is the ownership structure of the two government entities. Every time the minister comes into this place he talks about problems with the market, yet he is not providing any amendments to the market. It is ridiculous that the minister continues to pedal that sort of rubbish; it is not what this bill is about. The minister talks about fuel savings; how will the fuel savings be created? Where is the piece of paper that explains that? The minister says there will be lots of savings; where is the piece of paper that specifies those savings? The minister should show us the business plan—the considered reason for doing this. I am happy that the merger implementation group has a great PowerPoint presentation to explain how the new business will operate. That is not what I asked for. I asked for the business case for this decision. The fact that this decision was made without one piece of paper setting out the benefits for this state is condemnation of the government's position. I will just quote from a piece of paper I

have in front of me. On page 6 of the constitution of Liberal Party of Australia, WA division, section 4(h), under "Objects", states —

> To promote genuine free enterprise as the alternative to socialism and state corporatism.

Yet we have a bill that will do the exact opposite to the stated object of the Liberal Party. It is bizarre that the government came into chamber with legislation that is about corporatism, central control and central planning. It is interesting that object (i) is —

> To resolutely oppose Marxism and all other totalitarian philosophies.

But the government will introduce central planning to the electricity system in Western Australia. The government will introduce the central planning with no business case and with the minister incapable—when I use the word "incapable", let me make it clear that that is not an insult to the minister; it is a statement of fact—of telling us one cent of saving that this bill will provide, because there is no plan and there is no business case. There is nothing that supports this bill.

I have quite a number of technical questions that I will also need to address, but starting with this philosophical problem that we have, the government cannot specify one benefit from passing this legislation—not one benefit. As I keep pointing out, I have read the minister's second reading speech in detail. For not one figure in that speech has the minister been able to table a document to demonstrate his claim. What are the benefits? Can the minister specify what the improvements are? For example, the minister says, "We're going to get a better deal on fuel." The minister knows that the long-term gas supply contract was signed under the direction of the former minister; the minister did not personally sign the contract. That has already been signed, so what is the minister going to do? Is he going to go back to the Gorgon joint venture and negotiate a new contract? The cabinet of Western Australia approved the Verve and Synergy deal with Gorgon for those long-term contracts. Why did the cabinet approve those deals if they were bad for the state of Western Australia and did not provide a good outcome? The fact is that cabinet approved the two deals—the two contracts side by side—and it knew the contents of both of them. Was the cabinet allowing the people of Western Australia to be ripped off? This is ridiculous. What about our coal supply contracts? There is one coal supply contract; we all know that. It is with Premier Coal. What is the advantage of having one entity buying from one company rather than having another entity with a different name, but the same objectives, buying from the same company? The minister should tell us what those benefits are. He should not say, "There are benefits." He should specify what those benefits are. He should explain why he has gone to all this effort for no change.

Mr D.A. TEMPLEMAN: I am intrigued by the member for Cannington's dialogue and was expecting him to continue.

Mr W.J. JOHNSTON: I thank the member. I do not need to continue. I would like a response from the minister. I would like to know what are the benefits—not that there are benefits, but what are the benefits. Can the minister specify them? Can he make clear to us what the savings are? In two years when we look back and say, "This is what the government said was going to be achieved and this is what was achieved", what are the failure standards for this decision? That is what we need to see.

Mr F.M. LOGAN: If the minister will not respond to the series of questions that the member for Cannington has put to him about clause 22, which amends section 62 of the Electricity Corporations Act, maybe I will put the same questions but in a different way. I am seeking to find out the costs for bringing about these changes. In particular, clause 22 inserts new proposed section 62, "Segregation of functions". What will be the cost to the corporations—ultimately, the taxpayers—for the segregation of these functions? As the member for Cannington has pointed out, the new changes that seem to be made by the bill are that we will have a merged entity, and the merged entity requires the new wholesale market, which itself requires, obviously, new rules, regulations and segregation of functions. That, effectively, is what the bill is attempting to do. What are the costs? Even if the minister does not have the figures in front of him right now, what is the estimated cost of establishing that new wholesale market, the rules and regulations that are currently under construction, and the segregation of functions? That is the core of the bill. The member for Cannington has asked the minister what the benefits of this bill will be; I am just asking him: what are the costs? The minister should be able to provide to the house an estimation of the costs of the changes that are being made to Verve and Synergy by this merger.

Dr M.D. NAHAN: The cost of setting up the wholesale procedures is very small. We are creating a secure working environment for the wholesale business unit and creating the procedures.

Mr W.J. Johnston: That's not what he meant.

Dr M.D. NAHAN: I am talking to the member for Cockburn.

Mr W.J. Johnston: We're on clause 22.

Dr M.D. NAHAN: I am answering his question.

Mr W.J. Johnston: I know, but you're not talking about clause 22.

Dr M.D. NAHAN: I am answering his question.

Mr W.J. Johnston: No, you're not.

The SPEAKER: Member for Cannington!

Dr M.D. NAHAN: The cost of establishing the wholesale business unit is not large at all.

Mr F.M. LOGAN: That is not a particularly informative answer at all, is it, minister? What is "not much at all"? I asked the minister specific questions about the reasons for the bill, and quite rightly. As the opposition, we have an obligation to the taxpayers of Western Australia to find out exactly the costs associated with introducing this legislation, and its impact on taxpayer-owned entities. The minister has an obligation to inform the house of the costs associated with, and the impact these changes will have on, the new merged entity; the cost of the creation of the wholesale market; the new rules and regulations that will be required; and the provisions that we have in front of us at the moment. All those changes will require a segregation of functions. The two entities will merge and there will be a cost of separation within those two entities—a physical segregation, as the minister has explained to the house. The cost of that will not just be "not large"; it will be significant. I would like to know, and I am sure the house would like to know, exactly how much it will cost.

Dr M.D. NAHAN: We are in the process of estimating the cost of the complete operation. The preparation of the legislation, the setting up of the ring-fencing arrangements, the establishment of the separate entities, the computer system changes, the transfer pricing—all of it—will be about $10 million. That has not been finalised. We expect to get a payback within a year of that expenditure. We expect to recoup the entirety of that expenditure in about a year or a year and a half.

Mr F.M. Logan: Through lower costs?

Dr M.D. NAHAN: Through a range of benefits. The member for Cannington laughs, but he asked me a question —

Mr W.J. Johnston: Of course! It's a stupid answer.

Dr M.D. NAHAN: No, it is not; it is a very important answer. There will be a whole range of lower costs from better efficiencies in the operation of the plant, lower staffing levels and more fuel optimisation. The member for Cannington said that Verve and Synergy had signed contracts with Gorgon—yes, they have. It is no secret; it is well known. But they will be in the market to buy more gas when other volumes of gas expire, particularly the North West Shelf contracts.

Mr W.J. Johnston: That's not the answer you gave at estimates.

Dr M.D. NAHAN: They will be sometime; not necessarily right now, but they will be.

Mr F.M. LOGAN: I know the costs are estimated—if the minister wants to give the house an upper estimation, that is fine—but can the minister assure the house that the costs for the whole merger process, including all the changes such as the ring-fencing, the segregation and establishment in the market, will be approximately $10 million and no more?

Dr M.D. NAHAN: That is the current estimate provided by the implementation team, and that includes external advice such as lawyers, accountants and others. I emphasise that the current estimate is also that we will recoup that expenditure in full within a year to a year and a half, which is quite a short payback period.

Mr W.J. JOHNSTON: That is the merger implementation group's estimate of the costs and potential payback period, so has it been provided to the minister in writing and will he table the information he relied on to inform the house of that?

Dr M.D. NAHAN: It is preliminary. The work is ongoing, and it was verbally transferred to me now.

Mr W.J. JOHNSTON: So does the merger implementation group have any piece of paper with any of these things written down; and is it the minister's intention to have any information tabled for the benefit of the community of Western Australia about this decision?

Dr M.D. NAHAN: Yes, it is my intention to inform Parliament once we get firm estimates about the costs of the implementation and the benefits going forward. I might add that it was always my intention to do that, but we have to have confirmed estimates and we do not have them right now.

Mr W.J. JOHNSTON: Could the minister let us know if he is aware of any occasion that a billion-dollar company has been amalgamated without a business plan, and only after the amalgamation process is complete are the costs and benefits of that amalgamation recorded on a piece of paper and provided to the shareholders of that company, because that is what the minister has done?

Mr F.M. LOGAN: In terms of the segregation of functions, can the minister provide to the house a description of exactly how that will occur physically. At the moment Verve and Synergy have separate offices in Perth; how physically is this going to occur? The minister is talking about a physical ring-fencing of decision-making between the retail and wholesale areas. Can the minister describe exactly how that is going to occur?

Dr M.D. NAHAN: Yes, the member is right; they are in two different buildings now. A wholesale business unit will be created that will hold all the contracts and negotiations with the private sector, and that will be physically ring-fenced from the rest. That is the decision-making unit of this new entity. That is where the confidential information will be contained—contracts and others—and it will also have the intelligence about future policies. The aim is to have about 22 people in that unit—not large—and it will be physically separated from the generation and retail arm of the entity.

How the other two, generation and retail, are to be physically separated is yet to be determined. As the member well knows, most of the generation people are at the generation unit sites; they are not in the city, whereas most of Synergy's are. The key issue is the physical separation of the wholesale business unit from the generation and retail arm. One would assume that the generation will stay in Verve's office and the retail will stay in Synergy's office in smaller accommodation. That would remain, but the wholesale business unit would be physically located separately from both those and have secure access.

Mr W.J. JOHNSTON: I refer to proposed section 62(2), which states —

> Without limiting subsection (1), wholesale arrangements may be in the form of rules or a code.

What other form might they take?

Dr M.D. NAHAN: They might be guidelines indicating some of the procedures we can implement in putting these arrangements in place and this ring-fencing. I think the member for Cannington referred to extensive use of ring-fencing, particularly in other operations. If I remember correctly, he mentioned Telstra in his contribution to the second reading debate

Mr W.J. Johnston: No.

Dr M.D. NAHAN: There is, and particularly in electricity distribution systems around Australia. There will be codes, processes and guidelines.

Mr W.J. JOHNSTON: Is there any difference with what will be included in a guideline in its enforcement capacity? If it is issued as a guideline, does it remain enforceable in the way that a rule or code or a regulation would be or is it a lesser form of procedure?

Dr M.D. NAHAN: The processes and procedures must be consistent with the guidelines and regulations and, of course, they will be audited by the Auditor General and their pro-competitive aspects assessed by the Economic Regulation Authority.

Mr W.J. JOHNSTON: Is the minister saying that even if they are issued only as a guideline, the enforcement arrangements that are provided by proposed section 63A still apply regardless? I am not quite clear on the answer. Does a guideline have a lesser impact on proposed section 63A than a rule or code?

Dr M.D. NAHAN: The regulations will state that they must comply with the guidelines, so they are enforceable.

Mr W.J. JOHNSTON: I do not think it was me who referred to Telstra in the second reading debate, although I think one of my colleagues did. One of the interesting things about the ring-fencing provisions of Telstra was that all of its competitors complained about it constantly and it was a source of dispute and agreement not between divisions within Telstra but, rather, between Telstra and its competitors. It is only the former Labor government's decision to pay $11 billion for the separation of Telstra by buying its copper assets that has led to the end of the disputes about ring-fencing arrangements in Telstra. The history of the segregation functions through ring-fencing is not a positive one. I know that some other members may have mentioned the question of Chinese banks. It was not something I canvassed in my second reading debate contribution. Again, there are books written about the failure of those ring-fencing arrangements in investment banks and other commercial operations. It is interesting that there is no history of success with these types of arrangements. As they used to say when I lived in Indonesia, and it is a well-known saying around the world, power corrupts and absolute power corrupts absolutely. I think that is what we will find here as well. If there is a way to get around the provisions, it will be found, because that is in the economic interests of the operation.

Something that I did not raise in discussion about the previous market issues but is worth raising again now is how long it will take the Auditor General to discover malfeasance. If the Auditor General is supposed to pick these things up in the annual audit, I imagine that he will start his audit in March or April. It is a large organisation so the Auditor General will deal with it months in advance of the close of the financial year. We all know he is required to provide the report to the minister by 30 September, although he can apply for an extension. But, generally speaking, he will get it done within that period. That means that the Auditor General will not be looking at the ring-fencing arrangements every day. He is not in the business of checking out what is happening; we just rely on him to do an annual audit. Does that mean that potentially it could be as long as 15 months between the breach of the ring-fencing provisions and the discovery of that breach by the Auditor General? It seems a bit strange for us to rely on that procedure. If there is a different procedure, let us know. Of course, it is not in the legislation; it will be in the regulations. I welcome the information that the minister is able to provide. These are serious issues. This is a billion-dollar business. He is putting it together. He could have achieved the segregation functions in a different way without any extensive cost. I will be interested to know the answer to those questions.

Dr M.D. NAHAN: I refer to the Telstra issue, because ring-fencing is a methodology and the issues related to ring-fencing are well known. Of course, the problem with Telstra was that everybody used its copper wire network. That is equivalent to Western Power's poles and wires. It is a separate monopoly, so the issues are different here. Synergy and Verve are in a dominant position, but not a monopoly position, particularly in the contestable market, where I think it has less than 50 per cent of the market. The transfer pricing procedures and rules are well established. They are not perfect; it is how they are implemented. This is not a monopoly position. The transfer pricing and wholesale operations will be audited by the Auditor General, who will report on that when he does his usual report, and the ring-fencing arrangements will be reported on 31 December. The merged entity will be required to report to the minister if it becomes aware that it has breached the arrangements. I might add that the WA Independent Power Association was adamant that we have these ring-fencing arrangements.

Mr W.J. JOHNSTON: I probably would not have got up except for that last comment. If the government is doing something that the IPA does not want, it will obviously say that the government has to do this. Again, the Merger Implementation Group was good to acknowledge the fact that the IPA does not support bringing together the two entities. Of course, that was the decision the government made. It has said, "Given that you are going to do this anyway, we need the ring-fencing provisions just to give us a chance." This is called sovereign risk. The government is changing the way that the market operates for the interests of one of the participants. It is then putting a bandaid on it.

As I say, the minister could have done this whole thing just by giving some ministerial directions. He could have saved everybody some money and he could have solved all the bad things about the market by ministerial direction or a market review. He complains about the market, yet we are not dealing with the market; we are dealing with only Verve and Synergy. He could have achieved it all in a different way at a lower cost if that is what he really wanted to do.

I am happy to go on about this, but I have no intention of doing so. This is a flawed provision. It is not solving a problem in the industry. It is solving a problem that the minister has created.

Mr F.M. LOGAN: The minister indicated to the chamber earlier, when I asked about the costs of this process, that he expected those costs to be recouped within one year, and he then explained how those costs would be recouped. The minister indicated also that the merger would lead to a reduction in the number of people employed. I assume that if job losses were to occur as a result of this merger, those job losses would be within the current Synergy, the retail arm, as opposed to Verve Energy, on the basis that the minister clearly wants the power stations to continue to operate. If there is a change in the way the current retail arm operates with the creation of the new wholesale unit, those job losses would be within Synergy. If that assumption is correct, can the minister give us an idea of exactly how many jobs are expected to be lost, and whether they will be in Synergy or Verve?

Dr M.D. NAHAN: The job losses will be in head office, not in the generating operations. Of course, all of Synergy's contracts are with the private sector. The CEO will bring these operations together, and the job losses will be largely in shared services, such as information technology, human resources and other areas. Unless the operation announces the closure of a plant, as we already have at Kwinana C, it will not impact the generating workforce. But there will be a combining of the two businesses' head offices, and there will be reductions, particularly in the shared services area. Whether they will come predominantly from the shared services area in Synergy or Verve, I cannot answer that. It will be up to management to determine that. As to how many job losses there will be, I cannot answer that right now. The merger implementation team, along with the Synergy and Verve management team, are working on that now.

Clause put and passed.

Clauses 23 to 34 put and passed.

Clause 35: Part 10 inserted —

Mr W.J. JOHNSTON: I refer to proposed section 196. Under proposed subsection (1), Synergy will be eliminated and the current Verve will become the new corporation. Why we are eliminating Synergy and keeping Verve, and then renaming Verve "Synergy"? What is the reason that name was chosen?

Dr M.D. NAHAN: As the member knows, Synergy and Verve are trading names. Most of the people who interact with Synergy or Verve would interact with Synergy, because they buy their electricity from Synergy. They know the name "Synergy". They know Verve just as the wholesaler of electricity. The idea was that most of the personal contacts with people, particularly in the franchise market, are with Synergy. We will merge the existing Synergy into Verve, because most of the assets are in Verve, so we will not need to shift assets around, which is costly. We also wanted to minimise the cost and the disruption. Most of the people who deal with the entity know the name "Synergy", so we have decided to keep that name.

Mr W.J. JOHNSTON: I now turn to proposed section 221, the regulation-making power, at page 34 of the bill, still under clause 35. I want an assurance that under this regulation-making power there is no capacity to make a regulation that is contrary to the act. The chamber has had a discussion about these other powers in previous clauses and has discussed the segregation and market arrangements—I forget their proper name—being done through double delegation so that the regulations create the right for the minister to make a decision. I want to make sure that the same does not apply here; that it is only regulations and, therefore, they are all disallowable instruments, that they comply with the Interpretations Act and there are none of the issues that the member for Mirrabooka raised.

Dr M.D. NAHAN: Correct.

Clause put and passed.

Clauses 36 to 46 put and passed.

Title put and passed.

House adjourned at 10.52 pm