

BARROW ISLAND BILL 2003

Consideration in Detail

Resumed from 15 October.

Schedule 1 -

Debate was adjourned after the schedule had been partly considered.

The ACTING SPEAKER (Mr A.J. Dean): During consideration in detail yesterday it was thought that clerical amendments needed to be made to clauses 11 and 12 of the Bill. This has been further examined and it has been determined that clerical amendments are not necessary and will not be made.

Mr L. GRAHAM: At the close of my long three-and-a-half-minute filibuster to take us up to question time, I had asked the minister a series of questions to do with -

Mr P.G. Pendal interjected.

Mr L. GRAHAM: No, it was three-and-a-half minutes - it was my longest filibuster of all time! I did it to get us up to question time and I am deeply ashamed of myself. I had asked the minister a series of questions about the preparatory work that the joint venture company would be required to do under this particular provision. Firstly, I sought an answer from the minister on whether in clause 4(2) on page 23, "State" refers to Western Australia or the state of the then expected content? That was a minor point. Secondly, I asked whether each report prepared pursuant to the first subclause, to which subclause (2) referred, would be made public. In some of the toing-and-froing yesterday afternoon the minister made the point that there was nothing that prevented that happening. I sought a further commitment from the minister, not that there be nothing to prevent it happening, but that the Government would actively seek and release as much of that information as possible. I sought a specific undertaking and not just a general statement that openness and transparency is the best outcome. I seek a commitment from the Government that unless there is an extraordinarily good reason for not releasing these reports - in this case I expect the Government to make it clear why they should not be released - they should be released.

Mr C.M. BROWN: With regard to the minor point, "State" in this agreement means "the Premier", and "the Premier" means "operating in accordance with the State of Western Australia".

Mr L. GRAHAM: So "State" refers to the State of Western Australia?

Mr C.M. BROWN: Yes. With regard to the second point, it is my belief, and I believe my view is also shared by the Gorgon joint venture, that there should be maximum transparency. I believe the minister should - and so long as I am the minister I would want to do this - share that information as much as possible. The question of public information is extremely important. However, there may be certain commercial information that cannot be released. Therefore, to the extent that I am able to give a commitment, that is a commitment that I am certainly willing to give. Does that satisfy the member's concerns?

Mr L. GRAHAM: No, it does not, but I accept that is all the minister is prepared to do. I would now like to move ahead with a degree of haste and go to clause 7 on page 27. Subclause (1) provides that subject to the provisions of this agreement, the joint venturers shall submit to the minister to the fullest extent reasonably practicable their detailed proposals. That is interesting. I have a picture in my head of the negotiations between the State and the project proponents. Having been in a few negotiations I can understand why the words "to the fullest extent reasonably practicable" have been used; they are not bad words to use in this situation. The subclause then includes, in brackets, the sorts of things that would normally be required by a local government.

Is the mechanism that is contained in this agreement Act the sort of mechanism whereby the statutory powers of the relevant local government with regard to decisions about building and planning approvals will be transmitted to the minister and the minister will make those decisions based on the advice of his department?

Mr C.M. BROWN: Yes. The protocol in the department is that the department will share that information with the relevant local government authority and will take on board the concerns of the local government authority.

Mr L. GRAHAM: Normally the local authority would have the power to say yes or no to a development, or a part thereof, within its area of responsibility. However, as a consequence of this Bill, the local government's statutory responsibilities will be totally removed and will be transmitted to whatever is the relevant government department in St Georges Terrace, Perth. Is that correct?

Mr C.M. BROWN: I am told that what would normally happen in these matters, and what would be envisaged to happen on this occasion, is that the minister would set the conditions precedent and say to the proponents, "I

am prepared to approve X, Y or Z provided you get the approval of the relevant local government authority to those matters.”

Mr L. GRAHAM: With respect, I understand that; believe me, I understand that. However, that is not what I am seeking to determine. This matter is in the same category as the conversation that we had yesterday about rating capacity. I am talking about the rights, the authority and the law.

Mr C.M. BROWN: This will give the relevant minister the power to approve the project. There will be consultation all the way through with the local authority, and the minister can set certain conditions precedent in addition to the requirement that the local authority give its approval. With regard to whether the minister can legally approve something that the local government disagrees with, the answer is yes.

Mr L. GRAHAM: Let us get this clear. The minister said that the answer is yes. I always like to hear the word “yes” come out of the mouth of a minister, because it confirms that ministers do use that word from time to time. However, I am not sure what the minister has said yes to. I can understand the administrative arrangements and all those things. However, if this were a shopping centre, the proponents would go to the local authority and seek planning approval, and the local authority would approve or reject it based on its policy, guidelines and platforms. My question is will those powers be transmitted by this agreement Act from the Shire of Ashburton to the relevant state government department in St Georges Terrace, Perth?

Mr C.M. BROWN: If it were a shopping centre, it would be required to be approved by the local authority. This project is required to be approved by the Minister for State Development. The administrative arrangements are in place. If the member is asking whether it is the local authority or the minister who will give the approval, the answer is the minister.

Mr L. GRAHAM: Why? Why will that power be transmitted from the local authority to the minister?

Mr C.M. BROWN: The reason for this agreement, like all state agreements, is the magnitude of the project and the fact that the State has a direct interest in ensuring the magnitude of the project. State agreements are not done lightly, as the member knows, and that is the reason for the State’s interest in the project.

Mr L. Graham: The essence of my argument is that this one has been done lightly.

Mr C.M. BROWN: That suggests that the Government would leave projects worth \$6 billion to \$11 billion in the hands of a local authority to accept or reject. This is a much broader project in terms of the State’s interests and those of the local authorities, and there is a direct state interest for all Western Australians, not simply for local people in the immediate area.

Mr L. GRAHAM: Was this clause and the requirement for this to happen the wish of the project joint venturers or the wish of the Government?

Mr C.M. BROWN: This is a normal provision of a state agreement. The State Government is seeking to facilitate this project. It would look pretty silly internationally if it stepped forward and said that it would facilitate a project and then could not. That is why, in the broader state interest, these provisions have been included.

Mr L. GRAHAM: There is a great philosophical debate that we could have on another day, but I am not particularly interested in that. There is an assumption in the minister’s answer that in some way local governments in the Pilbara, first, do not support resource development - let me clear the minister’s mind of that concern; they do support resource development - and, secondly, are not capable of dealing with it - and let me remove that concern from the minister’s mind also. When we start work on an agreement Bill there are some givens, and one given is that the Government will take from local governments their authority to make decisions. My question was: is this clause and this requirement a standard government demand or was it demanded by the joint venturers?

Mr C.M. BROWN: I do not want to talk about what the joint venture parties and the State put forward. I do not think that is appropriate. However, let me say this: local government has a very important role to play. I, more than any other minister responsible for state agreements in the past, have recognised that, and that is shown by the way local government has been involved. That is the first point. The second point is that if local government makes decisions, particularly major decisions, that are considered by proponents to be inappropriate, all the proponents have an opportunity to appeal to either the Minister for Local Government or the Minister for Planning and Infrastructure, depending on the nature of the approval. Given the nature of the project, it is appropriate that the approvals for the project should rest with the relevant minister responsible for the Bill. I do not know whether I have answered the member’s question.

Mr L. Graham: No.

Mr C.M. BROWN: I will not go into the details of who said what in negotiation.

Mr L. GRAHAM: This is neither the time nor the place for that debate. I will just say this to the minister and then I will move on: if the Commonwealth Government of Australia passed an Act requiring approvals under the federal system, and therefore removed from the minister any responsibilities in the approvals process for this project and transferred them to the federal minister, there would be the greatest political furore we have ever seen in this State. I will leave it at that. The minister has done exactly what he would object to the federal Government doing. Having said that, I accept the point the minister has made about the advancement and the royalties issue. However, it is wider than a point-by-point argument about issues.

I turn to paragraphs (g) and (h) on page 28, which are project proposals. Is there any indication at this early stage of what is required by way of water supply and power supply?

Mr C.M. Brown: No.

Mr L. GRAHAM: I will ask no more; I will move on.

Paragraph (i) refers to accommodation for the construction and permanent work force. This could be a very long or a very short discussion depending on some answers. What is the likely construction work force and what is the likely permanent work force? There are estimates around.

Mr C.M. BROWN: The information on the anticipated figures is in the document titled "Environmental, Social and Economic Review of the Gorgon Gas Development on Barrow Island", dated February 2003. I will try to find the appropriate reference.

Mr L. GRAHAM: Perhaps I can help the minister. The Gorgon press release of 8 September, which encapsulates that document, says that the Gorgon development will create 6 000 jobs nationally. This Bill has no jurisdiction outside Western Australia, so obviously we will not be required to build houses for a work force in Sydney. Does the minister have any idea what the company plans for its permanent work force after construction? Is it envisaged that its permanent work force will be based on the island or in Onslow or Karratha, or is it envisaged that its permanent work force will, in the main, be based in Perth?

Mr C.M. BROWN: It has been brought to my attention that the second reading speech indicates that the construction work force will be about 3 000 and the permanent work force will be about 400. Details on the locations of both the construction work force and the permanent work force are to come forward in detailed proposals that will be approved by the minister.

Mr L. GRAHAM: The minister has hit on the key words: "will be approved by the minister". That is why I said in my contribution to the second reading debate and in my comments a little while ago that this agreement Bill has been done lightly. Other than paragraph (k), I will not get much chance to deal with the matters that I want to deal with on reporting to the minister. I am happy to move past that issue and deal with it when we come to clause 15, which will take some time.

Paragraph (j) states that a social impact management plan, including education, health and policing services and community facilities, will be required as part of the proposal. Can the minister explain why a joint venture petroleum project developer would prepare this sort of management plan and not the Government?

Mr C.M. BROWN: The view was taken that, given that it is a Gorgon joint venture project, this is part of that project. Similarly, the joint venture and not the Government handles environmental approvals.

Mr L. GRAHAM: Has the management plan for education, health and policing services and community facilities been commenced?

Mr C.M. BROWN: No. There is nothing to base a management plan on. If this agreement does not survive the Parliament, there will be no proposal. This is always a chicken-and-egg argument. If a management plan were commenced and this agreement did not survive the Parliament, enormous amounts of resources would have been spent for absolutely zero gain. The purpose of this agreement is, firstly, to say that there can now be a project; secondly, to enable determination of whether the project is viable - there is further work to be done; and then, if the project seems to be viable, to enable these other matters to be examined. The first step is to see whether the legislation survives.

Mr L. GRAHAM: I understand why the minister would say that. He has drawn a lot from his advisers on what has been the past, the norm and the practice with agreement Acts. I can tell him that, nearly without exclusion, every agreement Act that has resulted in a major project has caused as many problems in the north west as it has solved. I will give the minister one last crack to see if we can move on. It seems bizarre that the Government of Western Australia has considered and approved a project that we all agree will have a significantly greater impact than the North West Shelf; yet, the Government has yet to start considering its implementation and the consequences for the communities in the north west and elsewhere. I find that absolutely amazing. The experience, even as late as the current activities in Karratha, is that when it comes time for the project to move, it

will move at a pace with which the Government will never catch up. I say to the minister without fear of contradiction from anyone who looks at these things that in 20 years the Government will still be trying to rectify the errors that it will make under pressure when this project is at full steam. We have never got it right.

Mr C.M. BROWN: This is certainly a challenge. I reflect on what happens even when Governments plan way in advance. The member was the architect of the Pilbara 21 study, which resulted in further work. The Burrup land-use management strategy was completed in 1996. That strategy involved heavy consultation and won awards. It was conducted through the office of the former Minister for Resources Development and won planning awards for the amount of consultation that was involved. It eventually resulted in changes to the town planning scheme of the Shire of Roebourne. Under that agreement, areas were set aside for industrial development and for conservation. The State, through both the former minister and myself, continued to promote those industrial areas for international investment. Having done that in accordance with a process that had taken 10 years to put in place, I had to face a pretty angry crowd. I was asked why I was putting that industry investment in that area. I told the people that it was because it was signed off by the community seven years ago, to which I was told that the community was entitled to change its mind. Social planning is a very difficult issue because communities shift and change and circumstances and pressures change. The Government could spend an enormous amount going down this path. Who knows how the international circumstances might change? Who knows when this project may come forward? Who knows what will be the social impact until we get closer to the time? It is appropriate to do these studies, but they must be done when we are sure that there is a prospect of a project and that we can be at least relatively in tune with what the communities are thinking. This is not a perfect science. Communities ask me what the Government is doing about economic development in their area. I tell them that they have an opportunity for a \$900 million investment in their area, and they say that they do not want that investment and those jobs. They say that and again ask what I am going to do about getting them jobs. I say that there is the opportunity of another investment from a different type of industry. They say that they do not want that industry because it is too noisy and will bring into the town people they do not want. They say they do not want those jobs, but they also ask what the Government is going to do about getting them jobs. This is pretty hard. We are waiting for the haberdashery-led recovery so that everybody in that area can have a job.

Mr L. Graham: No, it is fashion!

Mr C.M. BROWN: Is it fashion? Whatever it is, we are waiting for it to occur. Social impacts are very important. I accept that, and that some past planning arrangements have been less than precise. However, community opinion and values change. What was once an area of the State that had a very industrialised view of the world and supported development - I am not talking about the Pilbara but other areas - is now an area that does not support development. Community values have changed. There is nothing wrong with that. People are entitled to have those values and to speak up for and advocate them. However, they are not entitled to expect the State to underpin them. Social impacts are very important. A social impact management plan will be undertaken. We do not know when this project might commence. Hopefully, for obvious reasons, it might be earlier rather than later. We cannot precisely determine what the social values will be in a given area. The management plan should be done, and we should try to accommodate the social impacts of what we seek to do.

Mr L. GRAHAM: I thank the minister for that five-minute speech. However, he did not answer the question. It was intriguing that he picked up a land-use management plan that was not acted on for six years. He picked up the end of it after a six-year gap and was surprised that it did not work. I would have thought that people would start over. I could make a couple of hundred trite points, not the least of which being that had the Government followed the recommendations of the Burrup land-use management study, it would not have experienced the problems it did at the end of the process. The recommendations included taking into account people's concerns for the local management of the Burrup. The Government transferred responsibility for management of the Burrup from the local authority to the "magnificent seven" committee of ministers. It is a completely different question.

The question I asked the minister was not about land-use management or industrial estates. I feel quite schizophrenic. Normally it is the Speaker and the minister who want members to stick to the point in question, and here I am asking the minister to deal with the question and not the rhetoric. Clause 7(1)(j) refers to a social management plan including education, health and policing services and community facilities. I reiterate that it seems bizarre. The Government works on three-year rolling forward estimates. This project will have an impact at the end of that. The Government needs to get its act together now to start working through the budgetary implications of this, particularly in those areas of education, health and policing. We are talking in the first instance of a construction work force of 3 000. That is larger than the population of most of the towns in the Pilbara. A person does not have to be Einstein to work out that will have a serious impact. It has the same effect as a project in Perth bringing in one million people. The minister would not say to someone in the capital city of Western Australia that we should sit down and wait to see what will happen before we look at the impact of an

additional one million people. People would be running around like headless chooks trying to deal with the problem and work out contingencies. This is a serious issue: 3 000 people or an additional 400 permanent residents. Let me make it quite clear: the economy of the town of Port Hedland is underpinned by about 800 people employed in the iron ore industry. If another 400 positions are established, it will have the possible effect of doubling the size of the town. These are serious questions. The minister should not sit here and tell me, as this agreement Act is going through, that the Government has not even started on this. He can say it and I have to accept it but please do not expect me to leave here and accept that it is going to remain that way forever. The Government needs to act now. Having said that, I will sit down to allow the minister to respond.

Mr C.M. BROWN: The Government of the day has an obligation to provide the services referred to in the clause. It has that obligation in regional areas and the metropolitan area. We are seeing shifts in population in the metropolitan area and regional areas. Where those shifts in population occur, either naturally or as a result of a major project, it is necessary to plan for them. Government seeks to do that. If this Bill survives and passes through the Parliament, the Government will need to plan for that. A number of things need to be considered. That is why it is important to try to make the planning timely. In some parts of Perth there has been an argument about the nature of education facilities that will be provided given the age profile of the population. That is an important matter. Not so much during the time of this Government - although the Minister for Education and Training has reported that he closed one school because it had only one student - but during previous Governments, we have seen the closure of schools. We have seen schools in some areas underutilised. In my own electorate, a school was significantly underutilised but, due to changes in demographics, the number of students in that school is increasing. However, one would have to say that the school has an enormous scope to take additional students. All those matters need to be examined appropriately. It must be done in the context of the time frame of this project. We obviously hope that the time frame is shorter rather than longer. When the project looks like coming to fruition all these matters will have to be considered and examined properly. They will be. It has to be done within the time frame for the project to materialise. They will be done as they are required to be done. There is no question that they will not be done. The purpose of the social impact study is to do that. That will occur.

Mr L. GRAHAM: I refer to paragraph (k). The proposal requires the joint venturers to report to the minister on the “use of local professional services labour and materials and measures to be taken with respect to the engagement and training of employees by the Joint Venturers, their agents and contractors”. Is it intended to make any of the conditions that relate to this provision binding on contractors and agents? How will it be made binding? Does the term “contractor” include subcontractors and so on down the chain?

Mr C.M. BROWN: This clause and the local content clause binds agents, contractors and subcontractors. There will be a requirement in the contractual obligations let by the joint venture to ensure that is done. If that were not part of the contract, the joint venture would be in breach. If it were not carried out by a subcontractor, the subcontractor would be in breach.

Mr L. GRAHAM: What does “in breach” mean? I understand the words so do not give me an English lesson. If someone is in breach of the agreement, what does that mean?

Mr C.M. BROWN: In the first instance people would be called to account.

Mr L. Graham: How?

Mr C.M. BROWN: Bear with me. They would be called to account and if, at the end of the day, the Government was not satisfied, there is a default process in the overall agreement.

Mr L. GRAHAM: For the sake of, for example, a plumbing contract worth \$25 000 a year, the protection mechanism is that we stop a \$20 billion project with a life of 60 years. Is that the Government’s defence mechanism if there is a breach?

Mr C.M. BROWN: The question in all this is whether the company is likely to operate in breach of these conditions. In the view of the Government, it is not. Given that, there is a requirement to do it. The Government believes the requirement will be carried out. If there were no follow-up, the end sanction is the default mechanism.

Mr L. GRAHAM: I have no axe to grind with the proponents of the project. They are not in question. The minister is telling us - those of us who are not the minister - that the Government trusts the company and has reached an agreement with it. The minister is asking to be trusted on this and that it will be all right. Unfortunately, I do not trust. I am not referring to the minister personally - we go back too far for that nonsense - but I do not trust the Government of Western Australia to get it right. History shows that it has not. I will not do so but I could go to my office and get a folder of documentation about eight inches thick concerning small business people who have been done over by the resources sector notwithstanding the fact that the resources sector has agreements in its agreement Acts to use local services whenever possible. For example, they could go off and come to an arrangement with a Melbourne supplier of footwear. When push comes to shove, it is the job

of the Department of Industry and Resources, or whatever name it carries this week, to support projects. That is its role. It is not there to enforce these types of arrangements. When we look at employment we should consider that, during the entire construction project in Port Headland, apparently not one person in our town was capable of cleaning the toilets. The subcontractors flew cleaners into the town. Notwithstanding those obligations, never once did the St Georges Terrace department interfere - not once. I am not asking the minister to spell out the bona fides of the company. I have said to the minister on a number of occasions that he is not a fool and that I am not a fool, so please do not treat me like one. I accept the company's bona fides. I want to know the mechanisms this Government will use to protect the interests of the people of the Pilbara - I think that must be the primary consideration - and those of the State of Western Australia, which is the minister's primary concern. I cannot find those mechanisms. That is what this is about. On each clause the minister is saying, "Trust me; the company will get it right." I trust the minister, but I do not trust the system. This goes back to the nub of the second reading speech and the haste with which this all happened. If it is a question of "trust me", I do not. I want to know specifically what mechanisms the minister, as the Western Australian Government's representative, put in place when he negotiated the agreement. It is becoming increasingly clear that the minister has not put any mechanisms in place. If under this particular clause the only way the local plumbing contractor can protect his local employment is by coming down to St Georges Terrace - at a cost of about \$1 000 - and walking through the door of the Department of Industry and Resources to ask it to close down the project because he has lost three plumbers, the minister is living in a fool's fantasy land. That will not happen; nor should it happen. That is not the defence. Will the minister tell me the mechanisms that he will accept to ensure that these project proposals contain appropriate measures?

Mr C.M. BROWN: If it receives the approval of Parliament, this agreement will provide a legal obligation on the joint venture proponents to do certain things and to report to the minister of the day on whether those things are being done. That legal obligation is in the Bill. The member for Pilbara raised concern about how we will know whether the minister will make sure that those things are done. That is the nub of the matter. It would be most unusual to write into an agreement with a joint venture party what the minister will do in discharging his or her obligations to the people. That is a matter for this Parliament.

Mr L. Graham: No it is not. With all due respect, we are not able to do that. That is factually incorrect. There is nothing I can do to change this schedule.

Mr C.M. BROWN: No. There is a legal obligation in the same way that there are legal obligations in all the Acts that survive this place for ministers to do or not do certain things and to be questioned on those things in this place. For example, if a contract is let for light bulbs by the Gorgon joint venture to a company in the eastern States, it can be asked why that contract did not go to a local company. That would be a valid question and the minister could well take it up if he or she was not aware of a good reason. However, that is a matter of the implementation of the obligation. The obligation to do those things is in the Bill. The question of the application of the obligation was raised by the member. The member is not confident that I, or whoever is in this job -

Mr L. Graham: Don't take it personally.

Mr C.M. BROWN: I am not taking it personally. The member is not confident that the minister or his officers will be diligent - or diligent to the degree the member thinks they should be - in carrying out the obligations in this area. I think that is the nub of the matter.

Mr L. Graham: In a nutshell.

Mr C.M. BROWN: That is it in a nutshell. What I say about all those things is this: legal obligations will be created. The minister of the day has an obligation to ensure that those obligations are carried out. There will be opportunities in this Parliament to ask ministers whether they have carried out those obligations, in the same way that ministers in this Parliament - whether they have come from Labor or coalition Governments - have been asked why government contracts have not gone to a Western Australian supplier, why government services have not been provided from Western Australia and why light bulbs have been made overseas rather than in Western Australia. All of those types of questions have previously been raised in this Parliament, and ministers and agencies have been put under pressure to answer those questions, which is appropriate. This Bill does not provide the opportunity to raise questions about the Gorgon joint venture or to call it into account in this Parliament. Rather, this Bill will create an opportunity to ask questions of the minister and his or her department about how those obligations are being discharged. I do not know what can be done other than to ensure that those obligations are created, that Parliament is used as a check mechanism and that those obligations are enforced. Other than that, the obligation rests with the minister. If the minister is satisfied but members of the general community or the business community are not, they will have the opportunity, through their parliamentary representatives, to raise their concerns with the minister in this place.

Mr C.J. BARNETT: Any company can comply with the letter of the obligations of an agreement Act. The real issue is whether the minister - it is not a matter of answering questions - is willing to roll up his sleeves and become directly involved in the project and its procurement. The minister might not like doing that, but that is the only way to effect change.

The other point I want to make - it relates to comments I made yesterday or the day before - is that the fact that the project is on Barrow Island, and the fact that there is no Australian partner, will make local content that much harder to achieve. The way to get true local content is to have an ethos in this project that it is Australian. We have to think Australian first. Unfortunately - I do not mean this as a criticism of ChevronTexaco or anyone else - because it is an internationally owned and managed project, all the contracting and design will be stipulated as having to be done by existing suppliers to Chevron and other major players. It will be very hard for new people to get into the industry. The organisation's culture must be to think Australian and, more particularly, Western Australian. When things go wrong, the minister has to become directly involved. When the minister was in opposition he did not hesitate to criticise me when I was the minister. I copped that criticism and the minister will cop it too. That should happen. One example is when Western Power decided to have the towers for the Albany wind farm constructed offshore. Another example is the modules on, I think, the Laminaria project. I became heavily involved in what was going on commercially within the company to ensure that the work was done on the Fremantle wharfs, and that is what the Government has to do. It must get in there and throw a bit of weight around; otherwise it will just go on, and the natural design and decision-making process will not be based here, but will be based in various places around the world, and projects and procurement will go elsewhere.

Mr L. GRAHAM: I want to respond to the points that the minister made about this. However, I do not want to do it generally, firstly because we are not allowed to, and secondly because I am not very interested in what happens generally; I am interested in what happens in the north west. I make this point to the minister: the minister's second reading speech becomes important. I do not overrate the importance of politicians standing on their hind legs talking. However, more than anything else that is said in this Parliament, the minister's second reading speech is the most crucial speech that is given to support a piece of legislation. Let us see exactly what the minister said about this part. He stated -

The use of local labour, professional services and materials in the joint venturers' activities and operations is important to the State maximising the economic and social value of this project to the community.

That is a powerful sentence. The minister did not make that statement because he thought it was a nice thing to do. I know the minister. He firmly believes in that. Either that or he has been fibbing to me for about 30-odd years, and I do not believe that is likely. I know the minister. He passionately believes in it. I know the things that the minister did in his previous life, before this place, to try to maximise the return to Western Australia. Therefore, it is not a personal criticism. However, the context of the proposals that this joint venture team will be required to put forward must be considered in that light, because that is what the minister, as the government spokesman, has expressed as the desire of the Government from its half of the agreement. The minister must bear in mind that this is an agreement between the State Government and the joint venture partners - not the community, not this Parliament and not me. We have no say.

With regard to these proposals, the minister has limited choices. They are outlined in the next part. Under clause 8(1)(a), he will approve the proposal without qualification or reservation; or, under paragraph (b), he will defer the decision until such time as the joint venturers submit a further proposal or proposals in respect of some other matters mentioned; or, under paragraph (c), he will require, as a condition precedent to giving approval, that the joint venturers make such alteration as he thinks reasonable, and, in doing that, he shall disclose his reasons for such alteration. The minister does not have an unfettered right. He has three choices. Basically, he can accept the proposal, refuse it or change it. I have moved on now from paragraph (k) and want to speak about the process. The provisos that come after that paragraph are about the Environmental Protection Authority and injecting carbon dioxide. Therefore, for the purposes of what I want to talk about, they are irrelevant. Given all that the minister said about the responsibility of the minister, they are the minister's three choices. The minister will be confronted with this situation.

I have been using the analogy of the plumbing contract for 10 or so people - and I will stick with it. The minister does not approve that contract. What choice does the minister have when the project proponents' proposals come forward? He certainly will not reject the proposal. A minister who did that would be (a) negligent and (b) stupid, and (c) it would not be in the State's interests for the project to be rejected for such a minuscule reason. Would the minister postpone it for that? I think not. Would he make it a condition? Again, I think not. This is, in essence, the sledgehammer and the ant argument. The only powers available to the State are major. It is able to make a major decision to stop or alter the whole project. However, the outcome that we are seeking may well be a subtle one. It seems to me that there is no mechanism to deliver that.

Mr C.M. BROWN: The process envisaged by the agreement is a consultative one whereby the minister will make known his or her views about the local content issues, and obviously try to arrive at a landing with the Gorgon joint venture on, as I said in my second reading speech, maximising local content. The minister will have to be satisfied that that is the case; otherwise those provisions will apply. I do not know what else I can say, other than that there is the legal obligation to do that. I said in my second reading speech that it is about maximising the obligation. I have received assurances from the highest levels of certainly the major participant, ChevronTexaco Australia Pty Ltd, that it is interested in building a strong, solid relationship with the Government of Western Australia. I do not mean this Government; I mean whichever Government happens to be the Government of Western Australia. ChevronTexaco is very much aware, as are other corporations, that there is this whole issue of a licence to operate and acceptability in the community. More and more there is a desire, which is not being legally imposed but which is being commercially imposed by the market, that companies will seek to work more and more with local communities to get high levels of acceptance. That is happening. In a range of other areas, corporate practice is changing, and not because of legal obligations imposed by government. More companies, particularly large resource companies, are saying that a key condition for them to operate within a local community is by and large to have the local community on side.

Mr L. Graham: I agree.

Mr C.M. BROWN: That is happening across the board. An interesting report was released the other day. I have not seen the report yet, but I saw a media release about it. The report was prepared by the former leader of the Liberal Party nationally, Dr John Hewson. In that report he referred to social responsibility, or words to that effect, and stated that resource companies more than others were leading the field. There are two drivers. One is the general way in which community values are now considered and the rising influence of stakeholder views on operations, and the second is the legal obligations in this agreement. A third obligation, if one likes, in terms of the commitments that have been given to me and openly talked about by the Gorgon joint venture, is local content.

Mr L. GRAHAM: This is the difficulty. We are sort of agreeing at length, but we are not quite getting there. My axe to grind is not with the resources people. If I have an axe to grind, it is with the Government - and not the Government of the day but the system of government generally. In my second reading contribution, I had interjections from members in front of me when I started to talk about local employment and Aboriginal employment. The rest of the world is 30 years ahead of us. On those matters, in 10 years the Government of Western Australia will be a 100 years behind private enterprise. Private enterprise is moving ahead at a rate that the Government has not even started to get its head around. It has not even thought of the answers required to break the cycle. I do not want to talk about that.

This company has put together a process for it to communicate its views. It is very good at it. It has put together a committee in the north west - and I have some reservations about it. It is called a community consultative committee. Very few from the community are on that committee, which is interesting. There are people on the committee representing companies and port authorities, but the bulk of the committee members are government employees. That causes me some concern. There are local government representatives and I have some concerns about that, but they are not major concerns. My biggest concern is that all the decision making required in the interests of the community is transmitted to the minister, and it is not obvious to anyone how the minister will obtain his information, other than by relying on a department based in St Georges Terrace that has been given the local authority's powers by this legislation. It is not rocket science; it is not difficult. It is unacceptable to require any issue that arises to come back into the Parliament to be dealt with. This is about a major resource project with the ability to transform this State. The minister knows that I am not a process person; I am not big on requiring this, that or the next. However, there is a vacuum in the way the Government proposes to respond to the issues that arise.

Mr C.M. BROWN: I am not sure that I can take this much further than I have already. In every way that the Government has entered into this agreement, the matter of local content has been one of the highest level issues on the agenda. These provisions will give the minister an opportunity to maximise the local content. I understand the concerns of the member for Pilbara about the fact that Governments have not carried out that obligation to the degree he considers appropriate. I am aware of complaints by small businesses, particularly in the north, that allegedly have been ignored by major resource companies. The member referred to footwear. Protective footwear was purchased from a Western Australian company until four or five years ago. That had quite a significant impact on that company. That company did not operate in the Pilbara. It operated a store in the Pilbara, but its manufacturing was done in Perth, as I recollect. There is a question of the degree of scrutiny of that matter, whether in this or any other state agreement over the past 40 years.

Mr L. Graham: With respect, the minister's second reading speech has made the game different from here on in. Previous agreement Acts contained all the caveats and outs, but the minister has changed the game. It is now not about what is reasonably expected to be able to be done; it is now about maximising the benefit to the

community. It is fundamentally different from those previous agreement Acts. I am just looking for some signposts for the future. I am interested to see how it will be done.

Mr C.M. BROWN: I have said what is provided for in the agreement. I have indicated the level of commitment. I believe the member for Pilbara is basically saying that there is a mistrust in the processes of government to do this, and another process with government is being sought that will make far more transparent than in the past the purchasing and contracting arrangements for major resource projects, and for this project in particular. Is that what the member is saying?

Mr L. Graham: Absolutely. Let me pose one to you. If this operation uses an airline, it may well sign a corporate deal with Qantas. Would you, as the minister demand that the joint venturers use the only regional airline in Western Australia, Skywest?

Mr C.M. BROWN: That would depend on a number of things - firstly, whether Skywest has a plane. It may not have a plane.

Mr L. Graham: If it had a contract with Chevron, it would go and buy one, I am telling you.

Mr C.M. BROWN: It may well do that.

Mr L. Graham: Minister, you have just proved the whole argument. You have not grasped the enormity of the monster in front of you.

Mr C.M. BROWN: No; the member is saying that whoever owns the airline will probably employ pilots, air staff and maintenance crews in Western Australia. That is local content. Those people are locally employed. The matter of local content will be properly examined, but if the member is suggesting that the Government check on the ownership of individual companies to see whether the shares are owned in Western Australia and then discriminate in favour of companies owned in Western Australia, as opposed to companies that operate in Western Australia, I am not sure whether it will do that.

Mr L. GRAHAM: I will come back to that matter when commenting on clause 15 of the agreement, but for now I will give the minister an example by way of anecdote. In my very early days I worked for a company in Bassendean called Agricultural Parts Supply Ltd, which sold Fiat tractors, in competition with Chamberlain. The State Government had tender rules about local content that were designed to make Chamberlain the tractor of choice for purchase by government. We managed to meet those content guidelines with a fully imported Fiat tractor from Italy. They came over in boxes, so we claimed local content for labour involved in the removal of the boxes. We claimed the air in the tyres and convinced the Government that, because our tyres were bigger than Chamberlain's, we surpassed Chamberlain's local content on tyres. We bought our fuel through a local distributor, filled the tank of the tractor and claimed it as three per cent local content. It is not a field that is entirely unknown to me.

I now refer to clause 11 of the agreement, headed "Net Conservation Benefits", on page 33. This is the benefit to Western Australia, in cash, as I understand it. This may be an appropriate place to raise the issue of royalties, because this project pays no royalty to the State Government. Is that correct?

Mr C.M. Brown: Yes, that is right.

Mr L. GRAHAM: The contribution to the State, therefore, will be by way of payroll tax. Is the project exempt from stamp duty?

Mr C.M. Brown: No.

Mr L. GRAHAM: Will full stamp duty be paid on the agreement, provisions, the project and all arrangements and anything that arises out of that?

Mr C.M. Brown: There is a provision for stamp duty exemption in the document, but it is only for the document itself.

Mr L. GRAHAM: So the document itself and the financial arrangements involved are stamp duty exempt? My mortgage is not exempt, but theirs is; that is a good deal.

Mr C.M. Brown: Their mortgage is not stamp duty exempt; this document only is stamp duty exempt.

Mr L. GRAHAM: I am glad the minister said that. It saves me getting into trouble later. However, if all those documents were done outside the State, they would not attract stamp duty, would they?

Mr C.M. Brown: Whatever the Stamp Act provides for, will apply. Various people try to come up with all sorts of inventive means to avoid stamp duty. I am not suggesting that the joint venture would do that, but a lot of other people have a go.

Mr L. GRAHAM: I would if I could find a way; it is a horrible tax.

Can the minister explain to me - I do not want him to go through a formula or that sort of thing - precisely what the \$40 million is for? It says in the agreement that it is for ongoing programs. I know that those ongoing programs are not necessarily on Barrow Island; they are likely to be in other places. Can the minister tell me - I understand the recommendation came from the Conservation Commission of Western Australia - by what mechanism the State Government will administer the \$40 million? How will the State Government determine where that money will be spent and how will it allocate priorities for the expenditure of it?

Mr C.M. BROWN: The money is paid into a trust account administered by the Department of Conservation and Land Management. There will be discussions between the joint venture proponents, the Department of Conservation and Land Management and other government agencies about the projects to be undertaken. The Conservation Commission report, which was delivered in July 2003, states -

The importance of the biodiversity conservation values of Barrow Island Nature Reserve and the threats to them from the proposed development have led the Commission to the belief that NCB projects -

That is, net conservation benefit projects -

would need to be similarly significant, substantial and ongoing. There is a need for a substantial icon project together with a substantial annual program over the life of the project. As a reference case for the substantial icon project the Commission has considered the creation of a national park on Dirk Hartog Island (the only island off the WA coast larger than Barrow Island). Costs for the removal of introduced fauna, destocking, revegetation, fauna reintroductions, and visitor facility establishment have been estimated by the Department of Conservation and Land Management to amount to around \$8 million to \$10 million. In addition to these costs, there would be other costs depending on the actual makeup of the island reserve and any other land uses on the island.

Although the icon project envisaged by the Conservation Commission has not been finally determined, the money will be used for an icon project of that nature. Whether it will involve the Dirk Hartog Island, another island or whatever, the locations of that are yet to be determined. Although the Conservation Commission is concerned about conservation in the State of Western Australia, it thinks the money should be used in the same bioregion and not in the south west, the far north or wherever. Those words are included in the state agreement to make sure that the money is spent in the bioregion in which Barrow Island is situated.

Mr L. GRAHAM: Is it possible that the \$40 million or part thereof will find its way into the Ningaloo campaign?

Mr C.M. BROWN: No. It is not possible that the money will find its way into any uses the Department of Conservation and Land Management has planned for Ningaloo. This is about a net conservation benefit. The Conservation Commission report is proposing the use of Dirk Hartog Island for that. The appropriateness of that is still being examined because consideration must be given to certain matters involving Dirk Hartog Island; that is, it has a lot of exotics on it and a significant removal program will be needed before we can move to that end. However, the icon project has not been determined -

Mr L. Graham: Who will determine it?

Mr C.M. BROWN: Ultimately, it will be determined by a reference group through the Department of Conservation and Land Management, and a recommendation will be made to the Government.

Mr L. GRAHAM: The minister said that the money will go into a special purpose trust fund in CALM. Who will be the trustees of that fund?

Mr C.M. BROWN: It is clear in law but we are not sure of the answer. It may be Treasury, in which case it would be the Under Treasurer, or it may be the Director General of the Department of Conservation and Land Management.

Mr L. Graham: Will that person be the sole trustee?

Mr C.M. BROWN: As the member knows, with all government accounts there is a single accountable officer. I do not know whether the accountable officer will be the Under Treasurer or the director general.

Mr L. GRAHAM: That is a different answer and I thank the minister for it. That explains who the accountable officer is under the Financial Administration and Audit Act, which is not what I asked for. I asked who will be the trustees. The money is going into a trust fund. By definition there must be trustees of that fund.

Mr C.M. BROWN: In my department there are trust funds. In a general sense, money is paid into an established trust fund in accordance with that trust. As I understand it, trust funds in government - I might be corrected by my advisers - are separate funds created for a purpose but they are operable by the department for that purpose; that is, there are no separate trustees but they are earmarked in a separate fund for a particular purpose. That is

how trust funds operate within government as I understand it. For example, in my department there are four or five trust funds, some of which have been there for many years. They are operated by the director general and the accountable officers in the Department of Industry and Resources. However, the moneys in those trust funds can be expended on only the projects authorised for the use of those moneys under that trust fund. That is my understanding of it.

Mr L. GRAHAM: Therefore, there are no trustees, as there would be in a normal situation.

Mr J.B. D'Orazio interjected.

Mr L. GRAHAM: Yes. If that is what it should be, is a special purpose trust account the same thing?

Mr J.B. D'Orazio interjected.

Mr L. GRAHAM: Okay. The money that goes into there is paid by the joint venturers and will be administered by either the Under Treasurer or the Director General of CALM, or whatever his title is at the moment?

Mr C.M. Brown: It will be administered by the Director General of CALM.

Mr L. GRAHAM: How will the Director General of CALM determine that if, 20 years down the track, the Minister for the Environment says, "We have \$40 million in that fund. We have invested it wisely and now we want to use that for these purposes"? The point is this: is this special purpose trust account independent of the political wing of government and the Executive, as it is being spun off to be, or is it just another bucket of money in government about which any minister of the day can say, "I want you to spend that money on these things"?

Mr C.M. BROWN: The intention of the fund is to provide net conservation benefits in the bioregion. The allocation of the money for those projects will be done in consultation with the Gorgon joint venturer. It is not proposed that the Gorgon joint venturer will simply put in the money and then the Government will make a decision. It will be done in consultation with the Gorgon joint venturer and the intention is for those funds to go into the bioregion. What this money will be able to be used for is fairly limited. The money must be used for net conservation benefits in the bioregion. Does that answer the member's question?

Mr L. GRAHAM: Yes, it does, but I now ask the same question with a different bent. Previously the minister said that we know how the private system will work but we do not know how the government system will work. Now he has reversed that and said that we know how the government system will work but we do not know how the private system will work. However, there is a bit of goodwill, so I will move on. I am still confused about what can possibly be the net conservation benefits for the bioregion. However, I will not dwell on that. Given that the minister has said that the Government cannot take any action on the social impacts of the project until the project has been committed to, subclause (2)(a) provides that an initial instalment of \$3 million shall be paid within one month following the commencement date or upon establishment of the account in accordance with subclause (5). I do not understand why that initial instalment must be paid upon the establishment of the account, or as soon as the parties agree, which I understand is, in essence, what subclause (5) means. Why is that to happen with some degree of haste?

Mr C.M. BROWN: The thinking behind this subclause is that if we are to try to locate an icon project - and that will not be easy; it will take some time -

Mr L. Graham: I would think that, by definition, an icon project would be easy to find.

Mr C.M. BROWN: That may be so. The Conservation Commission has raised the possibility of Dirk Hartog Island. That is in the public domain. That may or may not be an appropriate icon project. That raises the questions of how that should be done, whether that would be appropriate, whether it should be all or only part of Dirk Hartog Island, and how we could prevent other species from coming onto the island if we eliminated the exotics that are there. Once we have determined what the icon project will be, those funds can be used. I imagine that if the icon project is Dirk Hartog Island, the first thing we will need to do is get the exotics off the island. Some funds will then be available to start - not finish - that process.

Mr C.J. BARNETT: The commencement date will effectively be 1 January 2004. Therefore, very shortly, the Gorgon joint venture will be required to make \$3 million available?

Mr C.M. Brown: Yes.

Mr C.J. BARNETT: Who will decide how that \$3 million will be spent, and in what time frame?

Mr C.M. BROWN: There will be discussions between the Gorgon joint venture and the Government, through the Department of Conservation and Land Management, to determine what constitutes an icon project, and a recommendation will then come forward as to what that project should be. I cannot give a time frame for how long that may take.

Mr C.J. BARNETT: Next year is highly likely to be an election year, so - forgive my cynicism - the reality is that this will be a political announcement to favour the Australian Labor Party. That will, therefore, put a question mark over the integrity of this agreement from day one. This is effectively extorting \$40 million from the proponents for an unspecified project. Would it not be more appropriate for this Parliament to decide what the icon project shall be?

Mr C.M. BROWN: The Leader of the Opposition either agrees that the payment is appropriate, in which case it is not extortion, or he does not. If it is appropriate, we can have an icon project. There will be discussions between the Government and the joint venture as to the allocation of the funds, and they will be used for net conservation benefits.

Mr C.J. BARNETT: What guidelines does the Government envisage for the allocation of the initial \$3 million?

Mr C.M. BROWN: The initial \$3 million will go into a trust fund. There has been no determination at this stage about the icon project or the full allocation of these moneys, other than that, in accordance with the agreement, the moneys shall be used for projects that will have net conservation benefits.

Mr L. GRAHAM: Why is it that when the Government was negotiating the agreement it did not consider it necessary to start any work on the social impacts of the project, including education, health, police and community facilities, yet the Government has deemed it necessary to get an injection of \$40 million and an initial instalment of \$3 million before there is any commitment to the project?

Mr C.M. BROWN: This provision is a very up-front commitment to environmental issues. If this project were in any other part of the State, the environment would not be such a crucial issue, but because it is an A-class nature reserve, the environment is a crucial issue. The up-front payment of this money demonstrates a strong commitment to the environmental credentials of the company.

Mr L. GRAHAM: I would think that the company's nearly 50 years' experience on Barrow Island would demonstrate its environmental credentials to a significantly greater level than a \$3 million donation to government funds in an election year. Frankly, I think it does just about the exact opposite. Having said that, this debate is getting a bit repetitive, to the extent that whenever I ask a question, I get a statement of principle. When I ask the same question again, I get a grudging movement on the matter, and when I ask the question for the third or fourth time, I get an answer. I thought we had an understanding that we would try to move through the Bill with haste, although not undue haste. My question on this clause remains unanswered. Why does the Government believe this up-front payment is necessary and important - I assume it was the Government, because I would be surprised if the joint venture proponents offered up \$40 million at the first meeting, but we are not allowed to discuss those things - yet it has also said that it cannot commence any action on its core responsibilities of education, health and police because the project proponents have yet to commit to the project?

Mr C.M. BROWN: The Conservation Commission recommended an up-front payment of \$10 million. This is considerably less than that, but it is nevertheless an up-front payment.

Mr L. GRAHAM: With all due respect to the Conservation Commission, it is not a party to the agreement. The Government is a party. These two subclauses derive from the same project, yet the reasons for doing both of them are at opposite ends of the scale. I want to know why.

Mr C.M. BROWN: They are not at opposite ends of the scale. The Conservation Commission went through a full community consultation process on this matter, and it released its report in July and recommended an amount of \$40 million and certain up-front payments. The agreement reflects not the up-front payment required by the Conservation Commission, but rather a lower amount. Nevertheless it seeks to, in part, move to a form of up-front payment in order to move forward on the net conservation benefits. I do not know that I can be any clearer than that.

Mr L. GRAHAM: You still have not addressed the question. I understand what the Conservation Commission recommended, but it is not a party. You are the Government and you agreed. When the Government was in negotiations it said at one stage, "Because the Conservation Commission said these things, we want you to give us this money up front and we want you to do these things." I am confused about it. I do not think it is real smart; I think it has dirtied the water. However, having said that, the Government has done it. Why has it not done the same thing in its core areas of business - health, policing and education? When we were talking about paragraph (j), you said that it was inappropriate for the Government to do anything because the project proponents had not committed to the project yet and once they had, then it would move on. Why did the Government move on the environment, on which it has a proven track record of getting it right, and not on the area on which it has a proven track record of getting it wrong?

Mr C.M. BROWN: I appreciate the analogy being drawn. All I can say to the member about that issue is that we have made judgment calls about addressing the social impact. My experience teaches me that it is much better to address the social impact when we have firmer proposals rather than at an earlier stage.

There was a recommendation from the Conservation Commission on the environmental issues, which the Government took on board. It is not reflected in full in the agreement; nevertheless, there is an up-front payment. If someone wants to say that there has been a difference in approach, that point can be made. However, we were dealing with a very transparent process. The recommendations had been in the public arena, the amount of \$40 million had been in the public arena and, prior to that, the amount of \$10 million had been in the public arena. That was put up by the Gorgon joint venture in its environmental, social and economic review document, which has been out since February 2003. I think the decisions that have been made are designed to ensure that the community's social values are protected and that there is a net conservation benefit as indicated.

Mr C.J. BARNETT: Someone who does not know much of the history of Western Australia over the past 20 years might read this clause and say that it is a fair enough thing and will be good for the environment. However, there is a sense of *deja vu* about this. When the previous Labor Government came to power, a major project called the Argyle Diamond mine, which was like this project, was about to get under way in Western Australia. A small company called Northern Mining Corporation had a share. The Government acquired Northern Mining, which became the corporate vehicle for what was later the Western Australian Development Corporation and led to the whole WA Inc scandal. However, there was also another aspect to that. Originally, the Argyle Diamond project was to have a locally located work force. However, the proponents decided that they would rather have a fly in, fly out arrangement. The Premier of the day, Brian Burke, did a deal, which was that the Government would relieve the proponents of their obligation under the agreement to have a locally based work force and allow them to have a fly in, fly out operation, but the *quid pro quo* was that they were to hand over \$50 million. That was the start of WA Inc. I remember it well because I jointly wrote an article for *The National Times* called "Diamonds are a Government's best friend", which was probably the first of the WA Inc articles that were published. It was about a Government extorting \$50 million from a project proponent and then using that money -

Mr N.R. Marlborough: They did not extort anything of the kind. Don't use that sort of language.

Mr C.J. BARNETT: It was a scandal.

Mr N.R. Marlborough: What a load of nonsense!

Mr C.J. BARNETT: It was a scandal and it was the start of WA Inc.

Mr N.R. Marlborough: It was the taxation rules that drove fly in, fly out. It had nothing to do with the State. Get your history right. It is not Barnett's history. Get the history of the State right.

Mr C.J. BARNETT: It was part of the Argyle Diamond agreement that there would be a locally based work force and Brian Burke, as Premier -

Mr N.R. Marlborough interjected.

The DEPUTY SPEAKER: Order, member for Peel!

Mr C.J. BARNETT: Brian Burke, as the Premier of the day, relieved the Argyle Diamond proponents of their obligation to have a locally based work force, which would have done an enormous amount for the development of the Kimberley.

Mr N.R. Marlborough: What a load of nonsense! I suppose that is why every other company since has gone down the same path, is it? That is to blame for the Argyle \$50 million, is it?

Mr C.J. BARNETT: Obviously the member for Peel is a bit sensitive.

Mr N.R. Marlborough: Look at federal taxation. Go to Johnny Howard with your complaints. That is where the rules need to be changed.

Mr C.J. BARNETT: I do not think we should forget that it was a Keating Labor Government that introduced the fringe benefits tax

Mr L. Graham: It was not.

Mr C.J. BARNETT: Was it not?

Mr L. Graham: It was Treasurer John Howard.

Mr P.G. Pandal: It was not.

Mr L. Graham: Rubbish!

Mr C.J. BARNETT: No, the member is wrong. FBT was introduced in the mid to late 1980s. It was introduced in the period 1985 to 1987.

Several members interjected.

The DEPUTY SPEAKER: Order, members!

Mr C.J. BARNETT: We can have the argument later, but the fringe benefits tax was introduced in the mid 1980s.

Mr L. Graham: It was not. It was introduced in the 1970s by John Howard.

Mr C.J. BARNETT: The member should check that. It changed the economics of the Argyle Diamond project. However, the point I make is that Brian Burke and the Labor Government extorted \$50 million. It was a scandal. Members should talk to some of the Rio Tinto executives of that period. That was the start of the corruption of the previous Labor Government. That was the corrupt act. It was extortion. That is why I am sensitive when I read that \$3 million is to be paid on the successful passage of this agreement Bill. They are not the words of the agreement, but that is effectively what will happen. If this Bill is passed, on 1 January \$3 million will be handed over for the icon project. What is the icon project? I do not know, but it will be announced by Dr Geoff Gallop, Premier of Western Australia, in a major publicity event in a pre-election year. That is what this is about. It is not to the same scale, but it is exactly the same as Northern Mining and Argyle Diamond.

Mr R.F. JOHNSON: I am very interested to hear more from the Leader of the Opposition because obviously he has great skill in and has spent a lot of time on this area. I, like him, have concerns about what the Government will do with the \$3 million. Earlier the minister said that the decision would be made in consultation with the joint venture partners. The problem is that the consultation could simply be the minister telling them what he and the Government will do with that money. It is vitally important that we hear more from the Leader of the Opposition on this very important area.

Mr C.J. BARNETT: I thank the member for Hillarys. I make the point that there is something inherently unsavoury about this arrangement. It has been dressed up as an environmental project. I hope it is a good environmental project. We in this House who have a little understanding of politics and the timing of elections know that this will be used blatantly by the Labor Government and the Labor Party for self-promotion in a pre-election year. I put the point, but maybe not so bluntly, to the ChevronTexaco proponents that they have now been drawn into a political process because they have allowed themselves to be party to an arrangement like this. People in this State, and certainly those in the business community and more widely, remember these types of arrangements. They remember these sorts of deals from the 1980s. Essentially, \$3 million will be handed over. The Government will have a trust account structure. We all know that a political decision will determine how this money will be spent. It will be a major public relations promotion for the now Premier to enhance his green credentials. That is all this is about. Three million dollars is not a huge amount in one hit; nevertheless, it will be used to give maximum splash to the Premier. ChevronTexaco is compromised by this, not that it realises it. When I put it to -

Mr N.R. Marlborough: The \$3 million has compromised it, has it?

Mr C.J. BARNETT: When I put it to ChevronTexaco only a couple of weeks ago that this payment would draw it into a political process - it has happened today - it was quite shocked. It had not thought through the public implications of this component of the agreement.

Mr N.R. Marlborough: It was shocked because the comment came from the Leader of the Opposition.

Mr C.J. BARNETT: I can understand why the member for Peel is so upset. I have no doubt that he played a role in the Argyle Diamonds deal. I have no doubt he was an assistant to Brian Burke in whatever guise and was involved in the handing over of \$50 million. Was he a member of Parliament at the time?

Mr N.R. Marlborough: The only people in this room who today are interested in Brian Burke are two old dinosaurs like you and me. You want to misconstrue the truth because it suits you, and I want to keep the truth on track.

Mr C.J. BARNETT: I ask the member to please stand and defend Brian Burke and the extortion of \$50 million from Argyle Diamonds. I ask him to please stand and correct the record, and tell the people of this State that the extortion of money from Argyle Diamonds was a good thing for the credit standing and reputation of Western Australia. It was the first deal of WA Inc, and it was the deal that cast a cloud over the propriety of governance and the balance of the business community in this State. We all remember that it was the first deal done by the late Laurie Connell. That was his success fee.

Mr N.R. Marlborough interjected.

The DEPUTY SPEAKER: Order, member for Peel.

Mr C.J. BARNETT: This payment is a mini version of that. It is dressed up and it sounds nicer because it is about the environment, but it is a mini version of the same model. The understanding is that the Government will do what it can to get this agreement through Parliament - it will get it through because the Opposition will help it - and the ChevronTexaco joint venture will hand the Labor Government a cheque for \$3 million. I put to ChevronTexaco that it was now drawn into a political process. I told it that that money would be used politically and that ChevronTexaco would be funding a political exercise by the Labor Party going into the next state election. I said that if it turned out that way - which I expect it will - I would draw public attention to it. I will not enjoy that, but I will not stand by and let this Government try to replicate - even if it does not intend to do so blatantly - some of the practices and procedures of the Labor Government of the 1980s. This might be a mini version of those practices, but the principle is exactly the same: we do this for you, and you hand over money to us. If the Government had been genuine, it would have considered some sort of ongoing contribution from the Gorgon project to state Treasury. It should be sharing in the commonwealth revenues, but it failed to negotiate that. It did not even try to get a good deal for the State. It wrote a few letters to the Prime Minister, but it did not sit down with the Commonwealth to discuss the matter. We know that the State Government did not try because the agreement Act is going through this Parliament without that issue having been resolved. The Government did not even have a fair crack at that. It did not make a serious attempt to get a good deal for the State. It thought that a good deal was getting \$3 million in an election year. How cheaply the Government has sold out the people of this State and their legitimate interests in this project.

Mr C.M. BROWN: I reject what the Leader of the Opposition has said. It was nice rhetoric. The idea of establishing a Gorgon environmental foundation, as it was then referred to, was raised in the environmental, social and economic review document released by the Gorgon joint venture in February 2003. It is not new. Anybody who had a real interest in this would have read the document and asked questions earlier. The questions were not asked earlier.

Mr C.J. Barnett: We did not see the agreement Act until it came into Parliament.

Mr C.M. BROWN: This document was released in February 2003.

Mr C.J. Barnett: The agreement Act was introduced only a couple of weeks ago.

Mr C.M. BROWN: Anybody who had an interest in this would have read that document. No questions were asked when it was released. This is an opportunity to make a political point.

Mr C.J. Barnett: Of course it is, because it is a political program.

Mr C.M. BROWN: The Opposition would have a bit more credence if the former coalition Government had been pure on the issue of government advertising. It put its Premier in a helicopter, at enormous taxpayers' expense, so that he could fly over the city and talk about sewerage. It put pictures of the Premier and every other minister in publication after publication after publication. It continually promoted its political agenda through taxpayer-paid government advertisements promoting workplace agreements and all sorts of other things that lowered the standards offered to workers.

Mr C.J. Barnett: Is that your justification?

Mr C.M. BROWN: There is a thing about coming in with clean hands.

Mr C.J. Barnett: Mine are clean.

Mr C.M. BROWN: On this matter, the coalition just got out of the swamp. It does not have clean hands on this matter at all.

Mr C.J. Barnett: Give me an example.

Mr C.M. BROWN: It used taxpayers' funds for political advertising.

Mr C.J. Barnett: Give me an example about me.

Mr C.M. BROWN: Was the Leader of the Opposition not part of the Cabinet?

Mr C.J. Barnett: Come on! A whole team in the Premier's office is trying to find dirt on me. Here is your chance. Give me an example about the member for Cottesloe, a former minister, misusing taxpayers' money on self-promotion. Give me one example. I was a minister for eight years.

Mr C.M. BROWN: The Leader of the Opposition knows.

Mr C.J. Barnett: No, I do not. Give me one example.

Mr C.M. BROWN: No. The Leader of the Opposition knows.

Mr C.J. Barnett: Give me one example.

Mr C.M. BROWN: In the former coalition Government, over and over -

Mr C.J. Barnett: You cannot do it. The dirty sleaze machine in the Premier's office is running around reading everything I have ever said, and you cannot give me an example.

Mr C.M. BROWN: I tell the House this: the other day the Leader of the Opposition gave me an undertaking that consideration in detail would last for two hours.

Mr C.J. Barnett: No, I did not. I said that I believed it would be about two hours.

Mr C.M. BROWN: That is fine.

Mr C.J. Barnett: How many comments have I made on this Bill?

Mr C.M. BROWN: I understand where he is coming from. That is fine. When I was associated with the prison service, we had a saying, which I cannot repeat in this House, about being conned. Part of that saying is that someone, once conned, does not fall for the same trick again.

This has been a very transparent process. It was open to the community for a long time. It is always unfortunate for those in opposition if the Government makes a political statement or decision -

Mr C.J. Barnett: It is! You have admitted it is political. It is the political clause in the Bill. If the company hands over three million bucks, the Government will get its Bill through.

Mr C.M. BROWN: I do not know how people can say anything without it being misconstrued or misinterpreted by the Leader of the Opposition. Be that as it may, that is the impediment we must deal with.

This has been a very transparent and open process. All the reports were released to the community over a long period. People had the opportunity to comment on all the proposals that were put to government.

Mr C.J. Barnett: The Parliament does not have the opportunity until the Bill comes to Parliament.

Mr C.M. BROWN: Members had the opportunity to raise these issues by way of parliamentary questions. That could have been done when the Conservation Commission of Western Australia released its report. It is no different from what can happen with every other report released by a government agency. I have noticed that the Opposition has asked questions about government reports from time to time. Not one question was asked about any of these reports.

Mr C.J. Barnett: You are responsible to this Parliament.

Mr C.M. BROWN: Now issues are being raised. The suggestion that there is any underhandedness is a joke. It is in the Bill. Boy oh boy! This is said to be a secret process because it is in a Bill brought before the Parliament for consideration!

Mr C.J. Barnett: I did not say secret. I said extortion.

Mr C.M. BROWN: It is unbelievable. I cannot believe that is being contemplated. It has been an open and transparent process, and the payment is designed to achieve a net conservation benefit.

Mr C.J. BARNETT: The minister claims it is an open and transparent process. Lots of reports have been prepared, and there will be a lot more reports about Gorgon before any construction takes place. I remind the minister that in this House he is just one of 57 members. While he is in this House, he is no more important than any other member. The Bill has now come before the Parliament, which is where the minister is subjected to scrutiny on this legislation. That scrutiny does not occur earlier. It does not happen through public consultation, letters to the editor or questions without notice. The minister is accountable when the Bill comes to this place. How dare the minister try to limit my right to question him about a \$3 million payment to government on the passage of this Bill. The minister is accountable. No wonder his Government is today engaged in tricks and contrivances on another issue. It reflects exactly what is going on in the Labor Party.

Mr L. GRAHAM: Clause 15 is titled "Use of local labour professional services and materials". I am duty-bound to ask the minister the question: does "local" mean local as in local to the project or is it just a generic word that means not somewhere else?

Mr C.M. BROWN: One can interpret "local" as being in the eye of the beholder. Local could mean local to the Pilbara or to Western Australia and so on. Clause 15(1)(a) states -

... use labour available within Western Australia (using all reasonable endeavours to ensure that as many as possible of the workforce be recruited from the Pilbara) or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;

Whenever we read a heading we must interpret the heading in the context of the clause as a whole.

Mr L. Graham: And the answer is?

Mr C.M. BROWN: The answer is that we must interpret the heading in the clause as a whole. The clause refers to “all reasonable endeavours to ensure that as many as possible of the workforce be recruited from the Pilbara”. Does that mean that “local” refers only to the Pilbara? No, it does not refer only to the Pilbara but it does refer to the Pilbara.

Mr L. GRAHAM: And “local” does not mean local is the deduction that any reasonable person could make from that. Clause 15(1) starts -

Except as otherwise agreed by the Minister the Joint Venturers shall, . . .

I will dwell on the word “shall” because it is not “may” or “when they feel like it”; it is a legal responsibility. The word incurs an obligation. Having dwelt on the word “shall”, I would like the minister to confirm my view that it is a legal obligation that the joint venturers incur. I would like the minister to explain what possible grounds a minister could have for making an agreement outside that clause. What matters could possibly come before a minister that would allow him to effectively contract out of this clause?

Mr C.M. BROWN: The clause states -

Except as otherwise agreed by the Minister the Joint Venturers shall, for the purposes of this Agreement -

- (a) except in those cases where the Joint Venturers can demonstrate it is not reasonable and economically practicable so to do, use labour available . . .

There is an opportunity for the minister to exempt the joint venture from the obligations of this clause when the minister is of the view that the joint venturers can demonstrate it is not reasonable and economically practicable to use labour within Western Australia etc as set out in the clause.

Mr L. GRAHAM: I am sorry but I do not read it that way. In the circumstances outlined by the minister, I would argue that no exemption is in fact agreed by the minister. I would argue that the clause is quite explicit. If the project developers can demonstrate that it is not reasonable and economically practicable to use labour available within Western Australia, they do not need the minister’s exemption. If they were to do that, they would be acting in accord with the clause. Logically, we would not exempt someone from the clause if they were acting in accordance with the clause. I will tell the minister how I read it. I believe this provision gives the minister some power. It is one of the areas in this agreement Act that - if I read it correctly - gives the minister of the Government of Western Australia significant power because it does not require approval by the joint venturers or by the Cabinet. It gives the minister the responsibility to contract out of the clause. I would like to hear whether the minister concurs with that view because, if he does, I have some suggestions. I see no reason that a minister of the Government of Western Australia could not require, for example, that the operation to be a fly in, fly out operation. It is not covered. The minister has the power to state that it should be a fly in, fly out operation because the clause is generally about the use of local labour and services and he may, for example, want it serviced out of Perth. Equally, under the power I suspect is there, the minister has the authority to tell the joint venturers that he does not think it should be a fly in, fly out arrangement. I stress that the minister does not, at this stage, need the agreement of the joint venturers because this is a contracting out clause. Will the minister advise whether my reading of the clause is correct?

Mr C.M. BROWN: This clause has been drafted for the purpose of maximising the engagement of “local” labour and professional services etc. The member for Pilbara raises a question about the construction of the words in the clause and whether that construction gives the minister a discretion to exempt the joint venture from the obligations.

Mr L. Graham: No. The minister was doing all right and then he went one word too many. The minister is saying it gives the power to exempt and I am saying yes, it does. It also gives the minister power to impose. It sets out a set of circumstances in the first sentence. It creates the power for the minister to do things: “Except as otherwise agreed by the Minister the Joint Venturers shall”. The minister is reading it as though the project proponents have to come to him with a proposal. The construction gives the minister the power to put a proposal and enforce it with the joint venturers.

Mr C.M. BROWN: The intention of the clause is to maximise the use of local labour. The member is saying that the clause is capable of requiring the joint venture to use local labour; that is, to impose an obligation on the joint venture to use it.

Mr L. Graham: Yes, as it gives them the power to bring a proposal to the minister at a standard lower than that required in the subclauses. It also gives the power to the minister to impose a greater standard.

Mr C.M. BROWN: I will take some advice from my officers, but my reading of the clause is that it is envisaged to operate in this way: the clause enables the joint venturers to bring forward proposals about the use of labour

etc for the approval of the minister. If proposals came forward that did not use local labour, the minister would have the power to not accept the proposals. It is not a matter of the minister proactively saying, "You will do this." Rather, it is a matter of the Gorgon joint venturers coming forward with a proposal and stating what they want to do. If the proposal does not have local content, the minister has the ability to say no.

Mr L. GRAHAM: If we were back at clause 7 of schedule 1 - this is why I was prepared to move on - which dealt with proposals and the general heads of power on which the companies are required to report, I would agree with the minister. However, those words are not contained in this clause. I understand the system that the Government is putting together. The powers, which are dealt with in clause 8, allow the Government, in its entirety, to approve, defer or impose conditions. They are the minister's only options in terms of the project and the proposals that the joint venturers bring forward. That is the Government's opportunity to approve the entirety of it - it is its bite of the cherry. However, this is quite a specific clause because it is not about the minister's general powers and this may or may not be part of the proposal. This is a minimum 60-year operation. It could go on for the next 100 years. Surely the minister is not going to sit there and say that nothing in the original proposal will change in the 50 to 100 years. That would be nonsense. That opportunity has gone at this stage of the implementation of the agreement. Clause 15(1) of schedule 1 states -

Except as otherwise agreed by the Minister the Joint Venturers shall, for the purposes of this Agreement

All the examples that the minister has given about what the joint venturers have put forward and demonstrated are already contained in the Bill. If they go to the minister and say that they are going to use a design engineering company based in Germany for many reasons, including the fact that there is no facility available, the minister would immediately dive into the Bill and read clause 15(1)(a), which states -

except in those cases where the Joint Venturers can demonstrate it is not reasonable . . .

He will also look at clause 15(1)(b), which reads -

as far as it is reasonable and economically practicable so to do,

. . .

use the services of engineers . . .

. . .

. . . or if such services are not available . . .

Under clause 15(1)(b), the joint venturers have the power to do that. The minister does not have to agree to anything. If the joint venturers engineer to a standard that is not available in Western Australia, they have every right to use an international company. I would argue that that is in the State's interests. I will have some things to say about that later because some companies of international standing and repute could and should be used on major resource projects. This is not the kind of project for which our local engineering workshops are geared. All the circumstances outlined by the minister are catered for. I am happy to take a slight adjournment to allow the minister to obtain advice on the information I seek. The minister knows where I am coming from. It is hard for me to move on when we cannot get to a point where the interests of Western Australia are protected in a clause that specifically allows the minister to make exemptions to the normal arrangements. If the minister of the day cannot accept that he has that power, what hope do we have of enforcing it? What hope do we have of getting a Government to act on local employment? I am talking about jobs for Western Australia; I have not even begun to talk about jobs in the Pilbara. Clause 15(1) states -

Except as otherwise agreed by the Minister the Joint Venturers shall, . . .

The minister has the power to compel the joint venturers to do anything in terms of local labour, professional services and materials. The minister has the power to compel, provided it is in accord with the following subclauses.

Mr C.M. BROWN: The clause is constructed to impose an obligation on the joint venturers. The member for Pilbara has referred to the word "shall". He is absolutely right because the joint venturers "shall" do the things that are set out in the clause. It does not read that they "may", "might" or "could" do them. It reads that they "shall" do them. They have to do them.

Mr L. Graham: Except when the minister agrees to do otherwise.

Mr C.M. BROWN: Yes, unless the minister agrees to do otherwise.

Mr L. Graham: It does not read "not unless the minister cannot think of another reason not to do it". The minister has the power to agree otherwise.

Mr C.M. BROWN: The minister has the power to agree otherwise or to accept where it can be demonstrated -

Mr L. Graham: That is already contained in the Bill.

Mr C.M. BROWN: Yes, that is right. The clause reads -

except in those cases where . . . can demonstrate it is not reasonable and economically practicable so to do . . .

The minister can accept an argument that it is not reasonable or economically practicable to do so. The minister has that capacity and the power to exempt. Other than that exemption, the joint venturers “shall” do those things set out in the clause. This is not about what the minister imposes on the joint venturers; it is what the agreement imposes on them. The ministerial discretion is to exempt, not to enforce.

Mr L. GRAHAM: The minister quoted from clause 15(1)(a), which reads -

except in those cases where the Joint Venturers can demonstrate it is not reasonable and economically practicable so to do, use labour available within Western Australia . . .

I will stop there because I will come back to the part in brackets which refers to the Pilbara and deal with the availability of labour. As outlined in the minister’s second reading speech, the Government’s position is about maximising the economic and social value of this project. As I have said many times, they are strong words. According to Gorgon, this project will generate 6 000 jobs and of those 1 700 will be in Western Australia. The rest of Australia which, as far as I am aware, has no agreement Act to maximise its employment opportunities through this project, will receive around two and a half times more jobs than Western Australia. Given the minister’s strong words and the Government’s strong commitment to maximising this project - an obligation exists on the joint venturers and the minister has confirmed that it is a legal obligation - will the minister explain why we are the minority recipient of the jobs created by the project? We are not maximising our employment opportunities. If we are, the project may not have the benefits some of us think it has. Western Australia will get 1 700 jobs out of 6 000. Given where we are at, I would have thought that the Government would have already been in serious negotiations. The minister has said a number of times that the project proponents have made strong public statements, and they have. However, the net effect of their strong public statements is that 4 300 of the 6 000 jobs will not be in Western Australia.

Debate interrupted, pursuant to standing orders.

[Continued on page 12207.]