

Mr Tom Stephens; Hon George Cash; Hon Robin Chapple; Deputy Chairman; Hon Murray Criddle; The Deputy Chairman (hon Adele Farina; Hon Peter Foss

ELECTRICITY LEGISLATION (AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2003

Instruction to the Committee of the Whole

HON TOM STEPHENS (Mining and Pastoral - Minister for Local Government and Regional Development) [10.37 am]: I move -

That the Committee of the Whole House on the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003 have power to amend the Bill in accordance with those proposed amendments contained in the supplementary notice paper and make any other amendments as may be necessary as a consequence.

I will briefly explain why the Government is proceeding down this path. As members are aware, this Bill was one of the three Bills that the Government introduced to restructure the Western Australian electricity industry. The first of those Bills that passed through this Parliament received royal assent in April 2004. The second Bill, the Electricity Corporations Bill, has been suspended in response to the opposition of the Parliament to the proposed restructure. The third Bill is the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003, which is now before the Legislative Council. That Bill provides for a number of transitional provisions and amendments to several Acts resulting from the previously proposed restructure of Western Power. In addition, it provides for the transition to the new market arrangements previously agreed to by Parliament; that is, those contained in the Electricity Industry Act 2004.

In moving to introduce amendments into the Council, which are referred to in the motion, the Government is seeking to amend the Bill in three ways. First, given that the restructure of Western Power will not proceed at present, we need to amend or delete those provisions that relate to the restructure, and that will involve the deletion of a large portion of the Bill before the House. Secondly, in view of the fact that the restructure of Western Power will not proceed, we are seeking to introduce increased governance arrangements that will provide for more control over the corporation than is currently permitted. Thirdly, the amendments provide for mechanisms to transition market participants for the new electricity market arrangements provided for under the Electricity Industry Act in order to avoid the duplication of regulatory regimes under various statutes.

It is my intention to leave my comments there. As a result of the amendments on the supplementary notice paper, I believe that the House is entitled to further explanation and the time to provide that is during the committee stage. However, I commend the motion to the House. There has been considerable out-of-Chamber discussion and deliberation on the motion, and I hope it meets the needs of those who have contributed to that discussion.

HON GEORGE CASH (North Metropolitan) [10.40 am]: The Opposition is prepared to support this motion, which is an instruction to the committee when it deals with the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003. It is important for the House to recognise that the purpose of an instruction is to give power to the committee to consider amendments that it would not otherwise be able to consider; that is, amendments that would be outside the scope of the original Bill. In this case, as the minister has said, it is proposed to amend the Bill in such a manner as to clearly take it outside the scope as described in the second reading speech. In fact, if the second reading speech on this Bill, given in 2003, were compared with the Bill as it is presumed it will emerge from the committee stage - that is, on the presumption that the amendments on the supplementary notice paper will be agreed to - they would be irreconcilable. It is critical that we have this instruction. Equally, because the second reading speech, given in 2003, now does not reflect the Bill as we trust it will emerge from the committee stage, the minister has made the point that it would be convenient for him during debate on clause 1 to expand on the comments he has made in support of this motion. I suggest that not because I or other members who are vitally involved in this Bill are not aware of the situation - the minister has provided me with some written comments on the matter - but because it will be an impossibility for future readers of *Hansard* to reconcile the second reading speech with the Bill. The minister might want to have incorporated in *Hansard* any comments that may assist future readers. The Opposition would support leave to do so if he so wishes.

As the second reading on this Bill occurred in December 2003 as part of a cognate debate of three Bills dealing with changes to the electricity system in Western Australia, the House was told at the time that we would not be proceeding with this Bill at that stage and that it depended on what happened to the Electricity Industry Bill and the Electricity Corporations Bill. Because of that delay, it is important to enable some latitude to be given during debate on clause 1 so that the respective parties in the House can bring the committee up to date on where they stand on the issue and, obviously, on the various amendments on the supplementary notice paper. At the moment the supplementary notice paper comprises 25 pages of amendments. About 83 clauses of the original

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Bill are proposed to be deleted, and I believe that can be done in one motion. Although it appears that there are a considerable number of amendments, once the deletions occur, the Bill will come down to a fairly manageable size and I hope we will be able to progress the matter with some speed. With those comments, the Opposition supports the motion before the House.

HON ROBIN CHAPPLE (Mining and Pastoral) [10.44 am]: The Greens (WA) also will support the motion moved by the minister. Like my colleague opposite, we are aware of the significant changes that have been made to what was to be the Electricity Legislation (Amendments and Transitional Provisions) Bill. Some of these amendments, which we will support, have arisen from statements I made during debate on the Electricity Industry Bill, in which I indicated to the Government that we would support amendments to the Electricity Corporation Act to provide increased corporate governance of Western Power by the Government. We will welcome those amendments as we progress, but it was important to hear the minister's statement; his proposal will enable us to deal with substantive changes to the amendments and transitional provisions Bill. Like my colleague opposite, we note that there are a number of amendments to the transitional provisions Bill, which seeks to amend three other Bills, so there will be a long and convoluted process. I wonder whether it would have been worthwhile for the Government to have withdrawn the Electricity Legislation (Amendments and Transitional Provisions) Bill and reintroduced a Bill that was shorter and much more succinct. It might have made our task somewhat easier in the lead-up to debate on this legislation and also in its progress through this Chamber during the committee stage.

Question put and passed.

Committee

The Deputy Chairman of Committees (Hon Adele Farina) in the Chair; Hon Tom Stephens (Minister for Local Government and Regional Development) in charge of the Bill.

Clause 1: Short title -

Hon TOM STEPHENS: I have listened to the comments made by Hon George Cash and Hon Robin Chapple. Hon George Cash has suggested that I take the opportunity during the committee stage of formally making available, especially for the record rather than for members because members are familiar with the clauses, explanatory notes on the way we are about to proceed. I am proposing to take up that suggestion Hon George Cash has made and seek leave to table and have incorporated in *Hansard* the document that I have made available to members, which comprises introductory comments that basically detail and explain the various provisions contained in the amendments that appear on the notice paper. I therefore seek leave to have it incorporated into *Hansard*.

Leave granted.

The following material was incorporated -

ELECTRICITY LEGISLATION (AMENDMENTS AND TRANSITIONAL PROVISIONS)
BILL 2003

Introductory comments by the Hon. Tom Stephens, MLC

The *Electricity Legislation (Amendments and Transitional Provisions Bill) 2003* was one of three Bills introduced by Government in November 2003 to restructure the Western Australian electricity industry.

The first Bill, the Electricity Industry Bill received Royal Assent in April 2004. The second Bill, the *Electricity Corporations Bill 2003* has been suspended following the Opposition's lack of support for the restructure of Western Power.

The third Bill, the *Electricity Legislation (Amendments and Transitional Provisions Bill) 2003* currently before the Legislative Council provides for a number of transitional provisions and amendments to several Acts as a result of the previously proposed restructure of Western Power as well as providing for the transition to the new market arrangements, previously agreed to by Parliament, through the passage of the *Electricity Industry Act 2004*.

The Government seeks to move to introduce Amendments in Council to amend the *Electricity Legislation (Amendments and Transitional Provisions Bill) 2003*, principally in three areas:

- Firstly, given that the restructure of Western Power will not proceed at the present time, the *Electricity Legislation (Amendments and Transitional Provisions Bill) 2003* needs to be amended to delete those provisions relating to the restructure. This will involve a large portion of the current Bill being deleted.
- Secondly, in view of the restructure of Western Power not proceeding, the Government seeks to introduce increased governance arrangements to provide for more control over the Corporation than is currently permitted under the current *Electricity Corporation Act 1994*. These enhanced governance provisions are to be effected through amendments into that Act and were previously provided for under the *Electricity Corporations Bill 2003*.
- Thirdly, the Amendments provide for mechanisms to transition market participants to the new electricity market arrangements provided for under the *Electricity Industry Act 2004* in order to avoid duplication of regulatory regimes under various statutes.

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It should be noted that there are still a number of amendments contained within the *Electricity Legislation (Amendments and Transitional Provisions Bill) 2003* which are being retained. These include emergency powers to be conferred upon the Minister for Energy and the ability for the Parliamentary Commissioner to undertake the function of electricity ombudsman.

In addition to the changes I have just outlined, the Amendments in Council re-title the Bill the "*Electricity Legislation Amendment Bill 2004*".

The Electricity Legislation Amendment Bill is a mechanical bill necessary to support the Electricity Industry Act 2004. In this regard, the Bill amends:

- *Electricity Act 1945*;
- *Electricity Corporation Act 1994*;
- *Electricity Industry Act 2004*;
- *Energy Operators (Powers) Act 1979*; and
- *Parliamentary Commissioner Act 1971*,

I will now address the specific nature of the Amendments in Council in the context of the former *Electricity Legislation (Amendments and Transitional Provisions Bill) 2003*.

The current Bill before the House provides for:

- Amendments to the *Electricity Corporation Act 1994* to repeal all provisions except those relating to access to Western Power's transmission and distribution systems. The Bill sought to amend the title of the *Electricity Corporation Act 1994* to the *Electricity Transmission and Distribution Systems (Access) Act 1994*. This Act provided for the continuation of Western Power's obligations to provide third party access to its transmission and distribution capacity until such time as the Networks Corporation and the Regional Power Corporation, as appropriate, would have had access arrangements approved by the Economic Regulation Authority under a new Electricity Access Code.

In view of the restructure of Western Power not proceeding at the present time, the Amendments in Council now delete these provisions.

- The Bill provided for the making of a Transfer Order, by the Minister for Energy, specifying how the assets, rights and liabilities of Western Power were to be allocated to the proposed four new corporations. The Transfer Order was to give effect to the legal establishment of the new entities. The Bill also included provision for unallocated assets or liabilities.

In view of the restructure of Western Power not proceeding at the present time, the Amendments in Council now delete these provisions.

- The Bill ensured that the restructure of Western Power would not affect an employee's remuneration, existing or accruing rights or interrupt continuity of service.

In view of the restructure of Western Power not proceeding at the present time, the Amendments in Council now delete these provisions.

- The Bill made consequential amendments to a number of other Acts to replace the term "Western Power Corporation" with reference to one or more of the four successor entities.

In view of the restructure of Western Power not proceeding at the present time, the Amendments in Council now delete these provisions.

- Security of electricity supply is essential for consumers and the economy as a whole. The Government has moved to refine powers in the event of a system emergency. The Bill amends the *Energy Operators (Powers) Act 1979* to extend emergency powers to all operators of distribution and transmission systems, not just the Western Power successor entities. The Bill places an obligation on system operators to notify the Minister for Energy of a system emergency and empowers the Minister to make appropriate orders to ensure continuity of supply. This provision was proposed prior to the events in February 2004 and is even more relevant now.

The Minister will possess the power to delegate the role to make orders to an energy operator. This will ensure that appropriate skills can resolve the emergency in a timely manner. Importantly, in the event of an emergency that would have immediate consequences, system operators will be authorised to take any action considered necessary to mitigate or avoid the emergency.

The Amendments in Council do not change these proposed amendments to the *Energy (Operators) Powers Act 1979* originally introduced into Parliament in November 2003.

- In addition to emergency powers, the Bill also made a number of other amendments to the *Energy Operators (Powers) Act 1979*. These relate to:

- inserting reference to the successor entities to Western Power.

In view of the restructure of Western Power not proceeding at the present time, the Amendments in Council now delete these provisions.

- Extending the definition of "energy operator" to include that the holder of an electricity generation, transmission, distribution and retail licence. Presently gas licensees are afforded this right. With the establishment of the electricity licence framework under the *Electricity Industry Act 2004*, similar rights need to be extended to electricity licensees.

The Amendments in Council, for the main part, do not amend these provisions. However under the restructure model it was proposed to delete reference to Western Power in the definition of energy operator. In view of the restructure not proceeding, reference to Western Power in this definition has been retained.

- To clarify which powers are to apply to network operators distinct from energy operators in a small number of instances.

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In view of the restructure of Western Power not proceeding at the present time, the Amendments in Council now delete some but not all of these provisions.

- The establishment of an independent licensing regime under the Electricity Industry Bill gives rise to a number of amendments to the *Electricity Act 1945*. The Bill sought to repeal a number of provisions from the Electricity Act relating to supply authorities given that supply authorities are required to be licensed under Part 2 of the *Electricity Industry Act 2004*. The remaining provisions of the *Electricity Act 1945* relate to certain technical and safety matters that are administered by the Director of Energy Safety.

Under the original Bill it was proposed to delete these provisions outright. The Amendments in Council now proposes a sunset mechanism to be inserted within the *Electricity Act 1945*, which enables the various rights and obligations relating to supply authorities to be progressively suspended over time in recognition of the transition from a supply authority regime under the *Electricity Act 1945* to an electricity licensing regime under Part 2 of the *Electricity Industry Act 2004*.

- The Bill also amends the *Parliamentary Commissioners Act 1971* to enable the Parliamentary Commissioner to act as the independent Electricity Ombudsman and provide an accessible dispute resolution service to electricity customers.

The Amendments in Council do not amend these provisions.

The proposed Amendments in Council introduce a small number of new amendments to the *Electricity Industry Act 2004* and the *Electricity Corporation Act 1994*.

The amendments to the *Electricity Industry Act 2004* are:

1. *Industry Codes*

Section 39 of the *Electricity Industry Act 2004* provides the ability for the Economic Regulation Authority to determine industry codes on specific matters, including metering, transfer of customers, methods or principles to be applied by licensees in the preparation of accounts between licensees, standards relating to the quality and reliability of supply and any other matter prescribed in regulations.

The Government also requires the ability to implement such codes. Amendments to section 39 provide the mechanism to enable this. In the event that the Minister determines an industry Code, the Economic Regulation Authority may not issue a Code on the same matter. This will avoid duplicity of industry codes.

2. *Electricity Access*

Section 115(1) prohibits a network service provider from preventing or hindering a person from obtaining access to services provided by a network. The provision has been amended to make it more clear as to the circumstances and the conduct that are to be prohibited. This provision has an equivalent within section 4F of the *Commonwealth Trade Practices Act 1974*

The amendments to the *Electricity Corporation Act 1994* are:

1. *Annual reports*

Section 62 of the *Electricity Corporation Act 1994* (ECA) states that in preparing annual reports for the corporation on a segmented basis, "the operations of the corporation are to be divided into the following segments or such other segments as may be agreed between the corporation and the Minister" -

- (i) the generation of electricity;
- (ii) the transmission of electricity;
- (iii) the interconnected distribution and sale of electricity;
- (iv) the Pilbara interconnected system; and
- (v) the remote power systems.

Separate profit and loss accounts and balance sheets are to be prepared in respect of each of those segments.

It is proposed that Section 62 be amended to reflect the following operational segments as these more closely align to current business operations and provide for greater transparency in terms of reporting requirements:

- (i) the generation of electricity within the South West Interconnected System (SWIS);
- (ii) the transmission and distribution of electricity within the SWIS;
- (iii) the sale of electricity within the SWIS;
- (iv) the Pilbara interconnected system; and
- (v) the remote power systems.

The above will also require a definition of SWIS. The definition contained within clause 3 of the former *Electricity Corporations Bill 2003*, is proposed in this regard.

2. *Ring fencing of operational segments*

Reporting obligations under Section 62 of the ECA for the revised segments that are proposed above relate solely to financial performance, and will not in themselves result in increased security and/or confidentiality of information between the segments.

Consequently, it is proposed that Section 62 be further amended to reflect the wording of clause 64(2) of the former *Electricity Corporations Bill 2003*, which provided for security of information between Western Power's businesses and broader ring-fencing arrangements. These arrangements are to apply to the operational segments listed in tem 1 above (as amended). In essence the Government will possess the ability to make regulations in relation to:

- the keeping of accounts and records;
- financial reporting;

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- the apportionment of income, expenditure, assets and liabilities;
- the protection of information;
- the conduct of officers of a corporation; and
- controls and procedures, and the conferral of functions on a specified person, to ensure that any required segregation is effective.

3. *Minister may give directions*

Section 66 of the ECA enables the Minister to give directions to the Corporation generally.

Section 66 is to be amended consistent with clause 115 of the *Electricity Corporations Bill 2003* to provide for directions to be given with respect to the performance of functions, either generally or in relation to a particular matter. This will overcome a material problem in the existing legislation regarding the Minister's ability to effectively direct the Corporation.

Furthermore, it is proposed that the Minister possess the ability to give a direction, which prohibits the Corporation from performing any of its functions under section 28 of the Act, absolutely, to a limited extent, or in a specified area or areas of the State.

4. *Procurement of new generation and electricity access*

The Amendments in Council provides for the phasing out of operation of access and procurement provisions under that Act in recognition that both those matters are to be dealt with under the *Electricity Industry Act 2004*.

Sections 90, 91, 92 or 93 or Schedules 5, 6 or 7 or any portion of those sections or schedules may be repealed by the Minister for Energy following the enactment of Regulations provided that the Minister is of the opinion that the matters to which those sections and schedules relate are adequately dealt with, or will be adequately dealt with on or after a specified day under Parts 8 and 9 of the *Electricity Industry Act 2004*.

Part 8 of the *Electricity Industry Act 2004* provides for the establishment of a Western Australian access code. The new section 95A provides for the insertion of a sunset provision in relation to obligatory access to Western Power's transmission and distribution capacity.

These sunset provisions are necessary to ensure that there is not duplicity of generation procurement processes and electricity access arrangements within the South West Interconnected System.

I would like to reiterate that the matters dealt with under the Electricity Legislation Amendment Bill are arrangements necessary to provide for the transition from the various regulatory arrangements under a range of statutes to the new market arrangements approved by Parliament as part of its endorsement of the *Electricity Industry Act 2004* earlier this year.

Hon TOM STEPHENS: I appreciate the other suggestions that have been made. The first was by Hon George Cash. He suggested that there will need to be some introductory debate on the first clause. I also note that Hon Robin Chapple made the point that we might have been better off with a new Bill. I am told that Hon George Cash was nodding at that point. I did not spot the nod but I believe there is some strength of argument behind that position. I am merely the vehicle for the Government's Bill in this Chamber. I know that does not rob me of responsibility. As I look at it, I would have preferred to have gone down that path too, but it is not the path we have embarked upon.

Hon George Cash: My nodding was in appreciation of the fact that you were listening to what was said and that you were going to incorporate things on clause 1, but I also agree with the proposition that Hon Robin Chapple made.

Hon TOM STEPHENS: I have had made available to me what would be the consolidated version of the Bill once we have adopted the various amendments that at least I have proposed. If anyone else wants to look at that, please let me know. I appreciate the points that have been made. With goodwill and collaboration we can get to where we want to go pretty quickly. It is a little complicated but not beyond the skill and wit of all the members of this Chamber.

Hon ROBIN CHAPPLE: I am assuming that this is the document that the minister was referring to when incorporating the introductory comments. We were all provided with another document, which is far more detailed. It may also be of value to have that incorporated into *Hansard*.

Hon Tom Stephens: The explanatory memorandum is tabled and made available.

Hon ROBIN CHAPPLE: I was merely thinking that because of the nature of many of the elements of the Bill, it might be a useful process.

Hon Tom Stephens: I do not think it helps. I will table the document. A number of members in the House already have in their possession the new explanatory memorandum, which will help guide members through the Bill. I seek leave to table it.

The DEPUTY CHAIRMAN (Hon Adele Farina): The minister is seeking leave to table the document and not to have it incorporated into *Hansard*.

Leave granted. [See paper No 2525.]

Hon GEORGE CASH: The long title of the Bill announces the Bill to be a Bill for an Act, and reads -

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- to amend and rename the *Electricity Corporation Act 1994*, and to amend other Acts, as part of a scheme for the replacement of Western Power Corporation with four new corporations each having functions relating to a part of the electricity supply industry;
- to provide for the passing of assets and liabilities from Western Power Corporation to the new corporations or to the State and for other transitional matters;
- to make amendments relating to the electricity industry to other Acts; and
- to make related provisions.

As I indicated in the comments that I made during the motion to provide an instruction to this committee, that long title will not be relevant once the amendments that are on the notice paper are passed. In fact, it is proposed within the amendments that are on the notice paper to amend the long title so that it reflects the things that will be contained in the Bill once it has gone through the committee stage. However, I should indicate that there is a supplementary notice paper, as you have indicated, Madam Deputy Chairman. It is No 247-3, which has been distributed. It contains a substantial and indeed significant number of amendments to the Bill. The significance of the proposed amendments can be gauged by noting that the original Bill - that is, the 2003 Bill - comprised 76 pages and the proposed amendments that are on the supplementary notice paper currently comprise 25 pages. Of the 109 clauses in the original Bill it is proposed that in committee we delete more than 80. It is further proposed that we insert a number of additional new clauses. As I indicated, the amendments will be such that there will be a need to amend the long title of the Bill so that it more accurately and more properly describes the purposes of the Bill when the various amendments are agreed to in committee.

It is worth reflecting on the recent history of the Legislative Council's consideration of the Government's proposed reforms or the changes that it intended to have effected to enable the restructure of Western Power and also to facilitate new market arrangements for the Western Australian electricity industry in the form of additional private generation and marketing opportunities and a more effective distribution or network system that could provide a more equitable access to the network system itself. I note that it is still intended to establish an independent licensing regime for the electricity industry and to implement the measures that will effect a competitive market in Western Australia.

The original three Bills were debated at second reading stage in December 2003. Those original three Bills were the Electricity Industry Bill 2003, the Electricity Corporations Bill 2003 and the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003. Because of the time that has elapsed, I want to make clear or reinforce the comments that I made back in December 2003 so that the committee understands just exactly what is the Opposition's position on the reforms that were proposed at that stage by the Government. I refer to the *Hansard* of 9 December 2003 in which I said -

The Liberal Party has considered the Government's legislation, and it has agreed to support the Electricity Industry Bill 2003 in the form in which it has been presented to Parliament. It has further agreed to vote for appropriate amendments to the Electricity Corporations Bill 2003 to achieve a separate Electricity Networks Corporation and a Regional Power Corporation. The Liberal party room has voted to oppose the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003. However, depending on the amendments presented to Parliament by the Government to achieve a separate Electricity Networks Corporation and a Regional Power Corporation, it may be procedurally necessary for Liberal Party members to vote for the required transitional provisions to bring those two corporations into effect, and, therefore, to satisfy the intent of the party room decision. I make it clear that it is not for the Opposition to rewrite the Government's legislation; it is for the Opposition to state its position to enable the Government to consider the amendments necessary to achieve the position, should that be the desire of the Government. Unlike the Liberal Opposition and other minor parties, the Government has the resources and benefit of parliamentary counsel to ensure that appropriate and meaningful amendments are forthcoming to achieve a mutually satisfactory outcome.

I also made it clear in those comments when reinforcing the Liberal Party's position that in the end the Liberal Party would look for an electricity system in Western Australia that provided a number of important elements. The underlying elements of reliability, security, quality and safety of the electricity supply in Western Australia were the governing principles the Liberal Party was keen to see incorporated in any legislation passed. It is now history that the Electricity Industry Bill was passed. The Government and other parties were unable to agree to amendments to the Electricity Corporation Act. Many months later, the Government has decided not to pursue the Electricity Corporations Bill, which would have split Western Power into the four entities I mentioned. As a result, considerable amendments are needed to the Electricity Legislation (Amendments and Transitional Provisions) Bill 2003.

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There is no great need at this stage to go through the history of how the electricity reform Bills came to Parliament, save to say that soon after the Labor Government was elected in 2001, the Minister for Energy convened the Electricity Reform Task Force, which invited public submissions on various propositions put forward by that task force. Significant submissions were received and considered by the ERTF, and recommendations were later published by the ERTF. Those recommendations generally formed the basis of the original legislation introduced into the House.

I made the point in December 2003, as I have done consistently in this House, that Western Australian electricity consumers are forced to pay some of the highest tariffs in Australia for electricity, and that Western Power, as a monopoly generator, distributor and retailer, has not responded in an effective or efficient manner to reduce electricity costs in Western Australia. As a result, a number of potentially large electricity consuming industries have bypassed WA, and, consequently, employment opportunities have been lost to this State.

When dealing with the general principles contained in the Electricity Corporations Bill, the Liberal Party made it clear it was prepared to support a separate networks entity and a separate regional power entity, but was not prepared to split the generation and retailing arms. It was hoped that some arrangement could have been made with the Government to achieve a split into three rather than four entities. Unfortunately, that did not occur. It is not necessary for me to go into greater detail at this stage of the history of the Bills. That history is known by members.

It seems that the amendments contained in supplementary notice paper No 247, issue 3, proposing the deletion of clauses 3 to 86 in the Electricity Legislation (Amendments and Transitional Provisions) Bill could be disposed off in one single question; namely, that clauses 3 to 86 be agreed to. The committee could then vote in the negative and defeat the clauses. That would reduce the size of the Bill and allow the Chamber to get on to the more substantive amendments.

Amendments in the new supplementary notice paper will retain part 5, division 1, of the Bill that effects amendment to the Electricity Act 1945, even though additional amendments are proposed. The supplementary notice paper also proposes a new part 5, division 1A, that effects amendment to the Electricity Corporation Act 1994, and a new division 1B that effects amendment to the Electricity Industry Act 2004. Part 5, division 2, of the Bill relates to amendments to the Energy Operators (Powers) Act 1979, and part 5, division 3, will amend the Parliamentary Commissioner Act 1971. As I previously indicated, the amendments to the original Bill are so substantial that another amendment is proposed to amend the long title of the Bill; namely, to reflect the fact it is not intended to provide for the transitional arrangements authorising the transfer of assets, rights and liabilities of Western Power to one or more of its successor entities. Instead, the long title of the Bill, as amended, will show only amendments to the Electricity Act 1945, the Electricity Corporation Act 1994, the Electricity Industry Act 2004, the Energy Operators (Powers) Act 1979 and the Parliamentary Commissioner Act 1971.

That disposes of my general comments on the Bill as it relates to clause 1. However, as this Bill is intended to affect the electricity market in Western Australia, I take the opportunity to raise some other issues that are pertinent to the production of electricity in this State. I am conscious we are dealing with clause 1 and that this is not a second reading debate; however, it is important that I raise some important issues. The first involves the current strike conducted by the Australian Manufacturing Workers Union and employees of United KG Pty Ltd. That strike has now been going for about five weeks. By way of background, United KG is a contractor to Western Power in the provision of certain services - particularly, maintenance services in a substantial part of Western Power's plants. It is an absolute fact that a considerable number of Western Power turbines, particularly at Muja and Kwinana, are currently not operating. They are down for maintenance work. However, that maintenance work has been unable to be completed as a result of the strike. It is estimated that 700 megawatts of potential generating power is down because of maintenance, which represents about 20 per cent of Western Power's capacity in electricity production in the south west interconnected system. I also make it clear that Western Power should not be blamed for the strike, which is between the employees of United KG and the contractor United KG. I have noted that from time to time people blame Western Power for the strike. It is fair to say, however, that Western Power has contributed to the strike and enabled it to last as long as it has by standing on the sideline and not wanting to become involved; that is, it has assumed the role of the entity that is suffering some loss as a result of the strike between two other parties. In addition, the Government has been standing on the sidelines for too long. In fact, the strikers are in defiance of orders and directives from the Australian Industrial Relations Commission, so much so that the employees could now be sued individually for the damages that are occurring to United KG Pty Ltd. Some comment has been made about that in the press recently. The Government could have acted to stop this strike many weeks ago. I am very critical of the Government's position of standing on the sidelines, doing nothing and blaming either United KG, the employees, or even Western Power for the continuation of this strike. It has been within the Government's power at all times to take action but it has done nothing. Given that some of the Australian Manufacturing

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Workers' Union claims would increase wages by up to 43 per cent, the issue is a very significant problem for not only Western Power but also the Government and, indeed, consumers. It is not good enough that, firstly, directives of the Australian Industrial Relations Commission were ignored and that the AMWU has taken an opportunity to exploit the current failings of the management of Western Power. In the end, this strike will expose all consumers within the south west interconnected system. I must distinguish between the management of Western Power and the workers, the people who have worked for it for many years. In the main, Western Power workers have been doing what is required of them year after year. They have been keeping up the production of electricity for consumers and making sure that when we turn on our switches, the lights come on. There is no question that the management people of Western Power have failed miserably in the performance of their duties. In light of the payments and significant pay increases made to senior management since Western Power was corporatised, there is no doubt that Western Power has failed the Western Australian consumers. That failure is not attributable to this Government alone. The failings of Western Power management have been going on for years. I give credit to the present Minister for Energy for at least grabbing the bull by the horns soon after the Labor Government was elected and moving forward with a reform program that would incorporate efficiencies and effectiveness in Western Power's operation.

Today, Western Australia's generating capacity is down 700 megawatts, albeit I happen to believe the amount is higher than that. The information provided to the Parliament by the Minister for Local Government and Regional Development representing the Minister for Energy indicates that it is 700 megawatts. Summer is not far away; the AMWU is taking the opportunity to expose the consumers of electricity in the SWIS to blackouts during peak summer periods. They are doing that because they see a great opportunity to screw United KG. However, the bad news is that the strike has continued for so long that, even if the men go back to work this afternoon, it is possible that, in the period between now and summer, they will not be able to get all the turbines working before the summer heat is upon us. It is a very interesting situation.

I am critical of the Government for importing \$25 million worth of fuel oil.

Hon Robin Chapple: Hear, hear!

Hon GEORGE CASH: Yes. That oil is allegedly to keep the turbines working that it will not be possible to continue to operate if the gas is cut off. That reflects on the current problems surrounding the sale of the Dampier-to-Bunbury natural gas pipeline. Members will be aware that the company operating the pipeline is in receivership. It is the pipeline that Epic Energy purchased for about \$2.4 billion some years ago. That price has been clearly proved to have been too much, but that was a commercial decision by Epic Energy. Epic Energy has been indicating for some years that the tariff it is able to charge is insufficient to maintain its investment in the pipeline or to allow expansion of the pipeline. As a result, the banks have now taken over the pipeline and the company is in receivership. Tenders are open for interested parties to purchase the pipeline, and they close on Friday, 27 August. It is interesting that, although this Government blames the former Government for selling the pipeline, in fact the present Government has contributed to Epic's pipeline operations going into receivership. I say that because from the time the Government was elected to a period before Epic went into receivership, the Government was in a position to place forward orders for gas that would have been bankable by Epic and would have kept it afloat. However, for some reason it neglected to do that. I do not know whether bad advice was given by Western Power's senior management to the minister. However, I do not blame completely the minister as an individual for the failings on this matter. I think he is culpable, but the advice tendered by Western Power has been such that the failure of the Government to enter into forward contracts for gas has contributed to Epic Energy going into receivership. It is interesting, however, that in a desperate move - I can understand the desperation in light of the maintenance strike, summer coming on and the political impact that will occur if the lights go off again, as they did earlier this year - the Government has now said that it wants to build a 120-megawatt gas and oil-fired peaking plant. It has also entered into contracts for the supply of gas for a peaking plant, which will increase the opportunities for the owner of the pipeline. Equally, in what I believe to be a panic move, the Government has said that if a suitable tenderer comes forward and the banks can negotiate with that tenderer, the Government will not forgo the stamp duty but charge stamp duty, believed to be about \$110 million, on the sale of the pipeline and then hand back the \$110 million to the new purchaser, conditional upon the new purchaser agreeing to expand the pipeline's capacity. Some people have suggested that that is a replay of the WA Inc deal. That is not the case at all; however, it certainly showed that the Government jumped too soon. Before the tenders had closed for the purchase of the pipeline, the Government announced that it was prepared to put \$110 million towards the exercise. It is interesting that the 120-megawatt peaking plant will cost about \$110 million. With \$110 million worth of stamp duty, we could have built another peaking plant on top of the one that was announced. As I said, I think the Government jumped too soon. I do not think this is a WA Inc deal, because it was very open; indeed, the matter was commented on by various groups and splashed all over the papers. This issue has showed that the Government is desperate in its attempts to produce and distribute energy in the south west interconnected system.

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As I wind up my comments on clause 1, another point I will raise is the bad investment Western Power made in Bright Telecommunications. It is currently estimated that as a result of investing in Bright Telecommunications, Western Power will lose \$23 million. I also indicate that, at the moment, there is no buyer for Western Power's interests in that organisation. In due course, that \$23 million could blow out to a much larger sum as now people know that Western Power is a seller and wants to get out of the deal. The new managing director of Western Power has said that it is not prepared to throw any more money towards that investment. That is probably the right decision, but it also signals to potential buyers that Western Power is desperate to quit its shareholding. As I said, that \$23 million loss could, in fact, be a lot more by the time this matter is over. I use that as an example of the incompetence and abject failure of Western Power's senior management. I do not reflect badly on the people who work at Western Power because, in the main, they are doing a pretty good job. I should also mention the failure of senior management to provide adequate maintenance of the network. I will not go into that debate now because it has already been had in this place, and I am sure we will have it again. The fires at Tenterden and other places in the south west interconnected system earlier this year and the criticism the Energy Safety Directorate made about Western Power again indicate the failings of those at the senior management level. I should also mention the refusal of senior management to provide equitable access to the networks for private independent power producers. There is no doubt that Western Power is a monopoly producer, generator and supplier of electricity. It has gone out of its way to prevent IPPs coming in and getting access to the distribution network. Western Power's management has totally failed to rise to the occasion, become more competitive and allow those groups to enter the market. I have made the point before that Western Power was unquestionably in breach of the Trade Practices Act when it refused to provide equitable access to the network system.

The last point I want to make is that Western Power is a monopoly generator, distributor and retailer of electricity in Western Australia. It is an absolute monopoly producer and seller of electricity. However, in the past few weeks it has run a massive advertising campaign on television in an attempt to convince people that, firstly, Western Power is a good citizen in the community and, secondly, everything is under control. I note that the minister has now stepped in and that those adverts appear to have been pulled. Why a monopoly organisation has to sell itself to the public is beyond me. Perhaps it reinforces the fact that Western Power's standing in the community has fallen dramatically over recent years as a result of the failures of its senior management.

In closing, I am reminded of when I was in Ireland. The generator of electricity in Ireland was seen to be a very good community citizen because over the years it sponsored many community organisations and activities. Although I acknowledge that Western Power has certainly sponsored some community organisations and activities - I am thinking, in particular, of the Western Power Parkland at Kings Park - it has not done enough to prove that it is a good corporate citizen. Plenty of private companies do a lot more than Western Power. The sooner there are more IPPs in the system, the sooner Western Power will be required to become a more efficient and effective organisation. I hope that no matter what result is achieved at the next election, the focus of the Government remains on Western Power, because currently it is providing a disservice in the production and sale of electricity to those consumers who are required to buy from it. There is every chance that, as a state-owned enterprise, the Water Corporation is in a similar position. However, that issue can be argued another day. I would not want to exceed the opportunity provided to me to debate clause 1 of this particular Bill.

Hon Tom Stephens: You already have.

Hon GEORGE CASH: I have!

Western Power is a blight on state-owned enterprises in Western Australia. I am in a position to say that because I am not crawling to anyone to be a minister. I am not a minister and I -

Hon Derrick Tomlinson: You don't aspire to be a minister.

Hon GEORGE CASH: Hon Derrick Tomlinson is dead right; I do not aspire to be a minister. However, I aspire to make Western Power a more efficient and effective organisation; indeed, until I leave this place, I will concentrate on improving Western Power. To some degree I have not already started to concentrate on Western Power because I have relied on the Minister for Energy to bring in his reforms and have them worked through the Parliament. The Minister for Energy deserves a bit of support from the Parliament as a whole in making Western Power a better organisation and in reducing the cost of electricity in Western Australia. I will commit myself to do something about that. If that means getting rid of the most senior 20 people at Western Power, so be it. That might be the only way Western Power's efficiency will ever be improved. With those comments, I indicate support for clause 1.

Hon MURRAY CRIDDLE: The minister asked whether I was going to take part in this debate. Obviously, I was very involved in the previous debate. The minister would be aware that my party is now a part of the

Extract from Hansard

[COUNCIL - Wednesday, 25 August 2004]

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Mr Tom Stephens; Hon George Cash; Hon Robin Chapple; Deputy Chairman; Hon Murray Criddle; The Deputy Chairman (hon Adele Farina; Hon Peter Foss

coalition and that the member for Avon is our spokesperson on energy. I am sure he had a major say when this Bill was debated in the other place. Having made a major contribution earlier, I support what Hon George Cash said when he eloquently pointed out the issues. However, that does not in any way reduce my concern about what has happened in the south west interconnected system. The message that I gave at the time was based on the fact that there should be communication with the public. As late as this morning, the same issues were raised on radio with regard to the storms that we are currently experiencing. When I spoke about this in Parliament six or eight months ago - or whenever it was - the issue was about communicating the circumstances surrounding the loss of power to the people and informing them when the problem will be fixed. It was about making people aware of what was going to happen. One person lost power for 36 hours and still had no idea what was happening. From Western Power's point of view, keeping people informed would be a first step towards those people getting some recognition in the community of their wellbeing, so to speak. Obviously, conductors, poles and the other issues that I raised in the last debate are still significant. That is principally the reason that I, as the National Party representative in this House, did not support the Bills previously. We have outlined the expenditure that we would like to be put into the system. Having attended the meetings - in fact, I chaired the meeting at Koorda, and I attended the one at Jerramungup - I can say that there is a clear message in the community for Western Power to upgrade the system. I do not think we should go away from that. However, this debate is about generation, and I support the remarks of Hon George Cash on behalf of the coalition.

Hon ROBIN CHAPPLE: An amendment is sought to be made to the short title to reflect that the Act may be cited as the Electricity Legislation (Amendment) Act, rather than the Electricity Legislation (Amendments and Transitional Provisions) Act. We will deal with that issue under clause 1. Amendments will be made to the Electricity Act 1945, the Electricity Corporation Act 1994, the Electricity Industry Act 2004, the Energy Operators (Powers) Act 1979 and the Parliamentary Commissioner Act 1971. Taking heed of Hon George Cash's statements, I indicate that the Greens (WA) are happy with many aspects of the Bill and the amendments before us.

We must remember that in this place in May 2002 we were provided with a letter from the Minister for Energy. His genuine intent to provide a regime for access to the network on behalf of independent power producers - namely, the renewable energy sector - was thwarted by Western Power, to the point that it was not possible for the minister to give any direction whatsoever to Western Power. One element of the provisions in the amendments that we are dealing with is that the minister will have that responsibility. That will be a fairly onerous task for the minister, because we will now watch very closely whether he will be able to bring on stream the more than thousand megawatts of renewable energy that is waiting to be used at this time.

We have heard that the minister has agreed to the construction of a 120-megawatt peaking plant. Beacons, by the same process, is trying to get on stream 104 megawatts, or thereabouts, of renewable energy through one of its biomass projects. Although we seem to have a commitment for the renewable energy sector, unfortunately, it seems that any time there is a problem with power in this State, the approach is to put more fossil fuel, dry or wet, into the process; yet we have an industry sector that is crying out to be allowed access to the system so that it can get its development on line. In many cases, those peaking plants will take a number of years to come to fruition. They are not the sorts of plants that will solve next summer's problems. However, the renewable energy sector has projects that could be up and running within one to two years. Many of the large projects about which we have been talking, whether they be coal or whatever else, will take a number of years. After this Bill is passed and the minister is capable of giving direction to what I believe has been a leaderless utility for the past few years, the minister will have the option of taking some quite dramatic steps towards bringing on stream energy which is ready to go. That will resolve many of his problems, and also resolve the problems that we inherently face as a result of the continued use of fossil fuels for our energy usage.

Another issue gives me a great deal of concern. I hope that the minister, after this legislation is passed and he has the ability to do so, will rein in some of what I consider to be the stupid expenditure of Western Power. As Hon Murray Criddle has noted, there are still problems with rural and regional power supplies. We must remember that, over the past four to five years, Western Power has reduced dramatically the number of people who can facilitate the servicing and repair of transmission lines. At the same time, there has been massive expenditure on television advertisements about what can be done with the lines crews. I suggest that it would be far better if Western Power stopped spending those millions of dollars on advertising. Western Power, which is a utility of the State, should not act in a manner in which it is competing with independent power producers. It should not be necessary for it to do all that significant advertising. In fact, it should use those dollars and cents on the ground and start providing a service in remote and rural Western Australia.

I will deal briefly with another issue that was mentioned by Hon George Cash; that is, what we will do for energy into the future. One element of that is the Epic Energy pipeline. Notwithstanding the problems that Epic has found itself in, we must remember that it was Hon Geoff Gallop who, as Minister for Fuel and Energy,

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separated the gas transmission from Western Power - the old State Energy Commission of WA. That subsequently led to the privatisation of the gas pipeline, which removed from government the ability to control another energy utility. In our view, it is beholden on government to retain control of those utilities that the community needs for the provision of power in this State. As such, we are concerned that unless there is significant expenditure on the expansion of that pipeline, it will always be the bottleneck to power in Western Australia. An innumerable number of major projects will come on stream shortly, and they will need to use that gas. There is only so much to go around with the current constraints of that pipeline as a reservoir. Until the reservoir capacity of that pipeline is expanded, industry, the Government and the community of Western Australia will literally be held to ransom by the lack of energy provision in this State.

Finally, I point out that 1 000 megawatts of renewable energy are ready to go. Under the new direction that the minister will give Western Power, the Government and the minister should take that on board and start looking to the energy future of Western Australia, and not the vintage model that we have currently.

Hon TOM STEPHENS: I now have the opportunity of embarking upon a long response to both speakers who have just begun the debate on the short title. However, I am loath to do that because the House has an appetite for getting Bills through the committee stage as quickly as possible. Alternatively, and perhaps usefully, for the purposes of the record I would like to table and have incorporated into *Hansard* a couple of documents that will provide a response - although not a full response - to questions about how the State is responding to the challenges of increasing the reliability of its current gas supply and how the State is proposing to tackle the issues of the 2004-05 summer peak period -

Hon George Cash: Just before you seek leave, at the moment the Opposition would refuse leave on the basis that we have not seen the documents. If you want to show us the documents in a moment -

Hon TOM STEPHENS: I do it just for the purposes of -

Hon George Cash: I agree that you are entitled to do that. However, it would be proper for members of the Opposition to at least see the documents.

Hon TOM STEPHENS: I will respond to a point raised by Hon Robin Chapple about the privatisation opportunities that emerged as a result of previous situations when the privatisation of the gas transmitter, AlintaGas, occurred. Interestingly, the Council, with the support of Hon Robin Chapple, knocked back legislation that would have enshrined in statute a legislative bar to the privatisation of Western Power. That was on offer to members but was not embraced as a result of the decisions that were made. I regret that that has not happened. I seek leave to incorporate into *Hansard* the two documents.

Leave granted.

The following material was incorporated -

ELECTRICITY CORPORATION ACT 1994

6. How the Government will ensure that power supplies will remain unaffected during the 2004/2005 summer peak period and beyond.

Cronin report

Earlier this year, Western Power responded to the recommendations of the Report of the Review Committee into Western Power Corporation's management of the power supply crisis of 16 to 18 February 2004 (The Cronin Report), instituting significant improvements to its planning, forecasting and crisis management procedures.

The Government also moved quickly to address the reliability of electricity supply. This included introducing a new leadership team to ensure Western Power is customer-focussed and accountable.

In addition, following consultation with the Government, Western Power, adopted a 6-point plan to address electricity supply. The plan included:

- development of new emergency management procedures;
- investment of \$7 million in more coal and liquid fuel electricity capacity next summer to reduce its dependence on gas;
- introduction of demand management strategies with major consumers to cut energy use at peak times;
- review of 10-year power demand forecasts; and
- pursuit of all avenues to secure the expansion of the Dampier-to-Bunbury natural gas pipeline in the State's long-term interest.

New Infrastructure

The Government is modernising the State's electricity system by building new, efficient power stations, upgrading the electricity network and pursuing market reforms.

Western Power has also commissioned a new \$250 million power station at Kemerton - due to open in late 2005.

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The Government is also proceeding with a power procurement process for a 300MW megawatt baseload power station, which will come on line in 2008. Final bids will close in June 2005.

Western Power's current budget includes \$1.8 billion expenditure in upgrading the South West interconnected system (SWIS) network over the next 4 years. This includes expenditure to address reliability issues in rural areas.

Further on 5 August 2004, the Government gave approval to improve the diversity and security of Western Australia's electricity supply by way of approval being given to Western Power to build a new 120MW dual fuel power station — worth around \$100 million - to meet peak power demand in the summer of 2006-07.

Peak Demand Measures

Whilst the new power station will boost medium to long-term energy security, Western Power is putting in place measures to meet peak demand in the 2004-05 summer.

Western Power will have in place an additional 186 MW of generating capacity from the following sources:

- an upgrade of Pinjar Power Station (47 MW);
- an upgrade of the interconnection capacity of the Parkeston Power Station at Kalgoorlie (35MW);
- temporary rental of gas turbines at Pinjar Power Station (64MW); and
- a new demand response program (40MW).

Western Power has also secured extra fuel supplies for its generators in the event of fuel shortages. These include:

- Reinstating oil-burning capacity at Kwinana Power station, allowing 360MW of capacity to no longer be reliant on gas supply during the short periods of peak demand.
- A contract to purchase emergency gas from Wesfarmers allowing 40 TJ of gas to be used.
- Fuel swap arrangements with Alcoa and Alinta.

Together, these initiatives will substantially improve Western Power's capability compared with the 2003/04 summer period.

ELECTRICITY INDUSTRY ACT 2004

14. How electricity reform will deliver increased reliability of supply

The *Electricity Industry Act 2004* passed by Parliament earlier this year, establishes a number of mechanisms which will result in increased reliability of supply. These are:

Wholesale electricity market

Maintaining reliability of supply requires that there is sufficient and reliable generation and transmission capacity to meet peak demand. Reliability of supply needs to be addressed several years ahead in view of the extended time periods to commission new plant and to establish secure fuel arrangements.

The competitive market proposed for the South West interconnected system is aimed equally at both reducing the costs of generation (to ultimately deliver lower prices to consumers) and ensuring supply reliability. In other words, the market does not impose a trade off between cost and reliability; rather it seeks to achieve the best of both worlds.

The Government's reform agenda will certainly put competitive pressure on industry to develop the lowest cost sources of generation. At the same time a central feature of the reforms is to ensure that there is always adequate capacity on the system.

A key feature of the Government's model is that there will not be a reliance on market price signals to deliver capacity (as occurs in the National Electricity Market). Rather, the responsibility for ensuring supply reliability will rest with a central Government owned independent body called the Independent Market Operator (IMO).

Under the proposed mechanism, the MO will independently review longer term demand and supply requirements on the entire system. It will have responsibility for commissioning the development of new generation capacity where reserve capacity is considered to be falling below prescribed reliability limits.

A significant improvement is that the MO will look at the entire system, while now Western Power tends to take care of what it projects to be its own demand. Establishment of an independent entity with responsibility for ensuring adequate generation capacity improves upon the existing framework in which Western Power has multiple, conflicting functions.

These new market arrangements will procure capacity through several mechanisms:

- the Reserve Capacity Mechanism through which new capacity is sourced via a competitive auction process undertaken by the IMO;
- through direct competition between generators to secure contracts to supply to retailers and large industrial customers; and
- through the Short Term Energy market which is a day-ahead competitive market for trading electricity.

The reforms will also deliver more diversified sources of supply, rather than relying on Western Power. The wholesale market arrangements will ensure that there is optimum economic dispatch of all generation plant (both privately and publicly owned) on the system. Today, Western Power dispatches its own plant while private participants control their plant.

Also in a more competitive environment, electricity supply contracts will be negotiated with more explicit accountability in relation to reliability of supply. To date Western Power has had minimal competitive pressure from alternative suppliers on the negotiation of its arrangements.

Electricity Access Code

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The establishment of an Access Code will provide for the first time a transparent, independently regulated framework for regulating covered electricity networks. The South West interconnected system will be covered initially, other networks may be covered in future if they meet the required coverage criteria.

Under the Access Code, a network business will be required to establish appropriate service standards and the Economic Regulation Authority will be required to approve these standards and monitor compliance with these standards. The ERA is required to meet strict consultation requirements in undertaking its role and this provides opportunity to ensure customer views are taken into consideration.

Network Extension and expansion policy

Part 4 of the *Electricity Industry Act 2004* imposes an obligation upon Western Power Corporation to develop and submit to the Coordinator of Energy for approval an extension and expansion policy. The Act also provides that it is a condition of every licence held by the Corporation that the Corporation will implement the arrangements set out in an approved policy.

The objective of the policy is to establish a set of clearly articulated arrangements, approved by Government, which addresses on a State wide basis:

- the geographic extension of a particular transmission or distribution system;
- the expansion of the electrical capacity of that transmission or distribution system; and
- the connection of customers to that transmission or distribution system.

Western Power must submit the policy to the Coordinator of Energy within three months of a request. The Coordinator possesses the ability to request that amendments be made to the policy or determine changes.

Once approved, Western Power will be obliged to comply with the policy through the electricity licensing framework administered and monitored by the independent Economic Regulation Authority.

Regulations may be made to prescribe matters that are to be dealt with in an extension and expansion policy, including:

- the methods or principles to be applied in relation to the extension or expansion of the system to which the policy relates and the connection of customers to that system;
- the procedures to be followed in undertaking the extension and expansion of the system to which the policy relates and in connecting customers to that system;
- the criteria or parameters to be applied in determining the eligibility of particular classes of customers for connection; and
- information about the costs of implementing the policy. Electricity licensing

Electricity licensing

Under the *Electricity Industry Act 2004* Western Power Corporation, as with the private sector, will be required to obtain electricity generation, transmission, distribution and retail licences from the independent Economic Regulation Authority. The Authority is also responsible for licence administration, monitoring and enforcement.

Western Power retains responsibility for ensuring the reliability of the transmission and distribution network facilities. The Corporation's performance in this regard will be overseen by the Economic Regulation Authority through the imposition and monitoring of license conditions. This means that Western Power's focus on cost reductions should not in any way impact on the core responsibility of keeping the lights on. Commercial and reliability functions and objectives must operate in parallel and not in conflict.

The independent Authority will possess the power to impose licence conditions upon market participants in order to:

- regulate the construction and/or operation of any generating works, transmission system and distribution system;
- specifying methods or standards to be applied in the supply of electricity;
- require a participant to observe specified codes (including any codes issued by the Authority or Government); and
- require a participant to undertake performance reporting and the publishing of that information.

Improved Western Power Corporate Governance

The proposed Amendments in Committee provide increased governance of Western Power through amendments to the *Electricity Corporation Act 1994*. These principally relate to:

- specific Ministerial powers of direction;
- ability to make regulations to provide for tighter ring fencing between the various business operations. The ring-fencing of the Networks Business Unit within Western Power will also provide greater focus on network reliability by having a separate business unit, within the Government owned electricity corporation enabling it to solely focus on the performance of the electricity grid; and
- financial reporting on a more segmented basis.

Hon TOM STEPHENS: I move -

Page 2, line 4 - To delete “(Amendments and Transitional Provisions)” and insert instead -

Amendment

Hon GEORGE CASH: The Opposition supports the amendment for the reasons that all parties have given to date.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 2: Commencement -

Hon TOM STEPHENS: I move -

Page 2, lines 6 and 7 - To delete the lines.

Amendment put and passed.

Hon TOM STEPHENS: I move -

Page 2, line 8 - To insert after “of” -
this Act

Amendment put and passed.

Hon TOM STEPHENS: I move -

Page 2, lines 9 to 13 - To delete the lines.

Amendment put and passed.

Hon TOM STEPHENS: I move -

Page 2, line 16 - To delete “but”.

Amendment put and passed.

Hon TOM STEPHENS: I move -

Page 2, lines 17 to 22 - To delete the lines.

Amendment put and passed.

Clause, as amended, put and passed.

The DEPUTY CHAIRMAN (Hon Adele Farina): The question is that clause 3 stand as printed.

Hon TOM STEPHENS: Hon George Cash suggested that I encourage the Chair to give members the opportunity to vote on clauses 3 to 86. If the Chair does not mind moving those amendments en bloc, I think we can make some progress.

Clauses 3 to 86 -

The DEPUTY CHAIRMAN: The question is that clauses 3 to 86 stand as printed.

Hon ROBIN CHAPPLE: I would like to ask the minister a couple of questions about the amendments to clauses 8, 30, 31 and 32.

Hon TOM STEPHENS: Madam Deputy Chairman, I would like you to keep before the committee the question that you have just moved and to allow members to raise points on certain clauses.

Hon ROBIN CHAPPLE: I thank the minister and the Chair. There are many technical issues to deal with. The amendment to clause 8 states -

Page 4, lines 23 to 29 - To delete the clause.

I seek some clarification. That amendment will delete several pages of the legislation. We will delete from page 3 of the Bill “sections 2 and 3 replaced by section 2”. What we will do is interesting. Line 23 on page 4 to the bottom of the page will be deleted, which includes the title of the next part that is proposed to be deleted. Although both pages will be deleted in two subsequent amendments, should we have tidied it up and deleted each section rather than have cut through a section?

Hon TOM STEPHENS: I understand the effect of what we are doing. We might be double deleting some things, but the committee will have the pleasure of being absolutely sure that everything we want to delete will be removed when the Deputy Chairman puts this question, by the committee voting against it. I will vote against the question that has been put. Hon Robin Chapple might be right. We are double deleting some sections but that is good enough for me; it will have the same effect.

Hon GEORGE CASH: On the same matter, by deleting clauses 3 to 86 inclusive, we will remove from the Bill parts 2, 3 and 4. The instruction allows us to continue to amend some of the Acts that are referred to within those parts. Hon Robin Chapple may be correct. However, that is a typographical mistake - if there is a mistake. The intention is to remove parts 2, 3 and 4 as a result of this amendment.

Hon ROBIN CHAPPLE: I accept the advice from the honourable member opposite; that is, it also resolves the next set of problems, which was a triple deletion.

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Clauses put and negatived.

Clauses 87 and 88 put and passed.

Clause 89: Section 5 amended -

Hon GEORGE CASH: We agree with the amendments to be moved by the minister. However, I suggest that when the minister moves the amendments listed on the supplementary notice paper he give a brief description of the reason for those amendments. When a word is being deleted and the reason for that is obvious, there is no need for him to provide a description. With regard to clause 2, it may have been helpful for people who read *Hansard* in the future to have known the reasons for the amendments. In some respects Hon Robin Chapple and I are lucky, in that we have been provided with all the documentation. We have read and considered that documentation and were able to form a view on whether we should support the proposals. Where it is convenient to do so, the minister might like to make some short, sharp remarks for the record.

Hon TOM STEPHENS: I hope that you will allow me, Madam Deputy Chairman, to move all the amendments standing in my name in one block, on the basis that I understand that they have the support of all sections of the Chamber and to save putting you through the tortuous need to repeat the questions to delete and insert words. I do not know how you get authority to put it in that manner, but I think you will have the support of the committee if you choose to do it that way.

The DEPUTY CHAIRMAN (Hon Adele Farina): I seek the indulgence of the Chamber to move amendments Nos 91/89 to 103/89 en bloc. If any member has an objection to that, please indicate it now.

Hon GEORGE CASH: The Opposition has no objection to that, on the basis that we have been provided with certain documentation. Both Hon Robin Chapple and I know the reasons for the amendments. We will agree to the amendments being moved en bloc if the minister will give a short description of what they are all about. Some amendments are consequential on others. I indicate our support for the proposition.

Hon ROBIN CHAPPLE: That would almost be the document that I wished to have tabled, which articulates the reasons for us dealing with these amendments.

The DEPUTY CHAIRMAN: I think the minister is endeavouring to get to his feet to do that.

Hon TOM STEPHENS: I move -

Page 65, line 14 - To delete “deleting” and insert instead -
inserting after

Page 65, line 15 - To delete “and inserting instead”.

Page 65, line 16 - To insert before “network” the word “or”.

Page 65, lines 17 to 19 - To delete the lines.

Page 65, after line 19 - To insert -

- (2) Section 5(1) is amended in the definition of “electric installation” by deleting “electric” and by relocating the definition in the appropriate alphabetical position.
- (3) Section 5(1) is amended by deleting the definition of “supply authority and inserting instead -

“

“supply authority” means an entity that, immediately before the coming into operation of section 89 of the *Electricity Legislation Amendment Act 2004*, was a supply authority as defined in this section, but does not include the Western Power Corporation;

”.

Page 65, line 25 - To delete “2003” and insert instead “2004”.

Page 65, line 27 - To delete “2003” and insert instead “2004”.

Page 66, line 7 - To delete “2003” and insert instead “2004”.

Page 66, line 21 - To delete “2003” and insert instead “2004”.

Page 66, line 23 - To delete “2003” and insert instead “2004”.

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Page 66, line 28 - To delete ““Coordinator”,”.

Page 66, line 29 - To delete “, “electric installation”,” and insert instead “and”.

Page 66, line 29 - To delete “, “public authority” and “supply authority””.

Hon Robin Chapple not only sought to have the documentation tabled, but also succeeded in having it tabled. The only thing that he did not succeed in doing was to have it incorporated in *Hansard*. Hon George Cash asked me to not seek leave to have the documentation incorporated in *Hansard*, but to make some quick comments for the purpose -

Hon George Cash: Not three pages.

Hon TOM STEPHENS: No, only two! Clause 89 amends various definitions contained in section 5 of the Electricity Act 1945. A number of definitions have been deleted from the Act in recognition that the electricity authorisation and supply authority regime established under the Act has become obsolete over time. In its place a new electricity licence regime has been established under part 2 of the Electricity Industry Act 2004. This regime is to be independently administered by the Economic Regulation Authority. I discovered that this organisation has been positioned, I do not know whether permanently or temporarily, on my floor of Dumas House.

Hon George Cash: You will be able to pop in now and again to see whether they are doing their job.

Hon TOM STEPHENS: Yes. It is located between the office of the Minister for Agriculture and my office. I think there is some irony in the positioning of this authority between us, given our preoccupation with regional issues. The ideology that accompanies economic regulatory authorities is not necessarily enthusiastically embraced by the advocates of regional Australia. That is where this organisation has been placed. The Bill will delete the definition of “supply authority” and replace it with the term “network operator”. Definitions will be inserted for “distribution licensee”, “exempt operator”, “network operator” and “transmission licensee”. Related terms are defined in the Electricity Industry Act 2004. These definition changes are required to recognise the new arrangements. A number of definitions are no longer used in the Electricity Act, either because of the establishment of a new licensing framework or because they have no present application. These include the terms “concessionaire”, “Coordinator”, “department”, “Government Department”, “electric installation”, “linking up scheme” and “public authority”. The Act is being modernised. The Government has taken the opportunity to do that, as we would expect. The definition of “service apparatus” within section 5 of the Act will be amended to include reference to “network operator”, in recognition that a network operator includes the holder of a distribution or transmission licence granted under part 2 of the Electricity Industry Act. The amendment proposed in clause 89 to the definition of “transmission works” in section 5 of the Act is not required. Reference to “electric” in the definition of “electric installation” in section 5 of the Electricity Act is to be deleted and the amended definition relocated to the appropriate alphabetical position.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 90: Section 6 repealed -

The DEPUTY CHAIRMAN: I think it would be appropriate for the minister to move his amendment first.

Hon TOM STEPHENS: I move -

Page 66, line 32 - To insert after “repealed” -

and the following section is inserted instead -

“

6. Application of Act to supply authorities

- (1) The Minister may, by instrument published in the *Government Gazette*, declare that on and after a specified day a specified relevant provision does not apply to a specified supply authority, and a declaration so made has effect accordingly.
- (2) A declaration is not to be made in respect of a relevant provision unless the Minister is of the opinion that on and after the specified day the specified supply authority will have powers, rights and obligations under the *Electricity Industry Act 2004* that are

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substantially equivalent to those conferred or imposed by the relevant provision.

(3) In this section -

“**declaration**” means a declaration made under subsection (1);

“**relevant provision**” means any of sections 11 to 24, 34 to 41 or 43 to 51, or any portion of any of those sections, or section 32 (a), (b), (d) or (l);

“**specified**” means specified in the declaration.

”.

I anticipate that Hon George Cash will move his amendment to this amendment.

Hon GEORGE CASH: I move -

To insert after proposed section 6(2) the following -

- (3) A declaration is not to be made after the expiration of the period of 2 years beginning on the day of the insertion of subsection (1) into this Act by the *Electricity Legislation Act 2004*.

The minister’s amendment will empower the minister, by instrument published in the *Government Gazette*, to declare that on or after a specified day a relevant provision does not apply to a specified supply authority. The minister’s amendment indicates that a declaration so made has effect accordingly. When I had the opportunity to consider these amendments, it became very clear that the minister was being granted by Parliament inordinate powers that had no time limit attached. Having vested in the minister all these powers, he could have used those powers in the future or not used them but held them in reserve. After some discussions, it was explained to me that because of the changes that are being made and because certain things have to occur within the system for other changes that are being made to occur, the minister has to be in a position to call an end to one group of issues to enable the commencement of some other issues to take their place. In that regard we agree: that is a requirement that certain matters have to be cancelled to enable new matters to come into operation. The problem I had was that a time limit was not imposed on it and that, in fact, the Parliament was vesting in the minister all this power and that would have been the last the Parliament heard of it, apart from the fact that the minister is required to publish certain instruments in the *Government Gazette*. At the time of my discussions I proposed that this power be for only a 12-month period so that the Parliament was not left out of the loop forever. It was suggested to me that two years would be more practical, having regard for the changes that will occur. That was a very proper suggestion, and I say that for two reasons. First, the Parliament imposes on the minister a finite period in which to do the things that are being authorised in respect of supply authorities. Secondly, if they are not done within two years, they will come to an end. It seems to me that, now that a finite period is attached to it, there will be some encouragement to ensure that all the things that are required to be done are done. I understand that the Government is prepared to accept this amendment, because in practical terms it is a good amendment. More than that, I hope it recognises that the Parliament has not given away all the authority that Parliament is entitled to have in vesting ministers with inordinate powers and authority.

Hon TOM STEPHENS: I confirm that the Government will accept the amendment moved by Hon George Cash.

Amendment on the amendment put and passed.

Amendment, as amended, put and passed.

Clause, as amended, put and passed.

Clause 91: Part II heading amended -

Hon TOM STEPHENS: I move -

Page 67, line 5 - To delete “**Network operators**” and insert instead “**Powers, rights and**”.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 92 put and negatived.

New clauses 92, 93, 94, 95 and 96 -

Hon TOM STEPHENS: I move -

Page 67, lines 6 and 7 - To insert the following new clauses -

- 92. Part II Division 1 heading deleted**
The heading to Part II Division 1 is deleted.
- 93. Sections 7, 8, 9 and 10 repealed**
Sections 7 to 10 are repealed.
- 94. Section 13 repealed**
Section 13 is repealed.
- 95. Sections 15, 16 and 17 repealed**
Sections 15 to 17 are repealed.
- 96. Part II Division 2 heading deleted**
The heading to Part II Division 2 is deleted.

New clauses put and passed.

Clauses 93 and 94 put and passed.

Clause 95: Section 32 amended -

Hon TOM STEPHENS: I move -

Page 68, line 4 - To delete “(a), (b), (d),”

Page 68, line 4 - To delete “and (l)”.

Hon GEORGE CASH: The Opposition agrees with the amendments. However, I want to raise an issue that relates to section 25 of the Electricity Act 1945. I acknowledge that this clause relates to section 32, but section 25 of the Act deals with the duties of a supply authority. I want to talk about the specific obligations of a supply authority. Section 25 lists the duties of the supply authority and subsection (1) states -

A supply authority shall -

- (a) at all times maintain all service apparatus belonging to the supply authority which is on the premises of any consumer, in a safe and fit condition for supplying electricity;

Does this relate just to the consumer end of product use, or does it relate also to the requirement of the supply authority to maintain its own equipment; that is, at the generation end? The reason I ask the question is related to the current strike between employees of United KG and the company. Western Power would be the generating instrument in that case. Perhaps the minister will answer the first part of the question, because that might answer the second part.

Hon TOM STEPHENS: The provision relates only to those facilities at a customer’s premises.

Hon George Cash: The consumer end of the business.

Hon TOM STEPHENS: Yes.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 96: Sections 34, 35, 36, 37, 38, 39, 40 and 41 repealed -

Hon TOM STEPHENS: I ask the committee to vote against the clause.

Clause put and negatived.

Clause 97: Section 42 replaced -

Hon TOM STEPHENS: I move -

Page 68, line 19 - To delete “or electric”.

Page 68, lines 22 and 23 - To delete “or electric”.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 98: Sections 43 and 44 repealed -

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Hon TOM STEPHENS: I will be opposing this clause.

Hon GEORGE CASH: We also will oppose the clause and vote in the negative because that is the only way we will defeat the clause. The clause at the moment reads -

Sections 43 and 44 are repealed.

We are now dealing with the Energy Operators (Powers) Act 1979. I will check sections 43 and 44. Section 43 deals with property in works and section 44 was repealed by Act No 8 of 1994. Clause 98 states that sections 43 and 44 are repealed, but in the Energy Operators (Powers) Act 1979, section 43 deals with property in works. What will occur when this clause is deleted? Section 44 of the Energy Operators (Powers) Act 1979 currently does not exist, having been repealed by section 89 of the 1994 Act. I am interested in the procedure that is occurring, because we are dealing with a repealed section.

Hon TOM STEPHENS: I will inform myself in the first instance.

Hon George Cash: It is a procedural matter.

Hon TOM STEPHENS: I will take the opportunity of informing myself. The proposal is that sections 43 and 44 be repealed. We note from the distributed and tabled explanatory memorandum that section 43 relates to uniform charges and zoning. It was to be repealed as these powers have not been exercised by the Coordinator of Energy, nor do they apply to Western Power Corporation. The powers are now dealt with under section 132 of the Electricity Industry Act 2004. Section 44 provides that there is no obligation to supply a supply authority if this necessitates an extension of a distribution system. This is being repealed.

Hon George Cash: You are referring to section 44, and I assume that we are referring to the Energy Operators (Powers) Act 1979. If the answer is yes, we are at least looking at the same Act.

The DEPUTY CHAIRMAN (Hon Adele Farina): Clause 98 relates to the Electricity Act 1945, so it is sections 43 and 44 of that Act.

Hon TOM STEPHENS: Just to answer Hon George Cash's question, yes, we are dealing with the Energy Operators (Powers) Act 1979.

The DEPUTY CHAIRMAN: No, we are not. We are dealing with the Electricity Act 1945. Clause 98 seeks to delete sections 43 and 44 of that Act.

Hon GEORGE CASH: I agree with you entirely, Madam Deputy Chairman.

Hon Tom Stephens: That is not the proposition you put to the committee.

Hon GEORGE CASH: No, it was not. The minister is quite right, but the answer would probably be the same. The point is that page 69 of the Bill is headed Energy Operators (Powers) Act 1979, but that Act does not come into operation as far as the amendments go until about halfway down the page.

Hon Robin Chapple: It is division 2.

Hon GEORGE CASH: Yes, quite so. I was reading ahead of myself, as it were. However, we are dealing with clause 98. I agree that we are dealing with the Electricity Act 1945. The proposition in the Bill is that sections 43 and 44 are to be repealed. The minister's amendment is to delete the clause. I assume that we are deleting the clause so that clauses 43 and 44 of the Electricity Act will remain. If the minister confirms that, we understand what we are doing.

Hon Tom Stephens: Yes, that is the advice.

Hon ROBIN CHAPPLE: Will the uniform charges and zoning obligation to supply remain?

Hon Tom Stephens: That is correct.

Clause put and negatived.

Clause 99 put and passed.

Clause 100: Sections 46, 47, 48, 49, 50 and 51 repealed -

Hon TOM STEPHENS: I move -

Page 69, line 8 - To delete "to 51 are" and insert instead "is".

Hon ROBIN CHAPPLE: I am interested in the grammar that determined "is" as opposed to "are".

The DEPUTY CHAIRMAN: It is because we are deleting "to 51", so the only number that will be standing will be 46.

Hon ROBIN CHAPPLE: I thought we were dealing with sections 46 to 51.

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Hon Tom Stephens: My amendment would have the effect of deleting sections 47, 48, 49, 50 and 51. The grammar would then be “section 46 is”, and I am sure the Clerks will be good enough to remove the “s” from “sections” and then all will be well.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 101 and 102 put and passed.

Clause 103: Section 4 amended -

Hon TOM STEPHENS: I ask members to vote against this clause.

Hon George Cash: Just give us some explanation.

Hon TOM STEPHENS: The explanation is that it is something we have previously mentioned to the Chamber; that is, as we are tidying up the Electricity Act, this will get rid of definitions for categories that are no longer deployed. It repeals the definitions of “concessionaire” and “linking-up scheme”. It tidies up the Act.

Clause put and negatived.

Clauses 104 to 108 put and passed.

Clause 109: Section 34 amended -

Hon TOM STEPHENS: I seek the committee’s support for my amendment; therefore, I move -

Page 76, line 24 - To delete “2003” and insert “2004”.

Amendment put and passed.

Clause, as amended, put and passed.

The DEPUTY CHAIRMAN (Hon Adele Farina): The committee will not deal with the amendment by Hon Robin Chapple at this stage. I will jump the amendment by Hon Robin Chapple on page 14, and the amendments on pages 15 and 16 of the supplementary notice paper, and deal with the new clauses on page 17 under the heading of “Electricity Corporation Act”. Those new clauses need to be dealt with before we can come to amendments on preceding pages.

New clauses 101A to 101O -

Hon TOM STEPHENS: I move -

Page 69, after line 12 - To insert the following new clauses -

Division 2 — *Electricity Corporation Act 1994* amended

101A. The Act amended

The amendments in this Division are to the *Electricity Corporation Act 1994**.

[* *Reprint 2 as at 3 January 2003.*

For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 118.]

101B. Section 3 amended

(1) Section 3 is amended as follows:

- (a) by inserting before “In this Act” the subsection designation “(1)”;
- (b) in the definition of “subsidiary” by deleting paragraph (a) and “and” after it and inserting instead —

“

- (a) a body determined to be a subsidiary of the corporation under subsection (2); or

(2) At the end of section 3 the following subsection is inserted —

“

”

.

- (2) Part 1.2 Division 6 of the Corporations Act applies for the purpose of determining whether a body is a subsidiary of the corporation.

101C. Section 28 amended

- (1) Section 28(3) is amended by deleting “The” and inserting instead —
“ Subject to subsection (3a), the ”.
- (2) After section 28(3) the following subsections are inserted —
“
- (3a) Without limiting section 66, the Minister may under that section direct the corporation —
- (a) not to perform a function specified in the direction;
 - (b) not to perform a function specified in the direction to an extent, or except to an extent, specified in the direction; or
 - (c) not to perform a function specified in the direction in or in relation to an area, or except in or in relation to an area, specified in the direction.
- (3b) Subsection (3a) does not authorise a direction of a kind mentioned in section 38A(1).

101D. Section 31A inserted

After section 31 the following section is inserted —

31A. Segregation of functions

- (1) Regulations under section 100 may provide for, and in relation to —
- (a) the segregation of any segment of the corporation’s operations mentioned in section 62(2) from the other functions or operations of the corporation; or
 - (b) the segregation from the corporation of any subsidiary of the corporation that has any functions or operations of a specified kind.
- (2) Regulations referred to in subsection (1) may make provision for, or in relation to —
- (a) the keeping of accounts and records;
 - (b) financial reporting;
 - (c) the apportionment of income, expenditure, assets and liabilities;
 - (d) the protection of information;
 - (e) the conduct of officers of the corporation; and
 - (f) controls and procedures, and the conferral of functions on a specified person, to ensure that any required segregation is effective.

101E. Section 62 amended

(1) Section 62(2)(a) is amended as follows:

- (a) in subparagraph (i) by inserting after “electricity” —
“ within the South West interconnected system ”.
- (b) by deleting subparagraphs (ii) and (iii) and inserting instead —
“
 - (ii) the transmission and distribution of electricity within the South West interconnected system;
 - (iii) the sale of electricity within the South West interconnected system;”

(2) After section 62(2) the following subsection is inserted —

- “
- (2a) In subsection (2) —
“**South West interconnected system**” has the meaning given to that term in section 3 of the *Electricity Industry Act 2004*.
- ”

101F. Section 66 amended

Section 66(1) is amended as follows:

- (a) by deleting “generally”;
- (b) by inserting after “functions” —
“ , either generally or in relation to a particular matter, ”.

101G. Section 95A inserted

After section 95 the following section is inserted —

“

95A. Phasing-out of operation of access and procurement provisions

- (1) The Minister may, by instrument published in the *Government Gazette*, declare that a specified relevant provision does not have effect on and after a specified day, and a declaration so made has effect accordingly.
- (2) A declaration is not to be made in respect of a relevant provision unless the Minister is of the opinion that the matters to which the relevant provision relates are adequately dealt with, or will be adequately dealt with on and after the specified day, under —
 - (a) Part 8 of the *Electricity Industry Act 2004* and the Code established under that Part; or
 - (b) Part 9 of the *Electricity Industry Act 2004* and the regulations made and market rules established under that Part.
- (3) Regulations made under section 100 may —
 - (a) repeal any specified provision that has ceased to have effect because of a declaration;
 - (b) effect any repeal of or amendment to any other provision of this Part or Schedule 5, 6 or 7 that is consequential on a repeal referred to in paragraph (a); and

- (c) prescribe any matter that it is necessary or convenient to prescribe for transitional or savings purposes in relation to a declaration or in relation to a repeal or amendment referred to in paragraph (a) or (b).
- (4) In this section —
 - “**declaration**” means a declaration made under subsection (1);
 - “**relevant provision**” means any of section 90, 91, 92 or 93 or Schedule 5, 6 or 7, or any portion of any of those sections or Schedules;
 - “**specified**” means specified in the declaration.

Division 3 — *Electricity Industry Act 2004* amended

101H. The Act amended

The amendments in this Division are to the *Electricity Industry Act 2004**.

[* *Act No. 5 of 2004.*]

101I. Part 2 Division 7 heading amended

- (1) The heading to Part 2 Division 7 is amended by deleting “Other functions of the Authority” and inserting instead —

“

Administration and monitoring of licensing scheme and issue of codes

101J. Section 39 amended

- (1) Section 39(1) is amended by deleting “The” and inserting instead —

“ Subject to subsection (2b), the ”.

- (2) After section 39(2) the following subsections are inserted —

“

- (2a) If the Authority has not prepared and issued a code in respect of a code matter the Minister may —

- (a) prepare and issue a code in respect of that code matter; or
- (b) by notice published in the *Government Gazette*, declare that the Minister proposes to prepare and issue a code in respect of that code matter.

- (2b) If —

- (a) a code prepared and issued by the Minister; or
- (b) a declaration under subsection (2a)(b),

is in force in respect of a code matter, the Authority cannot issue a code in respect of that code matter.

- (2c) In subsections (2a) and (2b) —

“**code matter**” means —

- (a) the matter mentioned in subsection (2)(a);
- (b) the matter mentioned in subsection (2)(b);
- (c) the matter mentioned in subsection (2)(d); or
- (d) a matter referred to in subsection (2)(e).

101JA. Section 79 amended

Section 79(2)(c) is amended by deleting “customers; and” and inserting instead —

“

customers and providing for compensation payments to be made to customers when standards of conduct are not met; and

101JB. Section 89A inserted

After section 89 the following section is inserted —

“

89A. Regulations may modify application or operation of enactments to facilitate operation of code

The regulations may provide that a prescribed enactment —

- (a) does not apply in relation to the supply and marketing of electricity to customers;
- (b) does not apply in relation to the supply and marketing of electricity to customers to the extent prescribed;
- (c) does not apply in relation to the supply and marketing of electricity to customers to the extent that the enactment is inconsistent with the code; or
- (d) applies in relation to the supply and marketing of electricity to customers with such modifications as are prescribed.

101K. Section 103 amended

Section 103 is amended by deleting the definition of “access” and inserting instead —

“

“**access**”, in relation to services, has a meaning corresponding with the meaning that it has when used in that context in the *Trade Practices Act 1974* of the Commonwealth;

101L. Section 104 amended

Section 104(2) is amended as follows:

- (a) in paragraph (l), by deleting “metering and other”;
- (b) by deleting paragraph (m).

101M. Section 106 amended

Section 106(2) is amended by inserting after “agreement” —

“ or an enactment ”.

101N. Section 115 amended

(1) Section 115(1) is amended as follows:

- (a) by inserting before “must” —
“ , or an associate of the network service provider, ”.

(b) by deleting “aimed at” and inserting instead —
“ for the purpose of ”.

(c) after paragraph (c), by inserting —
“

Penalty: \$100 000.

Daily penalty: \$20 000.

(2) Section 115(2) is amended as follows:

(a) by inserting before “must” —
“ , or an associate of the person, ”.

(b) by deleting “aimed at” and inserting instead —
“ for the purpose of ”.

(3) Section 115(3) is repealed (but not the penalties after it).

(4) At the end of section 115 the following subsections are inserted —
“

(3) Without limiting subsection (1) or (2) —

- (a) a person is taken to engage in conduct for a particular purpose if —
- (i) the conduct is or was engaged in for purposes that include, or included, that purpose; and
 - (ii) that purpose is or was a substantial purpose;
- (b) a person may be taken to have engaged in conduct for a particular purpose even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or of any other person or from other relevant circumstances.

(4) In this section —

- (a) a reference to engaging in conduct is a reference to doing or refusing to do any act and includes a reference to —
- (i) making a contract or arrangement or giving effect to a provision of a contract or arrangement;
 - (ii) arriving at an understanding or giving effect to a provision of an understanding; or
 - (iii) requiring a covenant to be given or giving a covenant;
- (b) a reference to refusing to do an act includes a reference to —
- (i) refraining (otherwise than inadvertently) from doing the act; or
 - (ii) making it known that the act will not be done.

(5) Subsection (1) or (2) does not apply to conduct in which a person engaged in accordance with an agreement, if the agreement was in force on 30 March 1995.

(6) In this section —

“**associate**”, in relation to a person, has the meaning it would have under Part 1.2 Division 2 of the *Corporations Act 2001* of the Commonwealth if sections 13, 14, 16(2) and 17 of that Act were repealed.

1010. Schedule 1 amended

Schedule 1 item (k) is amended as follows:

- (a) by inserting before “under” —
“ or the Minister ”.
- (b) by deleting “Authority;” and inserting instead —
“ Authority or the Minister, as the case may be; ”.

Hon GEORGE CASH: We have had an opportunity to consider this amendment, which proposes a number of new clauses. All members would agree that it is a lengthy amendment. Therefore, it is important for the minister to give some explanation on the record regarding new clauses 101A to 101O. A number of pages of explanation were provided to me and Hon Robin Chapple; however, it would be good if the minister paraphrased some of that documentation for the record. A substantial amendment is to be dealt with in one hit. The Opposition is happy to support the amendment as long as the record shows its intention.

Hon ROBIN CHAPPLE: In support of Hon George Cash, members must remember that these are fairly new provisions; that is, they were not included on the original supplementary notice paper for this Bill. It is beholden on the minister that some detailed explanation be provided in *Hansard*.

Hon TOM STEPHENS: For anyone following the debate in *Hansard*, these new clauses will be best explained by perusal of pages 20 to 26 of the tabled explanatory memorandum. The key feature of these provisions include enabling the Minister for Energy, pursuant to section 66 of the Electricity Corporation Act, to direct the corporation to perform a function specified in the direction; to perform a function specified in the direction to an extent, or except to an extent, specified in the direction; or to perform a function specified in the direction except in or in relation to an area specified in the direction.

These provisions tighten up an area of the Act of which previous Governments were perhaps aware, as is the case with the current Government. The Act contains words that left open the opportunity for dispute regarding the opportunity for the minister with responsibility for Western Power to give directions other than general directions.

Hon George Cash: They were somewhat vague and general and could be misinterpreted. Rather, they were open to misinterpretation, perhaps not vague and general.

Hon TOM STEPHENS: Indeed. I understand that only Western Power chose to misinterpret. In those circumstances, new words are being provided to remove the opportunity for that misinterpretation. It was drawn to my attention yesterday that the Water Corporation’s legislation contains the same wording found in Western Power’s statute. Interestingly enough, no doubt has arisen in the mind of the Water Corporation about what the words might mean. I hope the committee, and in turn Parliament, will soon be able to give new words to Western Power, its board and its new senior management. A whole new group of senior management has been installed in the renewal of recent days. It may not be necessary for Hon George Cash to have to line up the 20 senior managers of Western Power.

Hon George Cash: That’s already happened, has it?

Hon TOM STEPHENS: A lot has already happened. Iannello seems to have a new group of senior managers in place. I have never met these people. Not only will Mr Iannello be in place with his new senior team, but that team, his board and the minister will have new sets of words emerging from the Parliament by which never again can confusion arise in the minds of people at Western Power.

I find this matter very interesting, as I know does Hon George Cash. I find it interesting because of some shared work Hon George Cash and I did. I do not know the genesis of Hon George Cash’s interest in this matter, but for me the genesis was in standing committee work we did together in New Zealand. We saw a trading enterprise that had been corporatised and moved to be at arm’s length from the Labor Government of the day. This was a policy flavour that was part of the new diseases that had infected Governments throughout the world. The New Zealand case was called “Rogernomics”. A Labor minister had reformed the whole bloody place. A drought occurred in the South Island of New Zealand and the hydro-electricity scheme could not produce enough power for everybody. Why not? The power corporation had adopted the view that it was there to make a profit, and decided that increasing the capacity of the hydro-power system to provide power at times of drought was not

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a good way of making a profit. Therefore, the corporation did not accept the view of government that a few dams might need to be built to help survive a drought. The utility seemed to state that it would make a profit and would not increase its capacity to meet extraordinary demand by building more dams. The organisation in New Zealand was in a complete muddle as a result of the legacy with which it had been bequeathed. In the 22 years I have been a member of Parliament I reckon that I have learnt to beware of smart, intelligent advocates for the latest fads and fancies. In the end, when things go wrong, we must come back and fix the problem. This legislation will provide the opportunity for ministers to fix circumstances like that and enable them, at various times, to give clear and specific directions on how agencies must respond to meet community needs. That is, in layman's terms, how I understand it. I hope the committee finds it of some use. I was referring to the famous trip for which a number of us were, in my view, libelled, slandered and defamed by the newspaper. Ever since then, I have not travelled much. That became for me a formative experience on how to respond to the challenges of government and legislation.

Hon Bruce Donaldson: Are you saying that it is beneficial for parliamentarians to look first-hand at professionals?

Hon TOM STEPHENS: I am encouraging every professional, including, ideally, some journalists and perhaps even some editors, to understand what is going on around the world because of the problems that are caused by the various contemporary fads and diseases that result from legislation, such as the suggestion that the minister could not direct on specific issues and had to give general directions so that the organisation could do as it liked. Clearly the community expects more. If these amendments are passed, the Parliament will be showing ministers that they will be equipped to do more than provide simply general directions. They will be able to respond. I hope that, with my layman's explanation, I have not caused any problems for the committee. That is how I understand the situation is progressing. I am pleased to see the amendment and that the committee will support it.

Hon ROBIN CHAPPLE: Given what the minister has said, it has been an issue for the Greens (WA) in many regards. In section 28 "Functions" in the Electricity Corporation Act 1994, subsection (4), the area that we are dealing with, reads -

Subsection (4) does not apply to any direction given under this Act by the Minister, or affect the operation of section 94.

It is repeated a number of times throughout the principal Act that Western Power always had the ability under a subsequent section, notwithstanding its requirement to listen to the direction of the minister, to say that it did not need to listen because that was implicit in the Act. The Greens (WA) raised considerable concern about that two and a half years ago and we are pleased that it will be amended. The minister will now be responsible, and with that comes a degree of responsibility that we hope he will take on board. Madam Deputy Chairman, can I move my amendment now?

The DEPUTY CHAIRMAN: Yes. Unless the member wants to seek the committee's indulgence to move them all en bloc. I believe they are discrete matters.

Hon ROBIN CHAPPLE: They are from my perspective.

Hon Tom Stephens: Would you like me to seek leave for you?

Hon ROBIN CHAPPLE: No. I am aware that when we moved amendments previously dealing with other legislation, we were to a degree successful in enshrining some of these glossaries. However, it is imperative, now that we are giving the minister some directive in this regard, that the minister and Western Power sign off on those principles. That is the intention of this amendment. I move -

To insert after proposed clause 101B(1)(a) -

(b) by inserting after the definition of "non-executive director" the following definition -

“

“principles of ecologically sustainable development” means -

- (a) decision-making processes 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, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

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- (c) the principle of inter-generational equity – that 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;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

”.

Hon TOM STEPHENS: The Government will not support either this amendment or any of the other amendments moved in the name of Hon Robin Chapple on the general theme of sustainability. That is against a backdrop of the Government being supportive of the ethic of sustainable development in the energy sector. I am sure that no-one in the Chamber or the community is in any way at odds with that objective. However, we may have disagreements on how to achieve it. The Government's view is that it will deal with the electricity industry as a whole and not just Western Power in isolation. It is important that it does not reduce corporate accountability in the provision of this key essential service; that is achieved in a transparent process in which stakeholders are aware of the policy ramifications and intent, and have been engaged in debate prior to any legislative change. The Government does not believe that this proposal, which is part of a package of proposals to amend the Electricity Corporation Act 1994, meets these criteria. We also believe that the proposals entail a significant market risk. The philosophy underlying the Government's reform agenda in this area is that existing impediments to renewable energy projects must be removed. Further, there should be no bias in generation technology. The reform framework contains significant initiatives, and the sustainable sector agrees with the Government that they will go a long way to removing the existing barriers to entry for renewable solutions. Those initiatives include the opportunity for the Economic Regulatory Authority to impose licence conditions on market participants with respect to energy efficiency, greenhouse gas emissions and the implementation of renewable energy strategies. In that regard, the ERA, in pursuit of those objectives, will have my support and, I am sure, the support of others, including the Leader of the House. The initiatives also include new top-up spill arrangements whereby renewable energy generators will be provided with much greater balancing tolerances and the ability to sell all their electricity output to Western Power in accordance with specified pricing principles. Further initiatives include the pursuit of a level playing field through access to the grid by way of an independently regulated access regime, the implementation of which is nearing completion, and the establishment of a wholesale market for the south west interconnected system that will recognise the unique nature of renewable projects and treat them accordingly. The market objectives enshrined in part 9 of the Electricity Industry Act 2004 explicitly refer to the avoidance of discrimination against sustainable energy options and the encouragement of demand management. The proposed amendments will go further to impose certain sustainable development objectives on Western Power. One problem with this - I hope everyone will recognise this, including Hon Robin Chapple - is that it will impact only on Western Power, not the sector as a whole. The Government is of the view that if new sustainable energy outcomes are to be established, they need industry-wide application. We cannot simply pick out Western Power. Accordingly, the Electricity Corporation Act 1994 is not the place in which to position a sustainable development policy. Other opportunities have been before this place; however, they have not been embraced. The Government is saying to Hon Robin Chapple and the committee that this is not an opportunity to pursue that agenda. If the Government seeks to achieve certain outcomes, it should do so in special legislation that will have an impact on the entire sector. Indeed, this is largely the regime that has been adopted in jurisdictions in the eastern States. It is also noted that such arrangements will not apply to the fully deregulated gas sector in this State. Simply picking out Western Power, which is the issue being pursued with this series of amendments, would be an odd way to proceed. There is a risk in inserting that sort of imperative in Western Power's business charter. It would be difficult for Western Power's board to interpret an ecologically sustainable development set of outcomes. We have already identified in the House some of the difficulties that Governments have had with these issues. What if the interpretation by management and the board compromises electricity supply or results in sudden increases in prices? Who would be accountable?

Two key principles of corporatisation are clear lines of accountability and clarity of objectives. The amendments suggested by Hon Robin Chapple do not sit well with these principles. If there is to be a higher sustainable development objective, it should sit outside the Electricity Corporation Act. The board's commercial charter would then be within the overall industry framework. The proposed model, if it were imposed upon the electricity corporation in isolation, would set a precedent of imposing all sorts of policies on the government trading enterprises legislation in an ad hoc manner. Ultimately, the corporatisation model would become blurred. In a commercial sense, Western Power would be disadvantaged relative to competitors not operating under such a limitation.

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I do not believe that Hon Robin Chapple wants Western Power to be impacted in that way. I have always viewed Hon Robin Chapple as a watermelon. I would hope that a watermelon would never attack a government trading enterprise and position it at a disadvantage in the commercial sector.

Hon Bruce Donaldson: Are they the claims of the Labor Party? I thought you were just talking about clones.

Hon TOM STEPHENS: No, it is simply a term of endearment towards Hon Robin Chapple.

If the proposed model is imposed on the electricity corporation, it would have that effect. The report of the task force established to review the machinery of Western Australia's Government considered this issue and concluded that such GTE boards face a mixture of commercial and non-commercial objectives, and that the simultaneous pursuit of inconsistent or conflicting objectives could lead to unintended and undesired consequences that prevent their agencies from maximising efficiency. Furthermore, conflicting objectives can be used by boards to evade accountability for poor performance in any area. That is the sort of clarity we need to retain in the legislation. I hope that with these remarks I can persuade Hon Robin Chapple to desist from his amendments. I believe that, over time - if not by the conclusion of his parliamentary career - Hon Robin Chapple will see why a better framework is needed to pursue these objectives. The sort of frustration expressed by Hon George Cash about Western Power earlier in the debate, and the sort of frustration that other people feel about this organisation, is partly because the objectives set for these trading enterprises have not had the clarity of accountability mechanisms. If that is further clouded, problems that none of us wants to be created will be created. In fact, we are trying to move away from such problems.

The Machinery of Government Taskforce believed that to avoid these outcomes it was important for the boards of relevant statutory authorities to be given a single, clear commercial objective; that is, their principal objective would be to operate as commercially as any comparable private firm. Any non-commercial outputs, such as those relating to economic and regional development or community welfare, that were previously supplied by a statutory authority should be dealt with by transferring responsibility for their supply to another agency without a commercial objective, such as a department. Such outputs should also be dealt with by being treated transparently as a community service obligation undertaken by the statutory authority upon receipt of appropriate funding. The task force considered that if the Government wishes GTEs to take account of externalities - for example, the environment or social equity - it should do so by regulations or taxation measures that force all players in the industry to internalise the cost of such externalities. Competitive neutrality will not be preserved if only government business enterprises are singled out. Indeed, the efficient allocation of resources will be compromised as a result.

Hon Robin Chapple also suggested that ecologically sustainable development principles should be reflected in schedule 7 of the Electricity Corporation Act, which relates to the procurement of generation by Western Power. The Bill before the committee seeks to provide for the eventual repeal of this schedule. Once the wholesale electricity market has assumed responsibility for procurement of new capacity, it will be a matter for the independent market operator, not Western Power. It is the Government's view that the proposed enhanced direction powers in the amendment Bill, together with the community service obligation framework embedded in the Electricity Corporation Act 1994, give the Government sufficient room to impose certain policy requirements on Western Power if a particular situation arises. Furthermore, in undertaking the procurement of generation in accordance with schedule 7 of the Electricity Corporation Act 1994, Western Power must seek to minimise the total delivered cost of electricity, subject to maintaining the reliability and safety of the electricity system. On those last matters, reliability and safety of the electricity system, I am advised that Western Power, as part of the current procurement process, is taking into account social and environmental factors, as not doing so may affect electricity reliability and safety.

I have stated earlier that schedule 7 of the Electricity Corporation Act 1994 will be repealed at a future date once the new wholesale electricity market takes effect. As part of the new market arrangements, the new independent market operator will undertake the procurement of new generation on a system-wide basis, and not just in relation to Western Power's requirements, which is presently the case. The new wholesale market arrangements provide for the avoidance of discrimination against sustainable energy options and the encouragement of demand management.

Finally, sustainable development does not come without a cost. As members will be aware, renewable energy is generally more costly to produce than is gas or coal-fuelled electricity. There is an argument that if there are to be price implications from a sustainable development policy in the electricity sector, the public should be properly informed, rather than imposing an isolated and not necessarily transparent initiative into Western Power's governance arrangements.

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I say to the committee that these are very big issues. The entire globe is facing the challenges of embracing renewable energy. Everyone lauds the objectives of Hon Robin Chapple. I do not think a single person in the Chamber does not want to go in the direction that is being advocated. It is just the wrong spot, wrong time, wrong place and wrong Bill. However, I would love the opportunity of working with Hon Robin Chapple and other members of the House -

Hon Robin Chapple: It must be getting close to election time.

Hon TOM STEPHENS: No, not at all. I absolutely see the fundamental objective of all of us to make some progress in the direction which Hon Robin Chapple advocates and which we advocate. I look forward to the opportunity of doing that. I encourage Hon Robin Chapple to desist from pursuing these amendments to this Bill. The consequences for Western Power would, I believe, be destructive.

Hon PETER FOSS: I felt that I had to stand and congratulate the minister. That is probably one of the most coherent and intelligent speeches I have ever heard him make. I have just one small comment; that is, I have frequently had cause to describe not only Hon Robin Chapple but also his Greens colleagues as watermelons, and I have never used it as a term of endearment.

Hon GEORGE CASH: I agree in the first instance with the comments of my colleague Hon Peter Foss, and I was tempted to say that I agree entirely with the comments the minister has made. However, I agree with only about 95 per cent of them. I believe they are important matters that need to be brought out in the public arena. We are talking about an amendment that will, if agreed, insert by way of definition the principles of ecologically sustainable development. As the minister has said, we agree with the ethic of ecologically sustainable development. However, we do not want to - I again use the minister's words - slip it into this Bill at the end of proceedings. I certainly do not blame anyone, in particular Hon Robin Chapple, for the lateness of this appearing on the supplementary notice paper. The reason I say that is that, along with the deputy leader of the coalition, I met with the Conservation Council of Western Australia some weeks ago and discussed these issues. I suspect that Hon Robin Chapple has also spoken to the Conservation Council of Western Australia in coming up with these propositions. However, we said to the Conservation Council that there needs to be a genuine understanding across the public of what ecologically sustainable development really means, because at the moment it could be argued that lots of people have lots of ideas about what they think it means and is meant to represent.

Paragraph (a) of the definition proposed by Hon Robin Chapple states -

“principles of ecologically sustainable development” means -

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;

I believe most people would agree with that. In fact, it could almost be described as a motherhood statement, because it does not mean a lot unless we examine each of those words and decide what long-term and short-term economic considerations are, what environmental considerations are, what social considerations are and what equitable considerations are. I believe there is a need for us, as a Parliament, to at least have a common understanding of what we mean by those words. Paragraph (b) states -

if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

That paragraph in itself raises some very interesting issues. At the moment the courts have not determined what the notion of that paragraph means. I would like more certainty. Therefore, I say to Hon Robin Chapple that, first, we need greater public debate on the question so that we, as a community, are able to get behind the notion, knowing that we are all heading in the same general direction. Secondly, these things come at a cost. We do not get them for free. They might sound good and feel good, but they cost, and they have impacts on other areas in the community. In this case, it is proposed that this amendment go into the legislation. If it was agreed to, it would have an impact on Western Power. However, as the minister has pointed out, that would be inequitable in so much as other power producers would not have the same principles imposed on them. They would not have to measure up to this proposition. Obviously, that would make Western Power uncompetitive in that sense. However, that in itself should not knock the general principle.

As part of the public debate, I would want to find out what costs we are talking about. I believe the community is moving towards the general proposition. However, if it results in the imposition of a greater cost of electricity in Western Australia, so long as the public as a whole is prepared to cop that, we should move towards it. It is an imposition that the public may accept. If that is the case, fine. Some countries in Europe have clearly adopted

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the general notion. However, there are other reasons in Europe also. It has opportunities that we do not have regarding some renewable energy. We do not have the same cost advantage as does Europe in some areas.

I suggest that there is a need for greater public debate. I agree entirely with the minister that if we are to impose ecologically sustainable development conditions or principles on organisations, it should be done with a single Act that applies across the board. It is no good picking out one or another organisation or Bill in which to insert these principles. They need to apply across the board. The deputy leader of the coalition, Mr Max Trenorden, said to the Conservation Council the other day that it should come back with a proposition that we could talk about, and we would consider a proposition across the board. However, he said that we were reluctant to consider imposing this in isolated cases in which, first, the costs are not known at this stage and it would affect the level playing field that was referred to earlier.

As much as we agree with the general ethic of the amendment, we cannot agree with the words in their present form - not because we do not believe in them, but because we do not know what the impact will be when they are put into operation. That is why there must be greater public debate and a recognition of the actual costs of moving towards this proposition. I do not think that is unreasonable. As I understood the minister's comments, that was basically his premise; that is, he believes equal playing field costs need to be determined, and we should not impose a burden on Western Power alone just because it happens to be a state-owned enterprise. If it is good enough for Western Power to follow ecologically sustainable development principles, it seems that it is good enough for those in the electricity-producing business to also follow those same principles so that there is a level playing field.

Debate interrupted, pursuant to standing orders.

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Sitting suspended from 1.00 to 2.00 pm