ELECTRICITY INDUSTRY BILL 2003

Committee

Resumed from an earlier stage of the sitting. The Deputy of Committees (Hon Simon O'Brien) in the Chair; Hon Tom Stephens (Minister for Local Government and Regional Development) in charge of the Bill.

Clause 3: Terms used in this Act -

Debate was interrupted after the clause had been amended.

Hon MURRAY CRIDDLE: Prior to questions without notice, I was commenting on the south west integrated system. I asked the minister to clarify what the situation was regarding the standard of the conductor and the poles of the electricity network. This is absolutely paramount to the point I have been making as the National Party member in this House. If reasonable infrastructure is not put in place, there is no sense whatsoever in trying to upgrade generation and the like because further power cannot be put down the line. I want an assurance that something will be done about that matter. When I was discussing this issue before Christmas, some figures were floating around that $500 million was required to be spent to upgrade the system. I am not asking for that to be done tomorrow, but it would not be bad if the Government could assure us that that type of upgrade will be carried out over the next 10 years so that at least a start can be made.

I was involved in the Westrail legislation and the advances it made in providing opportunities for people in regional and rural Western Australia. One of the provisions included in that legislation was for an upgrade of the railway line north of Esperance. The opportunity in the legislation is still available for those types of works to be done. There does not seem to be any similar type of provision in the Electricity Industry Bill. If the generation were upgraded, surely to goodness we would provide the capacity to carry that extra generation of power throughout the network so that industry could flourish.

As the minister knows, there is a problem with the network. I chaired a meeting at Koorda and attended a meeting in Jerramungup about the network. I do not have to tell the minister that if 250 people turn up to a meeting at Koorda and 150 people turn up to a meeting at Jerramungup, there is a major problem with the system.

Hon Bruce Donaldson: I can understand people wanting to go to Koorda; it is a nice place to visit.

Hon MURRAY CRIDDLE: Absolutely. However, it was 42 degrees in Koorda in January and the people were very frustrated. Powerlines were lying on the ground and fires were burning around the place. At Dalwallinu the other day there was a similar incident in which a powerline was lying on the ground. When a man was driving his vehicle to put out a fire, he drove along the road from across his paddock and ran over some live wires that were lying on the ground. Those types of things are not acceptable. At one stage the man thought he would be electrocuted.

Hon Peter Foss: Just imagine if it had happened in Doodlakine.

Hon MURRAY CRIDDLE: Yes.

Hon Tom Stephens: Half the political elite of the country would not be in existence.

Hon MURRAY CRIDDLE: This is a serious issue and is the basis of what I have been saying all along. We need some indication from the Government that the distribution system will have the capacity to carry power to the customers. We need that type of recommendation from the minister. I certainly need that type of recommendation. I made it clear last year that they are the types of assurances that we want to see included in any legislation that is put in place if it is to benefit regional and rural Western Australians.

The DEPUTY CHAIRMAN (Hon Simon O'Brien): Before I call the next member to speak, to facilitate the committee stage I remind members that we are considering the definitions clause; this is not a revisiting of the second reading debate or other current affairs.

Hon TOM STEPHENS: I will be very brief in my response to Hon Murray Criddle. No-one disagrees with the member's observations. Currently, the obligation for meeting capacity needs is contained within the Electricity Corporation Act. Specifically, clause 14 of the Bill, headed licence conditions: asset management system, and other amendments concern the interplay of the old Act with the Bill before the House. That is this Government's attempt to try to ensure that conditions will be imposed upon the licence. That would put the Economic Regulation Authority in a position to get the licence holder to put in place that asset management plan and activate it. It would then be able to respond to the types of observations that the member and other people around the State have been making, and which the Government made when in opposition.

Hon BRUCE DONALDSON: I seek some clarification from the minister. This Bill attempts to give third party access to generation and to pave the way by breaking the electricity distribution system into a much smaller model than was originally intended. Third party access was given to access Westrail. With regard to generation, I wondered why we did not do something simpler from the beginning to allow that to occur. Recently, someone said very mischievously that little Ted from HBF would be brought in to fix the situation. In fact within three days little Ted did appear on the scene and - blow me down - it was able to do a gas deal with Wesfarmers and what was then known as AlintaGas. I am not about to rubbish Western Power. However, it cannot take short cuts. Any business that is providing a service needs to take a risk sometimes, and perhaps incur additional expense, to ensure that it has sufficient capacity to provide the service; in this case, the generation of electricity. I do not have a problem with opening up competition to third party access, whether that be for green energy, as the Greens are chasing, or whatever. What is most important to me is that we seem to be going about this in a convoluted way. I am not trying to get back into the second reading debate, but, as Hon Murray Criddle has rightly pointed out, Western Power identified during the term of the coalition Government that it would need $800 million over 10 years, about $500 million of which was to be spent in country areas. Western Power has been restricted in using some of the profit that it has gained to upgrade and refurbish the distribution network. We are entering into this debate on the Electricity Industry Bill on a very bad basis, because we have just experienced one of the most tragic events that has ever occurred in service provision by any corporation or Government. I think the people of Western Australia were stunned at what occurred. My concern is that the basic fundamentals of service provision must be met first. It is only when that has been done that we should look at other areas such as aggregation or disaggregation. The capacity should always have existed for third party access to electricity generation.

Hon MURRAY CRIDDLE: I have not received any information that makes me at all confident that the network will be of a sufficient standard to take extra capacity, or, indeed, to take the capacity that is coming down the line at present and maintain that service over a reasonable time frame. One of the conditions imposed by the regulator is that supply must be provided within one hour. That has certainly not been happening in regional Western Australia. To comply with your wishes, Mr Deputy Chairman, I will be having some discussions with regard to clauses 12, 13 and 14.

Hon GEORGE CASH: In accordance with your wishes, Mr Deputy Chairman, I indicate that I am interested in the definition of "customer". The Electricity Industry Bill provides -

> **"customer"** means a person to whom electricity is sold for the purpose of consumption;

The Electricity Act 1945 provides -

> **"consumer"** means any person to whom electricity is supplied;

The Electricity Act relates to the establishment and control of electricity generating stations and to the transmission, distribution and use of electricity; and to the examination and licensing of persons, etc. Many of those things also appear to be contained in the Electricity Industry Bill. Therefore, will there be a conflict between those two definitions; and, if not, will the minister outline the difference between those two definitions?

Hon TOM STEPHENS: If any conflict or confusion does arise with regard to the interpretation of "customer" and "consumer" following the passage of this Bill through the Chamber, the intention is that the Electricity Legislation (Amendments and Transitional Provisions) Bill will deal with that issue. As Hon George Cash would know, the current licensing provisions are limited. However, with the passage of this legislation, the licensing arrangements will be more extensive. That may create a conflict in the way in which the words "customer" and "consumer" are deployed in the relevant statutes. However, that will be brought to resolution in the Bill to which I have referred.

Clause, as amended, put and passed.

Clause 4: Classification of licences -

Hon GEORGE CASH: This clause is in part 2 of the Bill, which deals with licensing of electricity supply. A number of the matters in clause 4 appear to be dealt with, in part, in the Electricity Act. Will there be any duplication in due course? For instance, if the Electricity Industry Bill were to be proclaimed and the Electricity Act were to continue in force, would there be any conflict between the two Acts? I recognise that some of the transitional provisions may deal with some of these items, but I am interested in whether there will be two Acts of Parliament that may clash at a particular time.

Hon TOM STEPHENS: My advice is that the answer is no, because the amendments that will be made in the Electricity Legislation (Amendments and Transitional Provisions) Bill will tackle the issue that Hon George Cash has raised. This is perhaps an additional argument as to why it might have been necessary to retain the flexibility of proclamation that is referred to in clause 2.

Hon MURRAY CRIDDLE: The clause provides that licences will be required for generation, transmission, distribution, retail, and integrated regional. What process will apply for gaining a licence? To whom must the licensee apply? If a licensee obtains one of these licences, will it automatically follow that he will be granted the other licences that will be required?

Hon TOM STEPHENS: The answer to the member's question is in clause 10 of the Bill.

Hon GEORGE CASH: Are independent power producers able to establish independent power systems within their system to service domestic customers rather than industry? If the answer is yes, what is the approximate length of the transmission distribution system in the south west integrated system that is not owned by Western Power?

Hon TOM STEPHENS: I am advised that if a customer is presently connected to the Western Power network, an independent producer cannot supply to those domestic customers. However, an independent producer is not prohibited from connecting to a potential customer who is not connected to the SWIS system as long as that domestic customer is not already connected to Western Power's network.

Hon MURRAY CRIDDLE: The minister suggested I refer to clause 10. Clause 11(3)(a) reads "have the same classification under section 4;" How long will this process take? Clause 10(2) states -

> An applicant must provide any additional information that the Authority may require for the proper consideration of the application.

What sort of additional information is required? There seems to be an ambiguous set of circumstances.

Hon TOM STEPHENS: Clause 19(2) refers to a period of 90 days within which the authority shall respond to the applicant. Under the amendments made by this legislation a prescribed form will be issued by the authority. The information required in that prescribed form will be only that information provided for under this Bill.

Clause put and passed.

Clauses 5 and 6 put and passed.

Clause 7: Requirement for licence -

Hon ROBIN CHAPPLE: Although the requirement for a licence is obviously intended to apply to people generating electricity, will it apply to properties or individual households that generate electricity they feed back into the grid? Many housing estates in America feed into the grid. As a similar situation develops in Western Australia, will the relevant households need to be licensed? If so, what will those licences cost and will penalties apply if licences are not sought?

Hon TOM STEPHENS: Producers are required to hold a licence. However, clause 8 provides an exemption. It is intended that such tiny production units be exempt from the requirement to be licensed.

Hon ROBIN CHAPPLE: I thank the minister for clarification. At least it is on the record that, as this market develops, those people will not require a licence.

Clause put and passed.

Clause 8: Power to exempt -

Hon TOM STEPHENS: I move -

> Page 8, line 1 - To delete "The Governor," and insert instead -
>
> > Without limiting the other matters that may be taken into account, matters that are to be taken into account

Hon GEORGE CASH: Why are we deleting the words "The Governor"? Clearly, by retaining those words, the Governor will be the person responsible for ensuring those matters listed in subclause 5 are taken into account. Who will be responsible if we delete "The Governor"? Why can we not leave in the words "The Governor" and include most of the words the minister proposes? The subclause would then read "The Governor, in determining whether the making of the order would not be contrary to the public interest, without limiting the other matters that may be taken into account, matters that are to be taken into account", followed by the list in the Bill. I do not understand why those particular words should be changed. Given an amendment seeks to change the words, what is the justification and what will be the effect of the changes?

Hon TOM STEPHENS: Let me answer a question foreshadowed by Hon Murray Criddle sotto voce: what was the reason for the amendment? The reason for the amendment was that Hon Robin Chapple encouraged the Government to move from the position that these issues may be considered to one in which they must be considered before an order can be made. The additional correction appears to be the style and drafting

preference of parliamentary counsel. The Government has accepted that advice. Nothing hangs on it as far as the Government is concerned.

Hon Peter Foss: Would you like me to have a look at it?

Hon TOM STEPHENS: No.

Hon Peter Foss: Would you rather stay in a state of ignorance; if so, what kind of ignorance may that be?

Hon TOM STEPHENS: My advice is that nothing hangs on this amendment. If someone objects and wants to see the wording returned to the provision, the Government would make no objection as it sees no difference other than style for the inclusion or deletion of these words. Parliamentary counsel has suggested that the words be deleted for the purposes of style and the elegance of the Bill -

Hon Peter Foss: Style maybe, but not elegance!

Hon TOM STEPHENS: In those circumstances, I will desist. If the Chamber is offended by the style, it can change it.

Hon GEORGE CASH: I thank the minister for his response. Clause 8(1) commences with the words -

> The Governor may by order published in the *Gazette* exempt any person or class of persons from all or any of the provisions of section 7(1) to (4).

Subclause (4) reads -

> The Governor must not make an order under subsection (1) unless he or she is satisfied that it would not be contrary to the public interest to do so.

I do not understand why a change in style is needed to remove "The Governor" from subclause (5). In response to the comment that it is just a matter of style, if the Government does not specifically say that the Governor shall do something or the Governor may do something, perhaps someone other than the Governor would take responsibility for that investigation and determination.

Hon Tom Stephens: The suggestion is that this must be read against the backdrop of the preceding four subclauses. One cannot make an order other than through the Governor. An order will be done in this way. The involvement of the Governor in the process is not to be deleted. Subclause (5) hangs off subclauses (1) to (4).

Hon GEORGE CASH: I understand the minister's comment. I then ask: if subclause (1) states that the Governor may by order published in the *Government Gazette* exempt any person etc, why refer to the Governor in subclause (4)? For certainty, the style change should apply all through the provisions so the reference to the Governor is clear. It seems strange that clause 8(5) alone will have "The Governor" removed.

Hon Tom Stephens: It's strange, I agree - but nothing hangs on it.

Hon GEORGE CASH: I am not so sure. Maybe something hangs on it.

Hon Tom Stephens: I'm assured that nothing hangs on it.

Hon GEORGE CASH: I take the minister's good word in good faith, but we must look at that question. Maybe something does hang on it. Without "The Governor", some uncertainty could arise regarding who will carry out the investigation into the determination of the making of the order. I agree that the Governor will make the order in due course; however, I do not understand why "The Governor" is to be removed. It seems that it would be convenient -

Hon Robin Chapple: Leave it in there.

Hon GEORGE CASH: That is right. Use the words. Maybe make a slight change for grammatical purposes; that is, change the words that need to be changed without deleting "The Governor". Who will conduct the assessment referred to in clause 8(5)? My next question is whether the report will be made public. That relates to subclause (6), which deals with the Interpretation Act 1984, which provides an ability to disallow. Not much good would be served in the Parliament seeking to disallow something without access to the report made in respect of subclause (5). I argue that the provisions tie back together. I leave those views for the minister to comment upon.

Hon TOM STEPHENS: The words before us now apparently rely on the model that was before the Chamber under the previous Government's drafting of similar provisions in reference to licensing.

Hon George Cash: How did you get "The Governor" into the Bill if you were relying on previous drafting?

Hon TOM STEPHENS: I do not know the answers to these questions. I am told that nothing hangs on this wording. If the Committee is of the mind that it wants to reinsert the words in the Bill, I would not object. The

Government assures the Chamber that the words make no difference. If the member wishes to put them in the Bill, I would not oppose that move. The words can be in or out. It was simply amended this way by parliamentary counsel. I will not put the compelling argument put by parliamentary counsel. One relies on the expertise of parliamentary counsel. This Chamber has not taken that advice as the final authority in other debates; I have watched parliamentary counsel be overturned before in its drafting. However, nothing hangs on this wording. If Hon George Cash wants the words reinserted, it would be a matter of finding a way to put them in without causing a difficulty.

Hon GEORGE CASH: I believe the words should stay in the provision. I suggest it should read -

> The Governor shall in determining whether the making of an order would not be contrary to the public interest, but without limiting the other matters that may be taken into account -

The provision would then outline the matters to be taken into account.

Hon Tom Stephens: Yes.

Hon GEORGE CASH: It would be preferable for the minister to provide the amendment so the Government is satisfied that it makes sense.

Hon Tom Stephens: Would Hon George Cash like me to move to postpone this provision so the Committee can come back to the matter?

Hon GEORGE CASH: Yes. I am trying to assist the minister. I point out something else: while talking about clause 8(5), I referred to subclause (6), which reads -

> The *Interpretation Act 1984* section 43(4) and (7) to (9) apply to an order under subsection (1) as if the order were subsidiary legislation.

Section 43(4) of the Interpretation Act reads -

> Where a written law confers a power to make subsidiary legislation, it shall be deemed also to include a power exercisable in the like manner and subject to the like conditions (if any) to amend or repeal any such subsidiary legislation.

The law, the Interpretation Act, states that one has the right to repeal a measure. Section 43(7) to (9) - I will not read out the subsections because they are too lengthy - states that a power to make subsidiary legislation may be exercised, and then it lists various conditions. The question I ask is - I hope that the reply will not be that it is a matter of style - that given that that is already provided for in the Interpretation Act, why are we raising it anyway, because the Interpretation Act applies in this legislation? Secondly, perhaps the minister would be good enough to tell me whether section 43(1), (2), (3), (5) and (6) also apply, or are we not providing for them because, for some reason, we are seeking for them not to apply? I think the minister understands where I am coming from. I just seek a response.

Hon TOM STEPHENS: Apparently, for the sake of consistency with the gas licensing regime, the provisions that related to that legislation when delivered to the House contained such style. Precisely what hangs on that, I do not know.

Hon George Cash: Why do we not say in subclause (6) that the Interpretation Act applies?

Hon TOM STEPHENS: I understand the question, and why would we need to say it? I suggest that we postpone debate on this clause, and, for the purposes of the record, I will make it clear why I suggest that we postpone clause 8. I will come back to the clause after we have considered the rest of the legislation so that I can have on the floor of the Chamber at that time the words that reflect what I understand the majority of members want to see re-included in the clause - that is, reference to the Governor - or some compelling reason that it should not be included. That will be best done at the end of the committee debate. Then I will endeavour to reply to the questions about the Interpretation Act as well, which I think are very good questions. They are the sorts of questions that should be asked.

The DEPUTY CHAIRMAN (Hon Simon O'Brien): I note also that the minister has amendments to clause 9 standing in his name, which are of a similar style. Therefore, the question that the minister needs to propose is that clauses 8 and 9 be postponed until after consideration of clause 139.

Clauses 8 and 9 postponed until after consideration of clause 139, on motion by Hon Tom Stephens (Minister for Local Government and Regional Development).

Clauses 10 and 11 put and passed.

Clause 12: Regulations as to licence terms and conditions -

Hon TOM STEPHENS: I move -

> Page 10, lines 8 to 10 - To delete "body established by section 4(1) of the *Electricity Corporations Act 2003* or any subsidiary of the body as defined in section 3 of that Act" and insert instead "relevant corporation".

Members are familiar with the amendment.

Hon ROBIN CHAPPLE: Again I seek some clarification of why the words "relevant corporation" have been used rather than "Western Power".

Hon TOM STEPHENS: It is simply because the words "relevant corporation" have been defined previously and that is the way the Bill has been constructed. The words "relevant corporation" have been defined as Western Power, and so they have become synonymous through the definition we dealt with at clause 3.

Hon GEORGE CASH: The Liberal Party accepts this amendment having regard to the fact that we inserted the definition of "relevant corporation" into clause 3. I do, however, say to the minister that he was going to seek in due course some additional advice on a couple of matters about subsidiaries, because "relevant corporation" includes Western Power or a body corporate that is a subsidiary as defined in section 3 of the Electricity Corporation Act 1994. I am not asking for an answer now, but I leave that issue with the minister.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 13 put and passed.

Clause 14: Licence condition: asset management system -

Hon GEORGE CASH: Subclause (1) states -

> It is a condition of every licence, other than a retail licence, that the licensee must -
>
> (a) provide for an asset management system in respect of the licensee's assets;

Will that particular asset management system be a public document? This goes to the question of infrastructure generally, because if licences are to be granted based on an asset management system, it seems to me that the Parliament, if not the community, would have a significant interest in understanding the extent of the asset management system that is referred to. We need not at this stage go into some of the problems associated with Western Power's current infrastructure or its alleged asset management system, but it is a matter of relevance in this clause.

Hon TOM STEPHENS: There is no requirement for the asset management system referred to in clause 14 to be made public. This is consistent with the regime of asset management systems that the previous Government put in place for the competitive gas industry, in which a number of operators manage assets for the reticulation and supply of gas. This simply is a mirror image of the previous Government's legislation so that the licence condition regime that applies to the management of gas distribution also applies to the electricity industry.

Hon GEORGE CASH: I accept what the minister has said, but I make the point that just because a previous Government did something does not make it right. This Parliament's job is to try to improve on its legislation as it considers the various Bills that are put before it. Equally, when we talk about style, just because the same words are used in another Act does not of itself mean that they are the correct words to be used in this Bill. I am all for consistency because when there is consistency in these matters, questions of law are more easily answered and, indeed, answers through the courts may provide precedents for a body of words. Although we will not object to this clause, we are all about trying to improve legislation and not relying on what might have happened in the past.

Clause put and passed.

Sitting suspended from 6.00 to 7.30 pm

Clause 15: Duration of licence -

Hon GEORGE CASH: Subclause (1) deals with the grant or renewal of a retail licence for a period not exceeding 15 years. Subclause (2) deals with the grant or renewal of a licence other than a retail licence for a period not exceeding 30 years. Is the minister able to advise what are the current provisions in the existing legislation? Are the provisions for 15 and 30 years or is it different? Which Act covers the licence periods?

Hon TOM STEPHENS: There are none; it is indefinite.

Clause put and passed.

Clauses 16 to 18 put and passed.

Clause 19: Decisions as to grant, renewal or transfer of licence -

Hon GEORGE CASH: Clause 19(2) states -

> The Authority must take all reasonable steps to make a decision in respect of an application for -
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> (a) the grant or renewal of a licence; or
>
> (b) approval to transfer a licence,
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> within 90 days after the application is made.

Is the minister able to indicate what sanction can be applied to the authority for non-compliance with the 90-day rule?

Hon TOM STEPHENS: There is no sanction; only a requirement of the statute for which there is no sanction.

Hon GEORGE CASH: Why is there no form of sanction in that, if the authority thumbs its nose at the 90-day rule, there is very little an applicant can do about it? I do not understand why there is no sanction on this matter.

Hon TOM STEPHENS: I assume that we would not normally require an agent of the Crown to be sanctioned by the statute with any penalty other than an obligation to do the job that has been given to the agent of the State - I suppose that is the contemporary language - in this case, the regulator, Mr Lyndon Rowe. He will be charged by statute to respond within 90 days. Presumably, the Parliament is the ultimate sanction and officers such as the regulator will be subject to the sort of censure that the Parliament might like to mete out if a complaint is received. It is presumed that people would complain about a breach of requirement entrusted to such an officer. The Parliament has the power to do whatever it wishes - to hang, draw and quarter, I suppose. There is no penalty. I presume the situation is the same for the gas regime. I cannot think of an example in which there would be a penalty.

Hon George Cash: There could be a positive covenant that states that if it is not done within 90 days it is deemed to be approved. That imposes a burden on the authority to get on with things, so to speak, or not be heard.

Hon TOM STEPHENS: That has not happened with the drafting of this Bill. I suppose that the Minister for Energy has tried to find a passage for the legislation through this place by not doing anything new or novel. He is trying to establish a framework with which members would be familiar, particularly members who have been in government, and take it forward. The commentary made by Hon George Cash in this debate and earlier committee debates was that there is an opportunity for the Parliament, every time a Bill is before this place, to improve on previous efforts of government. The Government has indicated there will be an opportunity for some of these issues to be revisited quickly through the transition provisions. If there is an appetite on the floor of this House to take on suggestions of the type flagged in this debate by Hon George Cash, it is the sort of provision which the Minister for Energy would consider and provide a response to whether this template should be updated. It will not happen now, as the Committee will understand. As the lay handler of the Bill on behalf of the Minister for Energy, Hon George Cash's suggestion makes a bit of sense to me. I will ask the minister for a considered response of the suggestion by Hon George Cash, but it will not be taken anywhere in this Committee's consideration of this provision.

Hon ROBIN CHAPPLE: I am interested in the issue raised by Hon George Cash. By current standards, 90 days is quite a short period. Many applications take one to two years. If there is no compunction for the regulatory authority to at least live by that 90 days, then I also have concerns. We have to realise that although we may be dealing with gas transmission, there are more players in the electricity market, some of which are quite small. We are talking about the licensing of electricity supply, whether it be for a small wind farm in the renewable area or for other users. Currently, that process is very long and drawn out. If we say that it needs to happen within 90 days, then we must put something in place to ensure that that occurs. Even though it would be a good outcome to have a decision made within 90 days, I am concerned that a decision might be made within 90 days for some of the big players but not the smaller players. I reiterate the concerns of Hon George Cash. If the honourable member seeks to move an amendment to ensure, in some way, shape or form, that the 90-day time frame is complied with, then he will have my support.

Hon TOM STEPHENS: By way of advice, in the handling of applications under a similar provision in the gas market, which I know does not carry through because we are talking about the larger electricity market, there has not yet been an example of any licence having been applied for and not granted within the 90-day time frame. All the applications have been decided upon in a time frame considerably less than that limit.

In quick response to Hon Robin Chapple, the truth of the matter is the converse of the argument in his comments to the House. It is more likely that the simple application of a small licence applicant will be dealt with more expeditiously than the 90-day time frame. That limit is the maximum time that might be necessary for consideration of an application with a very complex set of infrastructure issues.

Hon George Cash and Hon Robin Chapple have made points that I am more than happy to refer to the Minister for Energy. However, I do not have anything that I can offer them by way of resolution to their concerns during the Committee's consideration of this Bill.

Hon GEORGE CASH: I was considering moving an amendment to insert "or the application is deemed to be approved" at page 12, line 27 after the word "made", for reasons along the lines that I just discussed. The problem is that if the approval is made in absolute terms, it would not necessarily take into account some of the conditions that may be necessary. Under the circumstances, the best that can be said is that this is an area that we will monitor. If the authority does not carry out its duties within the 90-day period, then in due course we can come back and propose an amendment. For the time being, the way to handle it is to put the authority on notice; if it does not comply, then Parliament will take action.

Clause put and passed.

Clauses 20 to 24 put and passed.

Clause 25: Regulations about public consultation -

Hon GEORGE CASH: How far down the track are we in the preparation of the regulations? The area of public consultation interests me and I am keen to know the general thrust of the proposals for public consultation. There is a procedure to be specified. It would seem that the Government must have something in mind for that procedure, notwithstanding the fact that the regulation may not be available today. Can the minister give some indication in broad terms about the scope of the public consultation that is proposed?

Hon TOM STEPHENS: We are talking about regulations to come into effect, hopefully, by the third quarter of this year. Gas regulations to provide this framework are being drafted as we deal with this Bill. The intention is to have those gas regulations in place on 30 June, followed by implementation, and then electricity regulations soon thereafter in the third quarter. The regulator is required, by this framework, to make available a draft decision upon which public comment is sought and then to take that commentary into consideration. The time lines for that are specified within the regulations.

I will again refer to the clause to check that I have understood the question asked by Hon George Cash. We are dealing with the regulations about public consultation which require the authority, before it makes a decision on an application for the grant, renewal, transfer or amendment of a licence, to undertake public consultation in accordance with the procedure specified in the regulations. This provides for a regime whereby the draft decision of the regulator will be publicised. We are now familiar with this process through the gas regime, in part, in which public comment is sought and the regulator is required to take into account that public comment and make a final decision. I hope that throws some light on the process.

Hon GEORGE CASH: Yes, it throws some light on the general procedure. However, which committees have been convened to work with the Government in the preparation of the regulations generally? Hon Robyn McSweeney may be able to help me. With the Environmental Protection Authority legislation, I believe that the draft regulations were prepared and distributed to certain interested parties.

Hon Robyn McSweeney: Fourteen agencies at first.

Hon GEORGE CASH: Are committees currently set up to work on these regulations? Notwithstanding that, will the regulations be circulated in draft form so that interested parties can have some input into them? It is not much good our agreeing to regulations if they do not enjoy the support of the industry that will have to comply with them. That is not to say that if they do not agree with them, they will not have any effect. However, there must be general understanding so that the total bureaucratic shambles that occurred with the EPA regulations does not occur again.

Hon TOM STEPHENS: A working group is currently in place to deal with the gas regulations and is focused on this issue of drafting regulations for issues concerning the distribution of gas. That working group would be augmented and its membership adjusted so that it could respond to input from the electricity industry. The expertise on that working group from industry, consumers and government could also be drawn upon. They are the principal categories. That working group would be the basis for getting these regulations drafted in a way that accommodates the concerns and apprehensions that Hon George Cash is articulating.

Clause put and passed.

Clause 26: Regulations may authorise an exclusive licence -

Hon ROBIN CHAPPLE: I refer to the criteria on which the minister will make a designation for certain areas of the State. How will that come about? I need that to be clarified at some level.

Hon TOM STEPHENS: The interplay of clause 27 with clause 26 provides the answer to the question being asked by Hon Robin Chapple.

Hon ROBIN CHAPPLE: In terms of establishing designated areas for a period of exclusivity, is consumption or projected consumption taken into account within the nature of exclusivity? For example, a generator may be given a period of exclusivity for a fairly undeveloped area. A certain amount of power would be available for generation. However, over an extended period - that is, 10 years - the demographics of the area might change. Would that mean that the power generator in that area, who originally applied for a certain base load, would have unfettered access to any increased generation that might occur in that area?

Hon TOM STEPHENS: Yes. The advice I have received is that the exclusivity would remain. I will go back to the reason for this exclusive licence, which is to try to attract new infrastructure into, to use Hon Robin Chapple's words, an undeveloped area. It would be an area in which there was either no infrastructure or limited infrastructure. That is the way forward that is embraced in the regime contained in this Bill. I understand the member's point. I have often looked at the situation of the Ord hydro scheme and marvelled at the exclusivity that currently exists by virtue of the functionality of the top dam. The Ord hydro generation is exclusively available to the person who was lucky enough to have got through that whole process. He has covered all his costs and is now making a good return by all reports; at least, that is what the balance sheets of the company show. Would there have been a better way to do it? Possibly. Would that have guaranteed the delivery of a hydro scheme? Who knows? Maybe the hydro scheme would still be pursued in the same way that access was granted for the provision of that infrastructure under the previous Government. The simple answer to the question is yes. Will that create an opportunity for someone to gain a windfall if rapid development takes place? By the looks of things, quite possibly.

Hon ROBIN CHAPPLE: Conversely, if a generator were given a period of exclusivity and similar expansion occurred, would there be a compunction on the generator to perform to the exclusiveness of his or her contract? Would other generators be allowed into the area should the generator who was given the period of exclusivity not be able to perform his or her function of providing power within that exclusive area?

Hon TOM STEPHENS: An exclusive licence brings with it an obligation. If in the worst set of circumstances that obligation were not being met, such as with the provision of power to customers who were seeking access to that exclusive licence holder, then the licence holder could lose his licence. The regime would sort this out.

Clause put and passed.

Clause 27: Requirements for regulations -

Hon TOM STEPHENS: I move -

Page 16, line 14 - To insert before "For" -

Without limiting the other matters that may be taken into account,

Page 16, line 14 - To delete "may" and insert instead "is to".

Page 16, line 15 - To delete "one or more of".

Page 16, line 15 - To insert after "section 8(5)" -

but as if the area or areas referred to in section 8(5)(e) were the area referred to in subsection (1)(b)

Hon ROBIN CHAPPLE: After having discussed this with the Government during the last sitting, the Greens (WA) are very happy with the amendments, and believe they make much clearer the specifics that will be dealt with in clause 27, and remove the ambiguity of the word "may".

Hon GEORGE CASH: The Opposition understands the reasons for these amendments and supports them.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 28 and 29 put and passed.

Clause 30: Trade practices authorisation -

Hon GEORGE CASH: Clause 30 reads -

> For the purposes of the *Trade Practices Act 1974* of the Commonwealth and the Competition Code -
>
> (a) the grant of an exclusive licence as provided by regulations made under section 26; and
>
> (b) conduct authorised or required by or under any such licence,
>
> are specifically authorised to the extent that the grant or conduct would otherwise contravene that Act or that Code.

Is it intended that this clause should override the Commonwealth Trade Practices Act? What section of that Act is the Bill intending to override? Why should this clause not contravene section 109 of the Constitution, which deals with inconsistency between state laws and commonwealth laws?

Hon TOM STEPHENS: The explanatory memorandum states -

> This clause is intended to ensure that the exclusive licence provisions are not, and that conduct authorised or required by an exclusive licence is not, subject to the restrictive trade practices provisions of the *Trade Practices Act* in accordance with section 51 of the *Trade Practices Act* and equivalent provisions of the *Competition Code*. This provision is consistent with the provision contained within the *Energy Legislation Amendment Act 2003*.

I do not think Hon George Cash will be satisfied with that answer.

Hon GEORGE CASH: I appreciate that response, because the minister has identified the part of the Trade Practices Act that this clause relates to; that is, part 4, which deals with restrictive trade practices. Up to that point, I agreed with the proposition that the minister was putting. My question now is: how can the minister say that this does not contravene section 109 of the Constitution, which deals with inconsistent laws? I do not understand how the State is able to override the particular law of the Commonwealth, as provided in the Trade Practices Act.

Hon TOM STEPHENS: I will offer to the Committee at this stage the option of my coming back before the completion of the consideration of this Bill - either before the completion of the committee stage, or some later point - and providing a detailed reply to the question of Hon George Cash. That would get us through this clause. I am not suggesting that the Committee adjourn now, but rather that I take that question on notice, accept it as a solid question, and then get the best possible advice and come back to the Committee or the House before the Bill before us is finally dealt with in this place.

Hon ROBIN CHAPPLE: While I support the minister's position, am I getting from him the impression that the Committee should not now deal with clause 30, but should move on and deal with the clause at a later stage?

Hon Tom Stephens: Does the member wish to postpone clause 30?

Hon GEORGE CASH: I do not oppose the proposition. I am just seeking some advice now. I do not understand how this clause is not inconsistent. If the minister can come back and show this at a later stage, that suits me fine. I would have hoped that a fair bit of work would have been put into this legislation in an endeavour not to contravene section 109 of the Constitution. I am happy to agree to the clause in its present form, and would appreciate the minister's advice in due course on the reasons this legislation is not inconsistent.

Hon TOM STEPHENS: I am in the hands of the Committee. I have tried this argument before, and Hon George Cash has made the point that I should not rely too much on the way that apparently identical legislation has been passed in this place. An apparently identical provision was included in the gas reforms that were passed under the previous Government. Similar assertions were made about that statutory regime, and this repeats that assertion. I do not know why we were confident about that assertion previously or are confident about it now. It is a legitimate question, and I undertake that, before this Bill leaves this place, I will have an answer to it.

Clause put and passed.

Clause 31: Interruption of supply -

Hon ROBIN CHAPPLE: Clause 31(1) goes through a number of reasons for interrupting, suspending or restricting the supply of electricity, but then states that the reason can be any other unavoidable cause. I would like some clarification about what other unavoidable causes may be. Could they include commercial or contractual matters? I would like a really good understanding of the nature of unavoidable cause.

Hon TOM STEPHENS: This regime is currently available as part of the statutory provisions under which Western Power and the gas regime operate. The words contained in those statutes are now being applied to other

providers. Unavoidable cause would, I guess, be best covered by what used to be called acts of God. The movie *The Man Who Sued God* comes to mind, but the classic examples are cyclones, floods and fires that cause a loss of power provision and are deemed to be unavoidable. It may be successfully argued that some fires could be avoided, but others will not fall into that category. Presumably most floods will be considered to be unavoidable, although I suppose there could be arguments about those and some might say that the provider should make sure that the powerlines are out of reach of the damage that can be caused by predictable floods. Those sets of circumstances that the common man or the courts would determine were avoidable or unavoidable would be given substance in any judicial determination when claims arise out of this provision.

Hon ROBIN CHAPPLE: I thank the minister for his response. I am still concerned because the legislation mentions accidents, emergencies and potential dangers, which are the issues the minister has raised, or any other unavoidable cause. I did not have clarified whether that could be seen to be a commercial or contractual matter. If all those things the minister has identified - accident, emergency, potential danger - are in the Bill, I am rather concerned that there is this get out of "other unavoidable cause". I am concerned that it might provide the licensee with the ability to restrict power, as happened the other day, because it was considered to be a crisis situation. I need some reassurance that the clause does not provide a get out that will enable licensees to determine how they will provide electricity.

Hon TOM STEPHENS: It is not a get out. It is not intended that the clause deal with foreseeable issues associated with commercial or contractual arrangements. Because of the passage of cyclone Monty through the Pilbara at the moment, originally power to the residents of Onslow was to be cut off at 6.00 pm yesterday but they were given a respite and subsequently told that the power would be left on until midnight. That was in the face of Western Power making an assessment of when it was appropriate to interrupt the power supply to that community. It was done in response to the fact that, of necessity, the workers had to leave the gas pumping station at Tubridgi some hours before in preparation for the cyclone's passage into the area. Presumably any court would say that was a reasonable decision to make. There might be some argument as to whether six o'clock or 12 o'clock was the appropriate time for the interruption.

Hon Robin Chapple: That is covered by "emergency".

Hon TOM STEPHENS: Yes, but I believe it is illustrative. It is not aimed at being a get-out clause. I would imagine there will be an opportunity for people to litigate over what happened last week and ask the question whether it was reasonable for Western Power to make the decision that it did or whether it could have taken other steps. Light will be thrown on the topic as a result of a whole range of processes. The information provided to the Chamber today gives members some hint of the alternative solutions that might have been pursued. The inquiry that the Government is undertaking will throw more light on it. If, for any reason, people have opted to give an unfair weighting to commercial and contractual arrangements when they made these decisions, I guess this clause is not providing a get out for those sorts of questions but a framework. We are currently governed by this sort of framework for the electricity and gas regimes, and in future the private provider will be covered by the same process.

Hon GEORGE CASH: We are talking about the opportunity for a licensee to interrupt the supply of electricity. Subclause (1) states -

> A licensee may interrupt, suspend or restrict the supply of electricity provided by the licensee if in the licensee's opinion -

That immediately gives the licensee the right to decide -

> it is necessary to do so because of an accident -

I understand what "accident" means. I also understand what "emergency" means. I suggest that the issues in the north west yesterday that the minister talked about constituted an emergency. The clause also refers to "potential danger"; occurrences in the north west yesterday that resulted from the cyclone may have been a "potential danger". The words that follow in the clause are "or other unavoidable cause" and I am still unsure what those words mean. If we were talking about an act of God, then we should have had the words "or an act of God" included in the Bill, because clearly plenty of cases show what an act of God has been determined to be. This clause puts the onus on the consumer to go to court and show that the licensee's opinion was wrong and that the cause of the interruption was not unavoidable. All the expense is with the consumer. I believe that is wrong.

I will go one step further. Subclause (2) states -

> A licensee is not liable for any loss or damage that arises from an interruption, suspension or restriction under subsection (1) except to the extent that -
>
> . . .

(b) an agreement to which the licensee is party provides otherwise.

Is that intended to be an ouster subclause? Is it intended that an agreement can provide for overriding clause 31(1)?

Hon TOM STEPHENS: Yes, it is.

Hon George Cash: Can the licensee contract out of that obligation to the consumer?

Hon TOM STEPHENS: Yes. This clause is replicating, for the private providers of power, regimes that are already in place for Western Power and for the gas market. Some sort of level playing field is being constructed, and these words are simply being lifted and replicated in this legislation. It appears that the people drafting this Bill had foreseen the call of Hon George Cash to improve on the previous provisions. There is provision for liability by virtue of subclause (2)(a). This is an improvement on the previous regime, which had no provision for liability under the Electricity Corporation Act 1994. The drafting has now been improved. It incorporates by and large the same framework but allows for a potential liability arising from an interruption caused by negligence etc.

Hon GEORGE CASH: Having regard to what the minister said, will the new provisions, when agreed to, apply to Western Power on the various licences that it will be required to hold?

Hon TOM STEPHENS: Yes. I move -

Page 18, line 18 - To delete "*Corporations Act 2003*" and insert instead "*Corporation Act 1994*".

Amendment put and passed.

Clause, as amended, put and passed.

Clause 32: Failure to comply with licence -

Hon GEORGE CASH: Subclause (3) states -

Persons authorised by the Authority may enter any premises and do all things that are necessary for the purposes of subsection (2)(c).

Subclause (2)(c) deals with rectification of certain contraventions. Are there any restrictions on time, manner or any other restriction on when a person can enter premises?

Hon TOM STEPHENS: No, there is no such restriction; however, it must follow an assessment by the authority that there has been a breach of the licence.

Hon ROBIN CHAPPLE: Therefore that person may enter the property at any time. Will a specific authorisation be given to individuals at the time of an investigation or will a blanket authorisation be given to officers to conduct an inquiry at any time they see fit?

Hon TOM STEPHENS: Those powers can be invoked only when there has been a breach of the licence.

Hon ROBIN CHAPPLE: Subclause (2) states -

If, in the opinion of the Authority, a licensee fails to comply with a notice under subsection (1) the Authority may, subject to section 33, do one or more of the following -

(a) serve a letter of reprimand on the licensee;

(b) order the licensee to pay a monetary penalty fixed by the Authority but not exceeding $100 000;

(c) cause the contravention to be rectified to the satisfaction of the Authority.

Given the make-up of different players that might be in this market in future, whether it be a small wheat farm or a major coal-fired power station, how will such a monetary penalty be administered? Will there be a sliding scale, will the authority have discretion to levy a penalty on the basis of the size of the utility or will the penalties be administered at a notional level by the authority?

Hon TOM STEPHENS: It is a discretionary power that will be vested in the authority. The words are "but not exceeding $100 000". The authority will be guided by a maximum penalty but it will have vested in it a statutory discretion.

Hon GEORGE CASH: What appeal provisions are there against a potential $100 000 monetary penalty being imposed by the authority on a licensee?

Hon TOM STEPHENS: There does not appear to be an appeal provision against the authority's decision in this legislation. Our experience of regulators tells us that redress will be to the appropriate court. If a licensee is unhappy about a penalty decision by a regulator, and presumably for other decisions, the licensee will have the opportunity to appeal through the court processes. That appeal presumably can be made to one of the judicial forums, but to where I do not know. If Hon George Cash wants me to return to the answer to that question before the end of the debate, I will do so.

Hon GEORGE CASH: This is an important issue. The words in the clause are -

> If, in the opinion of the Authority, a licensee fails to comply with a notice under subsection (1), the Authority may, subject to section 33, -

Clause 33 refers to the right of a licensee to make submissions only -

> do one or more of the following -
>
> (a) serve a letter of reprimand on the licensee; -

I think we understand what that means -

> (b) order the licensee to pay a monetary penalty fixed by the Authority but not exceeding $100 000; -

That is a very significant penalty -

> (c) cause the contravention to be rectified to the satisfaction of the Authority.

That is not unreasonable.

Later the clause provides that the authority can recover any unpaid money in a court of competent jurisdiction as a debt due by the licensee to the State. I ask the minister to look into that matter. Hon Robin Chapple may see the issue differently and I am prepared to go along with him if he wants to hold up debate on the clause. However, I am prepared to accept the comments of the minister in due course on this matter. While I am dealing with this matter, I propose an amendment after the word "Authority" in subclause (3). Giving permission to someone to enter a person's premises is a very serious matter. At the very least I would expect the authority to put the permission in writing so that there is some evidence of the instruction. In fact, a person who is authorised by the authority to enter premises would be very foolish to not have that authority in writing. Sure enough, if something went wrong, the boss would say that the instruction was misinterpreted and the person was never authorised to enter the premises. I move -

> Page 19, line 11 - To insert after "Authority" the words "in writing".

Hon TOM STEPHENS: I am happy to accept the amendment. It seems to make sense. I encourage the Committee to accept the amendment moved by Hon George Cash.

Hon George Cash interjected.

Hon TOM STEPHENS: I also accept the point that has been made. I will get back to Hon George Cash, ideally before the end of the committee debate. I will not complete committee consideration until I have been able to get back to Hon George Cash on that issue. I know that this will not satisfy the member. However, we are talking about an amount not exceeding $100 000. In the normal course of events we would be talking about penalties that are much less than that, to the extent that they are drawn upon. However, I know that that still will not satisfy the member, because there is the opportunity, nonetheless, for the authority to go to the full $100 000, or a large amount, and why should there not be an accessible appeals provision, the member asks. I will get the answer to that question. The only other point that occurs to me now is that if for any reason such an appeal provision needs to be incorporated in this regime, presumably it is the sort of appeals mechanism that should be available across the board. When I say "across the board", I mean for Western Power or the gas market.

Hon ROBIN CHAPPLE: I believe it would be worthwhile holding over this clause. The primary provision in this clause states -

> If, in the opinion of the Authority -

I assume that in this case the authority is Western Power.

Hon George Cash: It is the Economic Regulation Authority.

Hon ROBIN CHAPPLE: Is it Western Power, or is it the economic regulator?

Hon Tom Stephens: It is the regulator.

Hon ROBIN CHAPPLE: If, in the opinion of the regulator, a licensee contravenes a licence, the authority may cause a notice to be served on the licensee requiring the licensee to rectify the contravention. Subclause (2) states that if, in the opinion of the authority, a licensee fails to comply with a notice, a whole range of things may happen. It really depends on the way in which the regulator operates. We have not established anywhere what the benchmark may or may not be if, in the opinion of the regulator, a licensee contravenes a licence. Will he or she operate in a particularly draconian manner and put a monetary penalty on everybody who contravenes, or will it be a much looser system, and without a method of appeal? If a small power provider got stuck with a $100 000 fine, it might not even be able to get to court. I do not believe it is a particularly good outcome to leave it in the hands of the courts at some future stage.

Hon TOM STEPHENS: Subclause (2) includes the words "do one or more of the following", followed by (a), (b) or (c), which state -

(a) serve a letter of reprimand on the licensee;

(b) order the licensee to pay a monetary penalty fixed by the Authority but not exceeding $100 000;

(c) cause the contravention to be rectified to the satisfaction of the Authority.

The authority may "do one or more of the following", so it could be all three. The intent of the structure is that Mr Lyndon Rowe, the new regulator, will apply penalties that will reflect the seriousness of any offence with which he is dealing. For minor offences, he may serve a letter of reprimand on the licensee. It must be kept in mind that we could be dealing with a situation in which the lives of people are placed at risk. Therefore, in these circumstances the authority should have available to it strong powers that cannot be thwarted. I believe we understand that. We do not want licensees who provide power to fail to comply with their licence requirements without adequate cause. We do not want the lives of our citizens placed at risk. We do not want the community put to massive inconvenience. That is why the authority will have this range of options available to it, and the discretion will lie with the authority.

Hon GEORGE CASH: I do not disagree with what the minister has said. However, when the authority's decision is manifestly unreasonable or unjust, there must be an opportunity for the licensee to take some action to appeal it. I also recognise that although the $100 000 referred to in subclause (2)(b) is a considerable amount of money, given that the licensee could be a corporation that deals in tens or hundreds of millions of dollars, it could be said to be almost insignificant. However, at the other end of the scale, there will also be smaller operators for which $100 000 is a considerable amount of money. We are not arguing about the general thrust; we are saying that there should be an appeal provision that is clear. Given the significance of this clause, Hon Robin Chapple has suggested that it be held over so that we can get a response.

Hon Tom Stephens: I refer the member to clause 33. It does not have all the answers to clause 32 -

Hon GEORGE CASH: No. Clause 33, "Right of licensee to make submissions", states that the authority is required to notify the licensee of the proposed action and the reasons for it, and give the licensee a reasonable opportunity to make submissions. The licensee can make submissions, but that does not mean that the decision will not be manifestly unreasonable or unjust. We are heading in the right direction, but if we get some further comment on clause 32 and hold it over now, I believe we will be able to deal with it very smartly when we come back, rather than our trying to solve the issue at the moment.

Hon TOM STEPHENS: I will take the advice of Hon George Cash and Hon Robin Chapple and move for the postponement of further consideration of clause 32.

The DEPUTY CHAIRMAN (Hon Kate Doust): Before the minister does that, it might be easier to deal with the short amendment that Hon George Cash has moved.

Amendment put and passed.

Further consideration of the clause postponed until after consideration of clause 139, on motion by Hon Tom Stephens (Minister for Local Government and Regional Development).

Clauses 33 and 34 put and passed.

Clause 35: Cancellation of licence -

Hon GEORGE CASH: This clause states that the Governor may cancel a licence if he or she is satisfied that the licensee -

(c) in the case of a company, is an externally-administered body corporate as defined in the *Corporations Act 2001* of the Commonwealth section 9; . . .

What does the minister understand by an "externally-administered body corporate"?

Hon TOM STEPHENS: This provision uses words that cover a circumstance in which a corporation faces insolvency. There may be other sets of circumstances in which a corporation has been put into external administration. Typically, it will be for insolvency.

Clause put and passed.

Clauses 36 to 38 put and passed.

Clause 39: Authority may issue codes -

Hon GEORGE CASH: This clause deals with the authority issuing codes. Clause 39(3) states -

> A code is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

Is it intended that the whole of the Interpretation Act 1984 applies or only particular sections, which is something we saw earlier? Was the minister able to obtain any information on the sections the Committee discussed earlier?

Hon TOM STEPHENS: The reference is to the whole of the Act rather than any particular sections.

Hon GEORGE CASH: In respect of the other matter, are we dealing only with particular sections and the balance of the Interpretation Act is not to apply?

Hon TOM STEPHENS: I have not received the definitive advice that I wanted to give to the member before we complete consideration of that issue.

Hon George Cash: Sections were specified, as the minister knows.

Hon TOM STEPHENS: The member is asking good questions.

Hon George Cash: I am waiting for good answers!

Hon TOM STEPHENS: I am looking forward to providing them!

Clause put and passed.

Clause 40 put and passed.

Clause 41: Taking of interest or easement for purposes of licence -

Hon ROBIN CHAPPLE: I am concerned about compensation. I seek advice from the minister about land sought either from the conservation estate or from any heritage-listed area.

Hon TOM STEPHENS: The statutory provisions that put the conservation estate in place would deal with compensation provisions.

Hon ROBIN CHAPPLE: I thank the minister for that clarification.

I would like to know how clause 41 relates to section 38 of the Environmental Protection Act. Under section 38, is there a provision for either the proponent, the department or an individual to refer any such easement to the EPA on the basis of the values of an easement?

Hon TOM STEPHENS: I do not know; we are not dealing with that Act. I do not know the answer to that question.

Hon GEORGE CASH: Part 9 of the Land Administration Act deals with compulsory acquisition of interests in land. I assume that we are providing a licensee with the ability to compulsorily acquire land by way of clause 41. We are clothing a licensee with the provisions of part 9 of the Land Administration Act, which deals with compulsory acquisition of interests in land. If that is the case, and in respect of compensation, which is covered by part 10 of the Land Administration Act, is that to apply? Is a licensee required to compensate in accordance with the Land Administration Act?

Hon TOM STEPHENS: Yes. That is more precisely spelt out at clause 43. The explanatory memorandum at clause 41 states -

> This clause (on the recommendation of the Minister for Energy) enables an interest in land or an easement over land to be taken under the *Land Administration Act 1997* for the purpose of enabling a licensee to supply electricity as if for a public work.
>
> The provision further affords the Minister the ability to require a licensee to obtain an interest in land for generation or certain transmission works where the Minister considers that such an interest is appropriate and so advises the licensee. The interest may be acquired by agreement where practicable,

> but otherwise by acquiring it under the provisions of the *Land Administration Act 1997* Part 9 as if for a public work.
>
> This requirement is intended to ensure that, where major electricity infrastructure is to be established, land owners are afforded reasonable protections, including the ability to be compensated for the acquisition of an interest in land by a licensee.
>
> The ability for the Minister to require a licensee to acquire an interest in land is not negated by operation of any provisions of the *Energy Operators (Powers) Act 1979* applied by virtue of Part 2, Division 9 of the Bill. That Ministerial power is also inapplicable to Crown lands or lands vested in a public authority.
>
> Any costs incurred in taking the interest or easement are to be paid by the licensee and may be recovered in a court of law as a debt due to the State.
>
> The clause also provides that, for the purposes of the clause, a reference to an interest in land in the *Land Administration Act 1997* Part 9 includes an easement over land.

In the absence of a copy of the Land Administration Act being made available to me, I am aware that part 9 of that Act deals with compulsory acquisition and part 10 deals with compensation. The clause notes explain that the compensation provisions of the Land Administration Act apply to this regime.

Hon ROBIN CHAPPLE: I now have incredible concern because part 9 of the Land Administration Act is clearly intended for government to acquire land in the interests of the State. I have a huge problem with passing over those provisions to private enterprise or to individuals to have the same right as government. That is an extremely draconian position and I am greatly concerned about it and will not support it.

Hon TOM STEPHENS: I hear what Hon Robin Chapple said. We are no stranger to this type of provision. It is contained within the gas regime which no longer simply involves government. Energy provision is an essential service in the community. In the pursuit of securing the roll out of that type of essential service, Governments and Parliaments make available provisions like this. This is a public work; that is, the provision of power or energy is viewed as an essential service that is delivered by private providers or, in the case of Western Power, a public provider, which will also be covered by this provision. However, this is an attempt to make sure that the public interest cannot be thwarted and that the mechanisms for doing this will enable the securing of a corridor in order for the essential service to be provided.

Hon ROBIN CHAPPLE: If it is the intention of the Government to enable land to be acquired for the purpose of providing public infrastructure, then the Government should do that. However, the provision should not be made for a private enterprise to have those powers. Private enterprise should go to the Government and obtain the concurrence of the minister so that the Government can acquire transmission line access or whatever is necessary. To put this into the hands of the private sector - I am not having a shot at the private sector - is not a situation that people understand when the acquisition of land is involved; that is, that it should be in the private domain. These matters should certainly be in the domain of government. If a private contractor wishes to establish an easement for the purpose of power transmission or whatever else, then it should apply to government to get that easement and the Government should be the entity that obtains that easement on behalf of the corporation. It should not be the right of the corporation to have the powers of the Land Administration Act to compulsorily acquire parcels of Western Australian land.

Hon TOM STEPHENS: I understand the view articulated by Hon Robin Chapple. However, I simply disagree. The way the contemporary apparatus of government moves in the protection of the provision of essential services calls for a regime of this sort. I draw to the honourable member's attention clause 41(2) in which the power is conferred in a way that can only be exercised on the recommendation of the minister administering this Act. That is also some measure of protection to keep in mind. Government in this State, by decision of the Parliament, is now no longer a provider of the infrastructure associated with the reticulation of gas. The Land Administration Act is deployed to ensure that nobody is denied access to easements and regimes that would make available to them the reticulation of gas. Let us think about it again. Telstra is just about privatised these days -

Hon Robin Chapple: Doesn't mean to say its right.

Hon TOM STEPHENS: With the way things are, I have done a lot of railing against the world. I loathe the sun coming up in the morning. I like it when the sun is down and I can sleep longer, but it still comes up. The modern way of the world is that ratings agencies keep the pressure on Governments to maintain their AAA credit ratings and to limit their capacity to borrow and do all of these things that they once used to do as a community and as a Government. Increasingly we rely upon the private sector to join in partnership with the community to deliver things like essential services. I am not a wild enthusiast of the way these things play themselves out in

specific circumstances, but that is the situation with which we are faced. In the face of that, this regime is a result of our solid effort to protect the public interest and the opportunity for access to an essential service. This regime equips the private sector with the opportunity to utilise the Land Administration Act, but only after the minister administering the Act has made a recommendation to do that, and then compensation provisions are deployed. The member should keep in mind the areas of the State with which he is particularly familiar. The Pilbara has vast tracts of land with infrastructure for the provision of electricity that is owned and operated by -

Hon Robin Chapple: It is owned and operated by private companies under an easement under the Mining Act, which clearly is just a temporary easement.

Hon TOM STEPHENS: I am not sure that they are under the Mining Act. I have been advised otherwise. The member may be right in that state agreements have provided for those vast powerlines, but I do not think -

Hon Robin Chapple: That was a government decision.

Hon TOM STEPHENS: If state agreement Acts put them there then surely the member is not arguing that those companies should have been prevented from having the opportunity to provide and reticulate power into the townships of Pannawonica, Tom Price and Paraburdoo -

Hon Robin Chapple: The Government made the decision. It was not made by a private corporation.

Hon TOM STEPHENS: In this case, the private corporations will be able to do that which the member is complaining about only on the decision of the Government of the day and the minister.

Hon GEORGE CASH: We are dealing with part 9 of the Land Administration Act because it is referred to in this clause. Earlier I said that part 9 deals with the compulsory acquisition of interests in land. I listened carefully to what Hon Robin Chapple said in respect of using the Land Administration Act for the acquisition of land by a private organisation. The minister has relied on clause 41(2) that states -

> The power conferred by subsection (1) may only be exercised on the recommendation of the Minister administering this Act

The only saving grace is that section 161(1) of the Land Administration Act, which forms part of part 9, when dealing with interests in land that may be taken for public works, states -

> Whenever the Crown, the Governor, the Government, any Minister of the Crown, any State instrumentality or any local government is authorised, by this Act, the *Public Works Act 1902* or any other Act, to undertake, construct or provide any public work, and the use of any land or any interest in land is required for the purposes of the work, then, unless otherwise specially provided . . .

It goes on to say that they may take that land. The best I can do is to view it as a shortcut, because the Land Administration Act currently allows any minister of the Crown to exercise certain provisions of this Act. Although I know that Hon Robin Chapple is not happy and may indeed vote against this clause, the Opposition could not support negating this clause on the basis that a provision within the Land Administration Act allows various individuals - admittedly mostly state officials or instrumentalities - to do the very thing that is authorised here, and that this is still the subject of a decision of the minister administering the Electricity Industry Bill. I understand where Hon Robin Chapple is coming from. I will understand if he votes against the clause. I am just indicating that we would not be able to support him on this matter.

Clause put and a division taken with the following result -

Ayes (25)

Hon Alan Cadby	Hon Paddy Embry	Hon Robyn McSweeney	Hon Bill Stretch
Hon George Cash	Hon Adele Farina	Hon Norman Moore	Hon Derrick Tomlinson
Hon Kim Chance	Hon John Fischer	Hon Simon O'Brien	Hon Ken Travers
Hon Murray Criddle	Hon Peter Foss	Hon Louise Pratt	Hon Ed Dermer *(Teller)*
Hon Bruce Donaldson	Hon Ray Halligan	Hon Ljiljanna Ravlich	
Hon Kate Doust	Hon Frank Hough	Hon Barbara Scott	
Hon Sue Ellery	Hon Barry House	Hon Tom Stephens	

Noes (5)

Hon Dee Margetts	Hon Christine Sharp	Hon Giz Watson	Hon Robin Chapple *(Teller)*
Hon Jim Scott			

Clause thus passed.

Clauses 42 to 44 put and passed.

Clause 45: Extension of certain provisions of *Energy Operators (Powers) Act 1979* -

Hon TOM STEPHENS: I move -

Page 27, lines 5 to 8 - To delete the lines.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 46: Transitional provision for existing operators -

Hon TOM STEPHENS: I move -

Page 27, lines 14 to 20 - To delete the lines.

Page 28, lines 15 to 21 - To delete the lines.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 47 put and passed.

Clause 48: Regulations as to supply contracts -

Hon GEORGE CASH: The minister previously indicated that with regulations generally, certain drafts are being prepared and considered by various interested parties. I ask the minister to convey a request to the Minister for Energy that once the regulations are drafted they be provided to the shadow Minister for Energy so that he is able to consider them in the light of the discussions that have occurred on this Bill. That could save a considerable amount of time. Obviously, certain other members of this place may also have an interest in those regulations. Recognising that interested parties or committees will have a particular interest in these regulations, rather than have them tabled in the House and for moves then to be made to have them disallowed, if the draft regulations were provided to the shadow Minister for Energy and, one would assume, Hon Robin Chapple - he will speak for himself in due course - that may save some time and pain later.

Hon TOM STEPHENS: I will relay to the Minister for Energy the request made by Hon George Cash, along with the commentary that he has provided.

Hon ROBIN CHAPPLE: Will the minister convey the desire of the Greens (WA) to have the intent of the letter tabled in the Legislative Council some two years ago in relation to an access regime for the renewable energy sector considered and possibly included in those regulations?

Hon Tom Stephens: I will pass that on as well.

Clause put and passed.

Clause 49: Form of contract to be submitted with application for grant, renewal or transfer -

Hon TOM STEPHENS: I move -

Page 31, after line 6 - To insert -

(3) The requirement in subsection (1) and (2) only applies if the applicant or proposed transferee intends to supply electricity to customers pursuant to the licence.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 50: Licence application not to be granted unless standard form contract approved -

Hon TOM STEPHENS: I move -

Page 31, after line 16 - To insert -

(2) If when a retail licence or an integrated regional licence was granted or renewed, or the transfer of a retail licence or an integrated regional licence was approved, subsection (1) did not apply because of section 49(3), the licensee may at any subsequent time submit to the Authority a draft of a standard form contract under which the licensee will supply electricity to customers pursuant to the licence if the standard form contract is approved by the Authority.

Hon ROBIN CHAPPLE: I note that the added subclause is numbered (2). Will this mean that the existing clause, beginning with the words "Despite section 19" will become clause 50(1)?

Hon Tom Stephens: Yes.

Hon ROBIN CHAPPLE: Will the minister provide further explanation about how clause 50(2) will apply?

Hon TOM STEPHENS: The interplay of clauses 49 and 50 is probably the way to best place this on the record as an explanation to the Committee. Clause 49 requires an applicant for a retail or integrated regional licence to submit with the application a draft of the standard form of contract under which the applicant proposes to supply electricity to customers. Customers in this instance are defined as those who do not consume more than 160 megawatt hours per annum. That is about $28 000 per annum or less. However, some prospective retailers may wish to supply only larger customers, and therefore the requirement to seek the approval of the Economic Regulation Authority for a standard customer applies only to those who wish to supply small-use customers. The new clause 49(3) provides for that situation. With regard to proposed clause 50(2), subject to clause 49(3), clause 50 provides that a retail licence or regional integrated licence is not to be granted unless a standard customer contract has been approved by the Economic Regulation Authority. A new subclause (2) is to be inserted into clause 50 by this amendment, providing for the holder of a retail or regional integrated licence who at the time of the licence grant does not supply 160 megawatt hours per annum customers but subsequently seeks to supply those customers, to have the ability to submit a standard customer contract for approval.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 51: Approval of standard form contract -

Hon TOM STEPHENS: I move -

Page 31, line 20 - To insert after "49" -

or 50(2)

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 52 to 54 put and passed.

Clause 55: Contracts with corporations -

Hon TOM STEPHENS: I move -

Page 33, lines 23 and 24 - To delete "body established by the *Electricity Corporations Act 2003* section 4(1)(c) or (d)" and insert instead "relevant corporation".

Amendment put and passed.

Hon GEORGE CASH: The Opposition would be quite happy for the balance of the amendments to this clause to be moved together, if that suits the Committee, subject to the minister providing some additional commentary about tariff customers. He may want to run through them in sequence.

Hon TOM STEPHENS: I move -

Page 33, lines 26 and 27 - To delete "the *Electricity Legislation (Amendments and Transitional Provisions) Act 2003* section 58(3)" and insert instead "subsection (6)".

Page 33, line 29 to page 34, line 1 - To delete "the *Electricity Legislation (Amendments and Transitional Provisions) Act 2003* section 58(2)" and insert instead "subsection (7)".

Page 34, after line 5 - To insert -

"tariff customer" of a corporation means a person who, immediately before the commencement day, was supplied with electricity by the corporation (otherwise than under a written contract) in relation to which the person was liable to pay fees and charges prescribed under the *Energy Operators (Powers) Act 1979* section 124.

Page 34, after line 30 - To insert -

(6) A tariff customer of a corporation is to be taken on and from the commencement day to have entered into a contract with the corporation for the supply of electricity.

(7) The Minister, by order published in the *Gazette*, is to prescribe a form of contract for the purposes of subsection (6), and the contract referred to in subsection (6) is to be taken to be in the form so prescribed.

(8) An order under subsection (7) -

(a) may specify different forms of contract in respect of different classes of tariff consumers; and

(b) may be amended, replaced or revoked by the Minister by order published in the *Gazette*.

This series of amendments reflects the continued existence of the Western Power Corporation, and the definition of relevant contract has been amended to delete reference to the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003. Standard contracts are now to be dealt with under the Electricity Industry Bill 2004, with new subclauses (6), (7) and (8) having been inserted to provide for this arrangement. These arrangements are necessary to provide for the transition from a by-law arrangement to a government-approved contractual arrangement in order to achieve parity with the supply of gas. That is where the Government has been approving standard contracts for the supply of gas since 2000. I think that provides the information the member is seeking.

Hon ROBIN CHAPPLE: I seek clarification on amendment 56/55, which inserts new subclauses on page 34, after line 30. I am concerned about proposed subclause (6). I think I get the intent of it, but it is not particularly well written. Can the minister clarify what it actually means, for the record?

Hon TOM STEPHENS: The Committee will be relieved to know that the clause is not here because a similar one was contained in the gas Bill. This is a deeming provision not currently in place. It is a requirement for the Government to approve contracts in reference to Western Power's contractual obligations for its customers. The provision provides for government approval of the type of arrangements that will come into effect, such as billing arrangements, and payment options and a range of other options that may come into effect as a result of an agreement between the power provider and the customer.

Hon ROBIN CHAPPLE: I assume that the tariff customer of the corporation applies to be taken on by the corporation. I am trying to understand what the clause means.

Hon Tom Stephens: It applies to the corporation.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 56 to 58 put and passed.

Clause 59: Regulations as to default supplier -

Hon GEORGE CASH: Will the minister provide a definition of a default supplier? Why is it not defined in the Bill itself? Does a default supplier assume the legal obligations of the former supplier? Does the default supplier assume the vicarious liabilities for the acts of the former supplier on being deemed to be a default supplier?

Hon TOM STEPHENS: This clause provides for arrangements whereby a customer uses electricity without a contract with the licensee. The situation is known as a default supplier arrangement. It is not the same as a supplier of last resort, which is referred to at clause 71 and involves a cessation of supply by one retailer and a continuation of that supply by the supplier of last resort. Regulations may, under this provision, among other things, provide that a standard form contract is deemed to apply. Regulations may set out the terms, conditions and provisions that will not apply or will apply in a modified form in a default supplier arrangement. The regulations may provide that a contract will continue to be in effect until it is terminated or until the customer chooses to enter into a non-standard contract. Similar provisions were contained in the gas Bill.

Clause put and passed.

Clause 60: Terms used in this Part -

Hon TOM STEPHENS: I move -

> Page 38, lines 11 to 13 - To delete "body established by the *Electricity Corporations Act 2003* section 4(1)(b) or (d) or any subsidiary of the body as defined in section 3 of that Act" and insert instead "relevant corporation".

Amendment put and passed.

Clause, as amended, put and passed.

Clause 61 put and passed.

Clause 62: Approval of policy -

Hon TOM STEPHENS: I move -

Page 39, line 19 - To insert before "In" -

Without limiting the other matters that may be taken into account,

Page 39, line 21 - To insert after "section 8(5)" -

but as if the area or areas referred to in section 8(5)(e) were the area to be affected by the exercise of the powers

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 63 to 65 put and passed.

Clause 66: Regulations as to content of policies -

Hon ROBIN CHAPPLE: The regulations refer to the expansion or the extension of the systems. Although the clause refers to the criteria or parameters applied by corporations in this regard, I am interested to know how evaluation might take place and whether it is desirable to install local generation as opposed to merely extending the grid and whether any cost benefit analysis or triple bottom line assessments are involved in this whole process. It seems to me it is about extending the grid. One wonders if at some stage there is an evaluation of whether regional generation might be better than extending the grid. I do not know whether the minister has any advice on how this process will work in the broader scheme of things.

Hon TOM STEPHENS: The proposal, for instance, to use local generation rather than expand transmission lines is the type of proposal that would be considered by the Government in approving the corporation's policy. The suggestion made by the member is exactly the sort of circumstance that the Government would take on board and consider at that time.

Clause put and passed.

Clause 67: Terms used in this Part -

Hon TOM STEPHENS: I move -

Page 42, lines 6 and 7 - To delete the lines.

Page 42, lines 10 and 11 - To delete the lines.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 68: Authority to ensure supply plan in place in designated areas -

Hon GEORGE CASH: This clause provides the best opportunity to ask the questions I posed on the default of the supplier. I will repeat some of them, because parts of them are superfluous. The Bill provides a definition of supplier of last resort. Will the supplier of last resort assume the legal obligations of the former supplier? Will the supplier of last resort assume the vicarious liabilities for the acts of the former supplier when he is deemed to be the supplier of last resort; and, if not, will the minister explain why not? Is a supplier of last resort currently in place; and, if not, what arrangements are in place to ensure the continuity of the supply of electricity to Western Power customers?

Hon TOM STEPHENS: Western Power, with its franchise market, is the current supplier of last resort; there are no others of which I am able to advise the House. The answer is no to the first two questions asked by Hon George Cash.

Clause put and passed.

Clauses 69 and 70 put and passed.

Clause 71: Supplier of last resort -

Hon TOM STEPHENS: I move -

Page 44, line 8 - To delete "—" and insert instead -

, Western Power Corporation is the supplier of last resort for the designated area.

Page 44, lines 9 to 16 - To delete the lines.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 72 to 76 put and passed.

Clause 77: Provision may be made by regulation -

Hon GEORGE CASH: Paragraph (b)(vii) refers to the recovery of costs by the supplier of last resort. What elements will comprise those costs?

Hon TOM STEPHENS: It is intended to cover the administration costs associated with the transfer of a customer from the failed retailer to the supplier of last resort, such as the cost of connection etc.

Clause put and passed.

Clause 78 put and passed.

Clause 79: Code of conduct -

Hon ROBIN CHAPPLE: I assume this clause is an oversight, considering the discussion on a code of conduct that we had with the Government in the early stage of the Bill. The clause states -

> The Authority may, in consultation with the committee, approve a code of conduct under this section.

I assumed the areas that the code of conduct would cover. The code of conduct is for the holders of retail licences, distribution licences, integrated regional licences and electricity marketing agents. It will define the standards of conduct in the supply and marketing of electricity to customers and it will protect customers. I would have thought that the authority "should" not "may" be in consultation with the committee in approving and developing a code of conduct. I therefore propose to move that "may" be deleted and substituted by "shall".

Hon TOM STEPHENS: The member may not want to proceed with the amendment if he accepts the argument that has been provided to me. His amendment may create a situation under the clause in which the authority shall approve the code of conduct. I do not believe that is what he intended with his amendment. There has been no oversight. If the member goes through the clause, he will see that his amendment will produce an effect that he does not seek.

Hon ROBIN CHAPPLE: The minister is quite correct.

Hon GEORGE CASH: There is another proposition. At the moment clause 79(1) states that the authority may, in consultation with the committee, approve a code of conduct. I believe that the words should be, "The authority shall, in consultation with the committee, publish a code of conduct". If the authority is to publish the code of conduct, it seems to me that it would have to approve it. If the minister does not agree with that proposition, because it is possible to publish something without necessarily approving it, I suggest that the subclause should read, "The authority shall, in consultation with the committee, approve and publish a code of conduct under this section." The reason I say that is that it is critical that the community and certainly parties directly affected understand what the code of conduct is all about. I will leave it to the minister for the time being. However, I believe that may achieve what Hon Robin Chapple was seeking to do earlier.

Hon TOM STEPHENS: Schedule 3 deals with the initial code that will be prepared through the processes described previously to the Committee. The initial code will contain a requirement for the authority's subsequent approval of codes of conduct to be published of necessity, and obligations will be imposed upon retailers to also publish. The interplay of schedule 3 and this provision has the effect of doing what Hon George Cash has referred to.

Hon GEORGE CASH: Much as I would like to agree with the minister, I cannot. All that clause 1 of schedule 3 states is that the initial code of conduct under section 79 is to be approved by the minister instead of by the authority. If the minister did not like the words that I was suggesting that would cause the authority to publish the code of conduct, the words could be, "The authority, in consultation with the committee, is to adopt and publish a code of conduct under this section."

Hon Tom Stephens: I understand what the member is trying to do.

Hon GEORGE CASH: If the minister has better wording, I am happy to listen.

Hon TOM STEPHENS: I have not. However, the problem with that wording is that it will not do what the member is wanting to do; rather, the suggestion is that the authority is adopting it for itself, when in fact the authority is trying to approve something that applies to someone else. It is 9.45 pm. I do not know whether the Committee wants to head in that direction or whether it wants me to postpone further consideration of this clause so that we can try to come up with words that accommodate what the member wants to do. I will move to postpone clause 79 for later consideration. I will come back with a form of words. I do not want to have the

clause amended. However, if the Committee is intent on amending it in some way to reflect the sentiments being expressed by Hon George Cash and Hon Robin Chapple, let us at least find words that do that without causing the regime a problem.

Further consideration of the clause postponed until after consideration of clause 139, on motion by Hon Tom Stephens (Minister for Local Government and Regional Development).

Clause 80 put and passed.

Clause 81: Consultative committee -

Hon ROBIN CHAPPLE: I support the notion of the consultative committee as it will be constituted. However, obviously there must be some budgetary provision. Subclause (3) provides for a funding provision. That must be discretionary at some level within budgetary provisions.

Hon TOM STEPHENS: Fees are to be imposed upon the holders of a licence. It is expected that the consultative committee's costs will be covered through that process.

Hon RAY HALLIGAN: Clause 81(2) states that the authority is to determine the membership, constitution and procedures of the committee, yet subclause (4) states that the committee may determine its own procedure. Will the minister advise the Committee whether the authority could determine it in one instance and the committee in another?

Hon TOM STEPHENS: We envisage a situation in which the committee would propose its procedures, which would go to the authority for approval.

Clause put and passed.

Clauses 82 to 91 put and passed.

Clause 92: Authority may approve scheme -

Hon ROBIN CHAPPLE: Again, we come to the word "may". It is in the title of the clause. Clause 92(1) states -

> The Authority may, by instrument in writing, approve a scheme that provides for a person (the **"electricity ombudsman"**) to investigate and deal with - . . .

I would have thought it would be imperative that we needed an electricity ombudsman. There is ambiguity between what is intended in the words and what is the outcome. Are we saying that the authority may instruct the electricity ombudsman to investigate? One would think that the electricity ombudsman should have the power as an ombudsman to do that evaluation. If that is the intent of the word "may", it concerns me. If the "may" is to provide a scheme to provide for a person to investigate and deal with, that gives me even greater concern because, on all accounts, we need an electricity ombudsman. That person should be the person making the deliberation, not the authority.

Hon TOM STEPHENS: The intent of the provision is for the authority to have discretion. The Government is of the view that the discretion is appropriately vested in the authority in these circumstances to intervene in ways that are provided under clause 92(1)(a) to (d), but not be required to. The Government puts it to the Committee that the discretion is appropriately left with the authority.

Hon GEORGE CASH: I am glad that Hon Robin Chapple raised this point. I had circled it but our Deputy Chairman was so keen to make progress that we nearly bolted through 23 clauses at once! However, I would have done the same. I agree with Hon Robin Chapple in that one of the selling points of this Bill was that there was to be an electricity ombudsman. That is what we were told and what was published. That is what the minister screamed from the rooftops. However, when we get to the crux of the matter and look at the detail, we see that the electricity ombudsman is at the discretion of the authority. If Hon Robin Chapple proposes to move the deletion of the word "may" at line 3 and insert the word "shall", the Opposition will support it. In respect of the "mays", that is, the discretion at subclauses (2), (3) and (4), that should be left open. By changing "may" to "shall" in subclause (1), we will guarantee ourselves that we end up with an electricity ombudsman, which was one of the selling points of this Bill.

Hon TOM STEPHENS: Would it help if I referred members to page 95 of the Bill, which is division 2 in schedule 3? I construct my defence against the member's persuasive argument at this point by drawing the attention of members to this division. In establishing the initial approval process, this is where the minister will establish the ombudsman to which members have referred. Subsequent processes will have that structure left in place. Members' fears are not grounded in the framework of the Bill because division 2 of schedule 3 does the job of establishing the ombudsman in the initial approval of the scheme.

Hon GEORGE CASH: Given the time, perhaps there will be an opportunity for us to consider what the minister has said in the next 24 hours and decide whether schedule 3 gives us an electricity ombudsman.

The DEPUTY CHAIRMAN (Hon Adele Farina): I think that is an excellent idea.

Progress reported and leave granted to sit again.

House adjourned at 9.56 pm