FOREST PRODUCTS BILL 1999

Consideration in Detail

Resumed from 30 March.

Debate was adjourned after clause 8 had been agreed to.

Clause 9 put and passed.

Clause 10: Functions of Commission -

Dr EDWARDS: The functions of the Forest Products Commission are very wide. If I may clarify this because we dealt with the previous clauses last week: Have we made any alteration to who are the commissioners?

Mr Omodei: Clause 6 refers to seven commissioners who must have expertise in such commercial activities as are relevant to the function of the commission. They were not to be sectorial, which would give us flexibility when appointing commissioners.

Dr EDWARDS: When debating the Conservation and Land Management Amendment Bill we were reassured that anyone who had a contract with the Forest Products Commission would not be considered for appointment to it. However, we have not had the same sort of formal assurance with this Bill. Our ongoing concern is with the functions of the commission.

Mr Omodei: Clause 6(3) states -

> A person is ineligible to be appointed or hold office as a commissioner if the person is -
>
> (a) the General Manager or a staff member;
>
> (b) a member of the Conservation Commission or a member of its staff;
>
> (c) the Executive Director or an employee of the Department.

The clause was amended to add paragraph (d) which also excludes current contract holders and anybody with a material connection to the contractor.

Dr EDWARDS: I knew that had been amended for the other Bill, but I could not remember whether the same had been done for this Bill. That removes some of the Opposition's concern about a potential conflict of interest, which it is pleased about. However, can the minister assure the Opposition that the commissioners will have enough expertise to carry out the activities? The commission's role will be to advise the minister on matters relating to the production and yield of forest products. Presumably, that will involve not only the native timber industry but also plantation forests. The commission will also advise the minister on the commercial value and prices of forest products. That is a huge brief for a State like Western Australia. The commission will need to consider factors for timber such as blue gum, jarrah and karri, through to sandalwood. Many factors will need to be taken into account. Over time, there will hopefully be other species with commercial value on which the commission will need to advise the minister. The commission's other function will be to sell forest products through contracts. Will the current contracts with the executive director of the Department of Conservation and Land Management be automatically transferred to the Forest Products Commission? I will say more about that later.

Mr OMODEI: I understand that the sale of forest products through contracts is dealt with under the transitional provisions of the Conservation and Land Management Amendment Bill. What were the member's other questions?

Dr Edwards: What will be the expertise of people appointed to the Forest Products Commission? The range of things the commissioners will be required to advise the minister on extends from strategic thinking for the future to day-to-day forest management.

Mr OMODEI: The commission has the ability to appoint committees and employ consultants to provide advice. The Minister for Forest Products has the ability to set up an advisory committee with expertise in a certain area. I think the legislation contains the flexibility needed to draw on other advice. The commissioners themselves must be people who have commercial expertise and acumen and knowledge about the areas in which the commission functions. I do not think that will be a major issue. Most people with any commercial knowledge will pick up those activities fairly quickly. Within a short period we will find those people who have some knowledge of the industry but are not directly connected to it. We are considering some of those people now.

Mr RIEBELING: The minister may be able to convince me how members with expertise will be found. The minister said he would be able to go beyond the commission to get expertise in certain fields. However, what is the scope to which the exclusions restrict people from the commercial area? I appreciate that it is difficult to find people with qualifications who do not have a vested interest. The minister is committed to recruiting people

without current contracts and who are not actively involved in the industry. However, does that mean that people on the fringes of the industry or who are retired from the industry will be the ones appointed to the commission?

Will a union representative be on the commission? That could go a long way towards assisting and getting input from the grassroots part of the industry. It could be a way of broadening the depth of knowledge the commission has and of making sure the functions of the commission are above reproach. The minister may have noticed that contracts and items affecting the taking of trees in Western Australia are closely scrutinised. When things are not done openly, people become suspicious very quickly. Will the minister consider tabling contracts to extract timber from our forests to make sure they are transparent in their scope, and that they are easier to read so that it is not only the person involved, conservationists and scientists who can understand them? One of the problems with conservation issues in years gone by is that one can talk to two experts in the forest debate, both with the same qualifications, and they will tell two different stories about the same plot of trees. It gets to the point at which it is difficult for the experts in the field to know where the truth lies, let alone the amateurs or the mums and dads who want to take their kids to look at the trees in the south west. Yet, it is those people who drive public opinion on these matters. If the Government is setting up a new process which is designed to function so that the people of Western Australia have confidence in it, the transparency and accountability of the contracts the minister is administering must have that integrity. I urge the minister to explain how that will be achieved through the commission's functions.

Mr OMODEI: I was originally concerned that the legislation constrained the guidelines for the eligibility of commissioners. However, I had another look at the Bill. We have since amended it so that it will also exclude people with direct contracts or who have material connections with the contractor. People in the plantation processing, value-adding sectors have the expertise required. There are no contracts in those sectors, so there is scope to find people with accountancy or business expertise. I think we will be able to find seven commissioners who are competent to look after the functions. The commission has the ability to set up its own committees to draw on expertise its members do not have and can also co-opt commissioners. The minister has the ability to set up a ministerial advisory committee, which we are in the process of doing. That committee will involve people with a range of expertise in the production and sale of timber. I am confident that we can cover the areas of expertise required.

I do not see a need for a union member on the commission; however, I will consider it. I think I said this during debate on clause 6. The Forest Products Commission will have little to do with the wages and conditions of workers. It will have more to do with the contracting, promotion, sale and export of timber products. The AWU has had a close affinity with the timber industry, and I will support giving the commission the ability to co-opt or appoint a representative of the Australian Workers Union to that committee. As a matter of fact, a member of the AWU is on the local consultative committee on the RFA that I chair - which is not related to this legislation - to give a perspective on the effect of the RFA on workers and on things like redundancies. There are hundreds of contracts with regard to the forest products industry, and all of those contracts are available for scrutiny. I intend to make this legislation as transparent as possible. That is the only way to achieve the full accountability for the forest industry that the community is demanding and that we will certainly deliver.

Mr RIEBELING: It would be sad if the minister thought that unions are interested only in working conditions and wages. Representatives of unions on such committees provide an avenue to feed information to management about how the industry is structured, they assist in restructuring, and they often assist in developing innovative ideas to improve areas that are not working particularly well. The minister may be surprised at what a representative from the union movement would add to the commission. I urge the minister to re-think the value of that suggestion. It is important to ensure that the commission is run in a professional manner and comprises people who do not have a vested interest. I had hoped the minister would advise us about the level of expertise of the commissioners. It is all very well to say that one of the commissioners will be an accountant, but some people may think that to provide for a bean counter or a person of that nature will not be in the best interests of the industry. The commission may have on it a person who believes that the regulations inhibit the industry and who may try to remove them. I am not one of those people who supports that way of thinking.

The minister did not respond to my suggestion that contracts be tabled. The minister did mention that there will be hundreds of contracts -

Mr Omodei: That is covered in a later amendment to be moved by the member for Maylands.

Mr RIEBELING: Will the minister agree to that?

Mr Omodei: I will discuss that when we get to it. I do not want to confuse the debate now by going over it again.

Mr RIEBELING: The accountability of the commission is of vital interest, and if the minister can indicate now that he will support that amendment, I will not ask any more questions about the issue of accountability.

Mr OMODEI: With regard to the proposed representation of the AWU on the Forest Products Commission, no-one has supported the AWU more than I have in its quest to get a sensible debate on the forest industry. Tim Daly and Nick Oaks have been eminently sensible in the way they have approached the debate on this industry. However, I find it passing strange that the Opposition, which rejected their every move with regard to a sensible outcome on the RFA, now has a new-found interest in and respect for the union movement. I do not want to turn this into a political debate, but as I said both last week and this week, the commission will be non-sectorial. If we were to appoint a person who represented the AWU, at least a dozen other organisations would be seeking to have the same representation on the commission. It was the considered view that that would not be the best way to appoint the commissioners. We have amended the guidelines under clause 6 of this Bill to constrain people who have a financial interest in a contract. I have sought advice from Treasury and elsewhere with regard to contracts. I believe there will be difficulties with the tabling of contracts, but they will be covered in the annual report, and there may be a capacity to identify parties in the contracts. However, rather than embark upon tedious repetition, I prefer to deal with the issue of contracts when it comes up later in the legislation.

Dr EDWARDS: It appears that the functions of the commission will be quite broad. For example, subclause (1)(a) and (b) states that it is a function of the commission to advise the minister on matters relating to the production and yield of forest products, and on the commercial value and prices of forest products. Will carbon credits come within the ambit of the Forest Products Commission in the future, because on the surface it appears to fit into that domain?

Mr OMODEI: I am advised that in the first instance it will be in the domain of the Department of Conservation. There are ongoing meetings between the State and Federal Governments, and the Minister for the Environment has attended international conferences on carbon credits. We have played an active role in the discussions on that matter.

Dr EDWARDS: Subclause (1)(s) states that another function of the commission is -

> to carry out or cause to be carried out such study or research of or into a matter relating to a function of the Commission as the Minister may approve.

Will most of the scientists in CALM move across now that these amendments have been made? Will the research division be split up, and how will it be funded within the Forest Products Commission?

Mr OMODEI: The scientists will stay with the Conservation Commission, and the people who deal with the technology of forest products will move to the Forest Products Commission. There will be some scientists and researchers on both sides. For example, the plantation scientists will move to the Forest Products Commission.

Dr EDWARDS: Subclause (2) on page 11 states that, "It is not a function of the Commission to be vested under any Act with land", yet subclause (3) states -

> Nothing in subsection (2) prevents the Commission from - . . .
>
> (f) having land vested in it, or the care, control and management of land placed with it, for the purposes of subsection (1)(g); or
>
> (g) leasing land for a purpose consistent with the Commission's functions.

I gather from the briefings I have had that the Forest Products Commission will now be able to have land vested in it as a result of the more recent amendments. However, on the surface, there appears to be a contradiction between subclauses (2) and (3). Under subclause (3), the commission's functions are so wide that it would almost appear that one could open the window and have a lot of land vested in this body, when the claim has been that all timber and forest lands will now be vested in the Conservation Commission.

Mr OMODEI: I am advised that under subclause (2), that would be the general rule. It is not a function of the commission to be vested under any Act with land or to have placed with it under the Land Administration Act the care, control and management of land. Subclause (3) deals with exceptions to the rule, and paragraph (f) states -

> having land vested in it, or the care, control and management of land placed with it, for the purposes of subsection (1)(g); or

That, of course, is the leasing of land. Clause 10(1)(g), on page 8, states -

> to maintain, or establish and maintain -
>
> (i) plantations of forest products;
>
> (ii) plant nurseries for the production of forest products; or
>
> (iii) seed or propagation orchards of forest products;

That is not native forest.

Mr RIEBELING: Clause 10(1)(h) states that the commission is to enter into contracts with any person for the management of forest products. I thought the commission's role was to manage forest products. Does this mean that the function of the commission, which is the management of forest products, will be contracted to a party who is not described in this document? Paragraph (h) seems to defy the reason for setting up this Forest Products Bill. Paragraph (j) states -

> to promote, and to advise the Minister in relation to, employment in, and development of, the forest products industry;

What input will the minister have in employment in the forest products industry? Is the overall strategy to have an industry which has a long life, or will the commission be actively involved in matters as basic as whether people enter into individual contracts? Will people be pushed out of enterprise bargaining? What will be the involvement of the minister, because paragraph (j) refers to the minister and not the department or the commission? Paragraph (k) states that the purpose is to ensure that any stockpile of forest products is kept to a minimum. Therefore, clearly, there will be a minimal amount of stockpiling. However, subparagraphs (i) and (ii) refer to the amount of forest products that can be stockpiled and the circumstances in which forest products can be stockpiled. Like every other member in this place, I have been to the south west and witnessed huge stockpiles of cut timber, woodchips and the like. One would expect that there is currently a minimal amount of stockpiling. However, if what I saw was a minimal amount, a fair amount of stockpiling of forest products is allowed. At this stage, what does the minister think would be a reasonable amount of stockpiling to be permitted under the executive director's powers? I presume - the minister will correct me if I am wrong - that the people who are currently involved in the cutting would say that the minimum amount required is what they are now chopping and stockpiling and that any reduction would weaken their ability to operate effectively; therefore, they would want the same amount of stockpiling as they have currently. This clause indicates that the role of the commission will be to minimise that. I hope that the minister will be able to indicate where, when and by how much the stockpiles will be reduced.

As members know, in the salt industry, which is similar to many industries, it became commercially viable to reduce dramatically the stockpiles of salt at Dampier, and the industry was able to operate much more effectively on smaller stockpiles. Paragraph (m) refers to monitoring the cost of production of forest products. Once the cost of production is monitored, what role will the commission have if, say, the cost of production of forest products escalates? Presumably, the commission will not be a party to the obligation side of the contracts, which is the cost aspect, to the contractor. What role does the minister see in that area?

Mr OMODEI: The member has raised a number of issues, the first of which deals with clause 10(1)(h), which states -

> to enter into contracts with any person for the management of forest products;

He referred particularly to the management of forest products. The definition of "manage", on page 3, states -

> "**manage**", in relation to forest products, includes establish, regenerate, grow, tend and protect;

I expect that road contracts will be involved in that. As is the case currently with the Department of Conservation and Land Management, the Forest Products Commission will outsource those works relating to harvesting and construction of roads, etc.

Mr Riebeling: Is that the management of it or the actual work? Will the management of it not be retained by the commission?

Mr OMODEI: The contract management will, but under the management plan and the provisions under regulations, the contract will empower the contractor to go into the forest to extract the resource. That would mean, for a start, surveying the lines, scrub bashing, road clearing, gravel extraction, road construction, logging, cartage and so on.

The member also raised a question about clause 10(1)(j), which states -

> to promote, and to advise the Minister in relation to, employment in, and development of, the forest products industry;

In that paragraph, we are talking more about the strategic approach in the whole forest products industry and the way it is managed from an employment point of view. Clause 10(1)(k) deals with the amount of forest products that can be stockpiled. We are talking there about the stockpile of product in the forest rather than on landings or at ports, and that would relate to the grades of logs that are cut. Logs are graded in the coupe into grades 1, 2 and 3, and salvaged timber. There will always be stockpiles in the forest, and the idea is to minimise them. Simcoa's agreement Act - I think the contract under that Act was signed by Brian Burke - says that the State will

supply so many thousand cubic metres of timber - I think it is about 120 000 cubic metres - and the majority is to be dry logs. They can be dried in two ways: They can be dried in stockpiles and landings in the forest coupes, or alternatively, dried at Simcoa's log stockpile. Some green logs are supplied to Simcoa as well.

Also, environmental considerations are involved. We want to minimise the amount of timber stockpiled in the forest, particularly in log landings where soil is disturbed to a great extent; therefore, soil compaction is a consideration as are dieback and hygiene. It is important that the stockpile be kept to a minimum and be managed appropriately. This has been a bone of contention. The member would know if he has been in the state forest the amount of timber stockpiled for which a good explanation has not been provided to the public by the Government or the Department of Conservation and Land Management. Some logs have been in stockpiles for too long. Questions relate to the economic extraction of that timber. The timber is graded once it is cut. The sooner one gets sawlogs out of the bush and into the log landing in the mills, which keeps them damp and such things to minimise cracking and loss from splitting, the better. The requirement to clear the landings is not such an imperative for firewood, post timber and char logs. Nevertheless, an imperative is that the landings be cleared up to keep the stockpiles to a minimum.

MR RIEBELING: I thought I would not need to ask any more questions, but I became more concerned as the minister's explanation progressed. Proper management of stockpiles in the forests - I realise it is not possible to do this exactly - would be to chop only timber that is to be used; that is, timber needed elsewhere to be worked by the industry. Therefore, one would harvest only timber to be used. The proper management of forest product would be not to chop a coupe which is then stored for a year in the hope that it will be used at some future stage. I thought this provision related to the management of stockpiles at timber and woodchipping yards which belong to the company which purchased the timber. However, the minister states that it relates to the maintenance of stockpiles of unsold logs or those chopped prior to their effective usage. I understand that Simcoa's operation needs drier woods than does other operations. Why does the State bear the cost of drying out that timber? Why does the company not store the wet timber in its stockpile so the State does not bear the cost of managing the wet timber? Maybe good reason exists for the State incurring that expense, but it escapes me. Why are we so generous? If trees are stored in the forest for woodchipping above the massive woodpile people see when visiting the woodchipping industry, the Government must provide an explanation. Enough timber is stockpiled in the timber storage space to keep the operation going for a year. The stockpiles are massive. It reminds me of driving around the iron ore stockpiles. I understand that the stockpiles the minister is talking about are within the forest. The clear desire of all is that the stockpile be kept to minimum. Could the minister explain to a layperson such as I why we store forest products on behalf of someone else?

MR OMODEI: After I visit the member's electorate, maybe he can visit mine and I will give him a tour -

Mr Riebeling: I could stay at your chalets!

Mr OMODEI: These chalets are remarkable; I wish they did exist! So many Labor Party members want to stay in my chalets, I would be wealthy if they existed.

The cutting of coupes depends upon the species of trees in the forest being cut. The gap creation method is used to cut a jarrah forest. The timber is harvested in small coupes, albeit with select cutting in some cases. The main method used to cut karri and jarrah forest is clear felling, and the areas cut vary in size. The average cut in karri is 13 to 15 hectares. The largest coupes in the past have been up to 100 hectares, but that was reduced to 40 hectares maximum under the Regional Forest Agreement with an average cut size of 12 to 14 hectares. Jarrah cuts are on average much smaller areas.

The objective of the exercise is to regenerate forests. We are considering production forests, not national parks. We regenerate forests to ensure that we achieve the best production for the next cycle of harvesting of that forest. To leave the defective trees would result in a lesser production return in the coupe. Once the logs are harvested, people who haul the logs into the landings separate the logs. The main contracts relate to grade 1 and 2 logs, with grade 3 logs and salvage logs down the line. The alternative is to leave the logs in the forest and not bring them into the coupe and stockpile them, but that would mean, as happened for many decades, that the resource would be burnt. When regenerating the forest, a burning regime is undertaken to allow the forest to regenerate by seed. Seeds are planted by hand if seed regeneration is not appropriate according to the prescription set.

A condition of the Simcoa agreement Act is that dry sawlogs are provided, and these can be dried only over time. Therefore, they must be stockpiled. The stockpiles seen and referred to by the member are probably stockpiles of marri logs. One may find a karri-marri coupe, a karri-marri-jarrah coupe or a straight jarrah-marri coupe as very few stands of forest are pure, apart from the sensitive old-growth blocks of pure karri set aside. Therefore, the supply to the woodchip operation is fully committed. A stockpile can be left until the logging contractor picks up the logs. A downside is the effect on the aesthetics of the forests as a clear-felled area before

it is burnt does not look very good: A lot of trash is on the ground as trees are hauled along haulage routes in winter.

Large stockpiles are made in timber and chip mills at this time of the year to maximise the harvest in summer and autumn. Logs are stockpiled in landings in the mill in the winter, particularly in jarrah country which becomes very wet and machines cannot operate, to maximise the harvest during summer and autumn. This minimises the winter harvest. Autumn is the more important harvest period. In the jarrah forest some logs are left on landings for more than a year in some cases two to three years until they are picked up and taken to Simcoa under the conditions of the agreement Act which, as I recall, amount to a maximum of 150 000 cubic metres a year. If those logs are not put into char blocks in the mills or transferred as straight logs to Simcoa, it is likely they would be burnt in the regeneration process.

Mr RIEBELING: I want to clarify the requirement to leave logs in the clear-felled areas for, as the minister said, up to three years.

Mr Omodei: Which is not desirable.

Mr RIEBELING: I am saying it is not desirable.

Dr Edwards: What is the extent of the problem? Obviously, as the minister will be aware, opposition members are often taken into those areas.

Mr Omodei: Since I became the minister it has improved! It varies, depending on the locality and whether there were harvesting problems. There may have been a late harvest and the winter caught the harvesting. Sometimes harvesting is abandoned if it is too wet, particularly in jarrah country where there is yellow, bottomless deep soil.

Mr RIEBELING: Some people in the charcoal industry say that trees are left for up to three years. I understand the minister said that is not desirable and the Government will try to stamp it out; however, are we not over-exploiting that part of the industry if trees can be left there for that length of time?

Mr Omodei: It depends on where the harvest is taking place. If it is jarrah country, for example, in Busselton, sometimes many third grade and salvaged logs are rotten. In the Dwellingup area of prime jarrah there are fewer third grade and salvaged logs. The karri-marri-jarrah country, again, has a better type of timber. It varies, depending on whether it is the southern forest region, the central forest region or the northern forest region.

Mr RIEBELING: People in the industry say that the reductions in take will have a dramatic impact on their capacity to maintain their contracts and on whether their contracts are viable, and the like. Yet the minister is saying that we must provide a massive 150 000 tonnes to the charcoal industry.

Mr Omodei: I believe it is 150 000.

Mr RIEBELING: In the next breath the minister says that in some cases we have a surplus of those logs which are no doubt the hardest to sell and the easiest to burn.

Mr Omodei: That is right.

Mr RIEBELING: Presumably that surplus occurs because they are left in the forest for up to three years, which does not make sense if there is an under-supply problem. I understand that some logs in parts of the forest are more suitable than others for burning. However, if we are cutting down less of the forest, presumably, on a per capita basis we should have fewer trees too. If the minister is saying that logs in karri 1 and 2 should be on the forest floor for six months only as a product, that will answer my question. If the minister is trying to say that he wants to reduce the three year wait to six months or 12 months for the logs to be picked up, could he please put that on the record?

Mr OMODEI: It is the intention to have logs in stockpiles for a minimum time. I suggest that in trying to recover something out of timber, one cannot make a silk purse out of a sow's ear. We are moving as quickly as we possibly can, getting excellent cooperation from the furniture industry to turn shorter lengths of timber into value added materials, whether that be laminated floor or parquet tiles which use very small pieces of wood. In the past that material has come out of select grade timber while processing the timber; in other words, drying it, cutting out the faults and so on. We are therefore moving as quickly as we can. The great challenge is to ensure that any sawn timber is taken out of the forest as quickly as possible to maintain as high a recovery rate as possible. We want to minimise the time that dried timber suitable for firewood and charcoal blocks stays on public land and, where possible, stockpile it at its destination. That is my aim and the direction in which we are heading.

Mr Riebeling: Is that possible?

Mr OMODEI: It is. We consolidated some of our stockpiles from Christmas to February by shifting about 30 000 cubic metres of timber. That cleaned up many of the landings where there were one, two and half a dozen logs here and there and consolidated them in one place. The transit to Simcoa is a long haul which takes time.

Mr Riebeling: Do we deliver them to the gate or does Simcoa pick them up under the contract?

Mr OMODEI: No, Simcoa will be charged a royalty; then road, logging and haulage charges will be added to that figure. The overall cost of Simcoa's raw resource is about the average cost of raw resources compared with other silicon plants around the world.

Dr Edwards: Does the cost of transport limit the distance it can travel?

Mr OMODEI: Yes, I suppose so. The further it must be hauled, the more it will cost.

Dr EDWARDS: Clause 10(5) states that the Forest Products Act does not limit or otherwise affect the operation of the Wildlife Conservation Act. Then subclause (6) counters subclause (5) in that anything done in accordance with the relevant management plan does not have to be taken into account. I assume the Crown is not bound by the Wildlife Conservation Act and therefore the Forest Products Commission will not be bound either. Although I understand what was said in the explanatory notes about flora, what will happen with fauna? Subclause (6) refers to the relevant management plan; however, many areas in the current Department of Conservation and Land Management estate do not have management plans. How will they be affected? This Bill will apply to some of the areas not covered by forest management plans. What will happen with the formulation of a forest management plan with respect to the Wildlife Conservation Act? Will that be taken into account during the forest management plan deliberations?

Mr OMODEI: All areas of forest that are harvested are covered by the forest management plan, which will be considered in the plan's renewal in a couple of years.

Dr Edwards: Does sandalwood come under this new provision?

Mr OMODEI: The forest management plan does not cover sandalwood. However, the sandalwood industry will have to comply with the Wildlife Conservation Act, therefore, flora and fauna will be protected. There will be an assessment process before harvest to identify any rare flora or fauna.

Mr RIEBELING: I wonder whether the National Party has written this subclause which provides that the commissioner will have the power to do all things necessary or convenient! What would happen if it were not inconvenient? Is this a bushie's way of saying that near enough is good enough; if it is inconvenient it will not be done? I have never seen the word "convenient" in an Act before. I wonder why a word is included that does not reflect the discipline of language in legislation.

Mr OMODEI: Subclause (4) allows the commission a general power to perform its functions and it is described in that way. Some things may not be specific within the Act and the commission must have that general power to carry out its functions.

Clause put and passed.

Clause 11 put and passed.

Clause 12: Principles on which Commission is to act -

Mr OMODEI: I know that the member for Maylands has proposed an amendment to this clause. To resolve the issue raised during debate on the Conservation and Land Management Amendment Bill, I move -

> Page 12, line 20 - To delete "ecologically sustainable" and substitute "principles of ecologically sustainable forest management to be applied in the".
>
> Page 12, after line 21 - To insert the following -
>
> (2) In subsection (1)(b) -
>
> **"Principles of ecologically sustainable forest management" means the principles that -**
>
> (a) the decision-making process should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
>
> (b) if there are threats of serious or irreversible environmental damage, the lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

(c) the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

(d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making; and

(e) improved valuation, pricing and incentive mechanisms should be promoted.

These amendments will bring the clause into line with the amendments the member for Maylands had on the Notice Paper, albeit with a slight change, and will make this Bill consistent with the amended Conservation and Land Management Amendment Bill.

Dr EDWARDS: The Opposition is delighted the minister has moved both these amendments. They cover our concerns about the principles on which the commission is to act. Clause 12 defines the principles and includes some definitions. The Opposition was concerned that the clause contained the profit principle on the one hand and ecological sustainability on the other hand. By altering the words and inserting "the principles of ecologically sustainable forest management" that issue is addressed.

I am also pleased a typographical error was made, because I was worried that one Bill would have one definition of the principles of ecologically sustainable forest management, and the other Bill would have abbreviated principles. That is a big advance in this Bill because it means that the commission must consider all its decisions in the light of the principle of ecologically sustainable forest management, despite its having to make a profit.

The other reason for the Opposition's amendments to clause 12, which I will not now move because the minister's amendments have overtaken them, was that the commission is to apply these principles to public land only. Obviously, given the commission's involvement in the timber share farming arrangements, it will deal with some private land. The Opposition hopes the principles of ecologically sustainable forest management will be applied to private land that will fall under its duties, as well as to public land.

The Opposition is delighted that the precautionary principle is picked up in the definition of ecologically sustainable forest management, that intergenerational equity is picked up and that improved valuation, pricing and incentive mechanisms are to be promoted. When considering the profit the Forest Products Commission will make from the timber contracts, it will be important for it to keep an eye on the other value that the community places on our timber resources. The inclusion of paragraph (e) is a good signal to indicate that the commission will be taking a broader view than has been taken in the past. The Opposition thanks the minister for these amendments and will support them.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 13: Delegation -

Mr RIEBELING: This clause relates to the delegation of powers. Under subclause (1) the commission may, by instrument, delegate the performance of any of its functions, except this power of delegation. This is probably a standard definition. The part that worries me is subclause (3), which states -

> A delegate cannot subdelegate the performance of any function unless the delegate is expressly authorized by the instrument of delegation to do so.

That definition seems to be contrary to the first definition which says that the power to delegate cannot be re-delegated, as it were. Broadly speaking, the powers of delegation in this clause are sweeping. The power to delegate all functions is covered by this clause. There may be a reason for that. If there is, I would appreciate the minister telling us why there is a need to delegate basically all the functions. Apparently there is also the ability to delegate the delegation to a third party. I wonder how efficient it is to have a party three times removed from the decision maker performing the functions which the delegator has been authorised by the commission to perform. If I am misreading that, perhaps the minister can tell me where I am misreading it. Referring to accountability and the powers to delegate to a third party once removed from the original delegation, the lines for the responsibility for that action become very unclear. I understand that the delegator always retains that responsibility, but in essence the clarity of that delegation is my concern.

Mr OMODEI: The clarity of the delegation would be in the instrument. Clause 13(1) states, "The Commission may, by instrument"; in other words the document instructs that person as far as the delegation of power is concerned. The instrument would make very clear what the staff member or lower level manager is able to do. It would be a normal type of delegation. The member's concerns about clarity are well and truly covered. There

needs to be an original document that gives that person power, which may be to deal with small contracts or something of like nature. There are virtually hundreds of contracts in the Forest Products Commission relating to fire, wood, roads and a host of things. Some issues will be partly shared responsibilities of the Conservation Commission and the Forest Products Commission. The Forest Products Commission will undertake some matters on behalf of the Conservation Commission, and vice versa.

Mr RIEBELING: Perhaps I am misreading subclause (2). My reading of it is that it lists the type of people to whom the delegation can go. From my reading of it there is a clue; that is, the delegation will go to no person who is not directly employed by the commission.

Mr Omodei: Paragraph (d) relates to a committee established under schedule 1, clause 16.

Mr RIEBELING: That could be an outside body. My understanding of what the minister said earlier relating to committees and the like was that they would be advising the commission. From the minister's first reply to my questions on this clause, it seems that it might involve a person driving a truck or someone in the forest.

Mr Omodei: No. I am talking about paragraphs (a), (b), (c) and (d), which involve lower level managers or staff members.

Mr RIEBELING: So the re-delegation after the original delegation, which is described in subclause (3), refers to committees?

Mr Omodei: A committee established under schedule 1.

Mr RIEBELING: Is the minister's understanding that subclause (3) relates to subclause (2)(d), relating to that re-delegation of the authority? Presumably the minister's answer would be that the original delegation would nominate any one of the staff members who is required to do it. I cannot work out why that is a requirement. I am concerned that the delegation relates to the performance of functions that the commission is capable of carrying out under this legislation. I understand the hands-on work can be contracted to a third party. I do not know necessarily whether this legislation requires a delegation to employ a third party to perform work. If it does, I can understand the minister's last answer.

Mr Omodei: There must be an instrument of delegation for anybody other than the manager; in other words, the manager can delegate work to any of those people under paragraphs (a), (b), (c) and (d), providing there is an instrument; that is, a written document that indicates expressly what those people are to do. Under clause 13(2)(d), even a committee established under the schedule would have to have an instrument. I am advised that if the general manager is to delegate his powers, he must within the commission's instrument indicate what powers those people have.

Mr RIEBELING: The short answer is that the committee is the main benefactor of subclause (3).

Mr Omodei: Not necessarily, no. It applies equally to all of them.

Clause put and passed.

Clause 14: Minister may give directions -

Dr EDWARDS: This clause is the start of a whole section on accountability, which is very important in this Bill. The clause deals with the fact that the minister may give directions. Directions are something which ministers probably want the power to be able to give and something of which Oppositions are always a bit suspicious. Does the minister have an idea in the back of his mind of the types of areas over which the minister may feel that he needs to give the commission a written direction? If the minister could explain that, maybe the rest of it could fall in place. It is important that if such a direction is given, it is laid before the Houses of Parliament, so that it is transparent. Will the minister also explain what is it in section 17 of the Statutory Corporations (Liabilities of Directors) Act 1996 that might mean that the minister's direction was in conflict with what the commissioners perceive as their tasks as directors? Can the minister explain what is the procedure? It appears from the Bill that if the commissioners thought that they were being directed to do something they should not be directed to do, after a period of time of communication this Bill effectively overcomes that, and the direction remains. Can the minister give us some idea of why that is in the Bill and what it might be used for, and the type of circumstances where the commissioners may say that have some difficulty with getting this direction from a minister?

Mr OMODEI: The minister giving directions is consistent with many other statutory organisations and government utilities and I think the accountability measure and transparency provision is that the directions have to be tabled in each House of the Parliament. An example of directions could be step-down targets for contracts in the restructuring of the timber industry, which is what we are doing now. The commission may come up with a recommendation which the minister does not agree with, and that has proven to be a difficult situation. For example, under the previous management plans, at about this time the Government of the day would have been

sitting down talking about the downsizing of the jarrah industry, because the previous management plans talked about going down to 300 000 cubic metres. The allowable cut under the current management plan is 490 000-odd cubic metres. The industry is not cutting that, it is cutting about 350 000 cubic metres. It may well be that the minister, on advice from his department, may choose to downsize the industry to a certain level. The commission might say that it does not think that it should be downsized that far. That is one area where the minister must have direction. In the end, if the minister does not have the power of direction, then why have a minister? One would just give the department statutory power.

Dr Edwards: Does it happen very often?

Mr OMODEI: I do not think it would happen very often. When I was the Minister for Water Resources there was the same sort of accountability measure: I had to table it in the House within the audited statements so that it was available for all to see. There will be occasions once the Forest Products Commission is up and running and it is fully conversant with the direction that the minister and the Government are heading. After 2003 the cut will go down to 286 000 cubic metres and how that is achieved, how we downsize, and which companies exist the industry, will not be an easy process, no matter who is in Government. I am finding it quite a challenge at the moment. There will be occasions when the minister will have to direct the commission.

Dr Edwards: What about section 17 of the Statutory Corporations (Liability of Directors) Act 1996?

Mr OMODEI: That enables the commission to question the minister's direction. If it considers the minister's direction unlawful -

> the governing body is to notify the responsible Minister in writing within 7 days of the receipt of the direction of its determination and the reasons for it.
>
> (2) Where the governing body gives such a notice to the responsible Minister, that Minister is to either -
>
> (a) cancel the direction; or
>
> (b) confirm it and state his or her reasons for doing so.
>
> (3) The confirmation of the direction has no effect if the direction is unlawful.
>
> (4) If the direction is confirmed the corporation is required, subject to subsection (3), to give effect to it.

There are some good accountability measures that allow the commission to question the minister's direction.

Dr EDWARDS: Where it refers to the direction being unlawful, does it mean dreadfully unlawful or does it refer more to the fact that the commissioners, as directors, feel that the direction - for example, if the industry is being stepped-down - interferes with their ability to make a profit or interferes with the ecologically sustainable forest management? Is that the case or does it refer more to something so over the top that it would be unlawful for them to do, such as if the minister directed them to grow marijuana to make lots of profit for the Government?

Mr OMODEI: I had never thought of that - now I know how we are going to find the money!

It could be, for example, if a series of companies had contracts and the minister directed the commission to say that the companies were going to be downsized; that is, they were not going to get the same level of intake timber, and that caused a breach of contract.

Dr Edwards: If the commission had the contract?

Mr OMODEI: Yes, if the commission had the contract. They may give a response in writing to the minister stating that such an action was unlawful and that it may expose the Government or the minister to legal action by those companies. If we downsize the industry to the levels that we need, the best way to do it is through a voluntary step-down by the industry by agreement. If parts of the industry do not agree to that, then they may choose to take action against the Government for breach of contract. That is not the best way to do business - my preference would be to do it on a voluntary basis. That may be one case that could occur.

Mr BROWN: Clause 14(1) provides that -

> The Minister may give written directions to the Commission with respect to the performance of its functions under this Act either generally or in relation to a particular matter but any such direction must not be inconsistent with the provisions of a relevant management plan.

I noticed that in clause 10(1)(n) that the commission is -

to participate in the preparation of any management plan under Part V of the CALM Act in relation to land that is State forest or a timber reserve;

My question is twofold. What is the purpose of that constraint on the discretion that the minister may exercise in issuing a

direction? To what extent, in any event, is the management plan inflexible? Is the minister caught with an inflexible management plan that then constrains any direction that the minister may give, or is the management plan so flexible that if the minister wished to give a direction, the minister could then try to ensure that the management plan was changed in order that the direction could be given?

Mr OMODEI: I understand that the reason for the proposed subsection is that the Minister for the Environment finally approves the plan, but it can be revised and there is a mechanism to arrive at such a revision. The Minister for the Environment explained that in a previous Bill in relation to the involvement of the Environmental Protection Authority and matters being referred to the EPA in relation to management plans.

Mr BROWN: Is it the intention that the minister for the purposes of this Act will be so constrained, and unless the Minister for the Environment, if that is a separate minister, agrees to change the management plan, the minister responsible for this Act could then not so direct if the direction is beyond the management plan? Has that been drafted deliberately to constrain the minister who will be responsible for this Act from exercising a discretion to issue a direction beyond what the Minister for the Environment may determine is appropriate for the management plan?

Mr OMODEI: It would be unusual if the Minister for Forest Products were the same minister as the Minister for the Environment. One of the reasons for this legislation is to try to avoid a gamekeeper/poacher arrangement.

Mr Brown: A lot of things have happened over the years, and personalities may change.

Mr OMODEI: Is that a signal from the Labor Party?

Dr Edwards: You would be a very good Minister for the Environment.

Mr OMODEI: I think I would too, and I actually have the track record to prove it. The member for Maylands has had this discussion with the Minister for the Environment. The two ministers would agree on the management plan, and if there was any stepping back from that, there would be a reference to the EPA. If the plan were to be changed substantially, it would need to be re-assessed, and when the two ministers agreed, it would need to be ticked off by the EPA.

Mr BROWN: Clause 10(1)(p) states that it is a function of the commission to advise the minister as to the performance of the minister's functions -

(i) under subsection (6a) of section 17 of the CALM Act in relation to a proposal . . .

(ii) under section 62(1aa) of the CALM Act . . .

Under clause 14(1), the minister may give directions to the commission. However, I assume it is not the intention to give the minister the power to direct the commission with regard to the advice it can provide to the minister under clause 10(1)(p), because there may be a temptation to use that clause to constrain the minister if the advice that will be received from the commission will be different from the advice that the minister had hoped to receive.

Mr Omodei: In theory that power will be there, but it is not intended to be used.

Mr BROWN: That is a bit of a problem. This Bill and the Conservation and Land Management Amendment Bill set up some tensions between different forces that are concerned about forest management and the environment to ensure that those forces can operate and focus on their areas of responsibility; and, at the end of the day, the Bills try to bring about a confluence of those forces and interest groups to ensure that a result can be achieved. However, we also have a minister who can issue directions, and a commission that can provide advice to the minister. Those two things may be different. We do not want a situation where the minister can constrain the commission by directing it not to provide advice to the minister.

While I appreciate the minister's comment that that is not the intention, I have seen, and no doubt the minister has seen, situations where members have drawn to the attention of the minister the implications of a certain piece of legislation, and the minister has said that is not the intention of that legislation and it is unlikely to occur; yet unfortunately three, five, 10 or 15 years down the track that has occurred. In 1981, advice was provided to the minister that he had left open a certain possibility, and the minister said he was confident that the legislation was not designed to operate in that way, yet in 1994-95 the legislation was used in that way and it cost the taxpayers of this State about $3m. If it is the intention that the minister cannot direct the commission in that way, that should be written into the Bill.

Mr OMODEI: The member for Bassendean is a conspiracy theorist. Yes, from time to time ministers disagree, but if there was a deliberate attempt by the minister to direct and it was against the law, it would be covered by clause 14(3), which states -

> The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament or dealt with under section 69 -
>
> (a) within 14 days after the direction is given; or
>
> (b) if the direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, within 14 days after it is confirmed under that section.

The member may not have been present when we discussed clause 14(7), which states -

> If a direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1966*, it does not become effective before it is confirmed under that section or the expiry of any extension of time notified under subsection (8).

Subclause (8) refers to an extension of time. The Statutory Corporations (Liability of Directors) Act sets out the checks and balances with regard to an unlawful direction.

Mr BROWN: I thank the minister for that explanation, but the point I am making is that the circumstance I am describing is not against the law.

Mr Omodei: It must still be tabled in the Parliament, so it will be open for all to see.

Mr BROWN: I agree that it will be tabled and will be open for all to see, so if the minister were to constrain the commission not to provide advice, members of the Parliament and members of the public would see that the minister had so constrained the commission, for whatever reason. However, as I read the Bill, it would not be against the law to constrain the commission in that way, and although it must be tabled in the Parliament, who knows the circumstances in which this might arise. For example, it could arise when the Parliament is in recess or at a time that is politically difficult for the Government of the day; therefore, the minister decides to exercise that discretion. It seems that if it is the intention that the minister should not issue an instruction which constrains the commission from providing advice to him on the performance of his functions, that should be made clear in the Bill. It would not take much to make that clear. It is simply a matter of writing into clause 14 a provision which says that the minister shall not give any direction in relation to the exercise of the commission's functions, as set out in clause 10(1)(p). I do not profess to be parliamentary counsel or to be able to come up with some eloquent words, but if that were the intention, it should not take parliamentary counsel very long to craft some words to make it absolutely clear. I do not understand the hesitancy to do that. After all, now is the time to do it. As the minister knows, after this Bill goes through the Parliament, everyone will be able to see it, and all the vested interest groups, as well as Government, will look to see how it survived, what it contains and what the obligations and powers are. If the intention is that the minister should not constrain the commission in this regard, rather than have it recorded and buried in *Hansard* somewhere, the obligation is on the Parliament to ensure that it is in the Bill for everybody to see. I do not see anything wrong with that. Legislation before the Parliament should be as clear and precise as possible. The insertion of such a provision in the Bill would make it clear that the minister shall not constrain the commission in that regard. I guess we raise these matters because some ministers have done things which are questionable. Not every minister of the Crown has a halo above him; they do not all operate in a non-political way or in a way in which they apply the law with the scrupulousness that they should. If the intention is that the minister should not constrain the commission from giving advice, why not move an amendment? It can be a government amendment - I do not have the words before me - which is very short and which achieves that objective.

Mr OMODEI: It is not intended that the minister should be constrained from giving directions. Why would we have a minister if he cannot direct the commission in its functions? Having given a direction, the minister must table it in the Parliament within 14 days, and when the Parliament is not sitting, clause 69(2) states that -

> A copy of a document transmitted to the Clerk of a House is to be -
>
> (a) taken to have been laid before that House; and
>
> (b) taken to be a document published by order or under the authority of that House.

Clause 69(3) states -

> The laying of a copy of a document that is taken to have occurred under subsection (2)(a) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

**If the minister does give a direction about the functions of the commission, all and sundry will know that the minister has given that direction. I cannot think of any direction that the minister would give that is not illegal and that would be unnecessary. The member is saying that this is a direction that is not unlawful, because if it is unlawful, the commissioners can use the relevant section of the Statutory Corporations (Liability of Directors)

Act to write to the minister and to inform him. The Government believes the clause should stand. Could the member give me an example?

Mr BROWN: Yes. I will go through this for the benefit of the minister. I do not have a problem with the minister being able to issue directions, in a general sense. However, the minister may issue directions with respect to the functions of the commission. That seems fine, except that it is a clear function under clause 10(1)(p) that the commission is to advise the minister as to the performance of the minister's functions. Therefore, those who have crafted the Bill have set it up, not so that the minister does this by himself or herself, but so that the minister gets advice - it is only advice - from the commission on the performance of his functions, as set out in clause 10(1)(p). It is a matter for the minister what he does about that advice, but the minister receives the advice from the commission on the way he or she will exercise his or her discretion.

Another clause enables the minister to give the commission directions. If the minister is concerned about the advice the commission might provide - that is, it is unwelcome advice and he does not want the advice because it may cause him problems, even though he can disregard it - the minister can seek to circumvent that advice by issuing a direction to the commission that it is not to issue that advice. Therefore, this is a way of stifling it. A commission is set up to give advice to the minister. That is another check and balance in the system, and that is fine - not a problem. However, the minister then says, "No, this is a bit risky. It is a bit worrying. I might get the wrong advice. I know what I will do. I will circumvent it. I will fix it up. I will issue a direction saying that the commission should not provide me with advice on this matter. I know it all. I have the answers. Thanks for coming. You do a really good job. It is beaut that you are here, but please don't give me any advice. I don't want it."

Mr Omodei: I think I was right. The member is a conspiracy theorist. Who would want the publicity surrounding a bun fight with the commission over an amendment of a timber boundary? It would be dynamite.

Mr BROWN: I reckon there would be a fair bit of controversy about timber boundaries, and there might be a minister or two who would not want the advice about timber boundaries. A minister might say, "Please don't give me advice on this matter. I don't want it. It might be difficult for me to reject it. How will I get away with doing something that is contrary to what has been recommended? I know: The easiest way is not to have a recommendation. That is the way to overcome it. I will give the commission an instruction to not give me a recommendation on this because it will be too difficult to handle. I don't want it." If the intention is, as the Bill provides, that the commission should stand alone in giving advice to the minister, unfortunately the minister must deal with that advice, and he cannot escape that by giving the commission a direction saying, "Thou shalt not give me any advice on these matters," for whatever reason or because of whatever political odium might attach to them.

Sitting suspended from 6.00 to 7.00 pm

Mr BROWN: I raised some matters before the suspension. I thought, towards the end of the rather persuasive argument that I put, that I might have convinced the minister, and so I am keen to hear his response, given the force of my argument, to see whether I had convinced him.

Mr Cowan: Naturally, you are disappointed.

Mr BROWN: I may not be; I live in hope. I still buy lotto tickets as well. I wonder whether the minister has considered that matter during the suspension and whether he is more inclined to support the amendment.

Mr OMODEI: I have considered in depth the member for Bassendean's comments. I believe the clause should stay as written. The clause enables the minister to give written directions. It is not unlike the ability for other ministers to give directions under other Acts of Parliament. They are important to the running of the commission and the ability of the minister to give direction. There are enough checks and balances in the clause and in the legislation to ensure that the minister only gives directions to the commission which are not outlandish or which will attract public attention.

Mr BROWN: It is not my intention to pursue this matter other than to say that I am disappointed, obviously, because this is a weakness in the Bill. If this weakness is exploited in the future by a minister, I will take pleasure in drawing it to that minister's attention. If the clause is not to be amended, I am disappointed but I will not continue to speak on it.

Clause put and passed.

Clause 15 put and passed.

Clause 16: Consultation -

Dr EDWARDS: Clause 16 deals with consultation. Before I make my comments, I acknowledge that clause 17 is about the minister being kept informed. My comment on consultation is that it is good that the commissioners and the minister will consult each other. Clause 16(2) states -

> The commissioners must consult with the Minister before the Commission enters upon a course of action that in the opinion of the Commission -
>
> (a) amounts to a major initiative; or
>
> (b) is likely to be of significant public interest.

My concern is that what the commission thinks is either a major initiative or is of significant public interest might be different from what the minister thinks and may well be different from what the community thinks. Recently we had an example of the Water Corporation embarking on a course and it is unclear whether it consulted the minister. I know the minister must be kept informed, but the reasons the minister must be kept informed appear to be somewhat different from the circumstances under which the commission might consult the minister. Will the minister ask the commission to inform him whether an event was likely to be a major rather than a minor initiative or some other type of initiative? Will the commission have the same type of savvy to be aware that something is likely to be of significant public interest? It gets down to how the commission, or a commission at a certain point in time, defines these terms. It depends whether they think an event is likely to be a major initiative and whether it thinks that a course of action it is about to embark on is likely to be of significant public interest. Can the minister reassure me that he is satisfied that the commission and the commissioners will consult him appropriately, given this clause?

Mr OMODEI: I am confident that the commissioners will be aware of what is a major initiative. I am thinking about my other responsibilities under the Disability Service Act. As the minister responsible, the board from time to time embarks on certain courses of action. In the four or five years I have been minister, I have had no problems. When they undertake a significant course of action, they advise the minister as is required under the amended legislation that we passed last year. To give the member an example: Were the Forest Products Commission to embark on a major plantation initiative, or a major study into value adding or something like that that would involve an amount of several thousand dollars, I am sure it would automatically understand that that is a major initiative and would be of significant public interest. I would expect it to consult with the minister and the legislation rightly requires that.

Mr RIEBELING: Clause 16(1) requires the commissioners and the minister to consult each other on a major event. I wonder why there is a provision for a third party or an appropriate representative. These major events do not occur every day of the week. I understand minor events do not necessarily require a minister to consult commissioners. However, for consultation on major events or occurrences, there would be no reason that the minister and the commissioners should not sit down and speak to each other. Will the minister advise us in what circumstances he envisages a representative will be needed to consult. Clause 16(2), as the member for Maylands has indicated, has certain requirements for an event or change that is of significant public interest. The main concern to me is that a minister and the commission may, for reasons known only to themselves, not want the public to know about various actions of the commission. Does this Bill elsewhere refer to the public becoming aware of that significant public interest, as referred to in clause 16(2)(b)?

Mr OMODEI: The member opposite suggests that the commissioners and the minister should consult. Is that correct?

Mr Riebeling: Yes. Why is it appropriate for a representative to represent either party?

Mr OMODEI: In my other portfolios, I have regular meetings with the disability sector, the chairman of the board and the Chief Executive Officer of the Disability Services Commission, and I have regular meetings with the Executive Director of the Department of Local Government. Likewise, I expect to meet with the manager and the Chairperson of the Forest Products Commission Board in relation to the commission. It is sensible. The minister would meet the entire board three or four times a year on a needs basis. That occurs across other ministerial responsibilities. I meet with representatives of disability organisations, the council of funded agencies and a range of organisations.

Mr Riebeling: I agree, but this provision does not refer to such meetings.

Mr OMODEI: Meetings between the minister and the commission will occur from time to time, and regular meetings will occur with the manager and the chairperson. Many of the situations involving matters of significant public interest would be covered under the statement of corporate intent and a range of other areas.

Mr Riebeling: Is that in the Bill?

Mr OMODEI: It is in clause 20.

Clause put and passed.

Clause 17 put and passed.

Clause 18: Notice of financial difficulty -

Dr EDWARDS: The commissioners under this clause must notify the minister if they believe they are likely to run into financial difficulty. My question relates to history. On the face of it, this provision refers to the commission's financial difficulty. Does this provision give the commission the capacity, as is written into some current contracts, for people to have royalty payments deferred? I understand that there will not be royalty payments, but that other payments will be involved.

Mr Omodei: Log prices.

Dr EDWARDS: Will the commission still have the flexibility to defer some payments in the current manner? Governments of all persuasions, until a year ago, gave flexibility to Whittakers Limited. Can the Minister comment? I am not sure whether that is a good or bad thing, although it is a good thing in the short or medium term. If the commissioners can give that flexibility, are they obliged to notify the minister? I know that they will never give flexibility to the extent that would place the commission in difficulty, as that would go against their function. Can the minister comment on the historical aspects of the Whittakers situation, and on the flexibility with current contracts? How will this clause apply beyond the commission?

Mr OMODEI: Giving flexibility to payments of royalties is not covered by this clause. I am not aware of any situation in the past in which a company placed the Department of Conservation and Land Management under financial difficulty. Undoubtedly, logging is a seasonal activity. Greater activity occurs in the forests at this time of the year with a greater number of logs delivered to the stockpile, which needs to be at its peak by May-June of each year. Certainly a liability from contractors to the commission will apply. Whether that places the commission in financial difficulty is a moot point. Clause 17(a) reads -

> Without limiting section 15, the commissioners must -
>
> (a) keep the Minister reasonably informed of the operations, financial performance and financial position of the Commission, including the assets and liabilities, surpluses and deficits and the prospects of the Commission.

I cannot foresee a situation in which the commission will be in financial difficulty. It should not allow that situation to reach the stage of the commission being in difficulty as a result of any flexibility or arrangements made with a contractor. Successive Governments gave Whittakers as much time as possible to meet commitments. New owners came in and restructured the operation and, unfortunately, it did not turn out as should have been the case.

Mr RIEBELING: I need an explanation regarding how the commission will charge.

Mr Omodei: They were royalties in the past, and they will be log or product prices in the future.

Mr RIEBELING: Do they reflect the cost of extraction, the maintenance of the department and the whole shooting match?

Mr Omodei: It is covered under clause 54 - "components of contract price".

Mr RIEBELING: If my understanding is correct, each year the commission will expect to receive at least as much as it is spending. Presumably traders will pay for log A when it arrives, or shortly thereafter: "How much has that cost? There is your bill." If we do not operate in that manner, we will be asking for strife. How will the commissioners advise the minister in this regard at any stage? It is a money making business, is it not?

Mr Omodei: Indeed. The commission is in the business of selling, value-adding and making money. The terms of trade are 30 days, and securities are in place in relation to the payment for the product.

Mr RIEBELING: Four or five of the Government's contracts would need to collapse to threaten the viability of the commission.

Mr Omodei: It would depend on the time of the year. We would not allow that to happen - not under a good minister.

Dr Edwards: You would have security anyway.

Mr OMODEI: The member for Maylands gave the example of Whittakers, for which the first secured creditor was the State Government. When the company defaulted on the royalty payments, the Government finally foreclosed on the company.

Mr RIEBELING: In relation to Whittakers - one would presume that that will not happen - will this notification for financial difficulty ensure that that sort of ever-increasing debt will be stopped much earlier under this system than it was under the previous system?

Mr OMODEI: I expect that the commission will keep a tight rein on contracts. Another part of the criteria which we are applying is the conditions on value adding of the resource. As an example, the new prescriptions are 100 per cent for premium grade jarrah, 70 per cent for first-grade jarrah and 50 per cent for second-grade jarrah. If the person who owns the contract and buys the timber does not meet that criteria, his contract will be terminated. That has been made very clear. There are two aspects of keeping control over the milling industry: One is the pricing mechanism and the other is the value-adding mechanism.

Mr RIEBELING: I may have misheard the minister slightly. Is it his hope that 100 per cent of high-grade timber is used or paid for straightaway?

Mr Omodei: One hundred per cent of premium-grade timber is value added.

Mr RIEBELING: Hypothetically, if a log has a value put on it, that price must be doubled. Is that what the minister is saying?

Mr OMODEI: No. Obviously the member does not understand it. The log pricing under this legislation, which replaces the royalty, will be the cost of managing the forest and delivering the timber to the mill. The methodology in that is quite complex. Once the log price has been arrived at, that is the price which is paid for the log. The new criteria for value adding is that 100 per cent of the sawn timber from a premium log and 70 per cent of the sawn timber from a first-grade log needs to be value added. For example, the recovery rate of a jarrah tree is usually between 30 and 35 per cent of the whole log. Part of the whole log will be sawdust, part will be bark, part will be rot and heart and so on. Out of the total log, value adding for sawn timber must be 100 per cent for a premium log, 70 per cent for a first-grade log and 50 per cent for a second-grade log. That has been increased from 70 per cent and 50 per cent previously.

Mr RIEBELING: When the minister said that the charges were determined by the cost of forest management and the delivery charges, my understanding was that, under the old system in which royalties were paid, the State received a substantial royalty return in excess of what it cost to run the department and to deliver the service. Are we now aiming purely at the recovery of costs and the maintenance of all forests in some way? If that is the case, how much of the old profits are we forgoing to sustain the industry?

Mr OMODEI: Clause 59 of the Bill refers to the components of the contract price. Clause 59(1)(g) refers to a component representing a profit from the exploitation of forest products. It is similar to what occurred before. Within that component will be tax equivalents which are paid as well.

Mr BROWN: I query why this provision has been included at all. I take it that the commissioners who are appointed under this Bill are not bound by the general corporations requirements that bind directors of companies. The Bill refers to the Statutory Corporations (Liability of Directors) Act 1996, which I understand to be the general Act which relates to directors of companies and which binds directors to act prudently and those sorts of things. I take it that the commissioners are not bound in a legal sense by the same obligations that apply to directors of companies through the federal Corporations Law.

Mr Omodei: I understand that the federal Corporations Law does not apply. However, the Statutory Corporations (Liability of Directors) Act, as amended, includes the commissioners of the Forest Products Commission in schedule 1. The commissioners will be directors for the purposes of that Act; for example, directors must act honestly, exercise reasonable care and diligence, not make improper use of information and not make improper use of their position.

Mr BROWN: I understand that that would be the case. If the commissioners are not bound by the general corporations powers in the context of company directors, why is it necessary to include this type of provision in the Bill? Governments establish many commissions which are not statutory authorities and which operate separate businesses, such as the Water Corporation or Western Power. Those commissions are in charge of government finances in the same way as chief executive officers of departments are required to operate within budgets. There seems to be some necessity to include in this Bill an obligation for this type of reporting when it does not appear in other Bills or Acts. Is this part of a new accountability measure, cross checking or standard clause which the Government intends to introduce in all future Bills for commissions of this nature?

Mr OMODEI: The member is correct. It is an extra accountability measure. I do not need to tell the member how prominent the forest issues are in the community today. It is an extra protection for not only the community but also the Parliament. The object of the exercise is to ensure that the whole accountability of forests and forest management is transparent and that the community is fully protected.

Mr BROWN: In relation to how it might operate, subclause (1) states -

The commissioners must notify the Minister if the commissioners form the opinion that the Commission is unable to, or will be unlikely to be able to, satisfy any financial obligation . . .

Subclause (2) provides -

Within 7 days of receipt of the notice, the Minister must -

(c) initiate such action as is required to ensure that the Commission is able to satisfy the relevant financial obligation when it is due.

Is it envisaged that the minister will issue directions? How is it envisaged that the minister will initiate such action on that advice? Will there be discussions? Does the minister hope the commissioners will do certain things and reach agreement or will the minister issue directions under the directions powers that the minister has about what the commission will do?

Mr OMODEI: There would be consultation between the commission, the minister and Treasury. I am trying to think of a situation where the commission could get into that position. The only situation I could think of, off the top of my head, would be in the case of a force majeure where a major fire or storm might damage plantations to an extreme.

Dr Edwards: Or an epidemic in the trees?

Mr OMODEI: Yes, an insect or something like that, which would require the commission to embark on activity extraordinary to its responsibilities, whether it be in a native forest or in a plantation.

Mr BROWN: Finally, I note the minister said that this clause is an additional accountability measure designed to provide better placed information and better degrees of scrutiny. However, there is no obligation in the clause to publish the advice given or any actions taken by the minister on it. Although there may be discussion between the minister and the commission and agreement as to what will occur, there is no other obligation to draw the attention of the Parliament to that matter.

Mr OMODEI: The previous clauses we have already discussed would apply if a direction were involved. Can the member for Bassendean think of any other examples?

Mr Brown: Those clauses may apply if it involves a direction. However, if it is not a direction no-one would know that something had occurred.

Mr OMODEI: Annual and half-yearly reports would be another mechanism, which is referred to later in the legislation.

Mr RIEBELING: The minister said this clause would increase accountability. We are talking about the commission not being able to function so we are referring to a major catastrophe.

Mr Omodei: That is right and everybody would probably know about it.

Mr RIEBELING: The extra accountability which the public wants is where a small operator is going down the gurgler and a large amount of wood is not fully utilised or is wasted. The public wants the forest to be properly managed so that wood products are not wasted. This accountability applies only if the commission collapses; and that is not likely to occur, given even major problems. If a large section of the forest were no longer harvestable or significant parts of the forest were to become diseased, no doubt the department's resources would be wound back to reflect that. I cannot see where the extra accountability rests in this clause.

Mr OMODEI: In the case of a small contractor going broke or into receivership, the commission, as a first-secured creditor, would have first call on security.

Mr Riebeling: This clause would not affect those situations?

Mr OMODEI: I do not believe so. The timber would not go to waste as it would be secured by the commission, as happened with Whittakers Ltd where all the timber was secured and distributed to other mills. The rest of the timber in the drying kilns was realised by the receiver-manager, first, on behalf of the State and then by the other secured creditors. Obviously, someone somewhere along the line missed out. However, this clause is an extra accountability measure. I expect if there was a major catastrophe it would become well known. It does not take much, by the way, to have a major disaster in the forest. Only two to three years ago a fire started at Quininup that burnt for about 60 or 70 kilometres all the way to Lake Muir. It did not take out a significant section of productive forest; however, we lost about 3 000 acres of regenerated forest that had been planted back in 1978. However, if there was a major catastrophe in mature forest there would be a significant loss. The problems associated with something like that would mean the commission would have to go into the forest and harvest the material to realise its value. One has only a certain amount of time to realise a pine plantation, otherwise it

deteriorates. That is just one example. I do not believe we will get to a situation like that; however, this is an extra accountability clause.

Dr EDWARDS: This is a good clause to have in the Bill and a good accountability measure, as the minister said. I hope that we never see it in use because I know the commissioners will be very competent. The minister would be aware that in the past couple of years I have asked many questions about Whittakers' debt and I have always been reassured of the extent to which the Department of Conservation and Land Management had it secured; CALM had it very well secured. Where did this clause come from? Is it a standard clause in other Bills which deal with the Forest Products Commission? What was its genesis? Are there commissions in this State on whose financial affairs the government needs to have a better handle?

Mr Omodei: I believe it was a suggestion of Treasury but I cannot confirm that.

Clause put and passed.

Clause 19: Half-yearly reports -

Dr EDWARDS: Given that the Government will shortly move an amendment that picks up the first part of my proposed amendment, I will not delay the House by moving my amendment. However, I want to make a couple of comments about where our amendment came from.

This clause, from memory, dealing with half-yearly reports is new and the Opposition welcomes the amendment. We further welcome the amendment which the Minister for Forest Products will shortly move to have the half-yearly report tabled before both Houses of Parliament. The Opposition became aware, when looking at other Bills and other commissions that, for example, the Government Railways Act 1904 requires Westrail to submit quarterly railways working accounts. That seemed to be a pretty good measure of accountability as under that Act a quarterly account must be provided with detailed information about the rolling stock, incidental expenditure and other expenditure. In this clause, the half-yearly report will not only be tabled in Parliament, but also it will be published in the Government Gazette. However, I believe that the amendment about to be moved by the Minister for Forest Products is virtually the same as the amendment we were about to move, therefore, I will not proceed with our amendment. Obviously, a half-yearly report will give both Parliament and the community much greater insight into what the commission is doing, and that is a good thing. The minister said that the Government has taken a number of measures to increase accountability; we welcome those measures. However, there is still a great deal of community interest about exactly what is happening in the forests and I do not believe that interest will go away. Therefore, there will be much greater accountability by having a half-yearly report tabled in the Parliament.

Mr OMODEI: I move -

Page 18, after line 5 - To insert the following -

(5) A half-yearly report shall be laid before each House of Parliament.

Subclause (2)(a) refers to a half-yearly report within two months after the end of the reporting period and paragraph (b) provides that another period can be agreed to between the minister and the commissioners within the agreed period.

Some Acts of Parliament require quarterly reporting. The commissioners in the City of Wanneroo reported quarterly, but by the time the reports were prepared it was almost into the next quarter. It makes sense to have half-yearly reports. Each report will be laid before each House of Parliament even when Parliament is not sitting. That is a good reporting mechanism that should satisfy the general public.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 20: Draft strategic development plan to be submitted to Minister -

Mr RIEBELING: A few minutes ago the minister indicated that the publishing of matters of significant public interest covered under clause 16(2)(b) will appear in the draft strategic development plan under clause 20. I cannot see how his answer bears any resemblance to putting matters of public interest into the draft strategic development plan to be submitted to the minister.

Mr Omodei: I think I referred to the statement of corporate intent.

Mr RIEBELING: The minister referred to clause 20.

Mr Omodei: I was referring to the statement of corporate intent under clause 31.

Mr RIEBELING: Both the minister and the commissioner will know what is the matter of public interest. However, the public may never find out what it is. I am trying to find out where the mechanism is by which

matters of interest to the public will be made public, given that it may be in the interest of the minister for such matters not to appear in the draft strategic development plan, which appears to be totally inappropriate. I am desperate to find out where matters of public interest will appear in the publications that the minister says will give extra accountability and transparency.

Mr OMODEI: If a major item of public interest arose, the statement of corporate intent would be amended. The half-yearly reporting provision is a mechanism for that to be made public. I expect also that the commissioners will report under clause 31(2)(m) which provides for such other matters as may be agreed by the minister and the commissioners to be included in the statement of corporate intent.

Mr RIEBELING: I refer to clause 16(2)(b) concerning a matter of significant public interest. What mechanism will be used to advise the public of that matter of concern? Must all matters of concern appear in the half-yearly report?

Mr Omodei: If it is a matter of major importance, we expect the statement of corporate intent will be amended and it should be reported in the half-yearly report.

Mr RIEBELING: Will matters of significant public interest be reported in the half-yearly report?

Mr Omodei: Yes.

Clause put and passed.

Clause 21 put and passed.

Clause 22: Matters to be included in strategic development plan -

Mr BROWN: I assume the term "profit" under section 12(1) referred to in subclause (2)(a) refers to profit of companies operating in forest products.

Mr Omodei: It is covered under definitions at page 4, and reads -

> "**profit**", in relation to the exploitation of forest products produced on public land, means an appropriate return to the State for that exploitation;

It is profit for the commission; the commission must make a profit.

Mr BROWN: Does the profit relate to profit to government from the exploitation of forest products rather than to any commercial operator that is involved in the forest industry?

Mr Omodei: It is the commission's profit on behalf of the State. Profit will probably go back into the other side of forest business.

Mr BROWN: Do the matters under subclause (2)(c) such as competitive strategies, sales and revenue projections, infrastructure maintenance, financial requirements and capital expenditure, relate to the government operation or to private sector companies that operate in the industry?

Mr OMODEI: Strictly for the Forest Products Commission.

Mr BROWN: The matters in this clause relate strictly to the commission, and in setting the strategic development plan, which would include the prices, the commission will look at all those matters as they apply to the commission in its operation, rather as they might apply to the private sector or commercial forest products industry.

Mr Omodei: We are really talking about the Forest Products Commission but, obviously, there will be a timber strategy for the whole of the industry, which is not covered in this legislation. That is a government policy matter.

Mr BROWN: Prices for commodities - timber is a commodity - rise and fall depending on supply and demand and so on. In recent days, for example, iron ore producers have achieved a 5 per cent increase in prices, and last year there was an 11 per cent reduction in prices. I am not sure what will happen with forest products as prices fluctuate. Presumably markets change as supply and demand change, and prices fluctuate. I am trying to ascertain the degree to which the price set by the commission - the Government - will reflect the price in the marketplace. To what extent will the commission take market operations into account, as opposed to its own operational considerations? If the words in the clause are intended to mean that the commission is required to look at its own operations in all these matters, to deliver a profit and to set a price accordingly, that would be one way of setting the price. Another way would be for the commission to look at all those matters, then look at industry viability, in terms of the prices available on the world market or domestic market, and then perhaps determine that prices could be lower or higher depending on the projected market price over the next 12 months, two years or whatever the patterns are in that market. I am trying to clarify the point. First, it seemed as though it would be more of a market price than a price set on the basis of an operating budget plus a profit. If it is to be

a price set on the operating budget plus a profit for the Government, will the issue of market price in any way influence the commission's consideration in setting prices in the strategic development plan?

Mr OMODEI: Clause 22(1) states that the strategic development plan must set out the commission's medium to long-term objectives, including economic and financial objectives and objectives relating to the non-commercial functions of the commission, and operational targets and how those objectives and targets will be achieved. At the same time, clause 12(1) sets out the principles on which the commission is to act, and states that the commission in performing its functions must try to ensure that a profit that is consistent with the planned targets is made from the exploitation of forest products while ensuring the long-term viability of the forest products industry. Reference is then made to ecologically sustainable management.

I anticipate that at times the industry will make higher profits. Under the current situation of a housing boom, the demand for timber is high and prices will be lucrative. As the member is aware, there are peaks and troughs in supply and demand, particularly in demand, and the private sector would receive smaller profits in times of low demand. However, under this legislation, the commission is obliged to cover its costs and to make a profit; that is the pricing policy that will be set. We cannot expect the Government to subsidise industry by taking a low price at times of low demand. Alternatively, if that were the case, they are not the principles by which this Government would run a business because it would then demand that it set a higher pricing policy in times of good prices and strong demand. The commission must make a profit, and it must comply with ecologically sustainable management and ensure the long-term viability of the forest products industry. That is what the Government is doing in downsizing the industry to ensure it is a sustainable industry long term that tailors its supply to the availability of the resource. Obviously, the pricing to the private sector would depend on supply and demand.

Mr BROWN: I take it that the pricing model will be based on operational costs of the commission, which include such things as revenue projections and infrastructure, which the commission must consider for itself, plus a profit. That is primarily the focus. However, I wonder what is the situation with regard to clause 12(1)(a) which refers to the long-term viability of the forest products industry. In the event that timber prices fell on the domestic and world markets to a point at which if the commission maintained its operational costs plus a profit, the margin would be so thin as to threaten the viability of the forest products industry, would the commission then reduce its price so that its profit was smaller?

Mr OMODEI: I refer the member to clause 59 relating to components of contract price. Clause 59(2) states that if the commission and the executive director cannot agree on the amount that is necessary to enable full recovery of costs, the Treasurer is to determine the amount. I dare say that in times of low demand and high production costs, there would be a rationalisation of the industry. Across Australia major American companies are taking over most of the pine resources. There could be a situation in which competitive forces cause a rationalisation of industry as well. Certainly there are some mechanisms by which we can address those issues.

Mr Brown: In those circumstances, would the commission lower its profit margins in order to try to meet the other objective of maintaining a viable industry?

Mr OMODEI: It is a difficult question to answer. I hope we are never in that situation. There probably would be a shake-out in the industry before that happened, and when there is a shake-out the smaller, less viable or the less equipped producers would lower production and tailor it to the demand. I do not think the Government would want to run its commercial forest operations at a loss; I hope it does not happen. We must find out if it does happen.

Mr Brown: The legislation permits it to happen.

Mr OMODEI: Under clause 59 reference is made to the commission setting the price for the sale of forest products under a production contract and what that contract must include. In subclause (1) reference is made to the case of a contract relating to forest products on land the subject of a commission sharefarming, the commission's operating costs in relation to the forest products and a component representing a profit from the exploitation of the forest products. Then again, under subclause (2) -

> If the Commission and the Executive Director cannot agree on the amount that is necessary to enable full recovery of costs as referred to in subsection (1)(c) or (d), the Treasurer is to determine the amount.

That may mean some flexibility in the pricing during a critical situation.

Clause put and passed.

Clause 23 put and passed.

Clause 24: Minister's powers in relation to draft strategic development plan -

Mr RIEBELING: It appears that the minister has the power of veto in the case of a dispute with the commissioners over what should be put into the draft strategic development plan. Under subclause (3), the minister may direct that the draft plan be modified in whatever way he thinks fit. Why is it necessary for the minister to have that overriding power of veto? I cannot see why it would occur, but if a dispute between the minister and the commissioners reached this point, is there any capacity for Parliament to be notified of the range of dispute? I understand the minister must table the amended copy of the plan in the House 14 days after the direction is given. Will the reasons for the dispute and the other side of the argument be divulged to the House when the amended plan is tabled?

Mr OMODEI: As an example, as the minister, I could direct the commission to manage current blue gum stocks in preparation for sawlogs to augment supply to the Pemberton mill after 2003. That suggestion might not be raised in the draft strategic plan but could be government policy. The accountability measures are quite clear -

> (3) If the commissioners and the Minister have not reached an agreement on the draft strategic development plan by one month before the start of the next financial year, the Minister may, by written notice, direct the commissioners -
>
> (a) to take specified steps in relation to the draft plan; or
>
> (b) to make specified modifications to the draft plan.
>
> (4) The commissioners must comply with a direction under subsection (3) as soon as is practicable.
>
> (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 69.

The accountability measures are specified in the Bill.

Mr RIEBELING: The legislation does not provide that the minister must say what the dispute is.

Mr OMODEI: The method by which the reasons for the dispute become known are contained in clause 14(3). The commissioners may object to the minister's objections and give the reasons for that. It is contained in clause 14, which the House has already debated. The commissioners may object under the Statutory Corporations (Liability of Directors) Act.

Mr RIEBELING: Is the minister saying that clause 14 of the Forest Products Bill compels the minister to also publish the reasons for the dispute when the ministerial direction is tabled?

Mr Omodei: The commission is subject to half-yearly reporting.

Mr RIEBELING: The minister keeps mentioning the half-yearly reporting, but we are talking about the strategic development plan. The commissioners will not necessarily have a problem with including a ministerial direction in the agreement. Clause 14 would come into play if there were a direction with which the commissioners disagreed. However, under clause 24, we are talking about the power of veto by the minister to change a draft strategic development plan. I am trying to understand how the public will be involved. Will the public know the reasoning behind the minister's decision to veto the commission's objection to including his direction in the statement?

Mr OMODEI: Clause 14(3)(b) refers to the Statutory Corporations (Liability of Directors) Act and section 17 of that Act states -

> (1) Where a direction is given under a written law to a corporation by a Minister and the governing body determines that . . .
>
> (b) the direction is unlawful . . .
>
> (2) Where a governing body gives such a notice to the responsible Minister, that Minister is to either -
>
> (a) cancel the direction; or
>
> (b) or confirm it and state his or her reasons for doing so.

The reporting mechanism is contained under clause 69 of this Bill. Clause 14(3) states -

> The Minister must cause the text of any direction under subsection (1) be laid before each House of Parliament or dealt with under section 69.

Clause 69 refers to the tabling of the document when Parliament is not sitting.

Mr RIEBELING: I understand that the provisions state that the minister's direction must be published and his strategic development plan must be tabled. I understand that all the things the minister does must be tabled.

However, it does not contain the alternative argument. What if the minister is in dispute with the commissioners over the strategic development plan for the industry and we get one side of the argument from the minister but the commissioners have a different argument? We are talking about accountability and, presumably, as the minister has stated, the commissioners will be eminent people who will have a knowledge of the industry and access to independent review teams and proper management plans. If there is a dispute of that magnitude between the minister and the commissioners, then as a measure of accountability surely both sides of that dispute should be published, but in the provisions indicated by the minister I cannot find where that would happen.

Mr OMODEI: I am advised that the commissioners may table any concerns they have about those directions in the annual report.

Clause put and passed.

Clauses 25 to 27 put and passed.

Clause 28: Concurrence of Treasurer -

Mr BROWN: Clause 28 provides that the minister shall not agree to a draft strategic development plan or any modifications to that plan except with the concurrence of the Treasurer. I take it that this provision is being included because presumably the budget for the year is intended to include expected revenues from this area. Is that the purpose of its inclusion? Therefore, if there are to be modifications to the strategic plan which may result in a different income to that expected, those modifications will require the Treasurer's approval.

Mr Omodei: The Treasurer's approval will be required not only for modifications but also for borrowings. The budget and the borrowings will need to be approved by the Treasurer.

Mr BROWN: Okay. I guess that is an another checking mechanism; there seems to be a number of them in the Bill. I hope that afterwards -

Mr Omodei: That it works?

Mr BROWN: I hope someone does a diagram of the process because it will be fascinating to see how this will all work schematically.

Mr Omodei: It is a bit of a problem when you have to draw pictures for the minister.

Mr BROWN: I have received the clarification I sought.

Clause put and passed.

Clauses 29 and 30 put and paused.

Clause 31: Matters to be included in statement of corporate intent -

Mr OMODEI: I move -

> Page 22, line 15 - To delete "ecologically sustainable management of" and substitute "principles of ecologically sustainable forest management to be applied in the management of indigenous"

This amendment also relates to ensuring continuity between this clause and the clauses amended previously to gain the agreement of the Opposition about ecologically sustainable forest management. This amendment will be moved wherever required in relation to the terms set out in clause 31(2)(a)(ii) to ensure continuity not only in the clauses which have been inserted into the Bill but also in the amendments to the Conservation and Land Management Amendment Bill 1999.

Dr EDWARDS: I inform the House that I will not be moving the amendment standing in my name. The minister's amendment picks up the intent of the Labor Party's amendment and we thank him for moving it. We will be debating the amended clause in a minute but I take this opportunity to ask the minister a question about the clause. Clause 31(4) says a community service obligation is "a reference to a community service obligation that may affect the capacity of the Commission to comply with section 12 in respect of its functions" under various sections. Can the minister give the House an example of what a community service obligation is likely to be, what impact it will have on the commission, and the estimated compensation the commission will be seeking for the performance of this community service-type obligation? We remain unclear about what sort of community service obligation a Forest Products Commission would have, given its functions and the principles it will be abiding by. With the amendment the minister has just moved and the amendments we have moved today, the commission will now be taking ecologically sustainable forest management into account. We are relieved that its motive will not be solely profit but CSOs might arise from that. We are interested in some clarification from the minister as to exactly what he believes the community service obligations will entail.

Mr OMODEI: Examples of community service obligations include the maritime pine project. It is a long-term project over 25 to 30 years involving the propagation of seedlings and the planting out of 15 000 hectares of

maritime pine a year to combat salinity - it is 150 000 hectares in total - in areas like Moora, Katanning and Esperance. Another example is the Oil Mallee Association project. From an environmental point of view we are looking at conserving land and combatting salinity while at the same time providing a resource at the other end of the project. In the initial stages I doubt whether either of those projects will be commercially viable and we may need a community service obligation from Government and that would probably come out of the profit made from the Forest Products Commission's commercial activities. These are two examples and there are probably others. Notification would be needed within the statement of corporate intent that the community service obligation applied. I think that will probably be the only way that we can embark on major projects like the maritime pine project and the Oil Mallee Association project.

Mr BROWN: Subclause (4) provides -

> A reference in subsection (2) to a community service obligation is a reference to a community service obligation that may affect the capacity of the Commission to comply with section 12 in respect of its functions under section 10(1)(c), (e) and (i).

Section 12 places an onus on the commission in the performance of its functions to try to ensure that a profit consistent with planned targets is made from the exploitation of forest products while ensuring the long-term viability of the forest products industry and the ecologically sustainable management of indigenous forest products. Clause 31(4) accepts that the commission may not be able to comply with section 12 in respect of its functions under section 10(1)(c), (e) and (i). Paragraph (c) relates to the selling of forest products by way of a contract. In what respect would that mean the commission is then complying with its community service obligations in that those obligations will allow the commission to sell forest products other than by way of a contract?

Mr OMODEI: Section 12 relates to selling things for a profit, the long-term viability of the forest products industry and ecologically sustainable management. Section 10(1) refers to selling products by way of contract, requiring rights and powers and accepting obligations under sharefarming agreements or through the agency of the executive director under sharefarming agreements, and entering into contracts with any person for the harvesting of products. The commission may enter into contracts or sharefarming arrangements which do not return a profit. For example, salt amelioration does not return a profit, but that is a call on the commission or the Government to honour a community service obligation under clause 31(4).

Mr BROWN: How would that apply when the commission is selling forest products by way of contract? Clause 31(4) provides an exemption from that. How does that sit in relation to clause 31(4)?

Mr Omodei: There is no exemption.

Mr BROWN: In the selling of forest products, presumably one does not have to comply with section 12 in the making of a profit.

Mr Omodei: That is what is intended. In that situation we would call on the community service obligation at least to make that pay.

Mr BROWN: The intention is that one might sell timber to cover costs but not to make a profit if a CSO is involved.

Mr Omodei: That is correct.

Mr BROWN: Subclause (3) provides what is to be included in the statement of corporate intent. Subclause (3) provides that the minister may exempt the commission from including any of the matters mentioned in subclause (2) in the statement of corporate intent. If it is appropriate to have a statement of corporate intent as proposed, and if it is apposite to have the matters referred to in subclause (2) dealt with in the statement of corporate intent, what circumstances would give rise to exempting the commission from including any of those matters in the statement?

Mr OMODEI: I cannot think of any. If we embark on a plantation in an area remote from facilities and the harvesting and freighting of the product renders the project not necessarily viable, the CSO will then be applied. The question is whether the minister would choose to exempt the commission from including any of those matters. I will check that. It is a question of how much detail we would require the commission to provide. This gives the minister the ability to exempt the commission in a case in which it was not deemed necessary to include a matter in the statement of corporate intent.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 32: Statement of corporate intent to be agreed if possible -

Dr EDWARDS: This clause provides that the commission and the minister must try to reach agreement on the statement of corporate intent as soon as possible and in any event not later than the start of the next financial year. Obviously statements of corporate intent are provided to allow both Parliament and the public to know exactly what the commission will be doing and, in particular, what will be happening in the relevant financial year. A key issue is that the statement should be made available before or, at the very worst, at the beginning of the relevant financial year so we all know what is going on. This legislation and other legislation dealing with corporatised entities requires the statement to be made available before the start of the financial year. Unfortunately, the Government has not had a good record in this regard. For example, the Water Corporation's 1997-98 statement of corporate intent was agreed to by the minister on 31 March 1997; that is, before the start of that financial year. It then took nine months for it to reach Parliament. A document that was meant to be made available for the awareness of the community and the public did not come into that domain until nearly seven months into the financial year. What mechanisms will the minister have to ensure that both the statement of corporate intent and the strategic development plan are made available to the Parliament before the beginning of the financial year?

Mr OMODEI: The statement of corporate intent must be agreed to if possible. The clause states that the commissioners and the minister must try to reach agreement, as the member has said, no later than the start of the financial year. The member does not need to make comparisons between the Water Corporation and this body, which has an unblemished record so far. The commissioners must comply with a request under subclause (1) as soon as is practicable. Clause 33(3) states -

> If the commissioners and the Minister have not reached agreement on a draft statement of corporate intent by one month before the start of the financial year, the Minister may, by written notice, direct the commissioners -
>
> (a) to take specified steps in relation to the draft statement;
>
> or
>
> (b) to make specified modifications to the draft statement.

It is referred to in clause 35(2), which states -

> The Minister must within 14 days after agreeing to a draft statement of corporate intent under subsection (1) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 69.

That relates to the tabling when Parliament is not sitting. Clause 32 says that the statement of corporate intent must be agreed to if possible. The only time that would be delayed would be when the minister sends it back and does not agree with the commissioners. However, there are requirements under the legislation to take specified steps in relation to the draft statement, and the minister must table it within a certain period.

Clause put and passed.

Clauses 33 and 34 put and passed.

Clause 35: Minster's agreement to draft statement of corporate intent -

Dr EDWARDS: Clause 35 deals with the minister's agreement to the draft statement of corporate intent. Subclauses (3) and (4) deal with the fact that deletions can be made from the statement of corporate intent if it contains information which is commercially sensitive. Subclause (4) is a check on that sort of balance in that the Auditor General then makes a comment about whether the information deleted is commercially sensitive. In the general scheme of things, what sort of issue might be deemed to be commercially sensitive? This is a particularly pertinent question given that the minister has put a lot into this Bill which increases accountability. I am interested in what he has in mind with these two subclauses.

Mr OMODEI: One example would be a situation in which the commission competes with the private sector in plantations, whether they be pine or blue gum plantations or any other timber species. For example, it may include the inputs into the management of plantations when it must compete with the private sector. There may be situations in which the commissioners request the minister to delete that from the copy of the statement of corporate intent. That is one example, and I am sure there would be many others in which there is competition. As the member would be aware, with all of these prospectus-driven plantations, the management of those plantations, the management of some of the great southern plantations of the overseas companies, or if there are to be investors under carbon credits-type plantations, there will be competition between the Government and the

private sector. Those companies may want to keep commercially confidential some of the inputs in those contracts, whether it be management, growing, harvesting or whatever.

Clause put and passed.

Clauses 36 to 38 put and passed.

Clause 39: Other staff -

Dr EDWARDS: I understand that all of the clauses about the remuneration and other terms and conditions of employment are no less favourable than those provided for in a number of other Acts and awards. Will the staff from the Department of Conservation and Land Management who transfer across be able to retain all their conditions and entitlements in a seamless way, and will they be able to stay there for the term of their natural working life, so to speak?

Mr OMODEI: The transfer of positions is covered under clause 6 of schedule 1 of the Conservation and Land Management Amendment Bill, which we have just debated. For example, clause 6(3) states -

> A person holding a position when it is transferred to the Forest Products Commission is to be regarded as having been engaged under section 39 of the Forest Products Act.

Clause 6(4) states -

> Except as otherwise agreed by a person referred to in subclause (3), the remuneration, existing or accrued rights (including the right to be employed for an indefinite period in the Public Service), rights under a superannuation scheme or terms, conditions or continuity of service of the person are not affected, prejudiced or interrupted by the operation of subclauses (2) and (3).

Mr BROWN: In relation to subclause (3), is it intended for the staff who are transferred that the positions with the commission will be advertised and that staff will have the opportunity to apply for those positions, or is it intended that people will be "asked" to transfer? What is the intention in that regard?

Mr OMODEI: The two top levels of management will be advertised and the rest will be covered under the transfer of positions under clause 6(1) of schedule 1 of the Conservation and Land Management Amendment Bill. We are splitting the roles and responsibilities for the new Department of Conservation and the Forest Products Commission. There will be a split of positions and a new structure with all of the various responsibilities outlined in a schematic way so that people apply for positions. All of the current officers are guaranteed to retain positions.

Mr Brown: Is the intent then to advertise all of the positions but limit it to the existing staff?

Mr OMODEI: The top two layers will be advertised, and the rest will be covered under clause 6(1)(a) of the Conservation and Land Management Amendment Bill, which states -

> the negotiation, preparation, administration and enforcement of contracts for the sale of things that are forest products;

These are the performing duties. Subclause (1)(b) states -

> the negotiation, preparation, administration and enforcement of contracts under section 88(1a) of the CALM Act in relation to things that are forest products;

Clause 6(1)(c) refers to arrangements in relation to timber sharefarming agreements referred to in section 34B of the Department of Conservation and Land Management Act. Paragraph (d) refers to the establishment or maintenance of plantations of forest products and plant nurseries for the production of forest products. Paragraph (e) refers to research into the management and production of forest products and plantations. Paragraph (f) refers to research into the use of forest products, and paragraph (g) refers to the provision of corporate services to the department including personnel, financial management, computing, legal, marketing etc. They are the responsibilities that will be retained without advertising.

Mr Brown: Could the minister clarify the physical location of the commission?

Mr OMODEI: The head office of the Forest Products Commission will be in Perth.

Mr Brown: On which site?

Mr OMODEI: That has not been finalised yet. It is the Government's intention to ensure a physical division between the office of the Forest Products Commission and the Department of Conservation. That will also be the case in non-metropolitan regions and in country towns. In some cases the Department of Conversation may be located in one town and the Forest Products Commission in another town. For example, in Manjimup, where there are multiple buildings, the Forest Products Commission will possibly be located in the current district

office of CALM, and the Department of Conservation in the regional office. They are the sorts of activities we are going through now.

Mr Brown: Obviously some regional staff will come over to the commission. Will staff - not the senior positions - be asked not only to come over to the commission but also to shift house?

Mr OMODEI: There may be some cases in which that will occur. The same sort of logistical action took place in 1985 with the amalgamation of the organisations which dealt with fisheries, national parks and forests. We have had a number of strategic planning sessions. I have spoken at a number of those meetings in the metropolitan area and elsewhere and have addressed employees as I move around the State. The officers have shown great willingness to find solutions to any difficulties that arise. Some people may have to travel, but many of them travel anyway. For example, people in Walpole and Pemberton might work in Manjimup; and Manjimup residents might work in Pemberton. I do not think that is a major issue. We will resolve those issues with some goodwill.

Mr Brown: What will occur in the event that someone who is already travelling now will have to travel a lot further and that makes the job unviable?

Mr OMODEI: I am not aware of those concerns being expressed. However, a person who works for CALM in the plantation division and makes part of his income in fire control in the burning season was concerned he would lose $5 000 to $8 000 of his income. It was made clear that the services provided by the Department of Conservation in relation to fire control will continue as though nothing has changed. The Department of Conservation will draw on personnel from the Forest Products Commission and vice versa and there will be charges. In other words, the Department of Conservation will charge the Forest Products Commission for fire control and so on.

Mr Brown: What will be the size of the commission staff?

Mr OMODEI: The Forest Products Commission will have 235 staff and there will be 1 000 in the Department of Conservation, which has responsibility for land management in the whole of the State.

Clause put and passed.

Clause 40 put and passed.

Clause 41: Funds of Commission -

Dr EDWARDS: This clause spells out the various ways in which the commission may get its funds, and paragraph (a) refers to "moneys from time to time appropriated by Parliament". If the commission has money appropriated by Parliament will it be appearing in Estimates Committee hearings?

Mr OMODEI: Normally if funds are appropriated by Parliament they would be subject to discussions in the Estimates Committee hearings. I will check on that between now and the third reading and advise the member.

Clause put and passed.

Clause 42: Forest Products Account -

Dr EDWARDS: Subclause (2)(c) refers to interest on repayment of moneys borrowed by the commission. What proportion of CALM's debt will be transferred to the commission and is this the appropriate place to ask about it?

Mr OMODEI: We do not have the detail on that at the moment. However, the debt associated with production in native forests and plantations would go across to the Forest Products Commission. Any debt to do with the commercial arm of production would be allocated to the Forest Products Commission, and the rest would remain in the Department of Conservation.

Clause put and passed.

Clause 43: Liability of Commission for duties, taxes, rates etc. -

Dr EDWARDS: Subclause (4) states that the commission will pay to Treasury an equivalent amount of local government rates. Where does that money end up? Does local government ever see any of that money. It is quite an issue.

Mr OMODEI: It goes into the pot, as it does with all other government trading enterprises. Local government does not see any of it directly.

Dr Edwards: Which hat is the minister wearing?

Mr OMODEI: At the moment I am wearing the hat of the forest products minister. The well-worn argument that rating equivalent should be paid by government trading enterprises has been around for many decades. The Government would argue that local government gets a return of some of their rates in some programs that the State Government funds. However, it is intended that the rate equivalent payments will stay with Treasury.

Clause put and passed.

Clause 44: Dividends -

Dr EDWARDS: Under subclause (1) the commission has the option of paying any surplus either wholly or partly as a final dividend to the consolidated fund or applying it to its own purposes. Under the Water Corporation Act and the Gas Corporation Act, both those entities must pay a final dividend. They do not have the option of applying the profit to their own purposes. I am foreshadowing moving an amendment based on those Acts to tighten up this clause and to empower the minister, with the Treasurer's concurrence, to direct that a final dividend is to be paid and how much is to be paid. Therefore, we will oppose this clause with a view to substituting our proposed new clause.

Mr OMODEI: The Government intends to oppose the amendment should it be moved. I see no necessity for the amendment to be moved. Under clause 17 the minister is to be kept informed. Under 17(a) the minister must be kept reasonably informed of the operations, financial performance and financial position of the commission, including the assets and liabilities, surpluses and deficits and prospects of the commission. Clause 44 reads -

(2) The commissioners, as soon as is practicable after the end of each financial year, are to make a recommendation to the Minister as to -

(a) whether a final dividend is to be paid; and

(b) if so, the amount to be paid.

(3) The Minister, with the Treasurer's concurrence -

(a) may accept a recommendation under subsection (2); or

(b) after consultation with the commissioners, is to direct that the amount of the final dividend is to be some other amount.

(4) The Commission is to pay the dividend -

(a) as soon as practicable after the amount is fixed under subsection (3); and

(b) in any case not later than -

(i) 6 months after the end of the financial year to which the final dividend relates; or

(ii) such other time as may be agreed between the Treasurer and the commissioners.

(5) If the commissioners consider that payment of an interim dividend to the Consolidated Fund is justified during part of a financial year the commissioners may make a recommendation to the Minister as to the amount of the interim dividend that the commissioners recommend should be paid.

(6) The Minister, with the Treasurer's concurrence -

(a) may accept a recommendation under subsection (5); or

(b) after consultation with the commissioners, is to direct that the amount of the interim dividend is to be some other amount.

(7) The Commission is to pay the dividend -

(a) as soon as practicable after the amount is fixed under subsection (6); and

(b) in any case not later than the end of the financial year to which the interim dividend relates.

I sought advice from Treasury. Its officials saw no necessity for the amendment, so the Government will oppose the amendment.

Mr BROWN: What are the projected dividends for the next few years?

Mr OMODEI: I am advised it will be up to the commissioners on their recommendation to the minister. However, to give an example, if it were to be 50 per cent of the profit, it would be in the vicinity of $3m to $3.5m. We will be conducting a pricing review in the near future. It depends on what will be the pricing, the production of timber, the community service obligations and so on. It is hard to say definitively at this point what would be the dividend. We will be in a better position at the end of the next financial year to give an indication. It depends too on what happens with forest management, the management plan and the volumes of timber that come through as a result of the next forest management plan.

Mr BROWN: I take it that currently the arrangement is that this money is paid in and used by the existing Department of Conservation and Land Management because CALM draws from the consolidated revenue fund anyway. I assume with the breaking up of the department into two departments, the Government will, on the one hand, be increasing the allocation of the consolidated revenue fund to the Department of Conservation while, on the other hand, be expecting that some or all of the shortfall will be made up by the dividend that will be paid through the commission. Is that analysis correct?

Mr OMODEI: Obviously we would expect the Forest Products Commission to pay for itself and provide a dividend to government. On the other hand, with the Department of Conservation, if one looks at the changes in relation to woodchipping and royalties availability and the Regional Forest Agreement, if there is a reduction in timber output, obviously that will affect income. One would therefore expect that the allocation from the consolidated fund to the Department of Conservation would increase significantly.

Mr BROWN: Will it be more than the $3.5m?

Mr Omodei: I am sure it would be a lot more than that.

Clause put and passed.

Clauses 45 to 49 put and passed.

Clause 50: Application of *Financial Administration and Audit Act 1985* -

Dr EDWARDS: I move -

> Page 34, after line 18 - To insert the following -
>
> (2) The Commission's annual report must include a comparison of the performance of the Commission with any relevant statement of corporate intent.

I have modelled this amendment on the Gas Corporation Act of 1994 which requires AlintaGas, which is not subject to this provision of the Financial Administration and Audit Act, in its annual reports to make a comparison of its performance with its statement of corporate intent. There is no similar requirement for the Forest Products Commission, and the Opposition believes its annual report should show how it has performed against the targets, planned achievements, pricing, revenue and expenditure and all the other matters outlined in the statement of corporate intent.

Mr OMODEI: The Government has sought advice on this amendment proposed by the member for Maylands, and I am advised that the proposed amendment would significantly increase the scope of the commission's annual report. The advice suggests that the clause not be amended, and notes that both the statement of corporate intent and the annual report are public documents which facilitate a comparison between the two documents. In addition, section 40 of the Financial Administration and Audit Act requires a comparison of performance against estimates contained in the previous year's annual report. On that basis, the Government does not intend to support the amendment.

Amendment put and negatived.

Clause put and passed.

Clauses 51 to 55 put and passed.

Clause 56: Contracts generally -

Mr BROWN: This clauses provides that without limiting clause 10(4), the commission may make any appropriate commercial arrangements or do anything else that it considers appropriate, for the purposes of entering into production contracts and road contracts, including conducting negotiations by private treaty and so on. What circumstances might give rise to a contract being entered into by private treaty? It seems to me that these days there is an expectation that contracting arrangements will be open and there will be competition for contracts that become available. Entering into contracts by way of private treaty suggests there might be some other process for entering into contractual arrangements. Exactly what is envisaged in the arrangements

described in the Bill as "conducting negotiations by private treaty"? Is it envisaged, for example, that there will be one, two or three preferred contractors and negotiations will go on with those contractors, following which a decision will be made by the commission, or commission staff, and the contracts will not generally be advertised? Will the minister indicate what is intended by this clause?

Mr OMODEI: In most cases major timber contracts will be renewed by private treaty; in other words, by negotiation. In the main, most road contracts will be let by tender, but flexibility is needed in the legislation to allow the Forest Products Commission to enter into an agreement by private treaty. If there is an emergency or if extra roads need to be built very quickly because of heavy rainfall and so on, the commission may need to engage people by private treaty. The member is correct in saying that usually a number of contractors are available for that sort of work. For example, the Department of Conservation and Land Management has its own machinery, but it also has an inventory of private contractors on call in the case of a wildfire. In that situation, tenders would not be let. Fire control will be under the auspices of CALM. However, it may burn forest that is within the responsibility of the Forest Products Commission. If a fire jumps over roads or burning buffers, it may be necessary to engage people to build not only roads but also firebreaks.

Mr BROWN: I concur with the minister that in the event of an emergency, the situation must be dealt with. However, prior to that situation arising, the commission must have all sorts of contingency plans. Presumably it does not work in a vacuum and expect there to be no fires so that when one occurs, it then inquires if equipment is available in Narrogin, for example.

Mr Omodei: They have an inventory and they have people on call.

Mr BROWN: I would have thought that it would also have arrangements that might be updated annually or every couple of years indicating the rates agreed for certain contractors and their equipment. Otherwise, the commission might get some very steep bills after the event if it had not arranged the deal before the work was done. I understand the need to act quickly when an emergency arises, and these days people are more aware that emergencies tend to arise more often than not and they must pre-plan for that eventuality.

Mr Omodei: They do to the extent of having people on call, on flat rates, and on 24 hour call in the case of an emergency. Emergencies do arise during normal logging activities and from time to time there may be a section of road that is not provided for under the contract that could be negotiated by private treaty.

Mr BROWN: I certainly would not want to speak against the agency being able to deal with an emergency situation. It must have the flexibility to deal with that. However, given some of the things I have seen with government contracting arrangements, I have a major reservation about this provision being so broad. This power should be more constrained in terms of emergencies or smaller contracts, or even regarding an existing plant. The power appears too wide, and Parliament's acceptance of that power will enable the commission or the general manager, when asked why certain contracts have been let, or why other contracts have been let by private treaty and why they were not opened up to others so they could compete for a contract, to respond, "The power is in the Act to which the Parliament has agreed and that is what has been done." That could be somewhat of a problem. It would have been better to state the circumstances under which the power might be used - whether it be for an emergency or for minor contracts of, say, $500, where more would be spent on administration than the actual value of the contract, or for those contracts where there is an existing timber company.

The other issue is that with the reduction over time of the availability of timber, presumably competition for the timber will occur between different mills. In the event of timber prices being higher due to a reduction in supply, there may well be a contest as to who is to get the allocation. The State may not receive the best price if the price is negotiated by private treaty because considerations other than the best return to the taxpayer may come into play.

Mr OMODEI: The conduct of production contract negotiations by private treaty would be more in relation to volume than price. The price would be set under the pricing mechanism. I assure the member that it is my intention that the majority of contracts will continue to be dealt with by public tender. Competition will occur between logging contractors as the timber resource diminishes. A huge reduction - of the order of about 300 000 or 400 000 cubic metres - in the amount of chip log will go to the Diamond chip mill. Obviously some logging contractors will drop out of the system, but I hope they will pick up a lot more work in the plantation area, particularly with blue gums, thinnings and the freighting of the product. Members can be assured that it is my intention that the vast majority of contracts will be let by public tender, as I understand is currently the case. We just need some flexibility in relation to negotiation by private treaty - volumes need to be handled by private treaty - and with the other issues where contracts can be let, it will be only a minimal arrangement to ensure that flexibility exists to provide that infrastructure.

Mr BROWN: I wonder if the minister is willing to reflect on that matter before the Bill goes to the other place. I see it as wide open and while I have no reason to doubt the minister's bona fides, he may not always be the relevant minister and other people may have a different philosophy and that different philosophy may be implemented.

Mr Omodei: I will obtain more specific examples of where that will be applied.

Mr BROWN: Will the minister consider whether there is a need to constrain that power?

Mr Omodei: I will do that.

Clause put and passed.

Clauses 57 to 61 put and passed.

New clause 62 -

Dr EDWARDS: I move -

Page 42, after line 11 - To insert the following -

62. Tabling of contracts

(1) The Minister must cause any production contracts or road contracts to be laid before each House of Parliament, or dealt with under subsection (2), within 14 days after the contract is signed.

(2) If -

(a) at the commencement of the period referred to in subsection (1) a House of Parliament is not sitting; and

(b) the Minister is of the opinion that the House will not sit during the period,

the Minister is to transmit a copy of the contract to the Clerk of that House.

(3) A copy of a contract transmitted to the Clerk of the House is to be regarded -

(a) as having been laid before that House; and

(b) as being a document published by order or under the authority of the House.

(4) The laying of a copy of the contract that is regarded as having occurred under subsection (3)(a) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

We move this amendment because we believe there needs to be good accountability with respect to the contracts. The Bill contains a lot of measures that improve accountability, but if the contracts were to be tabled in the Houses we would have true accountability - the type of accountability that I believe the public is demanding. I urge the House to support this amendment.

Mr OMODEI: My advice is that the amendment may make it difficult for the commission to negotiate contracts, particularly as the commercial confidentiality of private sector proponents will be lost; therefore, the Government does not support the amendment. It may be that there is an alternative, and that is that I require the commission to include in its annual reports some of the information about the contracts, such as the identity of the parties, the term of the contract, the amount of any fee and any other information that the minister responsible for the commission considers relevant. The existing regulation is section 148 of the Forest Management Regulations 1993. It is headed "Information to be provided relating to specific permits, licences and contracts" and states -

Upon application and payment of the fee, if any, specified in item 4 of Schedule 5 the Executive Director shall provide any person with -

(a) details of persons who hold permits, forest produce licences, contracts to harvest and deliver or contracts of sale;

(b) in respect of any permit, forest produce licence or contract referred to in paragraph (a), details of any fees, charges and royalties payable, log allocation, location of coupes and any conditions and limitations to which the contract, forest produce licence or permit is subject; and

(c) a copy of any permit, forest produce licence or contract referred to in paragraph (a).

There is also a regulation head of power in the current Bill. Clause 70(2)(k) gives a regulation head of power applicable to making contracts publicly available as provided under section 148 of the existing Forest Management Regulations. We will be able to amend section 148 of the Forest Management Regulations based on the advice given to us by Treasury. I think all of the member for Maylands' concerns are covered under the regulations and the regulations can be changed to cover what is not presently included to ensure that the whole issue is transparent.

Mr Brown: Are you saying that this contract will be tabled under the regulations?

Mr OMODEI: Certain aspects of it can be, under the current regulations. The current regulation indicates that the executive director shall provide any person with -

(a) details of persons who hold permits, forest produce licences, contracts to harvest and deliver or contracts of sale;

(b) in respect of any permit, forest produce licence or contract referred to in paragraph (a), details of any fees, charges and royalties payable, log allocation, location of coupes and any conditions and limitations to which the contract, forest produce licence or permit is subject; and

(c) a copy of any permit, forest produce licence or contract referred to in paragraph (a).

Based on the advice from Treasury, if we replace any regulation, we must bear in mind that that may make it difficult for the commission to negotiate contracts particularly as the commercial confidentiality of a private sector proponent will be lost. We need some commercial confidentiality or everybody else will know what a proponent has tendered.

Mr BROWN: I am interested to hear from the minister what he considers is commercially confidential in these contracts. I have been encouraged by some of the minister's colleagues to look at the Department of Contract and Management Services' web site to see all of the things on it. It is very nice -

Mr Omodei: And you have seen the light.

Mr BROWN: Yes. It sets out the conditions and after the contracts are allocated, it shows information about the price, who won and so on.

Mr Board interjected.

Mr BROWN: That is good but I have not yet heard whether the Minister for Employment and Training's colleagues use it. I am still waiting for that answer. If I get a clear and unequivocal guarantee from everybody that they use it and publish all the information, I will not need to continue to ask the questions I ask every month, but I have not received that assurance. However, my concern is that there seems to be a reluctance to make contracts available on the grounds of commercial confidentiality when I do not know what it is within the contracts that is commercially confidential. The contracts I have been privy to - I do not say there have been many - have been contracts which government requires the tenderer to enter into, and government does not set out within the contract the way the tenderer may go about the work, such as the intellectual property the tenderer may bring to carry out the contract, which might be commercially confidential. The contract does not always set out the type of machinery, techniques or management style the tenderer might use. Obviously when we are differentiating between companies there are a few things to differentiate them. Companies might be differentiated by the different equipment they use and they may not want to have that information in the contract - they may not want to tell their competitors the type of equipment they use. That is a bit hard to avoid at times. If one is in the trucking industry and has a truck on the road, it is a bit hard to put a big shroud around it and keep it secret. However, in a closed environment companies may not want their competitors to know what sort of equipment they are using. They may not want their competitors to know what management style or practices they are using, whether their employees are engaged on awards or enterprise agreements or are award free or whatever. Companies may not want their competitors to know who their suppliers are, about their supply chains or a range of other things. I understand that tenderers do not want their competitors to know about those things because it could give the competitors some advantage. The competitors may make a native title claim over some areas to stop a company developing. Who knows? However, those sorts of things are not included in the contracts. One does not set out in the contracts that one will have 10 employees engaged under workplace agreements working from 9.00 am to 5.00 pm doing something. One does not set out in a contract that one will have certain pieces of equipment or use certain intellectual property to do these things. What is in these contracts which is of a commercially confidential nature, other than the price which should be generally known? The price is advertised and is generally available.

I read recently, I think in a review of the State Supply Commission, about people referring to using standard contracts. I understood from the report that there was a degree of support for the use of standard contracts. People like the idea because they would have one contract and that would be all they would need to know. They would sign on the bottom line that they would provide this road with these dimensions, these width and depth requirements and able to withstand these loads and the rest of it is a standard contract. I do not know what is in these contracts which is commercially confidential. Perhaps the minister can explain what it is which is commercially confidential, why the contracts cannot be tabled and how that would be damaging to the entities which win the contracts.

Mr OMODEI: I agree with most of what the member for Bassendean said. My main aim would be to see commonsense prevail. There is no doubt that the current regulations allow for the provision of most of the information the member requires. I do not think very much would be withheld at all. The member might well argue that government should not be in the business of planting trees any more because the private sector and its prospectus-driven plantation effort, particularly with blue gums, means there will be an abundance of resource out there. If government is competing with the private sector in the maritime pine, pinus radiata or blue gum markets - in the future it could even be competing in the hardwood market - the level playing field must be maintained. If it is not, the commission would be at a disadvantage compared with its private sector competitors. One might argue whether government should be in the tree plantation business. It certainly must be in the business of managing state and native forests, but that may change in the future. However, I am very much in agreement with most of what the member says; I do not think very much will be withheld under normal circumstances. Again, it is a commonsense application of the regulations whereby the availability of information provides for as much transparency as possible. That will be my aim while I am the minister responsible.

Mr BROWN: Government is always more transparent than the private sector simply because it is government. If a business is competing with a government agency, questions can be asked in Parliament and the government agency's business is made more transparent than might be the case for the private operator. That is particularly so if the operator is not incorporated. In that case, it is not required to lodge returns other than with the appropriate authorities. It is very difficult to glean any information in those circumstances. Government activities will always be more transparent, both in terms of annual reports and ongoing scrutiny of operations. Indeed, concerns were raised by tourism operators at Margaret River about some Department of Conservation and Land Management accommodation arrangements in that CALM, being a government agency and being able to cross subsidise, was offering accommodation at a lower price than the market rate and was taking business away from the private operators. Those operators spoke to many members of Parliament about that matter and they could seek information from -

Mr Omodei: Particularly their local member.

Mr BROWN: They could seek information from the Government about CALM's operating costs, whether notional rental was charged and so on. I accept that and that when a government agency is in business it will always suffer a degree of scrutiny that is not levelled at the private sector. That is fine and highly appropriate.

That is a matter for debate, not for refusing to release the contractual arrangements. If contracts contained anything of a commercially confidential nature - for the life of me I am yet to see what it might be - perhaps there could be an exemption. If Coles Myer Ltd, with its enormous buying power, entered into an agreement with Coca-Cola to sell 50 million litres of soft drink a year, Coca-Cola would not include its formula in the contract. The contract would state that Coca-Cola would supply so many cans in crates, at a certain time, at a certain quality and so on. However, everyone knows the key to that organisation's success is the drink formula. Likewise, software companies will say what they can do, but they will not divulge the nuts and bolts of their software. Why would they do that and why would government ask them to do that? Government is seeking a service or product of a certain quality to meet its needs. It is not seeking to step behind the product and find out how it works. It will not ask for intellectual property to be included in a contract. Businesses would be placed at risk if they did that. I urge support for the amendment.

New clause put and negatived.

Clauses 62 to 72 put and passed.

Schedule 1 -

Dr EDWARDS: I move -

> Page 55, lines 20 to 26 - To delete the lines.

The Opposition believes that clause 19 waters down some of the accountability measures in the Bill. This sends a signal that, even though commissioners have a conflict of interest or an interest, they may still vote. These lines should be deleted so that if a commissioner has an interest, he or she will not be in a position to make decisions relating to that interest.

Mr OMODEI: This clause is similar to a clause in the Local Government Act, which is my other area of responsibility. That legislation refers to a person having a financial interest, but that interest is deemed to be trivial or an interest in common. Under the Local Government Act, on resolution of the meeting, that person is able to stay and take part in the debate but not to vote. I understand that this is similar, and in that case the issue would be a trivial interest or an interest in common. I am ambivalent about this issue. It means that the actions of the commission in properly debating an issue may be inhibited. A situation may arise in which a commissioner may have a trivial interest and may be able to contribute substantially to the debate, yet that person would be excluded from the meeting. This has been a real bone of contention among local government councillors when they believe the legislation inhibits good debate and people with expertise who could be available at a meeting are absented from the meeting for voting purposes.

Dr EDWARDS: I accept that the minister has put forward the notion of local government, and he has spoken about its applying to a trivial matter, but that is not clear from the clauses in the schedule. Clause 18 states that a commissioner who has a material personal interest in a matter, which may not necessarily be trivial, must not vote and must not be present. If we accept clause 19, we are saying that clause 18 may be declared inapplicable. If we proceed with both of these clauses, we are setting ourselves up for a John Howard's brother-type scenario. In that case, the Prime Minister was perceived as having stayed in the room, because all his colleagues said that he should stay in the room when a decision was made about the future of his brother. I acknowledge that that is a matter of perception. I am not saying that the Prime Minister had a conflict. However, there was certainly that perception. This is even worse because in the case of a commissioner who has declared a material interest, or where the other commissioners accept that this person has a material interest, clause 19 then allows them not to apply the procedures that would otherwise occur if the person did have a material interest. The deletion of clause 19 is essential if we are to have a transparent commission which operates in the best and most accountable interests of the State.

Mr OMODEI: I intend to oppose the amendment on the basis that clause 19 states -

> Clause 18 does not apply if the commissioners have at any time passed a resolution that -
>
> (a) specifies the commissioner, the interest and the matter; and
>
> (b) states that the commissioners voting for the resolution are satisfied that the interest should not disqualify the commissioner from considering or voting on the matter.

Earlier in the debate we talked about the commissioners being eminent or distinguished people. One would expect that, if the commissioners thought that a person had a material interest, they would not be moving by resolution that that person be allowed to continue to debate the issue. It is a similar issue to the Local Government Act. When a commissioner can make a contribution to a debate without having a significant material interest, the commissioner should have the ability to do so.

Mr BROWN: This is a much lower test than that which applies in the Corporations Law. In the Corporations Law, a director who has a conflict of interest is required to disqualify himself from participating in that process. I am told - I stand to be corrected if my information is not correct - that in some cases dealing with directors of companies it has been held that not only must the director disclose his interest and absent himself from that part of the meeting which deals with the matter, but also he should absent himself from the whole meeting and the venue where the meeting is being held. We are not talking about people who are untrustworthy and who rort the system. We are talking about people who are highly trustworthy and who have a strong sense of probity and of doing the right thing. It places pressure on their co-directors or, in this case, co-commissioners if they are called on to make a decision when one of them may have some interest or another. When a person speaks out on that in some way, it might be deemed by other commissioners or directors attending the meeting, that somehow a slight is being directed at that colleague. In those areas where there must be a high level of respect and trust, the last thing a person wants to do is generate that view. If that view needs to be generated, that is fine. If someone is on the take or is breaching the rules, so be it. However, it is important for the organisation to be acting on a high level of trust. It is difficult when directors and, in this instance, commissioners are put in difficult circumstances, even if a resolution is passed beforehand. For example, Joe Blow, who is a commissioner, declares certain things and says that if a matter is raised, he wants the ability to stay in the meeting and discuss it. How do the other commissioners deal with that at the time? Do they simply accept it or do they not accept it, in which case do they think the commissioner is putting pressure on them to give him an advantage?

This is not a reasonable provision. If a person believes he has a conflict of interest, whether he is a commissioner or a director, he should disclose it as soon as it becomes apparent. If it is a matter that comes up at a meeting or if it is a matter he knows is coming up at a meeting, he should disclose it and ask for the meeting to be held in his absence, or if it comes up at a meeting, he should disclose it and ask for the matter to be adjourned

and to be determined at another time when he is not there. This way of dealing with it is most inappropriate. Indeed, it can reflect adversely on people of good character. This provision should not be in the Bill, because what should be strived for - I expect the minister will strive for this in the appointments that will be made - is that these people be of good character and repute. Therefore, this provision is unnecessary. There is a need for the minister to consider this and for him to remove this clause.

Mr OMODEI: I understand the member for Bassendean's argument clearly. However, my interest is in ensuring that the commission operates effectively. The penalty for failure to declare personal interest in clauses 17 and 18 is $10 000 and a disclosure under subclause (1) is to be recorded in the minutes of the meeting. I am trying to ensure that if a commissioner has an interest, albeit not a substantial interest, the commissioner can provide his or her expertise in debating a matter. Clause 18 states that the person must not be present while the matter or a proposed resolution of the kind referred to in paragraph (a)(ii), which refers to a proposed resolution under clause 19 in respect of the matter, whether relating to the commissioner or a different commissioner, is being considered. In other words, clause 19 of schedule 1 states that clause 18 does not apply if the commissioners have at any time passed a resolution that specifies the commissioner and his or her interest in the matter, and states that the commissioners voting for the resolution are satisfied the commissioner should not be disqualified from voting on the matter. That person cannot be in the room when the effect of clause 19 is being put in place. Of course, members of a board or organisation could intimidate another member. This clause is included in the legislation to ensure that the commissioners are able to give their expertise and valued opinions providing the interest is not a substantial interest. Provisions in other Acts also protect people who have trivial interests. On that basis I am prepared to stand by the clause as it stands. It is not about undermining another person. These people will be chosen for their integrity, and if someone has something to offer why exclude him from the meeting provided he has no significant financial interest. It is the counter argument to the one put by the member for Bassendean, and is defensible under this legislation.

Mr BROWN: I will not continue with the point other than to make this observation: Justice has to be done, and justice has to be seen to be done. If the minister asks people who may be experts on a particular matter to express a view and they have a personal interest in that view - other than an interest in doing the right thing for the commission - albeit a small one, there is always the temptation to argue that the view they have expressed has been coloured by their involvement other than being a commissioner or director. That is why those rules are important. This clause diminishes the stature of those people who will be on the board. I do not raise it any higher than that.

Amendment put and negatived.

Dr EDWARDS: Clause 21 in schedule 1 enables the minister to declare that clause 18, which dealt with the disclosure of the commissioner's interest, and clause 20 do not apply in a specified matter. We could have the same argument that was put in the previous amendment, but we will not. The only saving grace in this clause is that if the minister makes a declaration at least it is tabled in Parliament and we will find out about it. If the commissioners do otherwise, presumably we will only find out about it well after the event.

Mr OMODEI: I presume the minister may declare clauses 18 and 20 inapplicable in the situation in which commissioners have an interest in common. For example, their superannuation company may have a connection to plantation activities in the private sector, which would be declarable as a conflict of interest. In that situation the minister must have the ability to declare that interest in common. That is similar to a provision in the Local Government Act. From time to time a group of councillors apply to the Minister for Local Government for an exemption to discuss an item on the basis they all have an interest in plantations; for example, if they are farmers they could potentially own plantations. In that case the minister invariably gives an exemption and they can discuss the matter at council meetings. Other examples are an interest in common in relation to roads, buildings or whatever, and to some of the activities of the commission or the commission's competitors. In that case the minister would be able to declare clauses 18 and 20 inapplicable.

Schedule put and passed.

Schedules 2 and 3 put and passed.

Title put and passed.

House adjourned at 9.57 pm
