

ECONOMIC REGULATION AUTHORITY BILL 2002

Second Reading

Resumed from 4 December 2002.

MR C.J. BARNETT (Cottesloe - Leader of the Opposition) [8.17 pm]: The Opposition will support this Bill. However, other members and I will make a number of comments on the role played by economic regulators. I also foreshadow that some amendments may well be moved in the upper House when this Bill reaches that stage. The Opposition will not put those amendments forward with an intention to frustrate the passage of this Bill, but rather to make some constructive improvements to it.

Before I comment on the nature of the Economic Regulation Authority Bill 2002, I will make some general, albeit almost philosophical, comments about the role of regulators. This Bill essentially brings together into a single authority the existing and anticipated regulatory arrangements, powers and functions applying to gas, water, rail and electricity. That may sound on the surface to be a sensible thing to do, and in broad terms it probably is. That is why the Opposition will support the legislation. However, some significant questions of public policy and private investment arise with the role of regulators. I will take a few minutes to talk about some of those issues before I specifically address the Bill itself.

By way of history, when former Prime Minister Paul Keating announced and introduced a competition policy framework for Australia, which the States dutifully signed off on, including this State under the Liberal-National Party coalition, Australia set itself down a certain path. Although Labor Prime Minister Paul Keating may have been looking at competition policy on its own merits, the inevitable consequence for Liberal Governments was a series of privatisations. They had to go hand in hand, and I suspect that Paul Keating favoured privatisation at both the state and federal levels. I do not wish to make a political or philosophical point. However, competition policy and privatisation go together, otherwise there is little point to the whole argument.

Traditionally, areas of public utility in Australia have been owned and operated, in the main, by State Governments. Major infrastructure services, ports, rail, transport, industrial estates and electricity, water and power supply have been state jurisdictions. The Commonwealth has had responsibility for telecommunications and postal communications. It has also been responsible for the airline industry and airports. Traditionally, Governments have played a strong role in all the broad areas of economic activity and utility service areas in Australia, as they have done in most liberal democracies. The United States provides an example of a situation in which utility services have developed within private enterprise, rather than public enterprise. We come from a British tradition, which is reflected in the historic economic development of this nation.

The philosophy of competition policy is that we have a mixed economic market; that is, some government and some private ownership of utilities. The conventional and traditional wisdom is that if something is government owned, it is "run well", but for the benefit of the community. Therefore, it is assumed by the populace that public interest issues such as equity, fairness, environmental matters, the expansion of services and the broad public service interest are provided by the utility simply because it is government owned. That is an act of faith, because, of course, that may not necessarily be the case. If we move into a market in which there is private competition with publicly-owned utilities, the argument is that there must be a fair set of rules. Private investment should not be disadvantaged simply because it finds itself in competition with a government-owned utility. Electricity is the most obvious example, because private power generation and private energy companies compete with dominant and publicly-owned utilities. The same can apply in rail, transport, shipping, airport and airline operations, and the like. Members should not forget that in Australia's history Governments at both the state and federal levels have owned banks, which are seen as providing a public service. Further, they have owned railways, airlines, engineering works - as was the case in this State - and all sorts of areas of economic activity.

Our view about what should be properly done by government as distinct from private industry has evolved and changed over time. We have matured to the stage that we now recognise that if government has a role either as an owner or regulator, it is in the area of what an economist would generally regard as a public utility. A public utility is not necessarily something owned by the Government. It has some characteristics; for example, it is known as a public good. In other words, it is in an area in which there is generally room for only one operator. Further, it is something for which the greater the number of users, the lower the cost of providing the service. In other words, it relates to economies of scale. Obvious examples are electricity transmission systems, power generation, gas pipelines, water supplies, telecommunications systems and the like. These are areas in which there is room for only one major provider and in which the greater the number of users, the lower the cost to the community. This situation results in a monopoly and all sorts of public issues. A monopoly, by definition, has market dominance - if not absolute, certainly relative - and, therefore, has the ability to exploit the consumer by charging higher prices, and providing, perhaps, a lesser product in terms of output and the quality of the service itself. There is a role for public intervention. The easy solution in the past was to make the utility government

owned. If a conflict arose because there was only one water supply, power supply, port authority or railway, we could not allow it to be privately owned because the owner could exploit the consumer by increasing prices unfairly. Therefore, the solution was to make it government owned. That has been the traditional solution in Australia. As we have moved on, we have realised that although monopoly issues may arise when a utility is privately owned, it does not necessarily mean that it must be government owned and operated. It may well be that a utility is better operated at a managerial and technical level by private enterprise, and, even though it is not owned by government, it could still be regulated by government. That is the evolution that has taken place. That was happening incrementally when TAA disappeared and when Qantas, BankWest and the Commonwealth Bank were privatised. When those changes happened, we moved away from that trend in Australia. If a utility is privately, not publicly, owned, and, therefore, often more efficient, it must be regulated.

The point I make in that slice of history is that competition policy and private investment in traditional utility areas and/or privatisation by taking something from government ownership and putting it into private ownership brings about this dilemma. Members opposite have stated that they believe in competition policy, but they do not believe in privatisation. That is like saying that one believes in having a mum, but not a dad. It does not work that way. They go together, and the Labor Party must take that giant intellectual step and recognise that when we talk about competition policy, like Paul Keating we are talking about private investment and privatisation. Keating understood that, but the rest of the Labor Party is some way off understanding what he was talking about. If a utility is to be privately owned and operated, it will enjoy a monopoly position, and must be regulated in some way. That becomes a dilemma for government. The theory is that a regulator who makes decisions about pricing, market share, market access, technical requirements, services to the community and the like will do so independently and free of politics. That is the theory. It is also the theory that because the regulator is independent, there will be greater certainty and things will happen in a timely way. As someone who used to teach economics, I taught and agreed with that concept. I would like to agree with that concept today; however, experience can sometimes be bitter and educative. The theory is that there will be independence, timeliness and fairness to all parties. However, does it work that way? That is the dilemma the Treasurer now faces, and the dilemma I faced as the former Minister for Energy.

It is fair to say that when the coalition in this State was in government, it signed up to competition policy. I remember when Paul Keating announced that every Australian would be better off to the value of \$1 750. When I was interviewed on television or radio, I said that that was right in theory, but that people should not rush down to their mailboxes looking for the cheque, because people would not see the benefits of competition policy directly. In broad terms, I support competition policy. However, often the application of that notion does not bear the results that people expect. The coalition Government established a gas regulator. We also committed at the last election to make the gas regulator responsible for electricity as an energy regulator and we established water and rail regulation. It is fair to say that had the coalition been re-elected, it would have moved to implement something along this line. I do not know that we would have moved so quickly. I think we would have taken some time to see how the gas-cum-energy regulator and the rail and water regulators performed. I am not critical of this; however, I suspect that this move might be a little premature. That is a matter for judgment. The Government has decided to proceed. I think that if the coalition had been returned, it would have been a little more cautious and allowed some time and experience to evolve in the specialist regulatory areas before it brought them together. However, I recognise that it is more logical to have a single regulatory authority than a host of minor regulators across government. It is a matter of timeliness. I am not necessarily critical, but I make the observation that we would have held off for maybe one or two years longer. However, we probably would have headed in this direction.

I look at some of the arguments. The business community strongly supports the idea of a regulator because it thinks a regulator will be independent, certain, timely, cheap and easier. Those arguments deserve some examination, and I deal first with independence. This Bill purports to establish an independent regulation authority; however, it will report to the Treasurer. I suppose that if we are to have a regulator general model, it is more appropriate that it report to the Treasurer than any other minister. In particular areas the regulator will continue to report to the ministers with portfolio responsibility for water, electricity, gas or rail. If the regulator is to be truly independent and deal with only the machinery elements of government policy, why will it report to the Treasurer and not directly to the Parliament? If the regulator is to do nothing more than implement existing policy and laws and go through the machinery of regulation - which I do not dismiss but consider a complex and exacting task - why will it report to a political office holder? In that sense, the regulator will not be truly independent. There is an argument that the regulator, like the Auditor General, should essentially report to this Parliament. If the regulator reports to a minister, it will by definition be drawn into political decision making and policy issues. I agree with the premise that the Government of the day makes policy and the regulator applies it. However, the regulator will report to the Government of the day. If it were to be truly independent, it would report to this Parliament, as does the Auditor General. If the regulator reports to the minister, there will be a conflict. It is absolutely inevitable.

The issue of independence becomes further complicated by the regulator reporting to the Treasurer and, therefore, the Treasury. It will be a conservative body that wants to suck up to the federal agencies and do competition deals and all the rest of it. Where will the portfolio minister stand? What will be the experience of the portfolio minister who wants, as a government policy initiative, to build a new gas pipeline, develop a new energy source, develop a port expansion or whatever else and is willing to contribute funds? Treasury will say that it costs too much, and an argument will develop. The portfolio minister will bat for the project, which will probably be the right thing for the State. Treasury, through the Treasurer, will say that the project represents too much expense and compromises the principles of competition. It will say that the market is no longer pure and that going forward with it might be seen as favouring the government enterprise over the private enterprise. All those arguments will flow. The regulator will tell the Treasurer that it is all a bit hard. The Treasurer will be on the side of the regulator. The portfolio minister will be sidelined, and we will not see development. A different set of conflicts will take place.

The Treasurer smiles in his benign, friendly, affable way; I give him an example.

Mr E.S. Ripper: I was smiling was because I was surprised by the assumption that the Treasurer would be antidevelopment. I am very much pro-development.

Mr C.J. BARNETT: I am not saying that the Treasurer is antidevelopment. I am saying that he will get caught up in that scenario. I give him a real example. The Treasurer has been a minister for two years, and I was a minister for eight. That gives me four times the wisdom.

Several members interjected.

Mr C.J. BARNETT: I knew that would wake people up!

A few years ago, when I was minister, I spoke at a conference of Australian regulators. They were the regulators of water, power, etc around Australia, and about 30 or 40 of them met in Perth. My opening comment was that their role as regulators was to be dull, colourless and boring. Quite a few of them met the description, and they were excellent regulators. I referred to - this has been in the media recently - the development of the gas pipeline to the Windimurra vanadium project. I described the process, which is similar to that which this Government is continuing on the Burrup Peninsula. The New South Wales regulator - I cannot remember her name - told me that it was an interesting project, a great concept and good for developing the State. She also told me that under the regulatory regime in New South Wales, a minister could not achieve that. I have always remembered those words. They were quite profound. It was not the biggest project in the world. Once all this power is given to the regulator, the ability of a Government to do things will be greatly constrained. That is my fear. That has been my fear since Paul Keating announced competition policy and we dutifully signed up. This State's infrastructure is grossly undeveloped. Thirty years of development must take place before Western Australia has mature infrastructure. Yet, if all these powers of regulation are given to a regulator, the ability of the Government to do things will be limited. I would have no argument with the concept of regulation if we already had mature infrastructure in place, as it is in Europe and North America. However, we are not in that position. We need another 30 years of public and private investment before we achieve that. That is my fundamental problem with regulation and this regulatory role. This legislation will give an enormous amount of power to the regulator and has the potential to constrain the most important thing for this State, which is the development of its infrastructure. I am sure the Treasurer will encounter all sorts of obstacles he has not anticipated. Independence appears nominally to be attractive but in practice will present a host of dilemmas in getting things done.

Mr E.S. Ripper: Will you give an example of how the independence of a regulator might prevent a development going ahead?

Mr C.J. BARNETT: There is one development that I can remember the Labor Party arguing from this side of the Chamber almost ferociously. The development of hydro-energy on the Ord River would not have happened under this legislation.

Mr E.S. Ripper: I think it was my colleague the former member for Cockburn who argued the issue.

Mr C.J. BARNETT: There was a fair argument from this side of the House at the time. I do not deny that there were grey areas. As a minister, I wanted to get on with it. There were grey areas; it was not a black-and-white scenario. I do not raise this for political reasons, but I refer also to the Derby tidal project, which now seems to have fallen over. Had the Government really wished to progress that, it would have found it immensely difficult under the regulatory regime outlined in this Bill. It would have been immensely difficult for the Government to support a tidal project as distinct from any other project. The Government will find its ability to do things constrained once this legislation is introduced. I know that is not its intention, but it will find that. If it appears to support one project, cases will be brought before the regulator or appeals taken to the Supreme Court. I say that not from an economic theory point of view but from the experience of eight years as a development

minister. It was not something I would have taught when I worked at Curtin University years ago. It is a knowledge that has come from watching what happens.

Mrs M.H. Roberts interjected.

Mr C.J. BARNETT: I probably taught a few Labor Party members.

Mrs M.H. Roberts: It was actually WAIT when you were teaching.

Mr C.J. BARNETT: I know, but I prefer "Curtin University".

Mrs M.H. Roberts: You tried to teach my husband, but to no avail.

Mr C.J. BARNETT: Sometimes even the most gifted of academics cannot cope with students!

The issue of independence is not clear because sometimes we do not want independence. We want a Government to be able to drive things and make them happen.

I give a second example. I do not believe that our Government would have built the goldfields gas pipeline in the time frame that it did under a regulatory regime. We introduced special regulation for the goldfields gas pipeline that gave the proponents a privileged position in developing the project and in the market.

Mr J.J.M. Bowler: You are not kidding! We are still paying the price.

Mr C.J. BARNETT: The member for Eyre makes the point that they are paying the price. However, if that had not happened, there would have been no goldfields gas pipeline. The Goldfields Gas Pipeline Agreement Act allowed for the regulatory role to come in. They were given a position of privilege.

Mr E.S. Ripper: In a very ambiguous way, I might say, which is causing legal action itself.

Mr C.J. BARNETT: I do not mind criticism of that, and I can always look back and say I might have done it differently, or whatever else, but that position of privilege allowed the project to be built, and now it will be there for the next 100 years. It might be argued that it was too generous, but it was built under those conditions. If the Treasurer tries to do that under this regulatory law, he will find it almost impossible. He will have the most perfect system in the world, but he may not get any development. That is the dilemma he will face. That is why enshrining legal independence sacrifices the other objective. Fairness, equity and independence are being traded off against the prime objective in this State, which is economic development. That is the fundamental problem I have with the regulatory role. I am not criticising this Bill, but that is why I hesitated. That is why the previous Government, when it established the Office of the Gas Regulator - which I did as a minister - was determined to keep it as a Western Australian-based regulator. Opposition members of that time, including the present Treasurer, argued that it should be under a national body. The then Government maintained an independent state regulator for that reason, and I am glad that it remains independent. It is absolutely critical that we do not hand over the regulatory powers for Western Australia, with its development imperative, to a national government. If that is done, the Cabinet could be cut in half. There would be no need for an energy minister, a water minister, an environment minister and a few others. An enormous amount of power would be given away. I makes those comments constructively, as someone with four times the experience and wisdom of the Treasurer.

Mr J.J.M. Bowler: Just experience!

Mr C.J. BARNETT: Yes, just experience!

One of the reasons the business community is so supportive of regulation is that it sees it as being defined legally, and therefore certain. Experience is not what that theory predicts. In Victoria, people invested in utilities, particularly electricity and gas, according to an established regulatory regime. The regulator then made decisions based not on what I would regard as the appropriate economic criteria, such as output, price and quality of service, but on rates of return. Therefore, if a private investor operated a utility service more efficiently at lower cost for better quality, attracted more customers and increased the turnover and profit, it was penalised by a reduction in its rate of return. This system penalised success. It was so formula driven that it became dysfunctional. Consumers are interested in the availability, quality and price of the service - the three key regulatory aspects - and not in the rate of return of the utility, whether it be government owned or privately owned. They want the service at a good price and with good quality, which is fair enough. So regulation moved away from what it should have been - essentially looking after the interests of consumers as a counter to the monopoly - to a regulation designed to make sure the monopoly never actually got ahead. It was an irrational, dysfunctional evolution of regulation. That has crept into regulation here, under both the previous and present Governments. The Treasurer needs to sit back and look at that to some extent.

Business has always said that when politicians make decisions, there is this thing called sovereign risk. Governments change, policies change, politicians change their mind, or have favourites or whatever else, so there was a big thing in the 1980s and early 1990s about sovereign risk. I made speeches about sovereign risk before I entered this Parliament. The idea was that, by moving all the decision making away to the independent

regulator, sovereign risk disappears, but in fact it is replaced by regulatory risk. Investors in the Victorian utilities found that. It might be argued that, in this State, there was an issue with Epic Energy and the privatisation of the Dampier to Bunbury natural gas pipeline, which I oversaw as a minister in the previous Government. The Government of the day made some policy decisions. It was to be sold for the best possible price - that was pretty important for the taxpayer and the community. It was important to make sure that it brought a lower price to consumers - which we did by reducing the price of transport from \$1.22 to \$1. There needed to be scope for expansion, and this was done by placing an obligation on the buyer to expand capacity. There was also the need for future competition, which was provided by expanding the easement, retaining the easement in public ownership, and giving only a limited expansion right of one extra pipeline to the purchaser. I thought I had thought through all the issues, and I was pretty proud of myself. I thought I was taking the sovereign risk out of the process by clearly laying down the criteria. We did not just put it up for auction; we laid down the policy criteria very carefully. I did it as a minister- I do not say that arrogantly, but it did not come from the bureaucracy. I spent much time talking to people and developing what should happen. We sold the pipeline for \$2.407 billion. It was a fantastic price. The transport cost of gas fell from \$1.22 to \$1. The company has spent \$100 million to \$200 million on expanding capacity, and there was a regime that brought the price down from \$1.22 to \$1.15, then to \$1.08 and then \$1 in a series of predetermined steps. It was certain, and it was predictable. Thereafter, the price was to be determined by the newly appointed gas regulator. I thought I had done everything right - thought through the policy issues, made the transition over time so that the world did not change instantly, appointed an independent regulator and established the starting price. Everyone was clapping their hands, and I was feeling pretty happy, because everything was working to plan.

Sovereign risk had been removed, but in came this new concept of regulatory risk. I had an expectation that \$1 was the reasonable price. My fear, which the Government would understand as fellow politicians, was that the regulator would come in and say that the price had to go back up to \$1.20. The then Opposition would have torn me apart, and quite rightly so. Unbeknown to me, and in a total surprise, the regulator comes in with a price around 78c. Suddenly, the certainty of a Government making and laying down the criteria for sale, trying to defuse sovereign risk, had been replaced by a new form of risk - regulatory risk - a decision by the independent umpire that was way outside the ballpark. I do not criticise the regulator. The decision was probably driven by the fall in market interest rates. It was formula driven. However, it was way outside the expectations of the buyer, the Government of the day, and even the consumers. The commonsense solution was probably about 90c to 95c, given the fall in interest rates. Had I been the minister at that time, I would have been pushing for that. I do not know what the Government's view is, but how does it resolve that issue under an independent regulator? How does it resolve an issue that went to the Supreme Court and cost millions of dollars, and then the Supreme Court largely came down on the side of Epic Energy, and the regulator still goes on? A political risk is replaced with a regulatory risk. I do not have an instant answer, but that is part of the dilemma.

The application of regulation is not the same as textbook theory would predict. The independence is not necessarily there, and the certainty is not there. The timeliness is also not there. At least a minister, if he or she is any good, can make a decision, or the bureaucracy, under guidance, can make a decision, and a result can be obtained. Under regulators, all sorts of delays, reports and reviews can result. It has not been a certain or timely process. That was the experience in Western Australia. It has not necessarily been a cheap process. One of the proposals put forward in this Bill is that it will save money. The bastion of private enterprise in utilities is California. It was nothing to be proud of, but California led the world in regulation of public utilities. There is a body called the Public Utilities Board, which has 5 000 employees. It is a huge bureaucracy, and it has made some almighty mistakes, none more so than the energy crisis that beset California two or three years ago. It was a crisis born not through rises in the price of fossil fuel or the collapse of the energy infrastructure, but by regulation or by the failure of the regulators. It is ironic because the regulators were to set the rules of competition in a perfectly open and accessible market applying great microeconomic theory. They regulated consumer industry but not consumers, and had different rules for different utilities. The irony was that the system collapsed. San Francisco and Los Angeles had major blackouts for the first time, and companies went broke and energy prices for industry soared. The great irony was that only one group of utilities made money; namely, nuclear power generators. They creamed it. I am conscious that we have a couple of members of the Greens (WA) with us in our humble Chamber; I welcome them. They care about nuclear energy, which may be debated later. It is almost trivia, but the irony was that the companies that thrived were the nuclear power generators. California has quite a strong lobby against nuclear energy, but in a time of crisis the suppliers could turn up a switch and provide 95 per cent capacity 24 hours a day, seven days a week. They made squillions of dollars while the other fuel suppliers suffered.

Mr E.S. Ripper: Is this your vision for the future of energy supply in Western Australia?

Mr C.J. BARNETT: My simple point, which I think the Treasurer understands, is that regulation is not necessarily a form of certainty. Failed regulation can be a massive form of instability. I cannot defend it logically, but maybe a wise minister and wise counsel from the bureaucracy making albeit subjective decisions

sometimes can resolve issues. I know that view is not palatable, and I know I would be criticised by the Western Australian Chamber of Commerce and Industry for that comment, but my view arises from my experience as minister for eight years.

If any group is to deal with public interest in the Western Australian context, it should be the people elected to Parliament. We are elected to represent the communities we serve. We are chosen to deliberate and make decisions on public interest. The regulator is not. One must question the sense of Parliament, or indeed of the Government of the day, handing down a public interest responsibility to a regulator. If the regulator is to be independent, he should deal with sums, numbers, facts and realities, but not make judgments about public interest. It is the job of the Treasurer and the Parliament to weigh up public interest issues, not a regulator. I urge the Treasurer to think about it carefully. This regulator potentially will be the most powerful person in Western Australia. He will be incredibly powerful. A chairman of a regulatory authority will have responsibility for water, gas, electricity, rail and whatever else in the future. A person or authority will have the ability to make decisions affecting billions of dollars - I am not exaggerating - share prices, employment, environment, development and the like. This Parliament in passing this Bill, if it is not managed very well, will hand over an enormous amount of public responsibility and public decision making to a regulator. I know it sounds contradictory, but, as I said at the beginning of my speech, I support the legislation. The experience of eight years as minister in this area makes me hesitant about where we are headed. Although I may disagree violently with some of the Government's philosophies and policies, I would prefer to see some public interest issues remain with the elected Government rather than be given to a regulator.

The Treasurer will be the guy with the executive role in this matter. He should not give the regulator or the authority too much space. Breathe down their necks and confine their role to that of a narrow regulator. It is subjective; it cannot be written in legislation. Keep them defined to the narrow focus of financial rules, regulation, access and the like. If the regulator takes a wide brief, as the Australian Competition and Consumer Commission is inclined to do, the regulator will set policy for all economic and industry development in Western Australia. The Government of the day will have limited ability to do anything. It will frustrate. If the Treasurer ever has a good idea about economic development, he will not be able to apply it. He will live forever in the shadow of the former Minister for Energy for a long time. The ministers of the day will be eternally frustrated. I might enjoy it from this side, but I will not enjoy it for the future of the State.

Conflicts will arise within government about this situation. I do not know another way of doing it if there is to be a single authority, but conflict will certainly arise between portfolio ministers and the Treasurer.

Mr E.S. Ripper: That's the Treasurer's lot!

Mr C.J. BARNETT: The Treasurer is a poor excuse of a martyr, if I may say so! Martyrs are meant to be quite different.

The Treasurer will apply the Treasury line that the Government cannot do a project because it will cost too much money and it is too adventurous. Treasurers are designed to be boring, dull and a wet blanket over everything, and the current Treasurer does it well - he is boring, dull and a wet blanket, and one of the best Treasurers we have ever had for those reasons! The role of the Treasurer is to keep a sobriety about government. However, things need to be done, especially in this State. Conflict will arise between ministers and agencies that want to do things for the good of the State and a regulator who will be heavily Treasurer, ACCC and probably Treasury influenced. It represents centralisation of power.

One of the major criticisms emerging of the style of the current Government, which is the Brian Burke style of Government - I mean no disrespect to the former Premier in that sense - is a centralisation of decision making. The chambers of commerce of this world do not understand this approach. There is a high degree of centralisation of the decision-making process in the Premier's office when compared to that in a coalition Government. In this case, a high degree of centralisation will occur in the Treasurer's office. Labor Governments tend to be centralist in decision making. Therefore, the Treasurer and the Premier have something to say, while most other ministers make statements about cocktail parties. That is the reality. The Treasurer will find a tension in government as this process evolves.

My final comment in a general sense is that when we headed down the path of competition policy, which the Premiers of the country became unreasonably excited about at the time, the idea was that we have private investment in traditional utility areas. Privatisation took place, which undoubtedly was the purpose of competition policy, and the idea was to have a light-handed regulatory framework. The rules of the game were to protect public interest, the consumer, the environment, development and whatever in a light-handed regulatory framework.

The first cab off the rank I dealt with as an energy minister was the national gas access code. I went along in goodwill and good spirit to that process. It was industry driven. Industry participants were involved, and they came up with a national access code that was like the telephone book - it is the most prescriptive document one

can imagine. The same will happen with water supplies, and that is already emerging. If the federal Government is serious about the Darling-Murray system, one can expect enormous regulation to be dutifully introduced at state level. The same will happen in a host of areas, such as ports and light rail; it is happening with electricity in other States, but it is coming into Western Australia.

The other great irony is that we are seeing an enormous amount of regulation or re-regulation in the name of deregulation. When many industries were publicly owned and operated, there was minimum regulation. Now they are moving to the private sector, and regulators go in with a raft of commonwealth and state legislation, the degree of prescriptive regulation is smothering. These industries cannot breathe. They cannot break wind without a regulator coming down on them. That traditionally has not been the case in Australia, which has been an engine of entrepreneurship in the public and private sector. We are tying up the Australian economy in elastic bands of regulation. That is one of the ironies and frustrations.

I attended successive energy minister conferences. Nick Minchin was the federal minister at the time; I have a lot of respect for him. He and I, and one or two others, could see that what started out in good spirit as a deregulatory, light-handed framework had become incredibly prescriptive. It was not good. Unfortunately, it is very difficult to turn it back. We need to go back to some of the codes and make them light-handed. I implore the Treasurer not to give over any regulatory functions to the Commonwealth. He must ensure that they remain with the State. By all means, the State should participate in national access codes, but we should not give any power or authority to the Commonwealth. It would be a terrible and retrograde step for the State. If there are to be consistent codes, we must remove the detail from them. The principles must be got right. What were the principles with gas? That we could build a pipeline, use an easement, have equality of access and have transparent pricing. It was not rocket science. A telephone book of rules and regulations came out of the process. That will be the challenge for economic control. We will have a mix of public and private enterprise. We need regulation, but it makes sense to have one regulatory authority. We could lose the whole plot if the bureaucracy carries on as it is. Industry has a lot to answer for. Through the national access code, industry was drawn in. Industry participants became the biggest regulators; it was amazing. It could see one competitor doing something and wanted to constrain it whilst it freed up other areas. Between them, they all overlapped and created a morass of regulation. The basic principles that Paul Keating, John Hewson and I espoused at the time - which we all agreed to - about independence, certainty, timeliness, less cost to participants, separation of policy from regulation and separation of public from private interest was a fantastic economic theory. Unfortunately, it has not delivered what it promised. It is not all bad, but it has not lived up to expectations. My reservations come from experience, albeit that the Treasurer may think it is limited experience or one year's experience eight times over or whatever disparaging, unthoughtful and ungenerous comments he might make. I offer my comments for the Treasurer to think about and be conscious of. It is a problem that any Government will face.

The Bill essentially brings existing rules, regulations and regulatory authorities into one body. I do not disagree with that, but there are swings and roundabouts that go with it. It establishes electricity, gas, rail and water within the economic regulation authority. The authority will assume the functions previously performed by independent or separate authorities and ministers. An important gain from this would be to achieve consistency of a regulatory regime. One would expect the access requirements for electricity, gas, water and rail to be the same in principle and policy. We would look for that; it is important. If bringing those elements together can develop a consistency of policy, interpretation and decision, that is good. It may be quite difficult to do but it is worth pursuing. If precedent by decision can flow to other sectors, that is also good. It will take some time; it will not happen overnight. It will take a decade to evolve. If it evolves and we can get rid of the over prescription, that will be positive.

There is a raft of amendments to other Acts; they are incredibly boring and I will not waste time on them. They are largely machinery.

The regulatory authority is to be given the power to conduct special inquiries. The Treasurer probably made a policy mistake with that. I do not deny that the Government may want an inquiry into the taxi industry or whatever. This body will be charged with regulation. As I said at the conference of regulators, the regulators need to be dull, colourless and boring. They are there to regulate and make decisions according to the law. If regulators are given the role of advising on policy through independent inquiries, the role will be blurred. I am not saying that inquiries should not be held, but regulators should not hold them. I would much rather the Treasury or some other independent group held them. Regulators and their staff would soon see themselves as regulator, government adviser and policy maker. It would be almost impossible to stop. It is human nature. I would be very wary about giving briefs to advise unless they were narrowly defined.

Mr E.S. Ripper: It is modelled on what is done in New South Wales.

Mr C.J. BARNETT: It is opening the door to an industry or productivity commission-type role. There is justification for that, but I am wary of a regulator undertaking that role. It is a policy decision I would not have

made. I would have gone a different way. It is something that the Treasurer might think about. The Government has made a policy decision, but maybe it did not think about it - like most things. The Government may have another opportunity through terms of reference. If it is to have terms of reference, they should be very narrow; they should certainly not be broad.

Mr E.S. Ripper: The Leader of the Opposition could follow his policy by never using those sections of the Act.

Mr C.J. BARNETT: That would be brilliant; it would be incisive. The Treasurer understands my point. There is a contradiction in the role the regulator is expected to take if given an investigative or policy role.

I find it quite strange that the regulator exists to report on access and rules, which is fine, but the single most important element of regulation is price. That is the hardest one because that is the one that matters to the consumers who pay the price and to the companies that receive the price and the revenues in deriving their profit or funds for reinvestment. Microeconomic theory of monopoly shows that there is only one thing wrong with a monopoly: it charges a price above a competitive market price. In other words, it has a deleterious effect on consumers. Because the price is high, fewer resources go into the production of the particular good. It involves a contraction of production and a raising of the price. If there is one element of monopoly to be regulated from a theoretical point of view, it is price. That is the single most important thing. The way to counter monopoly power is to regulate the price; to put on a maximum price. I do not like it in theory, but if there is a private sector monopoly, it will regulate or control price. The most important dimension of regulation is the one that the regulator has no authority over. It is an enormous contradiction and failing in the Bill. It is left to the Government. It is probably a political decision, because the Government wants to have two-bob each way about what happens to electricity and water prices. If I were the minister, I would have done the same. I understand the politics of that. There is a dilemma. The impartial, independent, hands-off, well-removed regulator cannot adjudicate on price. It is the one thing that matters to consumers, investors and the economic public interest. That is an enormous failing and contradiction. That is part of the problem. When the Government hands over to a regulator, it must keep the bit that matters politically. I understand the motive, but it is a contradiction.

The Bill also has problems with a lack of appeal provisions and confidentiality of information. There are a number of points I will raise in consideration in detail. I do not intend to draw out the consideration in detail, but I will ask some questions. I foreshadow there may be some amendments moved in the upper House, particularly to do with confidentiality provisions and reporting to the Parliament, which is important. We should not take the Treasurer out of the situation, but the regulator should be truly independent and work in a confined area. I will argue for confined terms of reference and application, and public reporting to Parliament.

Mr E.S. Ripper: Why can't the Opposition move the amendments in this House?

Mr C.J. BARNETT: We are still working on them. We had a discussion in the party room this morning. I have not had the opportunity to draft the amendments. They will be constructive, but it will take time. The Opposition supports the Bill, although I have pointed out some of the practical realities surrounding a regulator. If I ever leave politics, I would love to be the regulator, because I would be the most powerful and highly paid person in Western Australia. The regulator will be incredibly influential. I do not know how the Government will find a regulator.

Mrs M.H. Roberts interjected.

Mr C.J. BARNETT: Surely the minister does not think anyone better can be found?

Mrs M.H. Roberts: I was wondering whether we would be able to get the post established fast enough.

Mr C.J. BARNETT: The person who is appointed to this position will have immense power and responsibility in this State. It will not be easy to find someone in Western Australia who can fulfil this role. The merging of all this influence and power will create a mantle that will be difficult to wear.

Mr E.S. Ripper: Do you think we would get bipartisan support to appoint you as regulator?

Mr C.J. BARNETT: Probably; I am sure the vote would be strong on this side of the House! However, I seek more fruitful times ahead. The thought of being a dull, colourless, boring regulator is beyond my realm of objectives.

I understand the logic of the Bill. I am not concerned about its content, which does not change law; it simply brings bodies together. However, how the minister and the Government handle the law will be critical. Experience in the United States, Europe, Australia and this State has not lived up to the theory in the textbooks; it has not been easy. We can find champions in industry, as the Government has on issues such as this, who do not see the role from the eye of the policymaker or the conflicts that can take place. I support the legislation, but I warn the minister of some of the pitfalls that can occur in its application.

MR R.N. SWEETMAN (Ningaloo) [9.11 pm]: At the outset, I acknowledge my leader's contribution. I greatly enjoyed his comments, which put many technical aspects of the legislation into perspective. I do not like this legislation. My leader made the point that we have sought to privatise and deregulate, and have now gone full circle. Although our state trading enterprises are corporate entities and others have been privatised, Governments seem to want to impose other forms of regulation to make things difficult for not only the trading enterprises but also customers and the expansion of business.

The Leader of the Opposition also made the point that the regulator makes many of his decisions in the regulating process based on various formulas. It reminds me of Keynes' theory. I remember many years ago - and not having the benefit of a tertiary education - being fascinated with a television program about what I think was Keynes' model of the economy. One of his theories was illustrated by pouring water into one end of a container, which then flowed past certain obstacles and triggered reactions. It was a very simple demonstration of how stimulation of the economy in one area caused certain flow-on effects. Keynes failed to realise that people are all different. One of the critiques of that demonstration illustrated that if six people were poked with a stick, they would each react differently. The Keynes model therefore served no purpose for anyone after that.

Under this legislation, the regulator will take submissions from a raft of organisations and individuals, many of whom will have vested interests. A classic example is the Epic Energy situation. For one reason or another, many people might like to see Epic fall over. It might be commercially advantageous to pick up the spoils of what is left of the Dampier-Bunbury gas pipeline for a much lower price than Epic paid the State three or four years ago. The experience of the sale of the Dampier-Bunbury pipeline has taught us much. I enjoyed my leader's contribution when he said "with the benefit of hindsight" and "if we were still the Government". Experience teaches us much. The Leader of the Opposition was bold enough to say that, having had experience as a minister and made certain rulings with the support of the Executive, say, two or three years on, he would have acted to ensure that Cabinet's intentions, or his intentions as minister, were imposed across the issue rather than directly on the regulator. It is frightening that the position of regulator will be elevated even further by this Bill.

Ministers are responsible under various Acts. I can recall as a backbencher in government approaching the Minister for Health, Hon Kevin Prince. A general manager in my health service and one in an adjoining health service, which was partially in my electorate, had to reapply for their jobs when their contracts expired. I pointed out to the minister that such a process was fundamentally flawed. They were sitting ducks for people who had applied for a dozen jobs in the preceding 12 months prior to the renewal of their contracts. The incumbent general manager was unable to submit to the assessment panel that he had served five years in the position. The fact that someone works in one position for five years usually means that he has not sought other employment. He had not prepared a curriculum vitae or sought referees and he had not thought about how he would conduct himself before an assessment panel when seeking re-employment. He was a sitting duck to be knocked off by someone who gave a more polished performance and who had perhaps given the same performance at least half a dozen times in the preceding six or 12 months. In that situation, two very competent general managers lost their jobs. When I approached the minister, he said that he could do nothing about it because of the Public Sector Management Act. Ministers are already hamstrung.

I recently made a submission to the Minister for Education in an effort to have a second deputy principal appointed at the Mt Magnet school. I know that his hands are tied. I only went as far in my letter as suggesting that the minister use his influence to try to get a second deputy in that school. I became a member of Parliament because I wanted to change things and to allow people, through the electoral cycle every four years, to determine whether I had done a reasonable job. It is of great concern to me that for the short time I have been a member, the powers of the Executive Government have been whittled away. Government members seem to be compliant in a process to shift that responsibility. I am not sure whether it is due to the workload or the responsibility of those involved or whether in difficult times it provides an opportunity to say that the problem is someone else's concern.

I guess we are continuing to pay a price for the excesses of the 1980s. Although we learnt much from that period, it is a blight on this State Parliament that activities of the 1980s occurred without the appropriate checks and balances in place to prevent them. It was an appalling situation. However, I cannot help thinking that we have gone too far the other way. Ultimately, the electorate decided to turf out the Government that lost \$1.25 billion because of incompetence, naivety and corruption at the highest level within government and some government agencies. However, I do not think that is a reason to cocoon ourselves to the extent we are from the decision-making process. Since becoming a member of Parliament, I have yearned for the day when I could become part of the Executive as a minister of the Crown and make decisions that have a profound impact on the circumstances and people within this State, and be judged according to the way I have managed affairs on their behalf.

I am not sure what people think about this situation. Do they blame the regulator or the Government? This seems to be a developing trend within the political system. I put on record that I do not like it. As a matter of principle and for practical reasons I make it clear that I am not comfortable with putting a regulator in place who will have sweeping powers to the extent of determining the tariffs and the operating environment for commercial enterprises. I do not know what the Leader of the Opposition was referring to when he spoke about amendments that may be moved in the upper House. However, I would be consoled to some extent if, in the case of Epic Energy - it is the most appropriate case study at the moment - the regulators said that the tariff for transport would be 75c to Perth and 85c to Bunbury. The fact is that Epic has had to race off to court, which has cost it a bomb and has basically left it sterilised in an environment of indecision. In that scenario, why could Epic not have appealed to the minister? The minister could have made a decision, after taking advice of course, and then taken the matter to Cabinet for a decision. At the end of the day the regulator would have done his part in collating all the information and evidence, and applying due diligence in the way in which he prepared his report. The company may not have been happy with that, but the regulator would have sent the reasons for his findings to the minister who then applies the Wisdom of Solomon. This would be better than the aggrieved party - in this case, Epic - trying to get redress through the courts, which is an expensive and time-consuming process. I can see Epic being ground down.

I recently read in the newspaper that 27 or 29 banks had given Epic some breathing space. It looks as though the company has another six months to get a ruling from the regulator. It is caught in a fairly interesting situation. I understand Epic made a submission to its banks on the basis that the regulator would make a final ruling on the price of the tariff by the end of March. That would then leave Epic to fight that through the court, if that were required. However, on hearing of that, the regulator made a public statement that it is unlikely he will make a ruling or a final recommendation by the end March, and that it may be mid-April. Often, in public service speak, that can mean the end of April or the end of May. The clock is ticking and time becomes absolutely imperative to the wellbeing of a company that has not done the wrong thing by this State. It has paid \$2.4 billion for an asset and it has reduced prices from \$1.22 down to \$1, and from \$1.28 down to \$1.08 for areas south of Perth. At the same time it has gone forward and guaranteed in the regulatory compact that tariffs will effectively be reduced each year by a third of the consumer price index. In other words, tariffs will increase each year by two-thirds of the CPI. Therefore, tariffs will be reduced in the future. It makes me wonder about some of the morals and ethics behind this - perhaps those words are too strong to use in this context. Simply put, some commonsense and ability is needed by latter day members of Parliament to discern clearly the difference between right and wrong, not in a moral sense but in the sense of what is appropriate or valid and what is not.

The week before last at the Pastoralists and Graziers Association conference I spoke with Ken Dillon, a former member of the Canadian Parliament and a devout socialist who, in his own words, was converted to capitalism on a trip to Moscow. He returned from that trip and started to think a little differently from the way he had previously. When he articulated that different thought to his constituents, they duly voted him out of Parliament. However, following his departure from Parliament he is now the head of the prairie grain growers institute. He provides regular commentary on what is happening within business and, in particular, within farming and agribusinesses within Canada. After one of the grain workshops at the PGA conference he asked me whether we had appointed ethics counsellors to State Parliament. I thought he was pulling my leg so I asked him to clarify what he was talking about. He said in all seriousness that the Canadian Parliament had just appointed four ethics counsellors to permanent positions at Parliament House.

Mr R.F. Johnson: Perhaps we should have them here.

Mr R.N. SWEETMAN: At the time I flippantly said that if Canada needed four, we would probably need a dozen! In all seriousness, I know that ethics counsellors would be used to interpret the rights and wrongs of particular positions according to contemporary community values. I do not think they would teach people the difference between right and wrong from the Scriptures. However, I thought it absolutely fascinating that politics had degenerated to the point at which ethics counsellors were needed to provide members with guidance on the most appropriate way to vote on legislation according to the day's standards and values. It is a further sterilisation of individuals within the parliamentary process, which really alarms me.

I will briefly refer to the Treasurer's second reading speech. The Treasurer encapsulated everything in the Bill in his second reading speech. As time is of the essence I will delete some of the things to which my leader has already made reference. The important part of the process is to ensure that the principles of sale and the expectations of both parties are laid on the table during the negotiation period or, in the case of the Dampier-Bunbury gas pipeline, during the sales process. When the sales steering committee went through the tenders that it had received, that was the appropriate time to form the basis of the contract. I can recall a debate in this place in about June 2000 to which both the now Premier and Treasurer, as well as the member for Eyre, made substantial contributions. I can recall that the Treasurer, in his speech and regularly by way of interjection, said that he believed there was a regulatory compact. At that time it took me a little while to get my mind around

that, but it seemed to be clear that the Treasurer believed that a deal was done. Now that he is on the government benches the Treasurer appears to have changed his position somewhat from that which he espoused or enunciated during that debate. That concerns me because the time to get the Epic deal right was during the sale process. It is not fit, proper, ethical or morally correct - however one wants to describe it - for a regulator to come along after the fact and impose his will retrospectively on that particular deal. At the time bank managers, lawyers and accountants pored over the data. Everyone had access to the data room for the same period - some five or six weeks. Therefore, they certainly applied themselves and could not be criticised for a lack of diligence in the way in which they put their submission together for the purchase of that gas pipeline. I find it extraordinary that the purchaser would have signed off on that deal if it thought that there was any chance that the tariff that it genuinely believed it would enjoy was to be slashed, certainly to the extent that it was. I am sure that it did not anticipate that there would be a cutback from \$1 to 75c. That is grossly unfair and requires the intervention of government. It is not good enough for the Government to extinguish the debt and for excess proceeds to be applied to capital works projects, which provide benefits to the State that we all get to enjoy and bask in the achievement of. It is interesting. I think \$100 million from that sale process -

Mr C.J. Barnett: Computers in schools.

Mr R.N. SWEETMAN: I think it also went to the convention centre, which was one of the former Opposition's most hated projects. Now that the Labor Party is in government, it is fiercely in love with it. It is a bit like the love affair between Hon Tom Stephens and the Maritime Museum in Fremantle. Labor Party members thought it was a terrible project when they were in opposition, but now that they are in government they think it is actually not bad. The convention centre is of particular relevance, because I think a substantial amount - I am not sure whether it was the full \$100 million, but I can recall -

Mr C.J. Barnett: It was a bit more at the end of the day.

Mr R.N. SWEETMAN: A substantial amount of the proceeds of the sale went to the convention centre. The community of Western Australia will benefit from the proceeds of that sale. We should put the issue of the regulator to one side and go back and look at the deal as simply as we can for such a complex deal. We should ask whether it is fair that an amount was offered and that these advantages have accrued to the State from this purchase price.

[Leave granted for the member's time to be extended.]

Mr R.N. SWEETMAN: A guarantee has also been made that prices will diminish in the future, after tariffs reduce to \$1 and \$1.08. As well, \$850 million or \$870 million will be spent on expanding the capacity of the line when it is required. The company has already spent some \$170 million to \$200 million doing that. These things need to be taken into account. It should not be dropped into the lap of a regulator to make a determination on an issue as substantial as this. This is about not only the largesse and genuineness of the transaction and the sale price but also the implications that will ultimately result to the reputation of this State in the broader international investment community. There are good reasons for the international investment community to invest in Australia at the moment; our interest rates are still higher than those in most other developed countries in the world. It is interesting that we talk about interest rates. They may well have been a factor in the determination by the regulator in his draft assessment that tariffs should be 75c and 85c. That is my understanding of what it was. I am not sure whether it was in any way linked to the historical bond rate, but the reference rate for return on capital at the time the bids were being put together was accepted Australia-wide as being about 10.3 per cent. My understanding is that, because of continued low interest rates, the rate has been forced down to 7.7 per cent as a benchmark or as part of an assessment formula by regulators. It has been forced down further to 7.3 or 7.2 per cent since. It is not reasonable for this transaction to have been subjected to that drop, given when it occurred. It is also my understanding that the return on capital will ultimately cover the purchase price. I cannot see what will stop the price ultimately reducing further, once Epic Energy has a return on its capital. I understood that was included in the bid that the steering committee was to assess. I am sure that did not get lost anywhere; I am sure it is still a part of the regulatory contract that applies to the transaction.

The Treasurer should sift through those things. I am sure that he is reluctant to sit down with anyone who is directly involved with the company because this matter is being handled by the regulator. I return to what I said earlier: this is a part of the sterilising process. The Treasurer should be intimately involved in getting a resolution to this serious situation, but he is precluded from doing so by a structure that the Government of Western Australia has put in place. The only consolation I have comes from something that the Leader of the Opposition identified in the legislation and a point made by the Treasurer in his second reading speech; that is -

Other recommended functions are subject to further implementation work and include independent administration of a new electricity access code and a new electricity industry licensing regime. The Bill provides for the authority to conduct inquiries on matters related to the regulated industries and to report to the Government on these matters. The Government will initiate these inquiries through

issuing terms of reference. As part of the inquiry function it is envisaged that the authority will report on retail tariffs to apply in the regulated industries.

This is the best part -

However, the current practice of the Government setting the actual retail tariffs through industry specific regulations and by-laws will remain.

That gives me some heart and comfort, but it should also give Epic Energy some comfort in these circumstances. One does not necessarily have to accept the ruling of the regulator. Perhaps the Treasurer can comment on that matter by way of interjection or when he responds to the second reading debate.

Mr E.S. Ripper: That section of the Bill really relates to the publicly owned utility providers in electricity and water, rather than the monopoly assets regulated under the national gas access code.

Mr R.N. SWEETMAN: What is the difference? One is gas, one is electricity and one is water, but I cannot see what the big deal is. The regulator may well have proposed a different tariff in his draft ruling of 75c and 85c if he had had all this other work on his plate. The simple fact is that when that position was created, the regulator really had only one function: he was the gas regulator, so he was responsible for only one item at that time. I do not know whether he was doing any work on AlintaGas. I assume he was casting a casual eye over it. I certainly think that with all these other matters on his plate - that is, being responsible for more than one task - it will certainly give some relief and advantage to the people into whom he might ultimately inquire.

Cost recovery is an interesting point. The fishing industry has evolved and is now applying great pressure back on the Departments of Fisheries and of Planning and Infrastructure for all the levies and cost recovery fees that it has paid to the Government in one way or another. That industry is now starting to question how much it is paying in cost recovery, and whether it is in fact cost recovery or cost excess. The industry has questioned whether the excess fees it pays for the use of services within harbours and ports in this State is really a tax or a revenue base for the Government. We should consider the costs that have been applied to Epic Energy all the way along and not just the regular costs that it has paid to maintain the regulator in his position. When Epic Energy took the regulator to court to appeal his decision, it was presented with the regulator's expenses, even though, on the face of it, it did not seem to get a result in the court. The Supreme Court seemed to go with Epic Energy's argument, so one could argue that the regulator should pay at least some of the costs of Epic Energy's time in the court. It is a very interesting situation and one that needs to be considered more closely. I know that it will not be as big an issue once more industries contribute to the cost of running and supporting the functions of the regulator.

In closing, while the Government has certainly had good intentions with this legislation, as the Leader of the Opposition has said, how it operates and whether it delivers advantages to the State in the longer term will be seen over time.

I wanted to make another point, but time is short. I wonder how taxed the mind and assistants of the gas regulator will be in the event that Epic Energy is, for one reason or another, unable to carry on as the owner of the Dampier-Bunbury gas pipeline. It might be that the 29 banks go through another tendering process and - speaking hypothetically - a joint venture of AlintaGas and Wesfarmers ends up with the asset. AlintaGas, a retailer and supplier of gas locally, would suddenly be intimately involved with the transport of gas into the area. I wonder how the regulator would get his mind around that, as he would need to look at more than simple transport issues, reference points and formulas to work out how he will dictate to that consortium what it might charge for transport in the first instance and then the reticulation of gas to industry and private households around Perth. That is a hypothetical scenario. However, the storm clouds are gathering and the companies I see as most likely -

Mr E.S. Ripper: You might feel you can speculate from your position, but it would be unwise for me to speculate on such matters.

Mr R.N. SWEETMAN: Yes, but I have probably done my job because I think that now the Treasurer will give it some private thought.

MR M.W. TRENORDEN (Avon - Leader of the National Party) [9.40 pm]: The National Party has some concerns about this Bill and will seek to amend it in the consideration in detail stage. The role of the regulator in industry is a very significant one. It can either facilitate and develop industry while protecting the consumer or it can completely destroy the business environment and penalise the consumer. The National Party is seeking an assurance from the Government that its model has been thoroughly investigated and that this legislation is not being put in place merely to honour an election commitment. We also seek an assurance that industry has been fully involved with the drafting of this legislation and its concerns have been comprehensively addressed. I doubt the Treasurer can give that second assurance because our discussions with industry have revealed some significant concerns about this Bill. I will be interested to learn the extent to which the Treasurer says he has

consulted. I will also ask the Treasurer to table the documentation that demonstrates he has the concurrence of all Australian energy ministers to alter the Gas Pipelines Access (Western Australia) Act. Our understanding is that he cannot amend the legislation without the approval of all the other ministers, including the federal minister. I will be interested in his response to that.

Mr E.S. Ripper: We are not amending that aspect of the legislation, so there is no need to seek approval.

Mr M.W. TRENORDEN: This Bill will affect the gas pipelines access Act. The Treasurer has not got the approval of the other ministers to do that.

Mr E.S. Ripper: We do not need the approval of the other ministers so long as we do not change the rules by which we regulate.

Mr M.W. TRENORDEN: Clause 6.1 of the 1997 Natural Gas Pipelines Access Agreement states -

A Party must not amend its Access Legislation (either directly or by making other legislation that would alter its effect, scope or operation) unless the amendment has been approved in writing by all the Ministers.

I argue that that is what the Treasurer is doing, and I would like to know whether he has some legal opinion or the advice of other state and federal ministers that he is right in making these changes. He has not convinced me that he has such advice, and I think he needs to address this issue in this House. I am happy to be proved wrong.

Mr E.S. Ripper: The point is that this is institutional change, not policy change. We are not changing the access regimes for gas or rail.

Mr M.W. TRENORDEN: No, but the Government is amending the Act.

Mr E.S. Ripper: We are amending the Act, but not the access regime. It is the access regime that is the subject of national agreement.

Mr M.W. TRENORDEN: I am not a lawyer, but I make the point that my reading of the 1997 Natural Gas Pipelines Access Agreement does not allow that to occur.

Mr E.S. Ripper: The National Party is in coalition with the Government at the federal level. Presumably the federal Government would blow the whistle if it thought an agreement was being breached. It has not.

Mr M.W. TRENORDEN: If that is the challenge, I am happy to get on the phone and check with the federal minister to see whether that is the case. All I was asking was whether the Treasurer could guarantee that that is the position. I am happy to check with the federal Government.

We will seek to amend this Bill. Principally, our amendments will address the funding of the Economic Regulation Authority and provide a clear mechanism for the review of the function and effectiveness of the authority. I use the gas access legislation as a prime example of why the user-pays cost-recovery mechanism is very hard to apply effectively in a regulated industry. Members have already spoken about Epic Energy. This cost-recovery mechanism remains highly contentious in Western Australia and could be considered a distinct disincentive to sensible performance by industry. There has been some debate in this House about Epic Energy's situation. Epic has gone to court and is effectively paying for both sides of the argument. It is paying its bill and the bill of the regulator. Yet, the Government says it is an independent operation. That is a nonsense. There must be some penalty and accountability on the part of the regulator, otherwise this process will be crippling. The Epic saga has been going on for several years without any outcome. People might ask to whose detriment that is. Some will say it is to the detriment of Epic, and ask, "Who cares?" Frankly, I do. I want gas in my part of the world. At a public meeting at the Sheraton Perth Hotel attended by a considerable number of people, I made the point that the National Party does not want the regulator to force the price of gas as low as it possibly can because that would mean we will never get gas. Those of us who do not live within the current pipeline system will never get gas because there would not be any capital to encourage pipeline operators - Epic, Apache Energy or whoever they might be - to extend infrastructure. It will be the regulator who makes the decision that the people in my electorate and the rest of rural, regional and coastal Western Australia will not get gas. That is an astounding position considering that we in this Chamber and particularly the people to my left should now have the power to encourage the facilitation of infrastructure, whether it be for rail, gas, water or whatever. We should not have a regulator with a particular attitude and a foot on the hose. Although that will not always be the case, it is what has happened with the Epic decision. We are concerned. As I have said, the cost-recovery mechanism can be a distinct disincentive to a sensible performance by any industry. In Western Australia the cost-recovery mechanism requires the regulated entity to bear the cost, and there is no guarantee that the regulator, who has considerable discretion in matters of cost, will allow those costs to be passed on to the consumer. What nonsense is that? If the regulator decides there is an action and has costed that action, there should be, in most cases, the capacity to pass the costs on to the consumer. There cannot be an action without a reaction. That capacity must be built into the process. The National Party questions this process on grounds of

efficiency and equity. Governments continue to receive competition payments from the Commonwealth Government for things such as gas reform. Accordingly, Governments should bear the costs associated with regulation. Reforms come about through the national competition policy and Treasury gets paid a national competition policy payment. Our argument is that the cost of regulation should be funded by that payment.

Mr E.S. Ripper: I am spending that money on country hospitals.

Mr M.W. TRENORDEN: The Treasurer is not spending any money on country hospitals.

Mr T.K. Waldron interjected.

Mr M.W. TRENORDEN: He has a distinct sense of humour. Even if it were the case, I would argue that he is wrong to do so, because it is not right.

We are not talking about an independent organisation. One of the first comments in the Treasurer's speech was that the authority will be both independent of government and the interests of the regulator. What absolute nonsense! That is not a correct statement or one that the Treasurer could back up. Where will the independence be? The Treasurer has a range of capacities that can be drawn into the process with the regulator, who could become involved in industry. Unquestionably, as far as the National Party is concerned, government and the consolidated fund must pay the cost of the regulator; otherwise, there would be interference in the commercial activities of the State, which would be unacceptable. Those things will be demonstrated and the Epic situation would be repeated. If the Government's policy is that the market-recovery mechanism policy is to be implemented, it must provide a full pass-on of costs to associated end users, rather than leaving it to the discretion of the regulator. If the regulator will jump in and cause an effect, and if the industry will be forced to pay the cost of the effect, it must be handed on; otherwise, the regulator would be interfering in economic and commercial activity, which would be unacceptable, certainly to the National Party. If the Treasurer puts it to people who advise him, he will find in most cases that it is also unacceptable to them.

I chaired the Public Accounts Committee for eight years and I spent some time in Canada and the eastern States and a fair amount of time in this State listening to what has been done in this regard in other States and other nations, including South Africa and the United Kingdom. I listened to debates about the outcomes with regulators and regulation. It is not an easy course. In the majority of cases, regulators go for the lowest common denominator. That is the regulator's view. Regulators should say to industry, "Yes, you can do these things on these conditions." Regulators have a habit of saying no. That is the stage at which the Treasurer and whoever follows him will regret the passage of this Bill, if it gets through unchanged. We will talk about an office of regulator for some time.

To whom will the regulator be accountable? Nobody I know of. He will not be accountable to the Treasurer, this Chamber or the other place. He will have immense powers to mess around with the economic performance of this State. The National Party seeks an annual review of the office of the regulator by the Public Accounts Committee. I ask the Treasurer to think about this proposal, as he knows the process. It was successfully followed for a number of years with the State Government Insurance Office. It does not mean the PAC needs to go into great detail, but it would have the opportunity to pull the regulator in and question him once a year about his performance and attitudes. If that were to happen, the regulator would have to think about the role he or she plays in the field, and how he or she must be accountable to the people who make decisions in this House and to the people who elect the people to make decisions in this House. The Treasurer understands that regulators go for the lowest common denominator - it is a natural pressure.

As I said earlier, it is important to have regulation. No-one in this Chamber will say that we should have no regulation. It is important that the regulator adopt the right approach: "Yes, things can be done under certain circumstances." The other attitude would be to say, "No, I'll take it down to the lowest position I can drive it." Regulators believe, in view of the consumer's position, that this is the best outcome. We know already through the Epic case that if one refers to the lowest cost, one locks in a benefit to a certain number of consumers and precludes many others. That is not the role of the regulator.

I am passionate that this process requires some accountability. The Treasurer was on the Public Accounts Committee and knows its functions well.

Mr E.S. Ripper: I think we did some good work.

Mr M.W. TRENORDEN: That is right. Members had the right attitude. On a handful of occasions, politically inspired debate took place in the committee. However, members mostly had a good attitude to the process. I ask the Treasurer to consider the suggestion of an annual review by that committee.

Mr E.S. Ripper: Do you think the Public Accounts Committee might regard that as onerous, and as something it would have to do every year that might prevent it from making other inquiries?

Mr M.W. TRENORDEN: I think it will; however, my amendment suggests that the review be in only the first five years of the operation of the regulator. The committee could then review the body over whatever period it liked. Such review was undertaken when SGIO went from public to private ownership. It was done for a number of years to ensure that SGIO kept within its boundary with prudential assets and other questions of regulation. The Public Accounts Committee ensured that the right thing was happening, and reported back to the House. It would be an onerous task. However, the Treasurer and I sat on the PAC regularly dealing with matters referred to it from the House that were not of our choosing. We regularly had issues nominated to us by ministers. We could reject those, but if a minister of the Crown gave a request to the committee, in most cases it gave it serious consideration. I cannot remember the PAC knocking back a request from a minister because ministers do not make requests without due consideration.

The Public Accounts Committee never totally roams over its own field. I admit that the Treasurer and I enjoyed it when it did roam.

Mr E.S. Ripper: It depended where we roamed.

Mr M.W. TRENORDEN: Exactly. We roamed to some nice places. I remember the Treasurer and another person now sitting on the front bench getting lost in the middle of the United States at a roundabout on one occasion.

Mr E.S. Ripper: Those were the days.

Mr M.W. TRENORDEN: We need not talk about that; we are not inquiring into directions and geography.

The Public Accounts Committee has a joint responsibility to do work as directed and work it deems necessary to carry out. That is why it has been a good committee and has always had the support of the House. I ask the Treasurer to give my amendment serious consideration when we reach that provision.

The National Party will seek confirmation from the minister that the Western Australian regime will need to be resubmitted to the National Competition Council for recertification as an effective regime following the passage of the Economic Regulation Bill. This would impose additional regulatory uncertainty on a number of regulated entities, including the regulated gas transmission pipeline. We want to know that the process has the approval of the National Competition Council. Again, that is a fair request.

Regarding the effective and efficient operation of the authority, the National Party will move an amendment asking the House to instruct the Public Accounts Committee to carry out the annual review for five years. We picked five years because the Treasurer will undertake a review process in five years. It seems logical. If the Treasurer were to argue for a review over three years, I would accept that view. The point is that the review would be done once a year in a fairly mechanical manner.

The National Party wants to ensure transparency and accountability in the process, not only with the Bill and the Treasurer's actions, but particularly with the regulator when the regulator is born. This is an important policy platform to be implemented by this Government that will carry through to other Governments. It is hard to fathom why the Government has gone this way, because charging industry for an independent regulator is hardly an independent regulator, and we will debate that further later on. The National Party will be looking to amend this Bill, but I also ask the Treasurer to comment on the key issues I have raised - his opinion of his responsibility to the other ministers, his views about national competition policy, why this Bill needs to be funded by industry and not from consolidated revenue, and whether he is prepared to allow the Public Accounts Committee to have oversight of this legislation.

MR R.F. JOHNSON (Hillarys) [10.00 pm]: I want to make a couple of points on this Bill and on the principle of having a regulator. There are pluses and minuses in having a regulator in the circumstances provided for in this Bill. I want to go back a little bit, because my colleagues have already mentioned the Epic Energy saga, which has been going on for some time. I am very disappointed that the Treasurer has not really got involved to try to solve that problem. He has just thrown up his hands, stood back and left it to the regulator.

Mr E.S. Ripper: That is the logic of independent regulation.

Mr R.F. JOHNSON: That is the problem. The Treasurer says it is the logic, but it can also be a very severe problem. When the gas pipeline was sold to Epic Energy, I was a member of Cabinet. Many people believe that Epic Energy paid too much. From the point of view of the State, it was a fantastic deal to suddenly receive \$2.4 billion, which was the highest of any of the bids. It was also a good deal because it brought the cost of gas transport down from \$1.22 to \$1, and \$1.08 in the southern parts of the State. That had to be a very good deal for the people of Western Australia. The \$2.4 billion was used to pay off a lot of the debt that the previous Labor Government, of which the Treasurer was a minister, had got the State into. From the point of view of the State, it was a very good deal. The Minister for Community Development is looking very bewildered. She

probably cannot remember, because she was not here in those halcyon days. The previous Government bringing down the debt from \$8.5 billion to \$4.5 billion was a great achievement in eight years. I can see now that the debt will now go back up to \$8 billion, if the present Government lasts any longer than two more years. It will be up to \$6 billion minimum by the time the next election comes around.

The price that was paid for the pipeline was a good deal. The expectation - that is a very important word - not only of Epic Energy, but also of the Government of the day and industry, was that \$1 was a very fair price. It was a huge reduction. The regulator then looked at what was happening in the eastern States, which is like a different country. We are so apart from the eastern States, and we have a different infrastructure. The eastern States has a much larger consumer base than we do here, both in industry and residential customers. What happens in the eastern States cannot be used as a model for what happens in Western Australia. For the regulator to cut the cost and the turnover of Epic Energy by 20 per cent is horrendous. No Government would have done that, because Governments should act with honour and integrity. If the regulator were not in place, and the minister were charged with the responsibility for setting the cost, we would not at this time be looking at a 20 per cent reduction in the turnover of Epic Energy. From all the reports we have seen, if Epic Energy has to end up charging the price that the regulator has set, it will go into liquidation after spending \$2.4 billion. That does not augur well for any international corporations looking to invest in Western Australia. I am not saying that there should not be a regulator, but the regulator should be responsible to somebody. He should be responsible to the minister, in this instance.

Mr R.N. Sweetman: Will we see him at estimates?

Mr R.F. JOHNSON: No, we will not see the regulator at estimates. This Parliament will not be able to ask questions at budget estimates time. That will be one of the out-of-bounds areas. There will not be a great deal of accountability to this Parliament. This is the House that acts with accountability for all government expenditure in all government departments.

The minister should be able to intervene if he believes something is happening that should not be happening. If an unfair situation affects future investment in Western Australia, the minister should be able to intervene, but he is not doing that, and he does not want to. He will not be able to do that under this Bill. Who will the regulator be responsible to? As the member for Ningaloo has said, the regulator can run up enormous legal bills fighting in the Supreme Court, knowing that he or his department will not have to pay a cent. They will get it from the courts. Whoever wants to challenge the regulator will have to pay the regulator's court costs. That does not seem fair to me either.

Mr E.S. Ripper: The Treasurer sets expenditure limits for the regulator, so there is accountability there. The regulator cannot spend whatever he wants to spend. Secondly, with regard to this piece of legislation, given that there will be some consolidated fund finance for the economic regulation authority, I believe that it will be possible to examine that matter at estimates. I will confirm that in consideration in detail.

Mr R.F. JOHNSON: I would appreciate that if the Treasurer could do that, because it is important that members of this House are able to ask questions of the regulator, particularly in view of the possible impediment to any future development in this State by international corporations.

I wanted to say those few words about Epic Energy, because I was around at the time of the deal. I know what the expectation was and everybody believed it was a fantastic deal at the time. It can only be considered a dreadful deal from the point of view of Epic Energy. If nothing else, I believe in fairness. Epic Energy is being treated very unfairly in this situation, predominantly by the regulator, who has been looking at too many other areas to form the basis of what he believes the cost should be. The minister, the Government and this Parliament should take responsibility for all these issues.

Members on this side of the House are not the only people who have concerns about this Bill. One organisation that has enormous concerns is the Western Australian Council of Social Service, which has prepared a briefing note on this Bill. It is possible that some of the concerns of the Opposition may be complementary to those of WACOSS. As a brief overview, WACOSS is concerned about public consultation, or the lack of it; support from consumer groups; consumer complaints resolution; separation of policy planning, regulation and complaints; consideration in decision making; licence development; information provision; and licence breaches. I wonder whether the minister has seen this briefing note from the Western Australian Council of Social Service. If not, I suggest he have a good look at it. WACOSS is more likely to support Labor Government policies than those of a Liberal or coalition Government. If WACOSS is not happy with this legislation, the Government will have enormous problems. It is concerned about public consultation and says -

The Treasurer in the introduction and first reading speech states that the ERA has been subject to wide public consultation. However, the consultation process undertaken provided for one round of public consultation on a relatively brief Discussion Paper that failed to outline in detail the manner in which

the proposal would impact upon the system and failed to make detailed account of how the proposal would change the existing policy making, planning, licence development and complaints resolution system.

That is just one of WACOSS's many concerns, but I will not read them all.

Mr E.S. Ripper: Whose concerns are they?

Mr R.F. JOHNSON: They are from WACOSS. Has the Treasurer read their concerns?

Mr E.S. Ripper: I have not read them, but I am more than happy to look at them.

Mr R.F. JOHNSON: I am more than happy for the Treasurer to examine the letter because WACOSS has some serious concerns. As I said earlier when the Treasurer was talking, WACOSS is very often supportive of Labor Governments. However, it is not very supportive in this briefing paper.

Mr C.J. Barnett: Perhaps the Minister for Community Development will present WACOSS's point of view!

Mr R.F. JOHNSON: That would be very interesting. The Minister for Community Development should speak on behalf of WACOSS. It is an organisation with which she would work closely; it has a welfare interest.

Ms S.M. McHale: I heard every word, but I am ignoring you.

Mr R.F. JOHNSON: The minister said she has listened to every word and that she is ignoring me.

Ms S.M. McHale: I will not ignore WACOSS.

Mr R.F. JOHNSON: This is a document from WACOSS, on which the Minister for Community Development should have been briefed. I do not know whether she has been, but she should be making representations to the Treasurer about WACOSS's concerns. I hope the minister will get on her feet before the Treasurer responds so that she can put across WACOSS's case. It is not the Opposition's job to speak on behalf of WACOSS; it is the Minister for Community Development's job. Those concerns are outlined in these three papers.

Mr C.J. Barnett: It could go to a standing committee!

Mr R.F. JOHNSON: Yes; however, I would not dream of inflicting that on you tonight, Mr Speaker. I urge the Treasurer to look closely at these concerns. The Minister for Community Development is obviously not prepared to speak on behalf of WACOSS. There is too much detail in the three papers for me to read them into *Hansard*.

Mr E.S. Ripper: You are the master.

Mr R.F. JOHNSON: I could do that, but I am mindful of the hour; it is a very hot night and we have gone past our usual sitting time. I do not want to cause the wrath of my colleagues on either side of the House because I am keeping them here longer than they would like to be. I urge the Treasurer to read in detail these papers from WACOSS because they contain many important points. I will not read the points into *Hansard*; I will give the Treasurer a copy so that he can see them first hand. Perhaps he will respond tonight, unless he intends to respond tomorrow. WACOSS's concerns are genuine. I would like the Treasurer to read these three papers before he cuddles up to his teddy and closes his little eyes tonight. He could then not only respond to the comments of my colleagues tomorrow, but also he may have an opportunity to talk to the Minister for Community Development because she should have a great deal of interest in WACOSS's comments. She should be passionate about it, but she is obviously not because she is ignoring what I am saying. However, I have a great deal of faith in the minister. He is a man of integrity - most of the time. When he has read this tonight before he closes his eyes, he will have a different view tomorrow morning. I ask the minister to tell the House tomorrow what he thinks about what WACOSS has to say. I am very interested to know the minister's response to the serious concerns of WACOSS.

MR E.S. RIPPER (Belmont - Treasurer) [10.15 pm]: I will respond briefly to the comments made by members on the other side of the House. Members want me to finish soon so that we can depart on this hot evening. I will deal with some of the issues during consideration in detail tomorrow. At the outset, this Bill is not about policy change; it is about institutional change. It does not change the access regime for gas pipelines. It does not change the access regime for railways. It does not change independent licensing decisions for gas or water. Electricity access matters are still being developed within the electricity reform process. It is important to note that because a number of members have spoken about the access regime in gas or the concept of independent regulation. We are not changing the concept of independent regulation as it applies to gas pipelines or railways. We are not changing the access regime in either of those two industries. We are bringing together independent regulation in gas, rail, electricity and water. In doing so, the Government is honouring an election promise that had good reasoning behind it. Regulatory expertise is a scarce resource; it is difficult to find the appropriate talents and skills to conduct complex regulatory exercises. It is important to make the best use of the expertise

available in Western Australia by bringing that expertise together in one body. If we did that, we would have the advantage of better consistency of regulation across the utility industries. If we have a regulator that is not industry specific, we will avoid the problem that arises - and has risen historically - with regulators being captured by industry interests. The proposal before the House has the advantage of providing Western Australia with a bulwark against demands that would arise in national discussions for a single national energy regulator. In other words, there is a demand for national consistency to which the State is able to respond; we are organising consistency on a state basis through an economic regulation authority.

I have previously said that there will be no change in the access regime. That is why there will be no problem with the other jurisdictions or with the National Competition Council, as feared by the Leader of the National Party. I am advised that the Office of Energy and the Department of Treasury and Finance have consulted with the other jurisdictions and the NCC. There is no need to seek formal approval because the Government is not changing the access regime. I am advised there is acquiescence from the other jurisdictions and the NCC for what we propose.

I now turn to a number of comments made by the Leader of the Opposition in his interesting and thoughtful speech on regulation. The Leader of the Opposition pointed out that access regulation is an aspect of competition policy. That is absolutely correct. The previous Government signed up with a previous federal Government for competition policy to be applied nationally. This State is bound by the agreement made by the previous Government for various competition policy matters to be implemented.

I disagree with the Leader of the Opposition's comment that competition policy requires privatisation. I acknowledge the argument put by some people that there cannot be effective competition between publicly-owned entities and privately-owned entities because publicly-owned entities cannot go broke as can privately-owned entities. However, I do not believe that competition policy in itself requires privatisation. What is important about reform in energy and other markets is to get the mechanisms that provide for competition not to focus on privatisation. Other jurisdictions have sometimes focused on privatisation rather than competition, or they have been running the dual agenda of competition reform and privatisation and thus have not achieved the result that they have been aiming to achieve. For example, they have been trying hard to increase the value of the asset that they have been seeking to privatise and thus have compromised their competition policy reforms. The Victorian electricity privatisations and competition reforms suffered from that dual focus. Some of the problems in the South Australian electricity system have flowed from the fact that the South Australian Government was probably too interested in increasing the value of the assets that were to be privatised and thus allowed the competitive aspects of the policy argument to be subordinated.

Some interesting comments have been made about regulation. I have detected a tension between what we may describe as a can-do development mentality, which has been the traditional Western Australian approach, and the due process that is imposed by independent regulation. There have been times when ministers have wanted to roll up their sleeves and do a deal to get a development under way. I can understand why that approach may be attractive to ministers and potential ministers.

Mr D.A. Templeman: And to Speakers!

Mr E.S. RIPPER: Indeed, if they are from electorates that are in need of development. However, one person's public interest may be another person's special deal. We also get the perception that the rules are unclear and change from incident to incident, perhaps influenced by unfair political considerations. That is what the Leader of the Opposition was talking about when he referred to sovereign risk. A minister might roll up his sleeves and do a deal to get a development under way. However, another company might then come along with what it regards as a similar proposal and it would like the sleeves to be rolled up and it would like the can-do mentality to apply too, but the minister does not agree. We then get a perception among investors that the Government is showing some favouritism towards one investor rather than another. What gets us away from that sort of perception is a set of rules that is commonly understood and an independent and non-political process for the enforcement and application of those rules. If Governments do not like the way in which the rules are working in practice, Governments can change the rules. The only requirement is that through the independent regulatory process the rules are applied evenly and fairly to all contenders and participants.

Mr C.J. Barnett: That is a fair comment. However, the problem is that there is an inherent conflict between a development objective and a regulatory objective. The regulator will regulate; that is what he is charged to do. He will not have a development brief. It is not a political consideration. It is just that there are two objectives that are partially in conflict. That is the reality.

Mr E.S. RIPPER: I do not think the two objectives are necessarily in conflict. Of course, they can be in conflict and they have been in conflict in circumstances in which regulators, for example, have been overenthusiastic in their support for consumers' rights, and insufficiently considerate of the need for a proper return on investment to encourage investment into the future. If Governments and policy makers believe that regulation has been too

consumer orientated and not investment orientated enough, Governments can change the rules. That is an argument that is currently taking place on the national gas access code. I do not think the answer is to do away with independent regulation and have politicians get in there and support development. I think the answer is to amend the national gas access code if it is seen to have been applied in a way that does not properly support investment. I have supported a review of the national gas access code by the Productivity Commission. I hope that review occurs, and I will be very interested to see what conclusions are reached on the question of the appropriate balance between the rights of consumers and proper incentives for investment.

Mr C.J. Barnett: What you must make sure is that they do not go upstream, which has been part of the objective, to take it up to the wellhead, so that sub-sea production lines would suddenly be open to access rules and all the rest of it. The system will then frighten away offshore development.

Mr E.S. RIPPER: That may be an important point, but I am more interested in what the rules are for existing regulated assets, how they are applied and whether they scare off future investment in those sorts of assets.

Mr C.J. Barnett: My point is that regulation is fine in principle for existing assets. Where it runs into trouble is when you want to build a new asset or expand an asset. That is the dilemma. It is not a political point.

Mr E.S. RIPPER: It may well be that the national gas access code can be amended to deal with those instances in which, for example, a pipeline proponent has a particular arrangement with consumers in mind. If that particular arrangement can be accepted by the regulator, the pipeline will be built. If the pipeline is to be subject to uncertain decisions of the regulator, maybe the pipeline will not be built. There might need to be changes to the gas access code to provide for those sorts of arrangements.

I know that the Leader of the House does not want me to engage in a detailed discussion about gas access matters as I make my response to the second reading debate. I am happy to make some comments about these matters tomorrow as we go through the consideration in detail stage.

Mr C.J. Barnett: One way of resolving the dilemma is to introduce time into it, so that if a different set of rules applies for a new project or an expansion project, they will apply for a period and ultimately will become normalised. A special set of conditions may run for, say, 10 years on a capital-intensive investment. At the end of the day, if you get to a level playing field, that is fine, but you cannot always have a level playing field from day one.

Mr E.S. RIPPER: The sorts of comments that are being made by the Leader of the Opposition support my argument. The correct approach to this is to change the rules if we think the application of the rules is wrong. We should not say let us not have independent regulation; let us have can-do ministers who roll up their sleeves and do special deals. There may well be problems with the gas access code. There may well be disincentives to investment. I hope there is to be a review. I would like it to be conducted by the Productivity Commission, and I would like it to be conducted this year. I will be very interested in the outcome. However, the correct approach is to change the rules, not do away with independent access regulation.

I will talk about one more aspect of the legacy of the can-do development mentality in Western Australia. As energy minister, I deal with the after-effects of long-term decisions that were made no doubt for good reasons many years ago, but nevertheless the effects are negative today. As an example, the current Leader of the Opposition made what he thought was a good decision on the Windimurra pipeline. However, the vanadium mine is closing.

Mr C.J. Barnett: No, it's not.

Mr E.S. RIPPER: Hopefully, it will not stay closed permanently. However, if it stays closed permanently, we will have an asset in which the State has invested more than \$30 million and which will be largely unused. Another example is that the State Government, through Western Power, is signatory to some long-term coal contracts which involve prices for coal that are too expensive for Western Power to compete with effectively in electricity supply. Presumably, those contracts were entered into for regional development and other reasons a long time ago, but now we are dealing with the after-effects of those contracts.

Mr C.J. Barnett: That was back in the mid 1980s.

Mr E.S. RIPPER: That is right. I could provide other examples, but the phenomenon I am drawing attention to is the long-lasting impact of some decisions that probably brought short-term advantages to the State, the Government of the day or particular regions or industries at the time they were made. The can-do mentality sometimes borrows from the future at the expense of the experience of future generations. It leads to a situation where uneconomic outcomes possibly occur in the long term.

I could make other comments, but I want to reinforce that the way forward is through independent regulation. This Bill does not introduce independent regulation or change any access regime. It promotes institutional change that brings together the scarce regulatory resources we have in this State; it hopefully provides us with

more consistency in regulation; and it hopefully helps us to avoid the problem of industry capture of regulatory agencies. I think it is a rational, sensible reform. I know that some members opposite want to debate the whole concept of access regulation, but that is something which was introduced into this State by a previous Government and which is neither especially developed or hindered by this Bill. I commend the Bill to the House.

Mr C.J. Barnett: That is other than it does concentrate an enormous amount of economic and commercial power in the hands of one body. It is more than simply an administrative change. We now create a person or a body that has enormous power following the bringing together of all those functions. The regulator or the authority will be more influential than most ministers in any Government - such as Professor Fels, who was described as one of the most powerful people in Australia.

Mr E.S. RIPPER: The regulator will have to operate within the confines of the access regimes.

Mr C.J. Barnett: It did not stop Allan Fels.

Mr E.S. RIPPER: If the policy makers do not like the way the regulator is applying the access regime, they can change the access regime. It is a bit like the situation we have with the criminal law. We put laws through the Parliament; the courts apply the laws in ways we do not expect; we come back to the Parliament and we alter the laws to get the result that the Parliament intended. That is the way we should look at economic regulation. We are developing the laws and we have control of the policy; but, in the end, the application of the law in an individual case is something that is done not politically but independently. I believe that will provide the right climate to promote investment in this State. It is an aspect of a mature jurisdiction; the cowboy jurisdictions reject independent economic regulation.

I am happy to debate these issues again tomorrow when we go into the consideration in detail of this Bill. In the meantime, I urge the House to pass the second reading stage.

Question put and passed.

Bill read a second time.

House adjourned at 10.34 pm
