ELECTRICITY CORPORATIONS BILL 2005

Committee

Resumed from 31 August. The Deputy Chairman of Committees (Hon Ray Halligan) in the Chair; Hon Kim Chance (Leader of the House) in charge of the bill.

Clause 41: Principal functions -

Progress was reported after Hon Paul Llewellyn had moved the following amendment -

Page 22, after line 26 - To insert -

(d) to provide services that improve the efficiency of electricity supply and the management of demand on electricity transmission and distribution systems;

Hon PAUL LLEWELLYN: I will be pleased to get this amendment inserted into the bill. Earlier I made the distinction between a power utility that is primarily a supplier of electricity versus an entity that is a supplier of electrical services. This amendment relates to the supply of electricity and the efficiencies that are possible through new technologies. I would like to see also a similar set of words put into the functions of the retail corporation. It is the retailer that supplies the electrical services and on-sells the electricity to consumers. That is the point at which consumers should be given a choice between more electrons or more efficiency. More electrons cost them more and more efficiency costs them less. When electricity prices rise - they certainly will over time - the consumers will get a better deal as a result of being sold a more efficient product with fewer electrons. I make the analogy of a highly inefficient refrigerator that would cost $100 a year to run versus an efficient refrigerator that costs only $40 a year to run. The consumer is better off initially paying more for the more efficient refrigerator. That is the intent of the clause.

Amendment put and passed.

Hon MURRAY CRIDDLE: When we were debating the amendment in my name yesterday, the minister mentioned that we might be able to postpone this clause to a later stage so that we could consider another form of amendment. I wonder whether the clause could be postponed until after we have considered clause 192. In the meantime, I will consider changing the wording of my amendment so that it is more acceptable to the committee.

Further consideration of clause 41 postponed until after consideration of clause 192, on motion by Hon Murray Criddle.

[Continued on p 4949.]

Clauses 42 and 43 put and passed.

Clause 44: Principal functions -

Hon PAUL LLEWELLYN: In line with the comments I made earlier, this concerns the retail corporation's principal functions. Clause 44 states -

The functions of the Electricity Retail Corporation (in this Subdivision called the "corporation") are -

(a) to supply electricity to consumers;

The same logic applies that a retailer can supply not only electricity - that is, the flow of electrons - but also services. I move -

Page 24, line 14, to insert after "consumers" -

and services which improve the efficiency of electricity supply and the management of demand

Hon GEORGE CASH: I am interested to hear whether the minister intends to support this amendment.

Hon Kim Chance: Yes.

Hon GEORGE CASH: Therefore, we do not need to go into all the reasons for the amendment, because they are self-evident from what Hon Paul LLewellyn has said. In that case, we also will support the proposition.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 45 and 46 put and passed.

Clause 47: Prohibition on generation of electricity for a designated period -

Hon GEORGE CASH: Before I deal with this clause, I indicate that I believe a significant amount of progress can be made this morning because it appears that many of the issues of concern to some other members and me have been dealt with. That will be good news for the minister. I stop at clause 47 on the basis that I recognise that the Electricity Retail Corporation will be prohibited from generating electricity for a designated period of seven years. However, the following clause provides an opportunity for the minister to review that prohibition. The minister will have the capacity to lift that prohibition in due course if he believes that to be a proper course of action. This provision corresponds to the prohibition relating to the generation arm, which is restricted from retailing electricity. I need say no more than that this is the corresponding clause.

Clause put and passed.

Clauses 48 and 49 put and passed.

Clause 50: Principal functions -

Hon PAUL LLEWELLYN: In line with the previous amendments, I would like to include the capacity for the regional corporations to acquire energy from renewable sources. That has been omitted from the legislation so far. The clause refers to acquiring, transporting and supplying gas and steam. In no place does it refer to renewable energy sources. My amendment is simple. I move -

Page 27, line 5 - To insert after "electricity" -

from sources of energy including renewable sources

Amendment put and passed.

Hon GEORGE CASH: I move -

Page 27, after line 9 - To insert -

(c) to do anything that it is authorised or required to do by the *Electricity Industry Act 2004* Part 8 (which relates to network access) and regulations and Code made under that Part;

In the debate in the other place, my colleague Dan Sullivan, the shadow Minister for Energy, made it very clear on a number of occasions - he is certainly supported by the Liberal opposition - that there was a need to ensure that appropriate network performance standards for the Regional Power Corporation were included in this bill and that they were to be applied in much the same way as the Electricity Networks Corporation in the south west interconnected system. To enable that to happen I have proposed a number of amendments. In the first instance there is a need to amend this clause in the manner I have suggested. Clause 41(b) of the Electricity Corporations Bill 2005 already provides that a function of the Electricity Networks Corporation is to do anything that it is authorised or required to do by part 8 of the Electricity Industry Act 2004, which relates to network access, and the regulations and code made under that part. In recognition of that, a person or persons may seek to have the Regional Power Corporation's systems covered under the electricity network access code at a future date. It is proposed to include a similar provision to apply to the Regional Power Corporation that is consistent with clause 41(b) and some minor consequential changes. It is true that the bill gives the minister certain power to require areas within the Regional Power Corporation's area to come under or to be maintained at the same standard as the network system in the south west interconnected system; however, rather than require the minister to exercise that discretion, this amendment provides a very clear statutory obligation. It will bring the Economic Regulation Authority into the picture so that people serviced by the Regional Power Corporation will be able to obtain a reliable service, hopefully of the same quality as that received by consumers in the south west interconnected system. I ask members to support this amendment.

Amendment put and passed.

Hon PAUL LLEWELLYN: I want to be consistent with the previous amendment to clause 44(a), to which I added after "consumers" -

and services which improve the efficiency of electricity supply and the management of demand

The Regional Power Corporation fulfils the same functions. I believe that, at the end of clause 50(c), we should make the same amendment. Therefore, I move -

Page 27, line 10 - To insert after "consumers" -

and services which improve the efficiency of electricity supply and the management of demand

Members will see that, in order to make the clauses consistent, this is a sensible amendment.

Amendment put and passed.

Hon PAUL LLEWELLYN: I move -

Page 27, after line 13 - To insert -

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

Under this legislation, the Regional Power Corporation, like all the corporations, will be a vertically integrated utility, and all the functions of generation, distribution and retail are rolled into clause 50.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 51: Other functions -

Hon GEORGE CASH: I move -

Page 27, line 29 - To insert after "50" -

other than the function under section 50(c)

Page 28, line 2 - To insert after "50" -

, other than the function under section 50(c),

These amendments are consequential upon the amendment that has just been passed to clause 50, which deals with the principal functions. I ask members to support the amendments.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 52 put and passed.

Clause 53: Administration under delegated power -

Hon PAUL LLEWELLYN: I move -

Page 29, line 22 - To insert after "modifications," -

other than in relation to quality and reliability of supply,

Amendment put and passed.

Hon PAUL LLEWELLYN: I move -

Page 29, after line 24 - To insert -

(7) Regulations referred to in subsection (6) cannot limit or otherwise affect community service obligations, as defined in section 99(1), to be performed by a corporation under this Act.

Hon MURRAY CRIDDLE: I would like an explanation, and perhaps the minister or his advisers will be able to assist. Does this mean that in some cases the regulations can override the act?

Hon KIM CHANCE: Yes, that is the case.

Hon MURRAY CRIDDLE: Therefore, this particular amendment will not have a great impact, because the provisions of the act will be in place regardless. Will the status quo be maintained?

Hon KIM CHANCE: Yes. Clause 53 can almost be described as an ongoing transitional provision. This clause is actually unlikely to be used. It would apply only in the unusual circumstance in which assets from the corporation were transferred to and held by the minister. Therefore, it is unlikely that it would ever come into effect. However, in the event that it did, the provisions of the act would not apply if regulations had been made in that regard.

Hon PAUL LLEWELLYN: I have moved this amendment to ensure that, regardless of what may happen with other regulations and other parts of the act, the community service obligations cannot be diluted. It is a checks and balances safeguard.

Hon KIM CHANCE: Hon Paul Llewellyn has pretty well summed it up. It is a checks and balances provision, and one that the house in its wisdom may deem to be necessary. Although we will be supporting the amendment, in my view the amendment is somewhat of a belt and braces approach, because the things that are done under this clause can be done only by way of regulation. The regulations will need to come into the house in any case and will be allowable or disallowable under the provisions of the Interpretation Act. However, if it gives comfort to the house to make those checks and balances available, the government is happy to support that.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 54 and 55 put and passed.

Clause 56: Corporations may act at their discretion -

Hon GEORGE CASH: The clause reads -

> The fact that a corporation has a function given to it by this Act does not impose a duty on it to do any particular thing and, subject to
>
> (a) this Act; and
>
> (b) any direction given to the corporation under this Act,
>
> it has a discretion as to how and when it performs the function.

I am surprised it is necessary to include this in the bill. Would the minister be good enough to explain any particular policy reasons that would require this? I see that the minister is about to respond. I will sit down and allow him to respond.

Hon KIM CHANCE: My answer to Hon George Cash's question was going to be that it is there for a surfeit of caution. Essentially that is correct generically. The specific issue that was raised by Liberal Party members in the Legislative Assembly debate on this part related to - I suppose it is accurate to call them this - broadly non-core functions, such as the provision of telecommunications services. I recall reading that part of the debate in *Hansard,* in which there was some quite extensive debate about a power provider being involved in telecommunications. Indeed, that has already happened. The Bright Telecommunications component of Western Power's activity indicates that there may be some element in the future of a telecommunications provision deriving from the physical nature of the network. It also provides opportunities for the legislation to be competent to deal with other non-core functions. I do not think we should fasten overmuch on telecommunications; that is one example. However, there are a number of services in which a large provider of services, particularly but not limited to network services, could engage. Clause 56 provides some legislative framework to allow issues of that nature to be dealt with and considered.

Hon GEORGE CASH: I asked that question because the bill provides certain functions that can be carried out by the various corporations. I would have thought that once a corporation was provided with the authority to do certain things, whether or not it does those things, as long as it is not mandated that it must do those things, there would be no need to insert in the bill a clause to give the corporation a discretion to either do or not do those things. If it is not mandated how and when various functions shall be performed, the corporation will have an implicit discretion to perform them how and when it believes appropriate. It is a drafting issue, and I am surprised to see it in this bill. I cannot recall any such provision in other acts, although there may be. It is a question of which function is mandated. If a function is mandated to be done, it must be done, whereas if a function is not mandated but is authorised, it would seem that a discretion to perform the function is available to the corporation.

My question does not specifically refer to Bright Telecommunications. I am aware of some of the issues in that organisation. The fact is that this bill will authorise corporations to engage in telecommunications activities, and that could include the same activities that are conducted by Bright Telecommunications. My question is more a technical issue of why there is a need to insert a provision in the legislation that the corporation can exercise a discretion with functions that are authorised but not mandated. It is not a trick question; it is a question to which I want to know the answer.

Hon KIM CHANCE: I understand that. I will go back to the basis of the legislation. It is certainly true that the functions of each of the proposed corporations that will be the successors to Western Power are specified, such as the functions for the Electricity Networks Corporation mentioned in clause 41. That is one example of how the broad functions of the corporations are defined. The functions, as I read them, are quite open-ended. The need for the exercise of discretion is clear in my view. The need for the minister to have some power for discretion is simply an expression of the need for government to have a means of carrying out its policy.

As I said, I will go back to the basis of the legislation. We have not reached part 5 of the legislation, but it lays out the process for drawing up the strategic development plans and the statements of corporate intent. It is in part 5 and through those two named processes that we get to the detail of how the corporation will function. The real reason for the existence of clause 56 is to provide clarity and what is authorised in those functions. It is an attempt to provide some kind of legal framework to deal with the management of certain issues - issues that we do not anticipate at this stage. We cannot anticipate them, as we are dealing with something that will occur in the future.

Hon GEORGE CASH: I come back to the point that if a function is authorised and mandated, the corporation must carry out the function in the way it is mandated.

Hon Kim Chance: Yes.

Hon GEORGE CASH: If it is mandated, it shall carry out a function in a particular way.

Hon Kim Chance: I think it is better to say "is able to" rather than "is required to".

Hon GEORGE CASH: All right. If the function is provided and the corporation is authorised to carry out certain functions, it is able to carry out those functions.

Hon Kim Chance: Yes.

Hon GEORGE CASH: My question relates to the need to provide a clause that gives discretion to the corporation in areas in which it clearly has a discretion, without having to insert it in the bill. It is a drafting issue. I wonder why we need to say it. It seems to me that in most other acts that we deal with that, unless something is clearly mandated to occur, there is a discretion if the corporation has authorisation to carry out various functions. We do not see these discretionary-type clauses. That is the issue I am raising. I do not want to hold up the bill on the issue. It just seems that when another bill comes into the house next week that may have the same clause, I will probably ask the same question. At some stage the minister might like to talk to me behind the chair and explain the need for this clause. I see it as a belt and braces job because it does not seem to achieve any more than is already provided for in the bill.

Hon PAUL LLEWELLYN: I had clause 56 firmly deleted from my list of amendments; somehow it got lost along the way. The clause reads -

> **Corporations may act at their discretion.**
>
> The fact that a corporation has a function given to it by this Act does not impose a duty on it to do any particular thing . . .

That is the very reason that Western Power ran amok in this state. It is the very reason that we are now doing some very elaborate reorganisation of the corporation. Arguably, this is an axe job on Western Power, the corporation that has been running amok and has not been acting in the public interest. My concern with this clause is that it is quite unnecessary and that it could lead the public to believe that we will give free rein to the entity that we will create with hybridised public and private responsibilities and powers. I would move to delete the clause from the bill, because it serves no purpose. In fact, this is a quite dysfunctional piece of legislation.

The DEPUTY CHAIRMAN (Hon Ray Halligan): Hon Paul Llewellyn has no need to move such an amendment. All he need do is vote against the clause if he does not agree with it.

Hon KIM CHANCE: I will have another go, Mr Deputy Chairman. These corporations will be large organisations with multiple and complex functions. The short answer is that we cannot define the scope of the corporations' performance of those functions by a one-line reference in an act of Parliament. That is why I drew members' attention to the provisions of part 5 of the bill, which provide for the development of strategic development plans and statements of corporate intent which can provide detailed guidance to the operation of the corporations in delivering those functions.

Hon Murray Criddle: That happened with the port authorities.

Hon KIM CHANCE: Yes. There would probably be a number of precedents in more modern legislation of this kind. It would be unusual in older legislation. It is a way of addressing the complex situations that we were discussing last night with the development of a hybrid. This is a step forward in determining how this can be done with hybrid legislation and hybrid bodies of this nature; that is, publicly owned corporations competing in the private sector for services to the public. We believe this to be a better way of doing that. The provision for the establishment of detailed statements of corporate intent and strategic development plans will operate as the guiding mechanism. We need a statement such as the one in clause 56 to enable that to go ahead.

Hon GEORGE CASH: As I raised the issue about clause 56, I say to Hon Paul Llewellyn that we will not support the deletion of this clause. However, I want to explain why. Firstly, even though I say that this clause does not add anything to the bill, it would be dangerous for the Liberal opposition to vote to delete it on the basis that it is not necessary because there is some question about its real intent. It may be shown to be necessary at some stage. I do not think the clause adds anything to the bill. If something is authorised but is not directed - that is, there is no "shall" before it - discretion will exist about whether something will be done and how it is done. I will not say any more other than to say to Hon Paul Llewellyn that those are the reasons we will not support the deletion of the clause. I want Hon Paul Llewellyn to know that we are listening to what he is saying.

As I said before, we are giving Hon Paul Llewellyn support with his amendments, which, no doubt, he will reciprocate in due course when I move amendments.

Hon PAUL LLEWELLYN: A number of words were just used that set alarm bells ringing. Hon Kim Chance said that this is a modernised piece of legislation. I actually thought that we were trying to repair steam-age legislation. I do not think we should do running repairs. These are running repairs to a poorly constructed and conceived piece of legislation from a few years ago. I think a corporations bill was first introduced to Parliament in 1996. It was ill conceived at that time. We are now making some running repairs to it. The bill and its consequences will be major surgery to an institution that provides a vital service to Western Australia. On the one hand we want to modernise the business dealings of the corporation and the organisation of the economy to ensure that corporations can cream off as much as they can before, quite possibly, selling them off. However, when it comes to modernising the technology and moving forward on other matters, the government does not want to do that; it wants to stay in the past. It is frankly quite dangerous to give a corporate entity that is neither fish nor fowl, as we said last night, a holiday on its obligations to meet the provisions of the legislation that is supposed to guide it. That is what we are doing. I put on the record very strongly that if we are in doubt, we should leave it out. If this is a non-functional clause or if it will have some arbitrary, notional function at some future date, we should leave it out. I will certainly be voting against the clause.

Clause put and a division taken with the following result -

Ayes (23)

Hon Ken Baston	Hon Kate Doust	Hon Barry House	Hon Ljiljanna Ravlich
Hon Matt Benson-Lidholm	Hon Sue Ellery	Hon Sheila Mills	Hon Margaret Rowe
Hon George Cash	Hon Anthony Fels	Hon Norman Moore	Hon Donna Taylor
Hon Kim Chance	Hon Graham Giffard	Hon Helen Morton	Hon Ken Travers
Hon Peter Collier	Hon Nigel Hallett	Hon Simon O'Brien	Hon Ed Dermer *(Teller)*
Hon Murray Criddle	Hon Ray Halligan	Hon Louise Pratt	

Noes (2)

Hon Paul Llewellyn	Hon Giz Watson *(Teller)*

Clause thus passed.

Clauses 57 to 59 put and passed.

Clause 60: Certain works exempt from planning laws -

Hon PAUL LLEWELLYN: Yet again, these corporations will be given a holiday from the restrictions on their activities, and they will be able to override the Local Government Act. The Greens (WA) understand that Western Power and the new corporations will provide essential services to the community; we also understand that the business of the network division of Western Power from time to time will be to place transmission lines across the landscape of local government shires. The clause as it stands provides excessive powers for the Electricity Networks Corporation to override the Local Government Act. That activity should not be encouraged. For that reason, I propose an amendment to clause 60. For example, any regional local community will have views about how its locality should be developed and about where it is right and proper and not right and proper to place transmission lines. Also, in spite of my commitment to renewable energy and the requirement to upgrade transmissions lines for the uptake of renewable energy - as I have ensured is already partly required by the bill - I am not in favour of a network entity being able to ride roughshod over local governments for the transmission of electricity from one place to another.

In recognition of the fact that the Electricity Networks Corporation in many cases will provide an essential service, networks should have priority over local government arrangements in some cases. However, checks and balance should be in place. I propose that the Minister for Planning and Infrastructure be involved in the process of ratifying or agreeing to changes to local town planning schemes. Without saying too much more, I hope the Greens (WA) amendment will assure local government and town planners and developers that we have the best interests of local communities at heart, and that checks and balances are provided in the legislation so local government is not run over in our enthusiasm to build transmission lines. In some instances, these may be unnecessary transmission lines, particularly if we invest in renewable energy technology by which one can militate against the need for the transmission lines through adopting a more intelligent approach to our network development. I move -

Page 35, after line 14 - To insert -

(5) A corporation is to give the Minister and the Minister responsible for the administration of the *Town Planning and Development Act 1928* written notice of a proposal to carry out works referred to in subsection (2) if those works will not comply with the provisions of an order or scheme referred to in subsection (3).

(6) A corporation is to include in its annual report under section 107 details of any works carried out by the corporation during the relevant financial year that did not comply with the provisions of an order or scheme referred to in subsection (3).

Hon GEORGE CASH: The opposition supports the amendment moved by Hon Paul Llewellyn. This amendment is couched in different terms from the original amendment that Hon Paul Llewellyn proposed to this clause. His original amendment required a mutually acceptable conclusion to any negotiations between a local authority and a corporation regarding a corporation's infringement on a development order or town planning scheme. Clearly, a mutually accepted outcome is not possible in all cases, and the original amendment may have caused a transmission line that was urgently or justly required not to be constructed. Hon Paul Llewellyn, through this amendment, will inject into the argument the Minister for Energy and the minister responsible for the Town Planning and Development Act 1928. He will require that in cases in which corporations do not comply with town planning schemes or development orders, the corporation will be required to provide written notice to the ministers I just mentioned. Giving the ministers notice lifts the stakes, so to speak. Before a corporation decides to overplay its hand in respect of a town planning scheme or a development order, it will recognise that the ministers will become involved. I hope this amendment will cause greater consultation and discussion so that some reasonable conclusions can be reached. The opposition would not have supported the amendment in its original form because, notwithstanding the wishes of particular communities, on occasions the greater public good overrides a town planning scheme or a development order. Nevertheless, the amendment's intent is clear. It is a positive amendment. It will impose on the corporation not a significant obligation, but a greater need to consult and have regard for when it is likely to want to override a town planning scheme or interim development order.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 61: Corporation to act on commercial principles -

Hon PAUL LLEWELLYN: This clause harks back to the conflict in a commercial entity acting in the public interest. When we set up a corporate entity, there is no reason we should not specify that it should act according to prudent commercial principles - that is true - and endeavour to make a profit - that is reasonable - consistent with maximising its long-term value. Here is the danger. Maximising long-term value may well be a rational, economic and commercial decision for an entirely commercial private enterprise entity, but it is not necessarily an appropriate criterion for a hybrid entity. For that reason, the clause stipulates that only the networks corporation does not have to comply with this provision. It is not so much commercial prudence and good corporate governance that is at stake here; it is maximising the long-term value, but of what? The corporations have been given a direction to maximise their profits. We all know that when entities maximise their profits, the bottom line becomes the number of dollars. That is a legitimate requirement of an entirely commercial entity, but it is not a legitimate requirement of an entity operating in the public interest. Having said that, we are not here to say that any of these entities should not operate with commercial prudence. That would be unwise and irresponsible. However, the requirement to maximise long-term value, when that is very narrowly defined, is a dangerous precedent. I point out to members that when Western Power came under pressure from other entities to let some other generators or retailers into the action, it hid behind a provision of this kind, which allowed it to be legitimately anticompetitive in the way it behaved. A provision of this kind allowed Western Power to argue that it could not allow another generator onto the network because it had an obligation to maximise its profits over and above any other entity. This is a problematic clause.

The DEPUTY CHAIRMAN (Hon Ray Halligan): We are not going through a second reading debate. We are not questioning the policy. The purpose of being in committee is for members to ask questions of the minister in charge of the bill about aspects of it. They should be questions, rather than statements.

Hon PAUL LLEWELLYN: I ask the Leader of the House representing the Minister for Energy how it is that maximising the long-term value - that is, the profits - will work in the public interest for a hybrid organisation such as this.

Hon MURRAY CRIDDLE: We have postponed clause 41, which has a direct impact on clause 61(2). We really need to clarify clause 41 and make a decision on that, and postpone this clause until that happens.

Hon GEORGE CASH: We agree that the amendment that Hon Murray Criddle has foreshadowed is contingent on clause 41 being determined; therefore, we agree with the postponement on the basis that if the amendment moved by Hon Murray Criddle on clause 41 is carried, there will be an opportunity to deal with this. If it is not carried, certain things may fall away.

Further consideration of the clause postponed until after consideration of clause 192, on motion by Hon Murray Criddle.

Clauses 62 to 89 put and passed.

Clause 90: Matters to be included in strategic development plan -

Hon PAUL LLEWELLYN: Again, I will have to collect myself, as I find my way.

Hon Kim Chance: We will support your amendment.

Hon PAUL LLEWELLYN: That is a very good thing. We have now moved into considering part 5 of the bill, "Provisions about accountability". In ensuring transparency in the operation of this legislation, we need to separate out the Minister for Energy and the Treasurer, who is the principal shareholder on behalf of the people of Western Australia. There needs to be some consultation between those ministers, and we want to simplify those arrangements. I move -

Page 51, line 17 - To delete "on the Treasurer's recommendation." and insert instead -

after consultation with the Treasurer.

Hon GEORGE CASH: The opposition supports this amendment. At present, clause 90(6) would prevent regulations from being made unless recommended by the Treasurer. Hon Paul Llewellyn's amendment will not require the recommendation of the Treasurer, but will require consultation with the Treasurer before regulations are made under this bill. An argument was made earlier that the Treasurer was being included in the bill because the current Treasurer was the former Minister for Energy. It was suggested also that this might be an overhang from the old bill. It has been pointed out that the reference to the Treasurer in this clause relates to the Treasurer as the principal shareholder of the corporations. That is the context in which clause 6 was written. However, the important point is that the Treasurer has to be knowledgable of the regulations. At the cabinet table the Treasurer can either agree or disagree with them, because he will be knowledgable of those matters. However, the Treasurer will not recommend the regulations. In the future, the Minister for Energy need only consult with the Treasurer on these matters.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 91 to 95 put and passed.

Clause 96: Concurrence of Treasurer -

Hon PAUL LLEWELLYN: This is a similar clause. We see that the relationship between the Minister for Energy, who will oversee this act, and the Treasurer needs to be cooperative. However, the Treasurer's role should be made more limited and the Minister for Energy should have the authority to act with some independence in these matters, notwithstanding the fact that the Treasurer represents the principal shareholder of the entity. I move the amendment standing in my name to delete the entire clause.

The DEPUTY CHAIRMAN (Hon Ray Halligan): There is no need to move a motion to delete a clause. The member need only vote against a clause if he wants it deleted, because that has the same effect.

Hon KIM CHANCE: The Deputy Chairman has left me with nothing to say.

The DEPUTY CHAIRMAN: That does not mean that the minister cannot explain why he believes the clause should remain, just as Hon Paul Llewellyn has explained why he wants to vote against it.

Hon KIM CHANCE: I thought that by dealing with clause 96 we were dealing with the three specific amendments of Hon Paul Llewellyn. I understand now the Deputy Chairman's explanation that the member's amendment would have effectively deleted the whole clause. I had not grasped that earlier. The government urges all honourable members to support this clause. Effectively, it provides that the Treasurer must have input into the formation of the strategic development plan. The Treasurer in this instance, as in the last clause we discussed, is the minister who represents the principal shareholder. If the principal shareholder is taken out of the equation of the development of the strategic development plan, it achieves entirely the opposite effective that Hon Paul Llewellyn argued for in an earlier amendment.

Clause put and passed.

Clauses 97 and 98 put and passed.

Clause 99: Matters to be included in statement of corporate intent -

Hon PAUL LLEWELLYN: I move -

Page 54, line 26 - To insert after "functions" -

or to meet performance targets

The Greens (WA) believe it is essential that community service obligations be clearly established. One of those obligations may be to set targets. To give members a sense of it, when these types of corporate entities are required to report, they are very often required to report on targets relating to profits and a series of monitoring and commercial criteria. However, the entity is not obliged to meet any of its community service obligation targets. Why is the community service obligation not treated in the same way as the commercial components of this legislation?

Amendment put and passed.

Hon PAUL LLEWELLYN: I move -

Page 54, line 27 - To insert after "perform" -

or to meet

This amendment relates to meeting performance targets that are not commercial targets. It is in the public interest to add those targets into the legislation.

Amendment put and passed.

Hon PAUL LLEWELLYN: I move -

Page 55, lines 28 to 30 - To delete the lines.

Clause 99(4) states -

The Minister may exempt a corporation from including any matter, or any aspect of a matter, mentioned in subsection (3) in its statement of corporate intent.

It seems to me that to exempt the corporation from reporting transparently on any aspect of its operations is inappropriate.

Hon KIM CHANCE: The government will not support the amendment. It is a quite complex issue. The matters that are required to be specified in a statement of corporate intent are detailed in subclause (3)(a) to (k). The provision contained in subclause (4) is that the minister may exempt a corporation from any matter or any aspect of a matter that is detailed under subclause (3).

The need for subclause (4) arises particularly in relation to paragraph (k) as well as the other issues listed under subclause (3). A matter may be agreed by the minister and the board, pursuant to subclause (3)(k), that may relate to a matter that the minister wants exempted. If an exemption agreement were made under the provisions of subclause (3)(k), in the absence of the provisions of subclause (4), it would make that agreement nonsense. There has to be a provision that will allow agreement to be reached for a matter to not be included in a strategic development plan. It is to prevent a nonsense from occurring. It is as simple as that.

Hon PAUL LLEWELLYN: If the only concern was that the operation of subclause (3)(k) was to provide a faulty process, why cannot it be made for that provision alone and not the whole thing?

Hon Kim Chance: I believe I said quite clearly that, although this relates primarily to paragraph (k), it may apply to other paragraphs. It may apply to agreements made under paragraph (g).

Hon PAUL LLEWELLYN: There must be a requirement to report. As we all know, this bill is taking us to a new era of corporate arrangements. On one hand we have a requirement to report, but on the other hand we give the power to exempt from reporting. Pardon me, but that does not seem reasonable and logical for good governance and organisation.

When we establish one set of rules and then make provision for breaking those rules, we are moving into a grey area in which ministers and the Treasurer can excuse corporations from behaving in a certain way and not meeting certain targets. It seems to me that it is an unnecessary provision. I draw attention to the fact that we have already given the corporations a holiday from reporting on matters of commercial confidentiality. This is an additional exemption. Will the minister explain to me again how this provision will improve the transparency of reporting as listed under subclause (3)?

Hon KIM CHANCE: It will actually make very little difference. This clause already exists in the Electricity Corporation Act 1994. It will make no difference at all. This is a continuation of the existing situation. Let us

get things clear. We are talking about the issues in subclause (3) that are required to be published in the statement of corporate intent. It is a public document; it is something that goes out to everybody. What we are referring to under subclause (4) is those matters that the minister, not the corporation, can determine should not be in the document when those matters are listed.

Hon Paul Llewellyn: Anyone could be a minister. Idi Amin was a prime minister - he did some serious stuff -

Hon Simon O'Brien: He was actually a president!

Hon Paul Llewellyn: He was a president. Anyone could be a minister.

Hon KIM CHANCE: Anyone can, but, in those circumstances, we would have more to worry about than the exclusion of certain matters from the statement of corporate intent of the Western Power successor corporation!

Hon Ljiljanna Ravlich: Idi Amin is not coming to run Western Power because he's dead!

The DEPUTY CHAIRMAN (Hon Ray Halligan): Order, members!

Hon KIM CHANCE: Thank you, Mr Deputy Chairman, for rescuing me!

The statement of corporate intent is a public document. If there are glaring omissions from the statement of corporate intent, the minister, who is the only person who can authorise that certain matters not be dealt with in the statement of corporate intent, is publicly accountable for that. It is not a matter of giving the corporation the power to not disclose matters; it has to be a decision of the minister. The minister is accountable for what is or is not in a statement of corporate intent. We have to be careful that we are not jumping at shadows. There is nothing to be concerned about here. This is something that, if there were a gaping hole in the statement of corporate intent, the minister would be immediately accountable. I can just imagine what question time would be like the next day!

Hon MURRAY CRIDDLE: Does the minister concerned have to make a statement or is something tabled in Parliament? Is there a disclosure requirement? I have not come across it in this legislation.

Hon KIM CHANCE: If I understand the question correctly, the answer is no. However, the statement of corporate intent is tabled in Parliament. Any gap in the statement is clearly apparent.

Hon GEORGE CASH: Subclause (4) provides that the minister may exempt a corporation from including certain matters in its statement of corporate intent. Clause 56 provides that the corporations have a discretion as to how and when they perform a function, although there are some time limits with regard to statements of corporate intent. Is there any relationship between clauses 56 and 99?

Hon KIM CHANCE: There is. Clause 99 provides the specific of clause 56's generic.

Hon GEORGE CASH: If that is the case, then I am arguing that we have already agreed to give the corporations certain discretion. This clause just states in a more formal sense the circumstances under which the minister can affect that discretion.

Hon KIM CHANCE: The essential difference is that clause 56 deals with the corporations' discretion; clause 99 deals with the minister's discretion.

Hon George Cash: That is true.

Amendment put and negatived.

Hon PAUL LLEWELLYN: I move -

Page 56, line 11 - To delete "on the Treasurer's recommendation." and insert instead -

after consultation with the Treasurer.

Again, this amendment relates to the consultation with the Treasurer, and to transparency in the operations of the act. Can the minister explain why there is an obligation to report and set out performance standards, but then certain exemptions are given?

Hon KIM CHANCE: Rather than its being an exemption, this is an opportunity for the government to specify those items that need to be disclosed. However, having said that, the government will be supporting the amendment, for the same reasons that we supported an earlier similar amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 100 to 102 put and passed.

Clause 103: Minister's agreement to draft statement of corporate intent -

Hon GEORGE CASH: Subclauses (3) and (4) state -

> (3) A board may request the Minister to delete from the copy of a statement of corporate intent that is to be laid before Parliament a matter that is of a commercially sensitive nature, and the minister may, despite subsection (2), comply with the request.
>
> (4) Any copy of a statement of corporate intent to which subsection (3) applies must -
>
> (a) contain a statement detailing the reasons for the deletion at the place in the document where the information deleted would otherwise appear; and
>
> (b) be accompanied by an opinion from the Auditor General stating whether or not the information deleted is commercially sensitive.

The use of commercial-in-confidence clauses, in particular by government enterprises, and certainly also by government departments, and the question of commercial sensitivity generally, are matters that I have raised in this chamber on a number of occasions. All members of the chamber will know that notwithstanding who is in government, from time to time ministers come into the house and refuse to provide information about certain matters on the basis that they have been told the information is commercially sensitive and if it were provided, it would disturb some arrangement between the department or government enterprise and some other party. Often it is just left at that. Often the minister is not aware of the nature of the commercial sensitivity, and often the minister is not really interested, because it is an operational matter, and the minister cannot get involved in every operational matter that occurs. I have always made the point that although I recognise that at times there is a need for commercially sensitive items not to be published, because they may cause some commercial detriment to the parties, the Parliament, because of its paramountcy in being able to require papers to be produced and tabled in the Parliament, should always be able to obtain that commercially sensitive information notwithstanding the concerns expressed by the department or government enterprise. I have said on a number of occasions that that information can be provided in a number of ways. It does not need to be tabled in the house and become a public document, so to speak. It can be submitted by way of a sealed envelope provided to the Clerk of the Parliaments, and any interested member may then read the documentation. Often it is subject to the condition that members do not take notes or photocopies, which I do not find offensive at all. The bottom line is that the Parliament is exercising its paramountcy in requiring information to be provided, and the department or government enterprise is responding. However, there have been occasions on which requests have been made for information, and certain government enterprises have taken it upon themselves to seek independent legal advice - that is, from the private sector - on whether they are required to comply with the Parliament's request. In some instances the legal advice that has been tendered to a particular government enterprise or department has been very clear, and relatively short and concise. It has said that the department is obliged by law to provide the minister with information, and the minister is required to table that information in the Parliament; and certain procedures can be triggered if that does not occur. The end result, of course, is that the minister would suffer at the hands of the Parliament if he or she refused to table information that was lawfully required by the Parliament.

Although I do not want to waste too much time on this clause, and I will endeavour to continue through the other clauses with some haste, this is a very important issue to me, and it should also be an important issue to the Parliament. Some members in this place may have already forgotten about the paramountcy of the Parliament to require information. Certainly some ministers are educated by their departments to believe that that paramountcy does not exist. However, when the minister has been in the job for some time, he gradually works out that paramountcy does exist, but often the damage can be done because a culture operates in some government departments and government enterprises that seeks to keep secret information that the department or government enterprise deems to be of a commercially sensitive nature.

I have spoken a number of times in the Parliament on this issue. I want to relate to some comments that I made in one speech, I think, in 2004, when I was dealing with the notion of commercial in confidence. I said -

> Accountability and openness in government require that those who exercise power, while performing the functions of government or the functions of public servants, demonstrate in an open and practical sense that they are doing so with honesty, integrity, appropriate skill and judgment, and have discharged their duty in a proper manner for the common good and in the public interest. Those who are entrusted with public power are . . . required, when called upon, to justify the use of that power to their master. In the case of the public servant, the minister is the master; in the case of the minister, the Parliament is the master; and, in the case of the Parliament, the people are the master.

I went on to say -

> The use of commercial-in-confidence clauses as a shield to avoid proper scrutiny of contracts to which the Government or one of its agencies is a party, has the potential to seriously threaten accountability and openness in government.

I then went on to discuss how confidential information could be defined. I mentioned a number of cases that had considered the question. I made reference to the fact that, before a court is prepared to refuse to make public a document, it would want the government to show that the government would suffer some detriment if the matter were made public. There have been a number of cases on just what detriment is required to be suffered by government before a court will intervene and refuse publication of a document. In some cases the confidential information that has been considered by courts has been required to be considered because the minister has complained that he is holding the information because it is in the public interest. Of course, the courts then must look into the question of public interest and decide the detriment that would be caused if the information were released. Some cases have involved national security. The courts have said that if the publication of a document or documents would, in fact, jeopardise national security or relations with foreign countries or the ordinary business of government, they are issues in which the courts may intervene. However, it is clear that the courts will rarely intervene when the information might be termed contractual commercially sensitive information. They say that there is a procedure within the Parliament for that information to become available, but not become public. I have made that point on a number of occasions.

I have also made the point that the Gallop Labor government has increased the frequency in legislation of commercial-in-confidence clauses. In my view, that has prevented proper scrutiny by the Parliament of various government functions and transactions. I hark back to 1988, when some members will recall what the former Labor Premier Peter Dowding said in the Burt Commission on Accountability under the chairmanship of the former Chief Justice Sir Francis Burt. That commission reported in January 1989. At paragraph 5.3 on page 24, the Burt commission report states -

> The Commission is concerned by the practice of secrecy or confidentiality provisions being included in contracts entered into by State-owned entities, regardless of whether the entity has been established by statute or is owned by virtue of a shareholding.

The minister would hold those shares, of course. The report continues -

> The secrecy arrangement denies accountability to the Parliament. It denies public scrutiny and it may even deny ministerial scrutiny.

Later, in 1991, the Labor Premier Carmen Lawrence established the Royal Commission into Commercial Activities of Government and Other Matters. The commission reported on 12 November 1992. Part 2 of that report deals with open government accountability, integrity in government, the Parliament and the administrative system. In dealing with open government, the commission, at paragraph 2.1.2, wholeheartedly endorsed the observation made by the Chief Justice of Australia in Commonwealth of Australia v John Fairfax and Sons Ltd (1980) 32 ALR 485, in which he stated at page 493 -

> It is unacceptable, in our democratic society, that there should be a restraint on the publication of information relating to government when the only vice in that information is that it enables the public to discuss, review and criticise government action.

I do not need to go into any greater detail at this stage. I have already made those speeches in the house and I have also recommended that there should be an amendment made to the Financial Administration and Audit Act to require the Auditor General on an annual basis to review all confidentiality clauses that remain on foot within any contract to which the government is a party to determine whether that particular commercially sensitive clause or clauses should remain unable to be published. That recommendation has not been taken up. I suggest the Auditor General consider it because I believe that departments are using the shield of commercial sensitivity inappropriately in some cases.

I go back to clause 103(3) and refer to the words "a matter that is of a commercially sensitive nature". I ask the minister: what constitutes something that is commercially sensitive in nature, and who makes that determination?

Subclause (4) suggests that the Auditor General is required to review the information that is being deleted as a result of this clause, and he must state whether the information deleted is commercially sensitive. I want to know what criteria are to be applied by the Auditor General in determining whether something is commercially sensitive.

They are some general questions and I do not expect the minister to reply in any detail to me today, as I am raising particular issues about which he has heard me speak before. I am not opposed to the clause as long as it makes clear that the paramountcy of Parliament to require information to be tabled is inserted.

I move -

Page 58, after line 16 - To insert -

(5) Nothing in subsection (3) affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891*.

There is an argument that says this is unnecessary because the law is the law and it is already provided for. The purpose of inserting my proposed amendment is not necessarily for the benefit of members of Parliament, who I believe would know that the paramountcy of Parliament exists for the production of papers and documents generally, but is, in fact, a message to government enterprises that, notwithstanding alleged commercial-in-confidence clauses, the Parliament is still entitled to know all the particulars of those clauses. That is the basic premise on which I move this amendment. I will also place on the record the information that the Parliament has a right to call for. Again, I made significant reference to this matter in a speech in 2003, when I referred to the Constitution Act 1889 and the Parliamentary Privileges Act 1891. I said in part -

> It is self-evident that the Parliamentary Privileges Act 1891 empowers either House of Parliament in Western Australia and provides the necessary authority for either House of Parliament, or any committee of either House, to send for persons and papers and order any person to attend before the House, or such committee, to produce any paper, book, record or other document in the possession or power of such person.

That was a clear statement of the intent of the Parliamentary Privileges Act. I then went on to talk about a case involving the New South Wales Parliament and specifically Treasurer Michael Egan, who sat in the Legislative Council and who refused to table certain documents. The matter ended up in the High Court, which dealt with the question of the doctrine of reasonable necessity. I recognise that New South Wales law is somewhat different from our law. However, the bottom line - I am trying to save as much time as I can - on the question of what information the Parliament has a right to call for in Western Australia is that it is any information that is required to discharge its constitutional duty in legislating for the peace, order and good government of Western Australia. It could not be any clearer or broader. It is for those reasons that I have moved the amendment. I invite the support of the house for the amendment, which will do nothing to jeopardise this corporation's business operations but will be a reminder that while it remains a government entity, in the end it is required to answer to the Parliament. I have made my position clear: the master of the Parliament is the people. In the end, that is to whom the government enterprise is required to report.

Hon KIM CHANCE: The government will support the amendment moved by Hon George Cash. I rise not only to state that support for the record but also because I was a bit surprised to hear at least one thing that Hon George Cash said. I, and I am sure the government as a whole, agreed with 99 per cent of what Hon George Cash said; I was just surprised to hear him say that the Gallop government seems to be increasingly using the impediment of commercial confidentiality as a means of withholding information. I assure the Parliament that I can barely remember the last time that the impediment of commercial confidentiality was used by the Gallop government. I can barely remember whether it has ever happened. It may have happened, but it has not been common. The people who were members of this place a few years ago would recall that ministers would hide behind commercial confidentiality on a daily basis. Every minister of the Gallop government is aware of and complies with, and requires their departments to comply with, the recommendations of the Burt Commission on Accountability on commercial confidentiality and the formation of contracts, which require commercial confidentiality and which is the more important part of the Burt commission recommendation. Beyond that, I thoroughly support the matters raised by Hon George Cash. I am considering counselling the officers who caused the matter to not be included in the original draft of the bill.

The DEPUTY CHAIRMAN (Hon Ken Travers): Before giving the call to Hon Paul Llewellyn, I remind Hon Nigel Hallett of the rule on reading newspapers in the chamber. I am sure that he was about to take it outside and that I had not properly observed him doing so!

Hon Simon O'Brien: I think he confiscated it from a member opposite.

The DEPUTY CHAIRMAN: I am glad that he did that, if that was the case.

Hon PAUL LLEWELLYN: I am delighted that Hon Kim Chance has agreed with 99 per cent of what Hon George Cash said about commercial in confidence and entities hiding behind this provision. This bill is peppered with special exemptions for commercial entities. We will later wonder why they have become rogue entities and why we must do this again in a few years. We are reorganising the deckchairs on this particular *Titanic* because of the poorly conceived corporations bill that was previously introduced to the Parliament. Subclause (3) states -

> A board may request the Minister to delete from the copy of a statement of corporate intent that is to be laid before Parliament a matter that is of a commercially sensitive nature, . . .

Hon Kim Chance could not remember a time when the government has hidden behind commercial confidentiality, but we know that corporations hide behind commercial confidentiality on a daily basis. This is not a directive to the government; it concerns the compliance of the corporation. To incorporate confidentiality holidays in the bill would again compromise the public interest and the transparency of the dealings of the state and corporations. A company could not do this under the rules of the Australian Stock Exchange. A company would not be told, "You don't have to report on this particular thing; it is okay, boys." If corporations other than the hybrids that we have been talking about were to manage their affairs in the same way in which we will manage these government corporations, they would be out of business. In fact, they would be called before the Australian Competition and Consumer Commission, and the Australian Stock Exchange would ask how these sorts of arrangements could be put in place and what enabled them to not report on certain matters. I will move to delete subclauses (3) and (4), because they are not in the public interest.

The DEPUTY CHAIRMAN: We first need to deal with the amendment moved by Hon George Cash. If Hon Paul Llewellyn wishes to move an amendment, he will need to put it in writing.

Hon George Cash: If you are not happy with the clause, you can vote against it. If you do that, you will not have to put anything in writing.

Hon PAUL LLEWELLYN: However, that would mean that I would vote against the clause as a whole. I am not opposed to the clause; I am opposed to the two subclauses I have identified. I do not want to vote against the clause because it is a reporting matter. It provides an exemption. The Greens (WA) support the intent of the amendment moved by Hon George Cash, because it is a responsible measure in relation to the whole of the clause. However, I will move to delete subclauses (3) and (4). We will not stand in the way of Hon George Cash's wise addition to this clause. Will the minister explain what commercial in confidence actually means? On what basis can one of these corporations say that it is not obliged to report on these matters?

The DEPUTY CHAIRMAN (**Hon Ken Travers**): Before giving the call to the Leader of the House, to avoid any confusion for the committee, if Hon Paul Llewellyn wishes to delete subclauses (3) and (4), he will need in the first instance to defeat the amendment moved by Hon George Cash. My reasoning is that the amendment moved by Hon George Cash makes reference to subclause (3). Therefore, if passed, the committee will agree to the reference to subclause (3) in subclause (5). If the member wishes to defeat subclauses (3) and (4), he would first need to vote down Hon George Cash's amendment. If that amendment were defeated, I would then entertain an amendment to delete subclauses (3) and (4). If the amendment by Hon George Cash is accepted, it is not possible for the member to make that deletion. He may make a further amendment. Hon Paul Llewellyn's intentions are known to the committee.

Hon KIM CHANCE: I thought these comments would not require stating. Any corporation, whether public or private, operating in the commercial world at any one time has a range of commercially sensitive issues. That is simply an outcome of operating in a commercial world. If someone has competitors, that person has price structures, operational costs and functional plans that are confidential to that person. If that information were not confidential to that person, he or she would no longer be operating in the commercial world. If everyone knew the figures, people could bid one dollar under that person, which would be the end of that person's business. Commercial confidentiality is not something wicked, evil and dark that lurks around corners and comes to get people. It is an outcome of doing business. The Burt Commission on Accountability was specific about this matter. It did not state that commercial confidentiality should not be engaged in by government, or even by ministers, but that government agencies and ministers should not enter arrangements that are specifically about commercial confidentiality to give a shield to hide behind. That was the recommendation of the Burt commission.

Hon Paul Llewellyn also mentioned a matter concerning the capacity to withhold certain matters from a statement of corporate intent. He said that if an operator tried that in the Australian Stock Exchange, the ASX rules would get that operator. I separate in the honourable member's mind the difference between financial reporting and statements of corporate intent. Financial reporting arrangements are what the ASX watches very closely. The rules that will apply to these corporations are drafted on the basis of the fundamentals of the ASX rules. Statements of corporate intent by ASX-listed companies can be whatever the company determines. The honourable member may look at the statement of corporate intent of the state's biggest company, Wesfarmers. It is a one-liner: to maximise profits to shareholders. It need not be a document set down, expressed, framed and formulated in law in the way that we are doing with these electricity corporations. In terms of issues we are discussing here, the requirements in this legislation so far exceed those ASX requirements so as to be laughable. Members should have no worries about things that should not be hidden being hidden from people. The

legislation sets out to make an entire industry more accountable and open to competition - not the reverse. I cannot believe that it is implied that somehow or other the government is trying to hide something here. It is trying to get the industry open to people, not close it up.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 104 to 108 put and passed.

Clause 109: Deletion of commercially sensitive matters from reports -

Hon GEORGE CASH: I move -

Page 62, after line 3 - To insert -

(4) Nothing in this section affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891*.

I move my amendment for the same reasons outlined in respect of clause 103.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 110 to 192 put and passed.

Postponed clause 41: Principal functions -

The clause, as amended, was postponed on motion by Hon Murray Criddle at an earlier stage of the sitting.

Hon MURRAY CRIDDLE: I make a suggestion to the minister. We could spend endless time on this matter, and it would appear that the bill will not progress through all stages in the next week or so. Therefore, it would be advantageous to sit down and discuss the issues over time. Other clauses need to be dealt with. I am not sure that this matter can be handled now. My suggestion is a way of progressing this bill in the time before us. This will give us an opportunity to clarify the situation with clauses 41 and 61.

Hon GEORGE CASH: On the same point - I think it is now a point of order - I would encourage the minister to report progress so members can sit down and consider rewording clauses 41 and perhaps clause 61; the two clauses are intertwined. I acknowledge that a number of members hoped to complete consideration of the bill today - I am sure the minister intended it to be completed. I would suggest that we deal with new clauses in the schedules, but standing orders prevent that from occurring. I would prefer to have one or two matters left outstanding to be dealt with at a later stage. It would be foolish to waste time talking about postponed clause 41 for the purpose of causing the clock to wind through to one o'clock. Hon Murray Criddle made his suggestion in good faith to come to some resolution in respect of the postponed clauses. If no resolution can be arrived it, that process will at least have saved time when we return to the bill - that is, we will not waste time discussing items that may be determined at a later time through further consideration. It is a pity we have not finished considering the bill. Under the circumstances, it seems we have been caught short a little in respect of time.

The DEPUTY CHAIRMAN (Hon Ken Travers): Before giving the call to the Leader of the House, I remind the committee that if the committee determines, we could move to considering the schedules and the new clause. It is just that under standing order 236, we are required to go through the postponed clauses and then onto the new clauses and the schedules. There is nothing to prevent the committee, if it decides to do so, from dealing with those other matters. I invite the Leader of the House to move that motion, for the committee to determine.

Hon KIM CHANCE: In taking your advice, Mr Deputy Chairman, I now move -

That clauses 41 and 61 be postponed until after consideration of schedule 5.

Hon GEORGE CASH: I agree with the proposition. I was reading standing order 236(a), and did not read the words "Unless the Committee". I read it as the house having to do it and that is why I was proposing to report progress. I am glad that we can make some progress.

Question put and passed.

Schedule 5, new clause 28 -

Hon GEORGE CASH: I move -

Page 171, after clause 27 - To insert the following new clause -

28. Section 39A inserted

After section 39 the following section is inserted in Part 2 Division 7 -

“

39A. Review of code standards applying to Regional Power Corporation

(1) In this section -

“access arrangement” has the meaning given to that term in section 103;

“relevant day” means -

(a) for the first review, the day referred to in subsection (3); and

(b) for a subsequent review, the day referred to in subsection (4);

“RPC standards” means standards referred to in section 39(2)(d) that -

(a) are to be observed by the Regional Power Corporation; and

(b) are provided for in a code prepared and issued by the Minister under section 39;

“service standards” means standards relating to the quality and reliability of the supply of electricity that are provided for in an access arrangement.

(2) The Authority is to carry out reviews of the operation and effect of the RPC standards.

(3) The first review is to be carried out as soon as is practicable after the day on which the first access arrangement in respect of the South West interconnected system is approved under Part 8.

(4) Subsequent reviews are to be carried out as soon as is practicable after the day on which the period fixed under subsection (11) ends.

(5) The purpose of a review is to consider whether the RPC standards are appropriate for each of the transmission systems and distribution systems to which they apply when assessed against the service standards that apply to the South West interconnected system.

(6) When carrying out a review the Authority is to give members of the public an opportunity to comment on matters relevant to the review.

(7) The Authority is to give the Minister a report based on a review within -

(a) the period of 4 months after the relevant day; or

(b) any longer period allowed by the Minister under subsection (8).

(8) The Minister may, at the request of the Authority, extend the period referred to in subsection (7)(a) by not more than 28 days.

(9) A report may contain recommendations as to changes that should be made to the RPC standards.

(10) Within 28 days after the day on which a report is given to the Minister, the Authority is to -

(a) make the report available for public inspection in such manner as the Authority considers appropriate; and

(b) cause a notice giving details of where copies of the report can be obtained to be published -

(i) in a daily newspaper circulating throughout the State; and

(ii) on its internet website.

(11) The Minister, by order published in the *Gazette*, is to fix a period for subsequent reviews for the purposes of subsection (4).

(12) A period fixed under subsection (11) cannot be longer than 5 years after the day on which a notice in respect of the last preceding report under this section was published under subsection (10)(b)(i).

(13) The Minister, by order published in the *Gazette*, may -

(a) amend an order made under subsection (11); or

(b) revoke an order made under subsection (11) and replace it with another order.

".

For the sake of completeness, I refer to some discussions in the other place, where it was made clear that the Liberal opposition wanted the Electricity Networks Corporation, when dealing with the Regional Power Corporation, to come under the codes of access that were to be developed by the Economic Regulation Authority. In so doing, this clause will enable a review of code standards applying to the Regional Power Corporation. I do not know that there is a great deal that needs to be said as this new clause sets out the various definitions that are required, and then sets out how reviews are to be carried out of the operation and effect of the Regional Power Corporation standards.

Hon MURRAY CRIDDLE: I agree with the amendment moved by Hon George Cash. It means that the codes will apply to the Regional Power Corporation similar to the way the codes apply to the south west interconnected system. This will bring some clarity and equity to the situation. I encourage the government to agree with the amendment.

Hon KIM CHANCE: The government agrees with this amendment, which was worked out in the interregnum between the debate in the Legislative Assembly and today. It is proof of the value of the very good work that has been done on the legislation.

New clause put and passed.

Schedules 1 to 4 put and passed.

Schedule 5, clauses 1 to 26 put and passed.

Schedule 5, clause 27: Section 39 amended -

Hon GEORGE CASH: I move -

Page 171, after line 1 - To insert -

(1) Section 39(2)(d) is amended by deleting "or distribution licences" and inserting instead -

" , distribution licences or integrated regional licences ".

This amendment deals with the review of code standards applying to the Regional Power Corporation. The clause sets out various definitions that are required, and the manner in which reviews are to be conducted of Regional Power Corporation standards. For the sake of trying to move the debate along, given that these amendments were discussed and the drafting was assisted by the minister's advisers, I do not think there is a need for me to give a great explanation of every single sentence of the proposed insertion. I ask members to support the amendment.

Amendment put and passed.

Hon GEORGE CASH: I move -

Page 171, after line 10 - To insert -

(3) Section 39(2c) is amended in the definition of "code matter" by deleting "or" after paragraph (c) and inserting instead -

"

(ca) the matter mentioned in subsection (2)(da); or

".

Amendment put and passed.

Clause, as amended, put and passed.

Schedule 5, clauses 28 to 35 put and passed.

Schedule 5, clause 36: Part 9A inserted -

Hon GEORGE CASH: I move -

Page 179, after line 9 - To insert -

(d) any service standards to be observed by the Regional Power Corporation; and

I refer to proposed section 129D of the Electricity Industry Act - "Determination of tariff equalisation contributions". Members will be aware that this bill amends the Electricity Industry Act to establish the tariff equalisation fund, which is to be used to fund the Regional Power Corporation's losses as a result of supplying customers outside the south west interconnected system under the uniform tariff policy. Under the fund's arrangement, the bill specifies the matters that the Treasurer must have regard to when determining a tariff equalisation contribution. It is proposed to add a further requirement that obliges the Treasurer to take into account the performance standards applicable to the Regional Power Corporation, as specified in the reliability and quality of supply code. This amendment will provide a legislative basis to ensure that the funding requirement of the Regional Power Corporation is determined after explicit consideration of the performance standards it is required to meet according to law.

Amendment put and passed.

Hon GEORGE CASH: I move -

Page 179, after line 10 - To insert -

(4) In subsection (3)(d) -

"service standards" means standards referred to in section 39(2)(d) that are provided for in a code prepared and issued under section 39.

This amendment provides a definition of "service standards" referred to in section 39(2)(d) of the Electricity Industry Act, which are provided for in a code that is prepared and issued under section 39.

Hon KIM CHANCE: To save time, I indicate that the government will support the balance of the amendments on the notice paper.

Amendment put and passed.

Hon GEORGE CASH: I move -

Page 181, line 9 - To delete "and (c)" and insert instead -

"(c) and (d)".

These amendments are consequential upon earlier amendments that have been agreed to.

Amendment put and passed.

Clause, as amended, put and passed.

Schedule, as amended, put and passed.

Point of Order

Hon GEORGE CASH: Can we, from the Chair, agree on which clauses of the bill are outstanding?

The DEPUTY CHAIRMAN (Hon Ken Travers): Postponed clauses 41 and 61 and the long title are outstanding.

Committee Resumed

Progress reported and leave granted to sit again.

Sitting suspended from 12.55 to 2.00 pm